

OVERVIEW OF THE FIRM'S 2018 PRO BONO CONTRIBUTION

The Pro Bono & Human Rights Practice (the Pro Bono Practice) is proud to report that during what was a particularly successful and productive year, collectively Cliffe Dekker Hofmeyr (CDH) donated over 9,500 hours/in excess of R25 million in pro bono legal services to deserving individuals, organisations and causes during 2018. This is a truly impressive contribution of which the firm can be proud.

The extent of this year's contribution, I believe, shows that the impact and presence of the Pro Bono Practice is growing within the firm, and affirms the importance that CDH places not only on its pro bono obligations to assist indigent and vulnerable people to access justice, but on its moral and ethical obligations to use its considerable agency to further the promotion of constitutionalism, accountability and the rule of law.

Thank you to my team here in Johannesburg and to Brigitta Mangale, our Cape Town representative, for all your commitment and hard work over the year. And a big thank you to all the other practitioners in other Practice areas who contributed valuable time and resources in assisting with pro bono instructions and in helping us roll out some of our special projects and training.

In what follows below we share some of the highlights of our work over the year.

JACQUIE CASSETTE
*Director & National Practice Head
Pro Bono & Human Rights Practice*



PRIDES & PLIGHTS VISUAL ART EXHIBITION

As part of our mandate, the Pro Bono Practice selects a few campaigns each year through which to promote internal and external awareness of human rights and topical matters of public interest. As our penultimate campaign for the 2018-year we chose to highlight the cause of older women in Africa.

In furtherance of this cause, we hosted an art exhibition at our Johannesburg Office in collaboration with the Centre for Human Rights and at the University of Pretoria (the Centre). The "Prides and Plight" exhibition formed a part of a yearlong campaign by the Centre to draw attention to the plights of older persons with a particular focus on older women. The aim of the campaign was to advocate for their human rights, to promote an environment for older persons to age with dignity and to promote the ratification of the Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons (the Protocol).



The exhibition brought together works of art by several generations of practicing South African artists all who hail from institutional and self-taught backgrounds and focussed on "the Prides and the Plights" of older African women. As the title of the exhibition indicates, the works of art on display aimed to honour the dignity, resilience and contribution of elderly African women (their "Pride") while highlighting some of the human rights challenges and abuses suffered by them (their "Plight").

As a result of pervasive misconceptions and stereotypes about ageing, older women in many African countries face a triple jeopardy namely, sexism, disempowerment and ageing. Older women are often viewed as unproductive, an inconvenience, burdensome, dependent, passive and many are isolated, poor, abused and suffer various forms of violence and discrimination.

Exactly because of their marginal status, the lived realities of older African women receives little to no attention by main stream society.

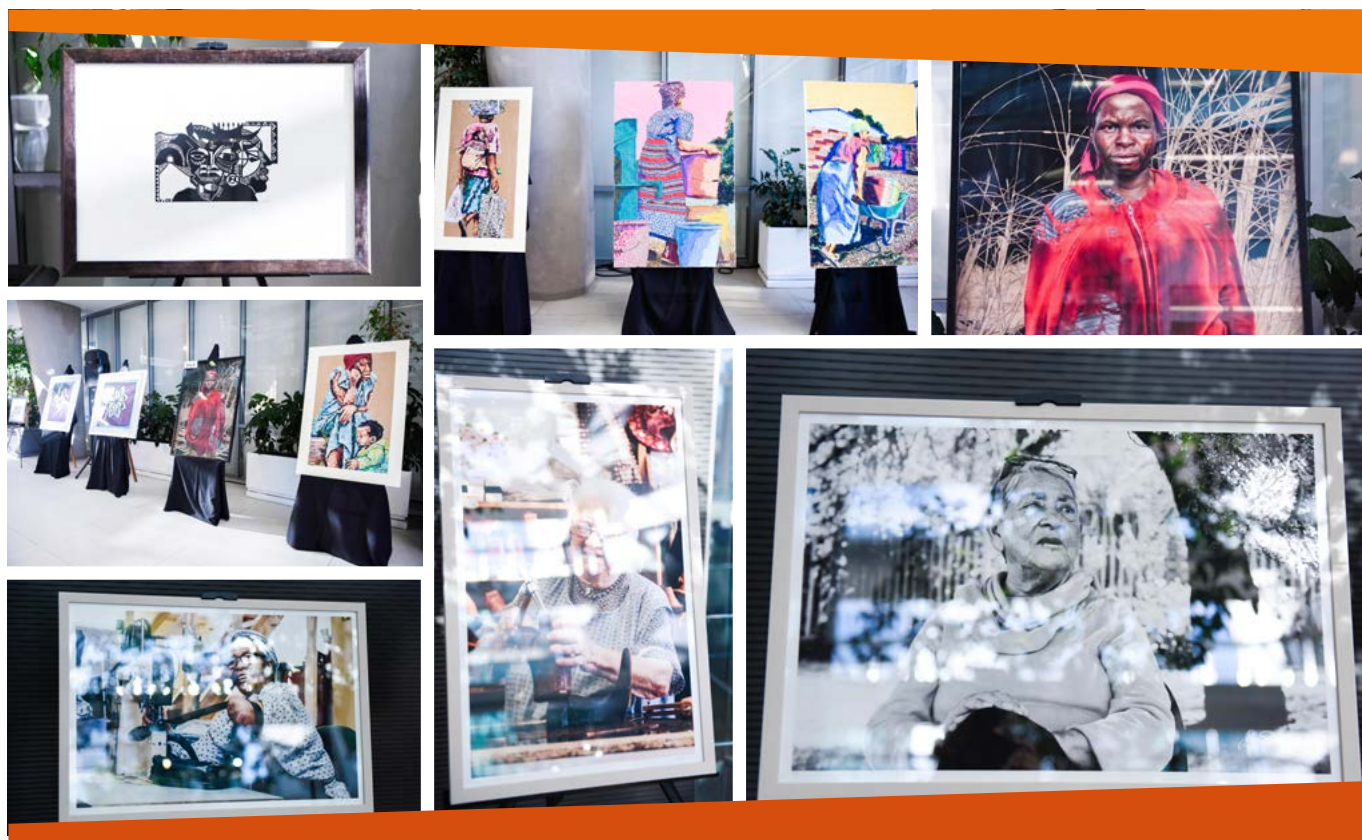
The adoption in 2016 by the African Union of the Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons (only the second legally binding international instrument on the rights of older person) was accordingly a welcome development. The Protocol provides a framework for governments to end ageism and covers a wide range of rights including



prohibition of all forms of discrimination against older people. The Protocol further requires member states to adopt policies, legislation and other measures that ensure the rights of older persons to enjoy all aspects of life, including active participation in socio-economic development, cultural programmes, leisure and sports.

Regrettably, the adoption of the Protocol has not come without its challenges and two years later only five countries have signed the Protocol, and only one member state has ratified it. The non-ratification of the Protocol by state parties perhaps highlights the lack of political will or non-prioritisation of the rights of older persons as well as the invisibility of civil society advocacy on this issue.

PRIDES & PLIGHTS VISUAL ART EXHIBITION...continued



The exhibition was showcased on 28 November 2018 at a cocktail event at our Sandton offices in what turned out to be an unforgettable evening. One of the highlights of the event was the keynote address by our VIP guest Chief Justice Mogoeng Mogoeng, who shared inspirational stories of the profound impact older persons have had on his life and upbringing. The Chief Justice reminded us of the storehouse of wisdom that resides with our elders and emphasised the need for us all to recommit to basic

values like respecting and honouring not only ourselves but all others. He also provided some valuable suggestions on how as a society we could be better caring for our elders.

The event was extremely well attended by members of the profession, the public interest legal sector, corporate clients as well as members of the firm, and a sizable donation was raised for the Eersterust Welfare Organisation for the

Aged (EWOFA) whose residents provided valuable inspiration and contributions to the exhibition.

A big thank you to everyone who attended, the Centre for Human Rights, Sandra Stuwig from EWOFA and Daniel Mosako, curator of the exhibition, for making the event such a huge success.

Jacque Cassette and Tricia Erasmus

ANNUAL PRO BONO & HUMAN RIGHTS NEWSLETTER

SPECIAL PROJECTS & INITIATIVES



MOOTING MAGIC

Throughout the year the Cape Town Pro Bono Practice assisted the University of Cape Town (UCT), the University of Stellenbosch (US) and the University of the Western Cape (UWC) in preparing for their respective moot competitions and in judging these competitions.

UCT and US requested training sessions prior to their moot competitions which were aimed at providing mooters with practical tips on how to best present their case. In both training sessions mooters were given a training exercise – based on a real case being run by the Cape Town Pro Bono Practice – which required them to prepare argument in application proceedings. All attendees were asked to prepare short arguments for the applicant and respondent and four lucky attendees

were selected to hold a mini-moot in the training sessions. Our presenter was able to provide specific feedback on arguing technique and the input of the class was also encouraged. Discussions were also held around how and why other attendees may have argued the case differently.

Guidance was provided in all areas of the moot process from the structure and arrangement of the argument, to court room etiquette and voice and delivery. Guidance was not only provided, but also carefully explained to the students with reference to real court room experiences. Summaries of the workshops were provided to the students to take home and draw from during their preparations. The students were able to prepare for their moots with practical tips on hand to making their moot experience magic.

The Cape Town Pro Bono Practice judged the moot competitions held at UCT, US and UWC. The competitions provided an opportunity to stretch the mooters

and provided practical experience in developing their arguing skills. Judges posed difficult questions to the mooters in all competitions and so provided an opportunity to put what they'd learned over the semester to the test.

The students were very appreciative of the opportunity to receive practical guidance from attorneys in practice and put the guidance gained during the training sessions to great use during the competitions. Students were at all times invited to discuss life in practice with the trainers and judges and gained invaluable advice from attorneys in practice. The sessions provided more than just guidance on mootings; they provided guidance on how to navigate the big bad world of corporate law.

Thank you to all the presenters and judges for your enthusiasm and willingness to share your wisdom with the next generation of lawyers.

Brigitta Mangale



CDH 16 DAYS OF ACTIVISM CAMPAIGN TO COMBAT VIOLENCE AGAINST WOMEN AND CHILDREN

In solidarity with the International 16 Days of Activism Campaign to combat violence against women and children, held annually between 25 November and 10 December, the Pro Bono Practice hosted a firm wide 16 Days of Activism campaign to address the issue of violence against women and children in our society.

The purpose of the campaign was to create constructive discourse within the firm about the daily human rights violations committed against women and children and to encourage members of our firm to contribute to, and participate in, initiatives aimed at combatting violence against women and children.

During the campaign, the Pro Bono Practice hosted a panel discussion with members from various institutions who work to combat gender-based violence including, Sonke Gender Justice, Rape Crisis South Africa, the Saartjie Baartman Centre and the Institute of Security Studies. The panel discussed: "Why allegations of sexual violence are often not reported, when reported, survivors are often not believed and the manner in which state institutions, private intuitions and the broader civil society can create safe spaces for survivors to come forward". The panel discussion was aimed at addressing victim blaming and creating an environment where survivors

of violence are encouraged to share their experiences without the fear of being retraumatised.

As part of the campaign's aim to empower survivors of abuse, the Pro Bono Practice also hosted a basic self-defence sensitivity training to assist members of our staff with some practical tools to deal with dangerous situations. The purpose of the training was to both empower members of our staff but also to create awareness around fleeing dangerous situations.

CDH and the Pro Bono Practice are committed to meaningful partnerships and creating networks of people and organisations that work together rather than dividing efforts. As part of an initiative to contribute to the existing work in the area of gender-based violence, the Pro Bono Practice in partnership with Rape Crisis South Africa organised a donation initiative in terms of which every R100 contribution by members of our staff was donated to Rape Crisis South Africa to fund a counselling session for a survivor of abuse.

The campaign raised interesting questions around the manner in which we all perpetuate or fail to address violence in our society, but also in our limited social circles. We hope that members of our staff will find ways to take the campaign forward, in order for it to have a meaningful impact outside the parameters of our firm.

Riola Kok

16 DAYS of Activism Campaign



HELD ANNUALLY BETWEEN
25 NOVEMBER
&
10 DECEMBER



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YOUTH DAY TALK WITH ADV. TEMBEKA NGCUKAITOBI

On the evening of 13 June 2018, our Pro Bono Practice hosted Tembeka Ngcukaitobi, acclaimed advocate, social activist and author of the book "The Land is Ours" for a Youth Day talk at our Johannesburg Office. An audience at our Cape Town office also joined in the event by way of video conference.

In his usual bold, unflinching and searchingly honest way, Tembeka delivered a powerful and thought-provoking address on the topic of the continued significance of Youth Day, social activism and the role of young lawyers in effecting meaningful social transformation. He also offered some profound and at times discomfiting reflections on transformation and what he believes stands in the way of meaningful change - within the profession and in South African society as a whole. Reflections which call on us all (white and black, male and female) to introspect and to transcend deeply engrained perceptions of ourselves and others.

Tembeka began his address with a moving homage to Tsietsi Mashinini, one of the student leaders who led the fateful June 16 student protest marches in 1976, and who was forced into exile as a result of the brutal lock down by the Apartheid state after events of that day. Mashinini died at the age of 33 in mysterious circumstances in Guinea in a savage attack. After recounting the injuries suffered by Mashinini, in an emotive appeal Tembeka called on the audience to reflect on the senseless waste of human potential inflicted by Apartheid - by pondering on what Mashinini and many other young people from his generation could have achieved had their lives not been thwarted. Might Tsietsi have become a lawyer, doctor, an engineer, an...? Reminding us that much has indeed changed, he then went on to urge all the young lawyers in the room to remember their relative privilege as educated young professionals (who have been afforded the opportunity to

unlock their potential) and the power and responsibility that attaches to this privilege. The power to make a difference in the lives of others and the responsibility to use this power to promote social justice.

While stressing the many systemic conditions that remain obstacles for many young black professionals and women, quoting from Bob Marley's famous "Redemption Song" Tembeka reminded us all of the power of our own agency, that freedom is a state of mind ("non but ourselves can free our minds") and that in the end we are all our own liberators. He also urged all young professionals to create their own opportunities to foster social change. "What" he asked "are you doing for yourselves and for others?" And for those cynics in the audience, one perhaps need look no further than to Tembeka's own example - to appreciate the power of transcendence.

Tembeka's talk sparked much discussion in a long question and answer session, which while it may not always have been easy, was honest yet respectful, deeply refreshing and ultimately, I believe, very meaningful. Thank you to the many predominantly young members of the firm and the Johannesburg and Cape Town Bars who attended the event and who contributed to making the event a great success. We hope we will find many more occasions to continue the conversation.

And to all the youth in our beautiful, complex land "may [you] forward in this generation triumphantly..." Bob Marley, Redemption Song.

Jacquie Cassette



HUMAN RIGHTS MONTH CAMPAIGN



During the month of March, our Pro Bono Practice conducted a human rights campaign in honour of Human Rights Day. As part of the campaign, staff members were provided with an opportunity to share their thoughts on Human Rights Day by writing on one of four expression walls. Messages written on the walls ranged from inspirational quotes to words of encouragement and personal reflections.

A remembrance event was also held in honour of Christine Jesseman, founder of the Pro Bono Practice, who sadly passed away earlier in the year, during which people reflected on Christine's life and contribution to promoting human rights. Candles were lit in the memory of Christine and all the countless struggle heroes who fought to secure our democracy.

As part of the campaign, we also arranged for a group of our support staff to attend an all expenses paid trip to the Apartheid Museum. The staff who attended the tour were selected by way of a lucky draw.

The winners of the draw were selected at random and 34 support staff members were selected to participate in the excursion.

Excitement filled the air on the morning of 28 March 2018, as the bus arrived early at the Apartheid Museum. After introductions by the guide, each of the staff member received an entrance ticket which arbitrarily classified them as "white" and "non-white". Depending on the classification on the ticket, staff members had to use different entrances to the museum, one for "whites" only and another for "non-whites". Staff members using the "whites" only entrance were

HUMAN RIGHTS MONTH CAMPAIGN...continued

permitted to use a ramp, while others using the "non-white" entrance had to use the stairs. This demonstrated how the apartheid era cruelly and forcibly separated people and the inequality, indignity and brutal racism suffered by those who were classified as "non-white".

The Apartheid Museum has many unique exhibitions, including the Mandela exhibition which celebrates the life and times of Nelson Mandela through six themes – character, comrade, leader, prisoner, statesman and negotiator. The themes are presented via visual displays, photographs, films, and other artefacts.

The duration of the tour was roughly two hours and it ended with the "new Constitution" exhibition where the symbols of South Africa's new nationhood was displayed in the form of a flag and the national anthem. Here, staff members were encouraged to take a stone from a pile on the right and place it on a growing pile to the left to demonstrate their commitment to fighting racism and discrimination in the new South Africa.

Staff members expressed their gratitude to the firm and management for providing them with this unique opportunity and indicated that they were proud to be part of a firm that provided their staff with such opportunities. Most of the staff found the visit extremely insightful and indicated that it provided them with a greater understanding of the history of apartheid. For others it was a painful reminder of the past and it brought back many hurtful memories of lived experiences.

Tricia Erasmus

During feedback sessions with staff, the following was expressed:

"I found the trip very interesting and insightful. I was very little in the late 1980s, early 1990s and do remember a few things happening on television but seeing what actually happened, according to how we learned it at school was very emotional. The layout of the museum and the tour itself, is so symbolic and gives you a sense of what it was like. The highlight of the trip for me was seeing the caspir in reality, as I remember seeing them on television and knowing that I need to be scared of it, my heart jumped a bit when I saw it. We live in a time where everything is fairly equal now and we are quick to forget the intensity of the atrocities of the past. I think that as a CDH staff initiative, it was great and I'm grateful for the opportunity. I do think that we should keep these types of trips as part of the Humans Rights month going forward. I am proud to be a CDHer and to be a part of a firm that offers these kinds of opportunities."

"I found this an emotional experience right from the entrance. The museum does an excellent job at educating you about apartheid and most importantly highlights the brave people that fought for equality and the rights of all to be treated as a person."

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“MONEY TALKS”

During 2018, the Finance & Banking and Pro Bono practices took on the challenge to work together to develop platforms for the Finance & Banking Practice to provide pro bono legal services. As one can imagine, given that the overwhelming majority of finance and banking clients are banks and other large financial institutions, there simply aren't too many traditional finance and banking clients out there in need of pro bono work. Therefore, sourcing these pro bono opportunities had been notoriously difficult – until this initiative took birth.



Heeding the call of South Africa's recently elected President Cyril Ramaphosa for all members of society to avail themselves for the task of rebuilding our nation, a team of Finance & Banking Associates led by Mashudu Thidiela, Andile Sangweni, Kgotso Matjila and Mulalo Tshikovhele in collaboration with Jacquie Cassette and Tricia Erasmus from the Pro Bono Practice organised and hosted a finance and banking community workshop on 14 February 2018, in partnership with ProBono.Org and the Ekurhuleni Municipality. And oh, what a lovely day it was indeed!

The purpose of the workshop was to deliver a presentation on some basic financial literacy and banking concepts that are relevant to the everyday lives of ordinary South Africans. The workshop was held at the Etafeni Skills Development in Tembisa, a township located east of Johannesburg, and was delivered to a crowd of approximately 85 elderly persons (mostly women) living in the community. If you watched the Minister of Finance deliver the Budget Speech recently, you would be forgiven for thinking that delivering presentations on issues pertaining to finance would be one of the easiest ways to put an audience to sleep. However, this was most certainly not the case. Instead, the attendees were highly engaged as evidenced by the sheer number of questions they posed to our team of speakers.

The presentations sought to cover some basic financial concepts that affect people on a daily basis such as: the difference between a cheque and a savings account, compound interest, the concept of a mortgage bond, bank loans, stokvels and much more.

It is impossible to overstate the overwhelmingly positive response that our team received from the attendees who did not want us to leave. Most of the attendees, as well as the community organisers, have since requested that our team return to deliver further lectures and to address different crowds such as the youth living in the community.

“MONEY TALKS” ...continued

As one of the presenters, I must admit I was utterly surprised at how relevant and useful this information would be to ordinary citizens. The demand for this knowledge was not merely in the theoretical sense but more so from a practical perspective.

Due to the overwhelming demand for further presentations, the teams are planning to carry out further workshops for the Tembisa community in the future. The initiative has demonstrated that contrary to popular belief, there is ample opportunity to do good for those in our society who need it most.

It reaffirmed our belief that the work we do is just as relevant to those living in marginalised communities as it is to the corporations we regularly advise. With just a little bit of creativity, commitment and collaboration, commercial attorneys can do a lot more to promote access to the law and the legal system we are called to uphold.

Heartfelt thanks to the above-mentioned Finance & Banking Associates as well as our Pro Bono Practice for carrying out this initiative. Many thanks for your efforts in ensuring that the CDH flag flies high as the country enters the dawn of a new era.

Mashudu Thidiela



WILLS & ESTATES PLANNING WORKSHOP

On 10 July 2018, the Pro Bono and Trusts & Estates practices collaborated with Pro Bono. Org to present a wills and estates planning workshop at the Ekurhuleni Council Chambers in Tembisa. A group of approximately 40 early childhood development (ECD) practitioners from the Ekurhuleni Metropolitan Municipality attended the workshop.



Director, Gretchen Barkhuizen-Barbosa and Associate, Emily West from our Trusts and Estates Practice presented on a range of topics including factors and implications to consider when drafting a will, marital property regimes, estate structures, tax implications, and the administration processes of deceased estates. Our experts also dealt, in great detail, with the concept of a family home, its ownership and how to bequeath it.

Our Trusts & Estates Practice emphasised the importance of drawing up a will along with proper estate planning. The workshop aimed to empower and encourage the attendees to take steps to protect their estates to preserve them for the long-term benefit of their families and communities.

The eagerness of the attendees, their engagement throughout the programme and the overwhelmingly positive feedback all signalled the workshop's success.

The workshop formed part of an ongoing initiative by our Pro Bono Practice to provide meaningful opportunities for all the firm's lawyers to share their knowledge and know-how with communities in order to promote community development and access to information for all.

Thank you to our Trusts & Estates experts for presenting a truly informative and enabling workshop.

Emily West

NGO WORKSHOP

On 24 July 2018, the Pro Bono, Tax & Exchange Control, Employment, Dispute Resolution and Corporate & Commercial practices collaborated with ProBono.Org to host a day-long NGO workshop at our Sandton offices. The objective was to provide participants with some basic knowledge to empower and equip them to run legally compliant entities.



A group of approximately 50 individuals representing an array of NGO's from different sectors namely legal, education, child care and health, attended the workshop, with some travelling from as far as Orange Farm, Dobsonville and Tembisa to participate in the activities.

Director, Yaniv Kleitman from our Corporate and Commercial Practice, commenced the workshop with a discussion on the different types of legal vehicles that NGO's can utilise, their pros and cons, general compliance issues,

MOIs, registration of entities and boards of directors. He finished off with a basic introduction to trusts. Engaged and eager to participate, attendees fired various questions at Yaniv, all of which were answered by him in great detail and with such skill that some of the attendees jokingly expressed a desire to employ him as their in-house counsel.

Associate, Louis Botha from our Tax & Exchange Control Practice, began the afternoon sessions with a discussion on a basic guide to tax compliance for

NGOs focussing in particular on PBOs, tax benefits to donors, 18A certificates and a general discussion on VAT, transfer duty and dividend tax. Attendees were so eager for further information that Louis had to promise to circulate additional tax guides to try and assist with their tax-related questions, going forward.

One of the highlights of the workshop was the presentation by Director, Michael Yeates and Associate, Bheki Nhlapho from our Employment Practice, who dealt in great detail with the importance

NGO WORKSHOP...continued

of employment contracts, basic conditions of employment, obligations towards voluntary, part time and full-time employees along with independent contractors. The attendees entered into lively debates with the speakers around the terms of employment contracts and whether someone was indeed a fixed term or a permanent employee - demonstrating that employment issues affect all entities and NGOs alike.

The workshop ended on a high note with a presentation by Director, Burton Meyer and Senior Associate, Nicole Meyer from our Dispute Resolution Practice on delinquent directors and the processes involved to remove such directors.

The attendees found the workshop extremely informative and thoroughly enjoyed the day as demonstrated by their

engagement throughout the programme and the many requests that the NGO workshop become an annual event.

Thank you to all the presenters for your enthusiasm, professionalism and willingness to partner with us in rolling out this truly meaningful event.

Jacquie Cassette and Tricia Erasmus



THE (NC)A TO Z OF RESPONSIBLE DEBT

On 15 November 2018, the Cape Town Pro Bono and Corporate & Commercial practices collaborated with ProBono.Org and the Ravensmead Community Advice Office to host a workshop on the National Credit Act (NCA) in the Ravensmead community.

The workshop was attended by about 40 members of the Ravensmead community and its purpose was to explain the key provisions of the NCA which afford debtors the most legal protection when credit requests are made. The presenters carefully explained the steps to be taken by the attendees to ensure the rights created by these provisions remain protected and enforced. The workshop also focused on explaining the NCA provisions that place obligations on creditors and explained how the attendees can go about determining whether their creditors are meeting these obligations, and what to do if they are not. Attendees were encouraged to engage with the presenters throughout the workshop.

The workshop was meant not only to explain key provisions of the NCA to create awareness around these rights, but also to provide practical guidance on how to enforce these rights and what to look out for when requesting credit. The presenters carefully detailed the procedures to be followed by both the debtor and creditor when credit requests are made and provided examples of contract terms and conditions that are key to ensuring credit is requested and received responsibly. The presenters provided attendees with a summary of the presentation to take home with them, and this summary included a checklist for debtors to consider when making a request for credit.

Much of the session was also dedicated to explaining the procedures to be followed when over-indebtedness is anticipated

or experienced. This included a detailed discussion on the role of debt counsellors, the debt review and consolidations processes as well as possible negotiations with creditors. In doing so, the workshop focused on providing the attendees with the information they need to make informed decisions before requesting credit, as well as information necessary to address difficulties post credit.

Attendees were provided the contact information of the National Credit Regulator, National Credit Commission, National Credit Tribunal and FAIS board to direct any queries they may have related to existing or future credit in their take-home summary of the workshop. This document in plain language summarised the general law applicable before credit is extended, during the agreement period and should over-indebtedness arise. The workshop provided a holistic view on the law regulating credit agreements applicable to consumers.

We were careful to create a space in which attendees felt free to ask any general legal questions which may flow from the workshop. This generated general contract law questions from attendees and general discussions regarding contract law were also held in addressing these questions. Attendees were invited to meet with the presenters after the workshop should they have further legal questions and where necessary referrals were made.

The workshop spanned just over three hours and discussions with attendees and advice officers continued afterwards. The attendees found the workshop extremely informative and left the session empowered with the knowledge to protect themselves when getting into debt.

Thank you to all the presenters for your enthusiasm, professionalism and willingness to partner with us in rolling out this important, informative workshop.

Brigitta Mangale



ASSISTING ASYLUM SEEKERS TO CLAIM UIF

During 2018, the Pro Bono Practice spent significant efforts working on a strategy to assist asylum seekers who are being denied their UIF benefits as a result of an unlawful policy and practice by the Unemployment Insurance Fund (the Fund) and the Department of Labour (the Department).

As part of our efforts, we took on the case of an asylum seeker who approached us for assisting in claiming his benefits. After being retrenched by his employer in 2016 and having contributed to the Fund for many years while employed, our client approached the Kempton Park Labour Centre in June 2016 to make an application to claim his benefits. But he was prevented from applying by relevant officials because he did not have a South African identity document, who also refused to accept his foreign passport (which is a valid form of identification for the purposes of the Regulations adopted under the UIF Act). Our client it seems is one of a number

of asylum seekers who are being denied their UIF benefits in contravention of the provisions of the UIF Act as the result of an unfairly discriminatory practice being adopted by the Fund and the Department.

After ongoing interactions with the Fund and the Department, our client has finally been paid a nominal amount in an apparent recognition that asylum seekers with foreign passports are entitled to benefits, but in an interesting twist, has unlawfully been denied a large portion of his benefits because these allegedly accrued prior to him receiving his passport. We have briefed counsel from the Johannesburg Bar and are considering what next steps to take to finally enforce our client's rights and to have the Fund's unlawful practice of discriminating against asylum seekers set aside. While the matter is far from over it has already assisted in setting an important precedent for all asylum seekers who are holders of valid foreign passports and who want to claim UIF benefits.

Jacquie Cassette and Tricia Erasmus

DURING 2018
JOHANNESBURG
Pro Bono Practice

↓
WORKED ON STRATEGY
to assist asylum seekers
being denied UIF benefits

↓
AS A RESULT OF
unlawful policy and practice
by the Unemployment
Insurance Fund and the
Department of Labour

COMMITMENT TO ENDING STATELESSNESS

We are currently assisting a client with an application for citizenship in terms of s2(2) of the Citizenship Act as well as an application for permanent residency status in terms of s31(2)(b) of the Immigration Act to give her interim protection. Our client was born in South Africa (SA) to Angolan parents who resided in SA as refugees and has lived here all her life. As a result of having no status in SA and receiving a constructive refusal by the Angolan Embassy to grant our client Angolan citizenship, our client is de facto stateless.

Section 2(2) of the Citizenship Act provides that persons who are born in SA, registered in terms of the Births and Deaths Registration Act (BADR Act) and who do not have the citizenship or nationality of another country or any right to same, shall be a SA citizen by birth. Section 2(2) of the Citizenship Act was promulgated as part of SA's commitment in terms of various International instruments to end statelessness.

Section 4(3) of the Citizenship Act provides that people who were born in SA to parents who are neither parents nor permanent residents, and who have lived in SA continuously until the age of majority are entitled to citizenship, provided that their birth is registered in terms of the BADR Act.

Section 31(2)(b) of the Immigration Act vests a discretion in the Minister of the Department of Home Affairs to grant foreigners or a category of foreigner's permanent residency status for a specified or unspecified period where special circumstances exist that would justify such a decision.

Our client's parents are both Angolan refugees who arrived in SA during the ongoing civil war in Angola during the early 1990's.

Our client's parents are both Angolan refugees who arrived in SA during the ongoing civil war in Angola during the early 1990's. Our client's birth was not registered at the time of her birth because her parents did not have the requisite paperwork. Our client only obtained a hand-written birth certificate during the course of October 2017. This is the only identification documentation our client has.

In addition, in or around 2011, our client's parents lost her original s24 refugee permit and failed to obtain a duplicate of same. As a result, our client has had no status in SA since late 2011.

Despite numerous attempts to engage with the Angolan Embassy, our client has not received Angolan citizenship and is therefore de facto stateless.

Our client has lived in SA all her life and SA is the only country she has ever known. She has never travelled outside the borders of SA and has no family or social ties to Angola.

Legal recognition in SA will afford our client the human dignity to which she is entitled to in terms of our Constitution and a recognition and acknowledgement of her personhood. As the SA Constitutional Court remarked in *Minister of Home Affairs v Watchenuka* 2004 236 (SCA):

"Human dignity has no nationality. It is inherent in all people- citizens and non-citizens alike- simply because they are human. And while that person happens to be in this country-for whatever reason-it must be respected and protected, by s10 of the Bill of Rights."

Riola Kok

DEFENDING THE RIGHT TO EQUALITY AND RELIGIOUS FREEDOM

The Pro Bono Practice assisted a group of Muslim learners together with their parents to engage with the School their daughters attend, to revise the School code of conduct (Code) with a view to formulating a more inclusive uniform policy that does not differentiate learners on the basis of religion.

The Code as it currently reads stipulates that Muslim learners who wish to wear the hijab have to wear a separate "Muslim uniform" consisting of a black jubbah (cloak) and hijab (black scarf) with a small school badge being the only form of identification with the school. In addition, those learners wearing the prescribed uniform for Muslim learners are precluded from wearing the official School uniform over their jubbah.

The dispute between our clients and the School arose in January 2018, after one of our clients elected to wear the School uniform with her hijab as opposed to the prescribed uniform for Muslim learners provided for in the Code. The nature of the objection to the uniform provided for Muslim learners in the Code was that it differentiated between learners on the basis of religion, it did not allow learners to practice their faith and identify with the School simultaneously, the uniform provided for Muslim learners in the Code did not allow the learners who wore it to identify with the School or its colours, and Muslim learners who chose to wear the uniform provided for Muslim learners in the Code were unable to display their academic and other achievements as they were precluded from wearing the School blazer.

Our clients sought an amendment to the Code that achieved a balance between the right to religion, the right to equality as well as School pride and uniformity.

The School, members of the School Governing Body (SGB) and members of the Gauteng Department of Education (GDE) were in consultation in order to try and resolve the matter. However, it became evident that the consultation process had evidently broken down when our clients were issued with disciplinary notices dated 19 June 2018 for repeated dress code infringements.

After numerous engagements between our Pro Bono Practice, the GDE, the SGB and the School management, the disciplinary hearings against our clients were unconditionally withdrawn. Engagements with the entire School body and all relevant stakeholders remain ongoing to amend the Code in a number of respects. The School has committed to revising the Code before the new academic year in January 2019 and has invited stakeholders to make submissions in this regard. The South African Human Rights Commission has intervened to assist the school to develop an inclusive code.

Riola Kok

ENFORCING SECTION 4(3) OF THE CITIZENSHIP ACT

With the able help of Advocates Steven Budlender, Mmakgomo Maenetje and Teboho Mosikili from the Johannesburg Bar, the Pro Bono Practice assisted two brothers who were born in South Africa (SA) (and have lived all their lives in SA) and have reached the age of the majority to apply for citizenship in terms of s4(3) of the Citizenship Act as amended in 2013. Section 4(3) of the Citizenship Act, as amended, provides that people who were born in SA to parents who are neither citizens nor permanent residents, and who have lived in SA continuously until the age of majority, are entitled to apply for citizenship, provided that their births were registered in accordance with the Births and Deaths Registration Act.

The brothers' parents are Angolan citizens who fled Angola in 1995 and who sought and were granted refugee status in SA from 1997 until 2014 – when their refugee status was withdrawn as a result of the Angolan refugee repatriation process entered into by our government in 2013. The two brothers were born in SA in 1996 and 1997 respectively and were also granted refugee status until 2014, when their status was also withdrawn together with that of their parents. Both brothers who have never been to Angola, who have lived in SA all their lives, and who know no other home, were in high school at the time that their refugee status was withdrawn and had to apply for temporary study permits in order to remain in the country.

No application forms have been promulgated by the Department of Home Affairs (DHA) for s4(3) applications (which it seems is more than reluctant to give effect to the provision). We accordingly, on behalf of the brothers, made applications to the DHA in terms of s4(3) by way of affidavit. No meaningful response was received from the DHA.

As a result, we instituted legal proceedings in the High Court on 8 June 2017. The matter was heard on 12 September 2018. In the application we seek and order granting the brothers citizenship. In defending the application the DHA argued that the amended 4(3) does not apply to the brothers because they were born before the enactment of the amended section – and applying it to them would amount to a retrospective application of the amended s4(3). It also argued that their hand-written birth certificates do not qualify as registration

of a birth in terms of the Births and Deaths Registration Act for purposes of s(3). At the time of drafting this newsletter, we await judgment in the matter.

In the meantime, the Supreme Court of Appeal (SCA) recently handed down judgment in the matter of *Minister of Home Affairs v Ali* (1289/17) [2018] ZASCA 169, which also involved the application of s4(3). In its judgment the SCA rejected the DHA's retrospectivity argument and held that s4(3) applies to persons who were born before 1 January 2013, and who reach the age of the majority any time thereafter. It found that an application of the section to persons who were born before s4(3) was enacted but who reached the age of the majority thereafter, would not amount to retrospective application of the section. The SCA directed *inter alia* that the Minister promulgate regulations in respect of applications for citizenship in terms of s4(3) within a year of the date of the judgment, and pending the promulgation of such regulations, accept applications in terms of s4(3) on affidavit.

In the interim, the Minister has granted the brothers, together with their mother and younger brother, permanent residence for four years in respect of the exemption application which they made under the Immigration Act. The brothers, together with their mother and younger brother have completed their applications for the residency permits and now await to receive same from the DHA. Their rights and interests will accordingly, we hope, be protected in the interim.

Jacque Cassette, Gift Xaba and Riola Kok

“A FRAUD HAS BEEN COMMITTED” - HELPING A MAN GET BACK HIS INHERITANCE

The Pro Bono Practice is currently assisting a client to defend an eviction application instituted against him by a relative who defrauded him of his inheritance. Client and the Applicant are relatives who have resided on the same property since childhood. The property belonged to their aunt (“the deceased”). The aunt died in 2000 and her will bequeathed her entire estate to our client. Our client reported the deceased’s estate to the Master of the High Court, Pretoria and was issued with Letters of Authority and appointed as executor of her estate.

Unfortunately, client did not have the means to have the Property transferred into his name as he had financial challenges at the time of being appointed as executor. He was also not aware at the time that he could obtain pro bono assistance to have the property transferred into his name.

In September 2013, notwithstanding that the Johannesburg Master’s Office had been alerted to the fact that the deceased had died intestate and that letters of authority in respect of the deceased estate had already been issued to our client by the Pretoria Master, the Applicant somehow managed to report the deceased estate as intestate at the Johannesburg Master’s office and have herself appointed as executor.

On the strength of the letters of authority issued by the Johannesburg Master’s office the Applicant managed to have the property transferred into her

name. This apparently on the back of flagrant fraudulent misrepresentations she had made to the Johannesburg Master’s office.

After fraudulently effecting transfer of the property into her name the Applicant then went on to institute an eviction application against our client. We are assisting the client to defend the eviction application and bring a counter claim to have the transfer set aside and have title restored into the name of the deceased estate. At the time of writing, the Applicant had not served and filed answering papers in the counter application and the matter had been set down for hearing for 20 December 2018.

Gift Xaba

On the strength of the letters of authority issued by the Johannesburg Master’s office the Applicant managed to have the property transferred into her name.

OUR TEAM

For more information about our Pro Bono & Human Rights practice and services, please contact:



Jacquie Cassette
National Practice Head
Director
Pro Bono & Human Rights
T +27 (0)11 562 1036
E jacquie.cassette@cdhlegal.com



Tricia Erasmus
Senior Associate
Pro Bono & Human Rights
T +27 (0)11 562 1358
E tricia.erasmus@cdhlegal.com



Gift Xaba
Associate Designate
Pro Bono & Human Rights
T +27 (0)11 562 1089
E gift.xaba@cdhlegal.com



Brigitta Mangale
Senior Associate
Pro Bono & Human Rights
T +27 (0)21 481 6495
E brigitta.mangale@cdhlegal.com

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

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