

GIVING HOPE AND DIGNITY TO THE POOR:

The story of ProBono.Org



Case Study

Case study conducted for The Atlantic Philanthropies September 2009
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Hospice Palliative Care Association of South Africa (HPCASA)/ProBono.Org meeting, November 2008

Photograph: Helen McDonald



Key

| | |
|---------------|---|
| HPCASA | Hospice Palliative Care Association of South Africa |
| LAB | Legal Aid Board |
| LHR | Lawyers for Human Rights |
| LRC | Legal Resources Centre |
| NGO | Non-governmental organisation |
| PILCH | Public Interest Law Clearing House |
| PLWHA | People living with HIV and Aids |
| SAHRC | South African Human Rights Commission |

Table of Contents

| | |
|---|-----------|
| I. Introduction | 5 |
| II. Background and Context to the Establishment of ProBono.Org | 7 |
| The decline of the public interest legal sector | 7 |
| <i>Pro bono</i> in the private sector | 8 |
| Emerging <i>pro bono</i> practices | 8 |
| III. The Establishment and Operations of ProBono.Org | 11 |
| Piloting the clearing house model | 11 |
| Setting-up ProBono.Org | 11 |
| The ProBono.Org Board | 14 |
| ProBono.Org and the clearing house model | 15 |
| ProBono.Org staff capacity | 15 |
| Current approaches and strategies | 16 |
| Networking and relationships with fraternal organisations | 19 |
| Funding | 21 |
| Impact and outcomes | 21 |
| IV. Benefits of the Clearing House Model | 23 |
| V. Challenges and Lessons Learned | 25 |
| VI. Conclusion | 27 |



*Odette Geldenhuys, founder and director
of ProBono.Org*

Photograph: Helen McDonald

I. Introduction

“Law firms and bar councils may seem to be these monolithic institutions, but they are made up of real people with different personalities, strengths and sets of expertise. In the last two years, the attorneys and advocates who have taken on *pro bono* matters, have done so with professionalism - and care”

Odette Geldenhuys, director ProBono.Org

In South Africa, immigrants, farm workers, the rural poor, and the gay community are among the population groups regularly denied access to rights, services and justice.

The Atlantic Philanthropies supports organisations that use the law to ensure access for the rural poor to the rights and services promised to them under the democratic Constitution. In practice, this means support for organisations providing free legal advice and support to indigent people in rural communities. In some cases the organisations engage in high-impact litigation to effect change, as well as in lobbying and advocacy to influence policy.

The Atlantic Philanthropies programme seeks to:

- support a small cluster of best practice public interest and human rights non-governmental organisations (NGOs) and law firms, selected on the basis of geographical reach and niche activities. This will guarantee the target group a sustainable, national infrastructure of legal support
- support this cluster with an institution-building programme *inter alia* to secure the longer-term sustainability of participating grantees
- promote networking and coalition-building among the supported grantees to identify key issues impacting most adversely upon the livelihoods of the target group that can realistically be remedied legally
- engage private law firms to provide *pro bono* legal support to NGOs engaging in public interest law, and
- partner with the Programme for Land and Agrarian Studies to develop an advocacy strategy with regard to these issues.

One of the organisations supported in The Atlantic Philanthropies programme is the non-profit clearing house ProBono.Org, the first public interest law clearing house in South Africa. ProBono.Org aims to increase access to justice via the *pro bono* services of law firms and advocates, with an emphasis on public interest matters. ProBono.Org has to look to the United States and Australia for role models.



Sharon Pillay (left), public interest law attorney at ProBono.Org, with a client

Photograph: Helen McDonald

“ProBono.Org offers a unique opportunity for legal practitioners to make meaningful impact on the lives of the poor. I am honoured to be associated with an organisation that strives to improve the quality of life of the poor and marginalised”

Sharon Pillay , ProBono.Org

ProBono.Org seeks to harness the vast, specialised resources of the private legal profession to extend and enhance public access to justice. At present government’s Legal Aid Board (LAB) and public interest legal NGOs offer limited access to justice. Deputy Chief Justice Dikgang Moseneke endorsed the work and objectives of ProBono.Org at its formal launch at Constitution Hill in May 2007:

There is a need for ProBono.Org like yesterday. The claims of the ordinary people are not reaching the Constitutional Court [...] ProBono.Org is most welcome. These lawyers are doing great services [...] The poor are not getting the fruits of the growing economy. Yes, the safety net may have increased but ProBono.Org needs to identify strategically that, which will advance the disadvantaged. If not, poor people know how to look after themselves. They will find other means. We have a duty to get them to use the measured means offered by the court. The legal means.

This case study, written as an easily accessible ‘how-to’ manual or primer for human rights activists and organisations, tells the story of ProBono.Org’s establishment and strategies. The case study shares the organisation’s insights through interviews with ProBono.Org staff, staff in participating law firms and other stakeholders.

II. Background and Context to the Establishment of ProBono.Org

“After 1994, when funding dried up further, it became very hard for the public interest legal sector to fulfill its function and promote expanded access to justice”

The initial piloting and subsequent establishment of ProBono.Org as a public interest law clearing house took place within a particular context. After 1994 there was a growing focus on increasing access to legal services against the backdrop of a declining public interest legal sector and negligible participation by the private sector. The following section gives a broad sketch of the context, noting key developments that provided a favourable environment for the emergence of ProBono.Org.

The decline of the public interest legal sector

Advice offices, community organisations, trade unions, NGOs - such as the Legal Resources Centre (LRC) and Lawyers for Human Rights (LHR) - as well as law firms play an important role in improving access to legal services and justice in South Africa. In many cases, advice offices are linked to the formal outreach structures of government's LAB offices, set up throughout the country.

The transition to democracy and the establishment of a rights-based dispensation proved very difficult for this sector, despite the fact that it offers an invaluable service. Ever-diminishing funding flows resulted in reduced scale and coverage and, for instance, in the closure of the National Community-Based Paralegal Association. Now, university-based legal support institutions are playing an increasingly important service role.

Under the former dispensation, public interest or *pro bono* legal services were provided mainly through funded organisations and there was no real pressure on the private legal profession to contribute. As a result, *pro bono* was not used to broaden access to justice. After 1994, when funding dried up further, it became very hard for the public interest legal sector to fulfill its function and promote expanded access to justice.

“Following the adoption of the *pro bono* rule by the Cape Law Society in 2003, Webber Wentzel recruited a long-standing, former LRC staff member with extensive experience in public interest litigation to set up a *pro bono* department”

Nevertheless, after 1994, justice was firmly on the public agenda and the following positive developments took place:

- the legal sector discussed compulsory community service
- law societies put *pro bono* on their agendas, and
- government revamped the LAB to improve access to justice.

Now the key question was: How could private law firms get involved?

***Pro bono* in the private sector**

In 2002 LHR hosted a *pro bono* conference, inviting both NGOs and private law firms to interrogate how to take the access to justice agenda forward. The conference gave private law firms a better understanding of how they could contribute.

Following this, LHR and the Law Society of South Africa set up a website. Law firms could register or volunteer their *pro bono* services. Unfortunately, at the time, private law firms still responded poorly.

However, at two subsequent meetings convened by corporate law firms, the idea of *pro bono* work started to take root. The New York Bar and large private law firms were invited by Webber Wentzel to discuss *pro bono* and the clearing house approach in 2004. Soon this was followed by a meeting of large law firms, hosted by Cliffe Dekker Inc, to which NGOs and public interest lawyers were also invited.

Since then a number of private law firms took the institutionalisation of *pro bono* in the profession to heart. In 2003 the Cape Law Society adopted a compulsory *pro bono* ruling, requiring its members to work *pro bono* 24 hours per year. The Eastern Cape and KwaZulu Natal Law Societies followed suit. By 2008, the last regional law society, the Northern Provinces Law Society, had also adopted the rule. In 2005 the Johannesburg Bar Council was the first among this fraternity to promote a 20 hours per year *pro bono* rule to its members.

Emerging *pro bono* practices

Although *pro bono* practice is not yet widespread in South Africa there are firms and practitioners who are leading by example. Formalising and institutionalising *pro bono* created a greater impetus in this regard, setting up the beginnings of a culture of *pro bono* work in the private legal sector. Below, references are made to models and practices in the law firms Bowman Gilfillan Attorneys, Webber Wentzel and Leppan Beech Inc. These are illustrative of models and practices developed or emerging in other law firms.

For example, in 2003/2004, Webber Wentzel¹ established an in-house public interest section. Following the adoption of the *pro bono* rule by the Cape Law Society in 2003, Webber Wentzel recruited a long-standing, former LRC staff member with extensive experience in public interest litigation to set up a *pro bono* department.

¹ Interview with Moray Hathorn of Webber Wentzel, January 2008



Erica Emdon (left), head of family law at ProBono.Org, with a client

Photograph: Helen McDonald

Around this time, a number of large legal firms also entered *pro bono* work. They had done well financially since 1994. Like Webber Wentzel, their growth gave them confidence in democracy and strengthened their belief that it was time to give something back.

Webber Wentzel was marginally involved in the Legal Defense Fund in the 1970s. This helped them encourage progressive values in the company. ProBono.Org and Webber Wentzel collaborate closely, in particular in relation to ProBono.Org's two Legal Clinics for HIV/Aids and refugees, respectively, which renders a substantial number of *pro bono* cases.

Legal Clinics are held on a weekly basis. Different law firms consult with potential clients and take on legal matters requiring attention. Much of the work relates to workplace discrimination against people living with HIV and Aids (PLWHA), and many cases are taken through the Commission for Conciliation, Mediation and Arbitration or the Labour Court.

Another large legal firm, Bowman Gilfillan Attorneys², institutionalised *pro bono* work across the company, striving to double the required number of *pro bono* hours to 50 hours per year. It also established a *pro bono* committee focused on building relationships with civil society.

According to Claire Tucker of Bowman Gilfillan Attorneys, it is easier for larger legal firms to take on *pro bono* work and apply her company's model.

Bowman Gilfillan Attorneys also participates in ProBono.Org's HIV/Aids and Refugee Legal Clinics. Two partners and senior associates make their time available. All the cases they take through the Legal Clinics are supervised by a partner in the firm.

Leppan Beech Inc, a medium-sized firm of attorneys³, set up a *pro bono* department in early 2007, but struggled to secure clients despite advertising the service. Coming into contact with ProBono.Org, they also became involved in the Legal Clinics and now 99% of their *pro bono* work is sourced through ProBono.Org.

Leppan Beech Inc sends their candidate attorneys to the Legal Clinics to assess needs and to assign cases to staff attorneys if more expertise is needed.

In addition to sourcing clients through the HIV/Aids and Refugee Legal Clinics, ProBono.Org also sends out regular e-mail requests, listing potential cases requiring legal support. If Leppan Beech Inc is interested in taking on a case, ProBono.Org makes a full brief available.

² Interview with Claire Tucker from Bowman Gilfillan Attorneys, January 2008

³ Interview with Janet Robertson of Leppan Beech Inc, January 2008



Paul Farinha of Paul Farinha Attorneys, pro bono attorney

Photograph: *Helen McDonald*

III. The Establishment and Operations of ProBono.Org

“If the private sector could be drawn into expanding access to justice, half the problem of sustaining paralegal work would already be solved”

In 2002, in the context of the emergence in South Africa of *pro bono* practice in the legal fraternity through law society resolutions, and drawing on the experience of the Public Interest Law Clearing House (PILCH) in Australia, The Atlantic Philanthropies funded a feasibility study to assess the viability of establishing a *pro bono* clearing house in South Africa. The thinking behind the feasibility study was that if the private sector could be drawn into expanding access to justice, half the problem of sustaining paralegal work would already be solved. Stakeholders approved of the idea. However, at the time it was not clear where it would be housed and there was no driver to take the initiative forward.

Piloting the clearing house model

In 2005 The Atlantic Philanthropies decided to fund a pilot initiative and brought Odette Geldenhuys (former LRC deputy director) in part-time to get it off the ground. Called PILCH after the Australian model, it ran from April 2005 to July 2006.

Initially, cases came from organisations and word-of-mouth referrals. Because there was no real ground plan, the initiative evolved organically. The activities and lessons from the pilot project was the basis for the establishment of ProBono.Org.

Setting-up ProBono.Org

ProBono.Org is based in Johannesburg and most of its cases come from Gauteng, although experience from the HIV/Aids Legal Clinic shows a considerable number of calls for legal advice from rural areas in provinces such as the Northern Cape and Kwa-Zulu Natal.

ProBono.Org was established with a four-year grant from The Atlantic Philanthropies, structured to cover a gradually decreasing percentage of the organisation's operating budget over this time. The grant provided support for the new organisation's core operations but not for specific projects or initiatives.



From left to right: Constitutional Court Justice Tholie Madala, Michael Katz of Edward Nathan Sonnenbergs, Evan Davis of Cleary Gottlieb Steen & Hamilton LLP (sitting) and Constitutional Court Deputy Chief Justice Dikgang Moseneke at the launch of ProBono.Org in May 2007

Photograph: Helen McDonald

The process of establishing ProBono.Org can be broken down into four phases

August to December 2006: The initial set-up phase

Working from the offices of The Atlantic Philanthropies, Odette Geldenhuys sourced office space, interviewed potential staff, approached potential board members and set up an organisational infrastructure. In October 2006 ProBono.Org moved into its own offices. Staff joined between October and December 2006.

January 2007: Becoming a Section 21 company

After registering ProBono.Org as a non-profit Section 21 company, the law firm Edward Nathan Sonnenbergs registered ProBono.Org as a tax-exempt public benefit organisation with the South African Revenue Service and as a non-profit organisation with the Department of Social Development. This was all done on a *pro bono* basis.

21 February 2007: The ProBono.Org Board

On the above date the first ProBono.Org Board meeting took place. Individuals serve on the Board of Directors in their *ex officio* capacity as representatives of various law firms and the Johannesburg Bar Council (the latter took a directorship on the Board shortly after the first meeting). Other interests are also represented.

The initial Board members were: Taryn Hirsch (Deneys Reitz Attorneys), Moray Hathorn (Webber Wentzel), Harold Jacobs (Werksmans), Janet Love (LRC), Masi Mathai (ABSA), Ivan May (Radio Today), Bongi Mpitso (Mpitso Attorneys), Claire Tucker (Bowman Gilfillan Attorneys), Eric van den Berg (Bell Dewar Hall), Henry Bennett (Cliffe Dekker Inc), Janet Braun (Edward Nathan Sonnenbergs), and Odette Geldenhuys (ProBono.Org).

7 May 2007: Public launch

ProBono.Org was successfully launched with two events held in collaboration with the Cyrus R Vance Center for International Justice's Visiting Lawyer Program. The first event was a round table discussion attended by South African legal practitioners and the discussion was led by former New York City Bar Association president Evan A Davis, Ed Turner from Shearman & Stirling LLP, former Credit Suisse USA managing director Elizabeth Millard, Joan Vermeulen of the Cyrus R Vance Center for International Justice and Odette Geldenhuys. The second event was the reception addressed by Deputy Chief Justice Dikgang Moseneke.



*Bongsi Mpitso of Mpitso Attorneys, ProBono.Org
Board member*

Photograph: Helen McDonald

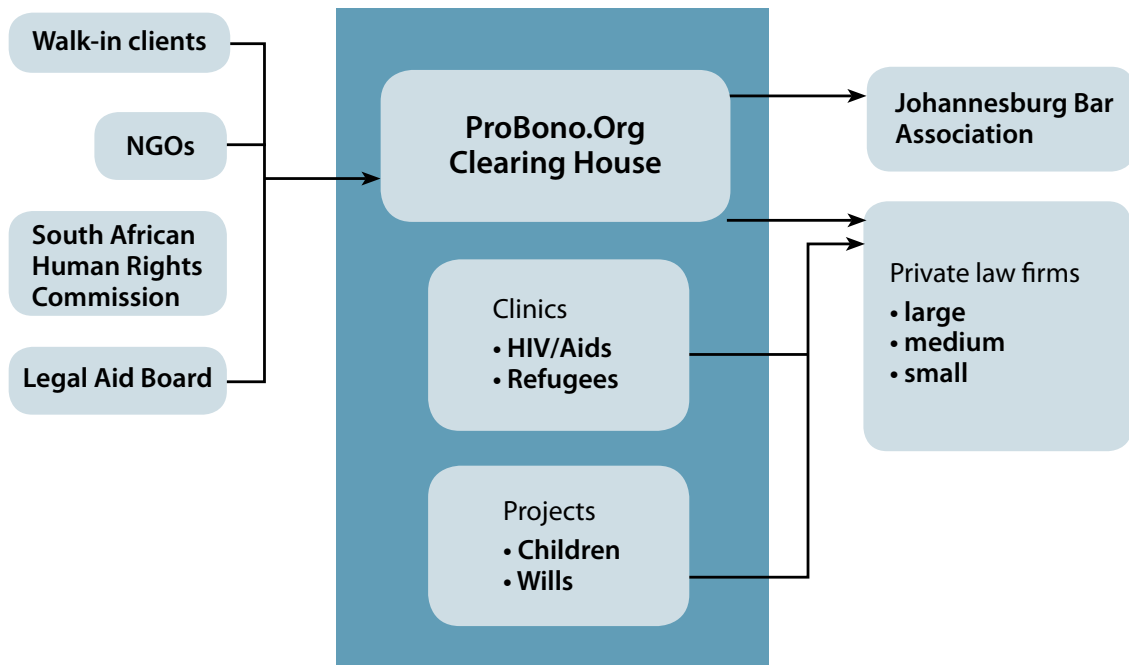


Figure 1: The ProBono.Org model

ProBono.Org was established as a non-profit company with a Board of Directors. It was envisaged that it could be converted into a membership organisation, with the membership fees of law firms, bar councils and others being sufficient to cover running cost and administration. However, this was not a realistic model and ProBono.Org is working on a multi-pronged income strategy.

The ProBono.Org Board

Because ProBono.Org is a Section 21 company, its key governance structure is the Board, drawn from public interest and private legal firms involved in the initial clearing house pilot project and still involved in providing *pro bono* services in ProBono.Org-cleared cases.

The Board is not involved in the organisation's direct, day-to-day operations. However, the director feels it is important for the Board to be involved in strategy, fundraising and profiling, even if Board members' busy schedules limit their availability.



Patrick Bracher of Deneys Reitz Attorneys with Henry Bennett, director with Cliff Dekker Inc, broadcasting the ProBono Law programme on Radio Today

Photograph: Helen McDonald

“If the matter has good merits and if the client is unable to afford legal fees, ProBono.Org matches the issue to a law firm or advocate with the relevant expertise and experience, and provides them with detailed *pro bono* requests”

ProBono.Org and the clearing house model

A clearing house such as ProBono.Org stands between clients and law firms. Thus, clients come in and the organisation assesses the issue they bring in. If the matter has good merits and if the client is unable to afford legal fees, ProBono.Org matches the issue to a law firm or advocate with the relevant expertise and experience, and provides them with detailed *pro bono* requests.

There are a number of differences between a clearing house and a paralegal organisation.

A clearing house has a structured relationship with private professional firms and advocates. Only the more sophisticated paralegal organisations have links to law firms.

Although a clearing house has an inherent paralegal/advice office function, this is not the reason for the organisation's existence. The clearing house exists to unlock resources in the private legal profession. A clearing house will itself have attorneys to properly assess and evaluate cases before passing them on to relevant professionals.

A clearing house cannot be seen in isolation from the network of practitioners it clears cases to. As previously noted, these practitioners are organised in different ways in order to provide their *pro bono* services.

A clearing house model could also be applied to other fields, such as providing engineering or other services to NGOs or government agencies.

ProBono.Org staff capacity

ProBono.Org currently has a staff of three attorneys, of whom the director is one, a paralegal and a receptionist.

The director manages the organisation, liaises in particular with the larger law firms and organised legal professionals, and manages three special projects: The weekly HIV/Aids Legal Clinic, the fortnightly radio programme ProBono Law and the Wills Project.



*Kase Simon Mahlaku, candidate attorney
from Deneys Reitz Attorneys*

Photograph: Helen McDonald

The second attorney - the staff attorney - is a specialist in education and refugee law. She consults with the majority of walk-in clients who present a wide range of legal issues. She also manages the weekly Refugee Clinic.

The third attorney, who works part-time, manages all the family law matters and is in charge of the Children's Project.

ProBono.Org is also working on creating a forum of estate attorneys to deal with the increase in problematic succession cases arising as people die younger due to Aids, which invariably impacts on children.

Current approaches and strategies

There are three broad approaches to ProBono.Org's work.

Dealing with requests for assistance and walk-in clients

The organisation deals with requests from individuals or groups, and referrals from organisations such as the LAB, the South African Human Rights Commission (SAHRC) and NGOs, such as Tshwaranang Legal Advocacy Centre. Requests and referrals are assessed and then prepared as *pro bono* requests to private practitioners. Requests from individuals or organisations are generally in the following broad public interest areas:

- children's rights and family law
- land rights, land restitution and development
- housing
- employment, and
- equality matters.

The staff attorney assesses the merits of each case in terms of the client's ability to pay, the public interest of the case and the legal merit/basis of the case. If the case has merit, it is taken further and a detailed *pro bono* request is developed.



Client in consultation at ProBono.Org's weekly Refugee Legal Clinic

Photograph: Helen McDonald

“ProBono.Org’s biggest problem is a lack of capacity. With more capacity, the Legal Clinics could be greatly expanded and extended”

This may take two to three consultations with the client. The *pro bono* request includes:

- the names of parties
- brief explanation of client’s inability to afford legal fees
- basic information and a description of the facts of the case
- an outline of public interest elements, and
- description of the legal action required.

Once a firm accepts a *pro bono* request, a consultation is set up between the client and the firm. The staff attorney participates in the consultation. The firm then takes the case forward.

ProBono.Org has different lists of law firms for referrals. One list consists of law firms wanting to receive all *pro bono* requests. Alternatively, when firms specify specialist areas, only relevant requests are sent to them.

Topic specific Legal Clinics

ProBono.Org also runs topic specific Legal Clinics staffed by different law firms on a *pro bono* basis. As outlined above, two current topic specific Legal Clinics deal with HIV/Aids and refugees. Currently, Legal Clinics are planned for workers compensation and family law.

The HIV/Aids Legal Clinic links with the South African National AIDS Council and assists in taking forward the Council’s plan of action. Through promoting access to justice for PLWHA, ProBono.Org implements the access to justice element of the Council’s plan of action.

The Legal Clinics are convened for half a day every week. Half hour appointments are scheduled. Rosters are fully booked in advance as the demand for the services offered by the Legal Clinics is extremely high. ProBono.Org’s biggest problem is a lack of capacity. With more capacity, the Legal Clinics could be greatly expanded and extended.



Odette Geldenhuys (left), ProBono.Org, and Amelia Vukeya, Bowman Gilfillan Attorneys, prepare a brief at ProBono.Org

Photograph: Helen McDonald

“Where possible ProBono.Org consults each person who qualifies for help in person in order to prepare a full statement. As mentioned such cases are then either sent on to all practitioners or practitioners with special interests”

With regard to the case work the organisation has three qualifying criteria:

- matters must be in the public interest or be access to justice matters
- cases must have merit – that is, the chances of success must be good, and
- the client must be unable to afford commercial legal fees.

Where possible ProBono.Org consults each person who qualifies for help in person in order to prepare a full statement. As mentioned, such cases are then either sent on to all practitioners, or to practitioners with special interests.

In addition to the topic specific Legal Clinics, a number of law firms participate in the Wills Project - running education sessions on wills at various hospices. This project is done in association with the HPCASA.

Public interest focus areas

ProBono.Org identifies public interest focus areas that require legal intervention, namely:

- giving substantive meaning to the constitutional right to basic education, and
- making greater use of the equality court’s jurisdiction.

In addition, ProBono.Org recruits attorneys and advocates to do *pro bono* work on an ongoing, pro-active basis. It assists firms to devise suitable *pro bono* arrangements and liaises with the organised profession and voluntary structures to promote the concept of volunteerism/*pro bono*.

Although distinct in terms of the focus of work and the capacities required, strategic (or impact) litigation and broader public interest law geared at expanding justice are not mutually exclusive.

With regard to strategic litigation, there is significant potential for broader social impact. Organisations focusing on strategic litigation generally have limited capacity and have to narrow their focus as they are not set up to provide expanded access to public or private services. However, organisations with an access to justice and public interest focus are set up and geared towards providing public services to further expand access.

They have legal capacity and a wider basket of services, among which are counselling, mediation, negotiation and litigation.

ProBono.Org can fall in the last category. Big strategic/impact litigation cases can come from the cases arising from the above mentioned Legal Clinics.

The Children's Project

Since its establishment, ProBono.Org has been a referral point for a range of matters affecting children. Before *pro bono*, legal help for children was scarce, ad hoc and hard to access. To deal with child case challenges, ProBono.Org devised a number of initiatives to ensure a more organised service in a growing number of matters. It currently promotes these initiatives:

- the Pro Bono Family Law Forum
- in house mediation, and
- direct legal intervention.

To run the Children's Project efficiently and help more children, the organisation needs to employ an additional full-time attorney, solely focusing on children's rights practice. Ideally, it also requires an additional paralegal and/or mediator. In addition, ProBono.Org requires an electronic library and a collection of books on its premises for initial case research.

A full-time children's attorney would free up the current part-time family attorney to focus on recruiting new *pro bono* attorneys and advocates, liaising with law firms and legal bodies, doing advocacy work, creating new *pro bono* opportunities, fundraising, media report writing, writing up success stories and other important managerial work.

Networking and relationships with fraternal organisations

Appropriate networks and relationships with fraternal organisations are critical to the effective operation of ProBono.Org. In its short existence, relationships have been established with key institutions referring cases. They are described below. Much of ProBono.Org's referrals come from the SAHRC and the LAB who are its key partners in expanding access to justice.

The SAHRC

The legal department of the SAHRC deals with complaints and investigations, legal advice, mediation, negotiation, conciliation and litigation. Although it has offices in all the provinces, it has limited resources. Since formalising links with ProBono.Org, the SAHRC has addressed some of its capacity constraints by referring a number of cases to ProBono.Org.



Simon Delaney, attorney with Deneys Reitz Attorneys, in telephone consultation

Photograph: Helen McDonald

“ The SAHRC refers cases falling outside its mandate, or cases with a clear violation for which it does not have the skills or capacity, to ProBono.Org for clearing to appropriate legal practitioners”

The two organisations signed a Memorandum of Understanding in October 2008, setting out the relationship between them, as well as which cases will be referred and processed. The SAHRC assesses cases prior to referral. The memorandum details:

- ProBono.Org’s objectives
- its work and its partners
- the SAHRC’s objectives;
- commonalities and mutually enhancing capacity, and
- mechanisms to ensure service levels.

According to the Memorandum, the SAHRC refers cases falling outside its mandate, or cases with a clear violation for which it does not have the skills or capacity, to ProBono.Org for clearing to appropriate legal practitioners. In other words, ProBono.Org’s clearing house function enhances capacity all round.

The SAHRC’s legal department deals with about 11 000 complaints per year. Only about 2% of them are litigated. The low level of litigation partly reflects skills and time constraints. Complaints come in the form of walk-ins or through telephone, e-mail and fax communications. Clients are also referred to the SAHRC, many of them prisoners. In a sense, the SAHRC acts like a clearing house - referring, rejecting or resolving matters.

The LAB

ProBono.Org and the LAB have agreed that the LAB will refer civil cases to ProBono.Org for clearing to appropriate legal practitioners. The LAB mainly deals with criminal cases.

The Johannesburg Bar Association

The Johannesburg Bar Association provides opinions on the merit of matters arising from walk-ins or the Legal Clinics, and its members act as *pro bono* counsel in other matters. In particular, ProBono.Org works with the Bar on complicated cases, and the Bar identifies advocates who can work with and assist smaller firms on cases cleared to them.

The Johannesburg Bar Association is represented on the Board and as a result, ProBono.Org has access to 800 advocates.

“ProBono.Org is surprised at how quickly the organisation became known among the public, NGOs and other referral agencies. However, because the steady growth in cases is not matched by growth in funding and staff, it is becoming increasingly difficult for ProBono.Org to manage its services optimally”

Funding

At present, ProBono.Org is sustained by a limited number of donors. More donors need to be brought on board. Current donors include The Atlantic Philanthropies, the Anglo American Chairman's Fund, law firms and the Johannesburg Bar Association.

In the first two years of its existence, fundraising was difficult. However, ProBono.Org is part of a three-year NGO Sustainability Programme (a partnership between The Atlantic Philanthropies and the Inyathelo Institute for Advancement to help key grantees develop effective strategies for longer-term sustainability), which is enabling the organisation to develop critical advancement skills.

Impact and outcomes

ProBono.Org is an extremely valuable addition to the human rights and access to justice movement in South Africa. It occupies an important niche in that it draws on and builds the goodwill and social conscience of the legal community. It expands access to justice by linking those with legal needs to professionals in the private sector.

In its short life, ProBono.Org has achieved some notable outcomes:

- Dealing with 150 files after opening in 2007, the case load increased to 400 files between January and September 2008. Most were handed over to private attorneys and advocates and about 15% of cases were handled in-house. Child cases make up a large proportion of the case load. This demonstrates that a growing number of NGOs and other organisations believe in the role and efficacy of ProBono.Org
- A growing number of attorneys and advocates are making themselves available for *pro bono* matters from ProBono.Org
- ProBono.Org has expanded the number and kind of *pro bono* opportunities available to legal practitioners through the Legal Clinic model
- The live ProBono Law programme broadcasts fortnightly on the community station Radio Today, in partnership with the Constitution Hill Trust. Its aim is to make the Constitution relevant to all in South Africa.

ProBono.Org is surprised at how quickly the organisation became known among the public, NGOs and other referral agencies. However, because the steady growth in cases is not matched by growth in funding and staff, it is becoming increasingly difficult for ProBono.Org to manage its services optimally.



Attorney Ian Shapiro, Routledge Modise (now Eversheds) at HPCASA/ProBono.Org meeting, November 2008

Photograph: Helen McDonald

IV. Benefits of the Clearing House Model

“ProBono.Org assists legal firms and advocates in moving into public interest law as a new area of work, while clients benefit from professional support otherwise financially inaccessible”

In interviews with staff a number of benefits arising from the ProBono.Org model or approach are highlighted.

The clearing house is a voice that promotes *pro bono* work in the private sector. ProBono.Org highlights and publicises this work in its newsletter, showing the start of a shift in the culture of the South African legal sector - from a litigious, antagonistic spirit, to also incorporating a greater public interest focus.

Given that *pro bono* is a new area in South Africa, a clearing house is valuable in assisting legal firms to inculcate *pro bono* work practice. Because they receive matters via a clearing house, firms do not have to advertise *pro bono* services or set up walk-in infrastructure.

As outlined above, the clearing house acts as the initial interface between potential clients and professional legal support by:

- assessing cases in terms of whether they require legal intervention or can be resolved through other means such as mediation or negotiation
- identifying the specific legal issue or area that requires attention and undertaking initial case preparation, and
- matching the area/issue to the right legal support before referring cases to legal firms/advocates.

Thus, ProBono.Org assists legal firms and advocates in moving into public interest law as a new area of work, while clients benefit from professional support otherwise financially inaccessible.

Importantly, the clearing house model reduces the overall legal costs of cases because the case preparation work is done by the clearing house, which is more cost effective. Practitioners' costs are far higher. The limited *pro bono* hours available are maximised with this groundwork.

Firms benefit from the clearing house through links to research and other necessary professional services, such as social work. ProBono.Org also links the private sector and civil society.



Chantelle Gladwin of Schindlers Attorneys (left) at HPCASA/ProBono. Org meeting, November 2008

Photograph: Helen McDonald

These positive perspectives are mirrored in the opinions of private firms doing *pro bono* work.

ProBono.Org facilitates law firm exposure to clients and a wide range of interesting matters they would not otherwise access.

ProBono.Org helps firms meet the *pro bono* requirements of law societies and improves their black economic empower score cards. The Leppan Beech Inc candidate attorneys involved in the Legal Clinics receive good exposure and mentorship, and participate in making the most of the limited *pro bono* hours.

As outlined above, ProBono.Org links the private sector with the NGO sector, clients, information and strategy, and has the legal acumen to do case groundwork, saving everybody time and money whilst expanding justice.

V. Challenges and Lessons Learned

Despite the successes noted above, the organisation is facing a number of challenges. Firstly, the South African *pro bono* culture has to be developed, nurtured and expanded. Activities have to be designed to contribute to the building of a meaningful *pro bono* culture.

Secondly, in areas of law - such as family law - where it is difficult to get *pro bono* lawyers quickly enough to meet the need, it is necessary to use lawyers, willing and able to assist, in as strategic and focused a manner as possible.

Thirdly, ProBono.Org believes it should only be one of many *pro bono* initiatives so that a multiplier effect can be achieved, increasing access to justice for the poor across the country.

In order for ProBono.Org to add additional value in terms of its own bank of knowledge and expertise, it may have to consider narrowing its clearing house function to more specific areas rather than the current broad canvas of public interest issues.

An informal survey of local organisations with clearing house type functions has helped ProBono.Org identify gaps in public interest need. They are:

- the right to education
- the right to health care
- the right to equality and the right not to be discriminated against
- HIV/Aids issues, and
- family law matters, resulting from widespread societal instability.



Family from the Democratic Republic of the Congo at ProBono.Org's Refugee Legal Clinic

Photograph: Helen McDonald

VI. Conclusion

It is a sad irony that as the possibility for increased access to justice moved to the fore after the advent of democracy in South Africa, the organisations spearheading the movement in the dark and trying times of apartheid are struggling to survive. Instead of being at the forefront of a vibrant and expanded system of justice in South Africa, many of them are in decline or are closing down.

Fortuitously, whilst the civil society sector struggles, the private sector is becoming more involved. This development needs to be optimised to fill the gap left by the decline of especially the paralegal sector.

The clearing house strategy is of mutual benefit to civil society and private sector organisations, serving the strategic and business interests of both. This clear common interest bodes well for the replication of this model throughout the country.

The clearing house model substantially reduces public interest law costs since it unlocks expensive private legal expertise. Consequently, it has the potential to contribute significantly to the sustainability of organisations, especially when coupled with a multi-pronged advancement strategy.

ProBono.Org is an innovation worth emulating in other centres of the country.



Case Study