



## Pro Bono Practices and Opportunities in South Africa

### INTRODUCTION

The South African government and legal community have made significant strides towards improving access to justice for all in the Republic of South Africa (“**South Africa**”). The government operates, and continues to expand, a legal aid system that uses public funds to assist those in need of legal services. Likewise, law firms and law societies throughout the country have adopted mandatory pro bono requirements for attorneys. Nevertheless, it is widely recognized that the legal aid system falls short of meeting the needs of the poorest South Africans, particularly in view of the social and economic challenges the country has experienced since the end of the apartheid era. There has been significant growth in the number of legal NGOs offering services, though efforts by private law firms, the country's law societies and these NGOs only go part of the way to improving access to pro bono services.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

South African law is a ‘hybrid’ legal system, with its origins derived from both continental Europe and England. As a general rule, South Africa follows English law in both criminal and civil procedure as well as in company law and the law of evidence. On the other hand, Roman-Dutch common law is followed in contract law, law of tort, law of persons, law of things, family law, etc.<sup>1</sup> In the post-apartheid era room has also been made for the recognition of traditional African customary law.<sup>2</sup> International law is incorporated into domestic law and becomes binding via adoption in the country's parliament. International law must be considered when interpreting the Bill of Rights and thus foreign law may frequently be referred to in this context.

Overarching the above legal framework is the Constitution of South Africa, which was approved on December 4, 1996 and which took effect on February 4, 1997. The Constitution is the supreme law of the land in South Africa and no other law or government action can supersede the provisions of the Constitution. Chapter 2 of the Constitution sets out the Bill of Rights, which enshrines the rights of all people in South Africa and affirms the democratic values of human dignity, equality and freedom.<sup>3</sup> No law can limit any right entrenched in the Bill of Rights except for laws of general application, to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors.

##### The Courts

The South African judiciary is an independent branch of the government and consists of the Constitutional Court (the final court of appeal for all matters), the Supreme Court of Appeal (the second highest court for all matters except for certain labor and competition matters), the provincial divisions of the High Court, and the district and magistrate courts. There are also specialty courts established to oversee various matters, such as land claims, labor disputes, and tax matters.

Judicial officers in South Africa are not publically elected but rather appointed via various commissions pursuant to processes set forth in the Constitution. Judicial appointment is not for life, though security of tenure is established through prescribed terms of service. Judges of the Constitutional Court, including The Chief Justice and Deputy Chief Justice, are appointed by the President of South Africa on the advice of the Judicial Service Commission. The appointment of High Court Judges is conducted by the Judicial

<sup>1</sup> See <http://www.justice.gov.za/sca/historysca.htm> (last visited on September 4, 2015).

<sup>2</sup> Section 39(3) Constitution of the Republic of South Africa, 1996.

<sup>3</sup> See <http://www.gov.za/documents/constitution/chapter-2-bill-rights> (last visited on September 4, 2015).



Service Commission, and the appointment of (lower court) magistrates falls under the separate Magistrates' Commission.

### The Practice of Law

The legal profession in South Africa is comprised of two types of lawyers: attorneys and advocates. In general, attorneys provide advice on matters ranging from commercial transactions to the drafting of wills while advocates represent clients in major court proceedings and arbitrations, and also provide written or oral opinions on matters involving South African law. The Qualification of Legal Practitioners Amendment Act of 1997 dictates that an LLB degree is required to practice law in South Africa. The degree should be obtained from a South African law school. If a law degree is obtained outside South Africa, independent verification is required to establish that the degree is equivalent to an LLB in South Africa. If equivalency is verified, candidates must satisfy certain other requirements to become either an attorney or advocate. These include being at least 21 years old, a South African citizen or permanent resident.

Historically, advocates could only work on matters that were referred to them by attorneys and only advocates (as opposed to attorneys) were permitted to argue matters in court. However, the recent Legal Practice Act 28 of 2014 has led to the blurring of the distinction between advocates and attorneys. The Legal Practice Act provides that an advocate may render legal services upon receipt of a request *directly* from a member of the public, provided that the advocate is in possession of a fidelity fund certificate and a trust account. Also fairly recently, attorneys who have obtained the requisite certification have been allowed to appear and argue cases at the High Court level.<sup>4</sup> The Legal Practice Act has as its stated purpose the creation of a single regulatory body for advocates and attorneys to ensure that legal services are accessible to the public and entry into the profession is unrestricted. It remains to be seen what impact these statutory changes will have on the profession and access to justice. To date very few attorneys have entered into the sphere of practice historically served by advocates.<sup>5</sup>

The Legal Practice Act envisages that all legal practitioners will be subject to the jurisdiction of the South African Legal Practice Council (the “**Council**”), which will, *inter alia*, regulate the conduct and affairs of all practitioners (attorneys and advocates), develop norms and standards and develop programs to empower the previously disadvantaged.<sup>6</sup>

Currently, attorneys in South Africa are regulated by regional law societies – the Black Lawyers Association, the Law Society of the Northern Provinces, the Cape Law Society, the Kwa Zulu Law Society, the Law Society of the Free State and the National Association of Democratic Lawyers, all of which fall under the umbrella body of the Law Society of South Africa (the “**LSSA**”).<sup>7</sup> According to the LSSA, as of May 2015, there were 23,217 attorneys practicing in South Africa.<sup>8</sup> While some of those attorneys practice at large-to medium-sized firms (firms with ten or more legal professionals), as of December 2014, approximately 17.4% of South African law firms consisted of between two and nine attorneys and approximately 81.7% consisted of sole practitioners.

Currently, advocates are represented by the General Council of the Bar (the “**GCB**”), a national body comprised of ten societies of practicing advocates. Societies are located at the seat of every provincial and local division of the High Court of South Africa.<sup>9</sup> At a more micro level individual advocates organize around ‘Chambers’ or ‘Groups’, some of which have made express commitments to improve access to

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<sup>4</sup> See Right of Appearance in Courts Act 62 of 1995.

<sup>5</sup> While the Legal Practice Act has been signed into law it is not (as of the date of this report) in effect.

<sup>6</sup> See Preamble to the Legal Aid South Africa Act 39 of 2014.

<sup>7</sup> See <http://www.lssa.org.za> (last visited on September 4, 2015).

<sup>8</sup> See [http://www.lssa.org.za/?q=con\\_147](http://www.lssa.org.za/?q=con_147) (last visited on September 4, 2015), About the attorneys' profession.

<sup>9</sup> See <http://www.sabar.co.za> (last visited on September 4, 2015).



justice through pro bono services and other initiatives.<sup>10</sup> There are currently over 2,000 advocates practicing in South Africa.<sup>11</sup>

Attorneys and advocates both have a long history of pursuing equal access to justice in South Africa, dating back to the apartheid era. The legal profession has heeded calls to increase its pro bono efforts as part of a new spirit of volunteerism in the country by introducing a mandatory pro bono initiative for attorneys and advocates. Legal professionals are required to provide at least 24 hours of pro bono services per year.<sup>12</sup> A number of South Africa's leading law firms have gone further and made significant efforts to develop and increase their pro bono activities, including the creation of the ProBono.org website<sup>13</sup>, seeking to match lawyers with individuals in need of legal services. It is expected that pro bono work will continue to grow in importance for the South African legal profession over the next several years as legal professionals are encouraged to establish their social responsibility credentials consistent with principles embedded in the Constitution and with the coming into force (and anticipated full effectiveness) of the Legal Practice Act.<sup>14</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Whether a matter is criminal or civil in nature impacts the right to legal assistance in South Africa. Other than for children, there is no constitutional or common law right to legal counsel in civil proceedings. For a child to qualify for assistance in a civil matter he/she must be under 18 years of age and, furthermore, substantial injustice must otherwise result if no counsel were to be appointed. Notwithstanding the lack of an express right, the constitutional entitlement to a "fair public hearing" may give rise to a claim for legal assistance in civil matters and such assistance is in fact made available for civil matters under the Legal Aid South Africa Act 39 of 2014 (the "**Act**"). In the criminal law context, detained and accused persons have a constitutional right to legal counsel and to provision of a legal practitioner at state expense if substantial injustice would otherwise result.<sup>15</sup> The Criminal Procedure Act reiterates this right.<sup>16</sup>

### State-Subsidized Legal Aid

South Africa has a system of legal aid that uses public funds to assist those unable to afford legal services. Effective March 1, 2015 state-funded legal aid came to be governed by the Act, which replaced the Legal Aid Act 22 of 1969. The Act established Legal Aid South Africa ("**LASA**") as the national public entity responsible for rendering and providing access to legal aid, advice and representation. LASA's purpose is "to ensure access to justice and the realization of the right of a person to have legal representation as envisaged in the Constitution and to render or make legal aid and legal advice available."<sup>17</sup> The functions of LASA are carried out by a board, (the "**Legal Aid Board**") in consultation with the Minister of Justice and Correctional Services.<sup>18</sup> The Legal Aid Board's work covers both civil and

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<sup>10</sup> See Thulamela Chamber's constitution: <http://www.thulamela.com/wp-content/uploads/2014/04/Thulamela-Constitution-14-November-2013.pdf> (last visited on September 4, 2015).

<sup>11</sup> See <http://www.advocatesa.co.za/> (last visited on September 4, 2015).

<sup>12</sup> See [http://www.lssa.org.za/index.php?q=con,89,Pro\\_bono\\_services\\_by\\_attorneys](http://www.lssa.org.za/index.php?q=con,89,Pro_bono_services_by_attorneys) (last visited on September 4, 2015).

<sup>13</sup> See <http://www.probono.org.za/> (last visited on September 4, 2015).

<sup>14</sup> See <http://www.justice.gov.za/legislation/acts/2014-028.pdf> (last visited on September 4, 2015).

<sup>15</sup> Section 35 Constitution of the Republic of South Africa.

<sup>16</sup> Section 73 of the Criminal Procedure Act 51 of 1977 (as amended).

<sup>17</sup> See Preamble to the Legal Aid South Africa Act 39 of 2014.

<sup>18</sup> Legal Aid South Africa Act 39 of 2014.



criminal cases, although criminal matters comprise a larger percentage of its services and budget. In its civil work, the Legal Aid Board is particularly focused on providing legal advice and protecting and defending the rights of vulnerable groups such as women, children and the homeless.

The forthcoming Regulations to be promulgated under the Act will lay out the eligibility criteria for state-funded legal assistance. The extant 2014 Legal Aid Guide published by LASA details the existing criteria as follows:

- **Criminal Law Matters** - Children and recipients of State grants and old age pensions from the South African Social Security Agency are automatically eligible. Others must meet a means test (the applicant must earn less than ZAR5,500.00 (approximately US\$ 450.00) per month after tax and not own personal property in excess of ZAR100,000 (approximately US\$ 8,250.00). Where the applicant is a homeowner, the value of the home together with any personal property must not exceed ZAR500,000 (approximately US\$ 41,000.00) in the aggregate; other than cases where an applicant's Constitutional right to representation is implicated, if the individual applicant is part of a household then the household income is tested and must not exceed ZAR6,000.00 (approximately US\$ 500.00) per month after tax). There is no citizenship requirement.
- **Civil Law Matters** - Recipients of State grants and old age pensions from the South African Social Security Agency are automatically eligible. All other applicants must meet the means test noted above.<sup>19</sup> For a child applicant the child's household must meet the means test, and where the proceedings are between spouses there is no aggregation of household assets for the purposes of the test. Non-citizens are not eligible for legal assistance in civil matters unless the matter (i) involves a child or (ii) the individual is an asylum seeker.
- **Alternative Dispute Resolution** - Mediation and arbitration assistance is offered as part of LASA's non-litigious civil proceeding services. The eligibility criteria noted above are applicable.

Distinct from the legal aid system are various ombuds (and other similarly functioning organs) which may take on and investigate complaints on behalf of complainants in certain sectors or on specific topics. Typically, these ombuds are mandated by statute or by an industry association to hold industry or government officers accountable and a complainant's legal representation is less relevant. Depending on the empowering statute or founding document, ombuds may also have more limited power to secure specific relief for a complainant and are typically limited to issuing non-binding findings or recommendations.<sup>20</sup>

According to its 2014 Annual Report,<sup>21</sup> the Legal Aid Board provided:

- Legal services through a national footprint of 64 justice centers and 64 satellite offices;
- Delivery of legal services in 447,301 new legal matters - an increase of 7% from the 2009-2010 reporting period. Of these matters over 85% were criminal cases, with the balance civil in nature; and
- Legal assistance in 16,858 matters involving children

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<sup>19</sup> See <http://www.legal-aid.co.za/?p=929> (last visited on September 4, 2015) for the Legal Aid Board's Impact Litigation Program, which recognizes that the Legal Aid Board may have opportunities to assist or fund litigation with the potential to positively affect the lives of a large number of indigent persons. The Legal Aid Board looks at whether an opportunity exists to establish legal precedent either by class action or strategic intervention and rendering of non-litigious services. Rather than evaluate each client individually, special litigation matters are submitted to the Legal Aid Board through written proposals and approved on a case-by-case basis.

<sup>20</sup> In the context of maladministration in the performance of public functions see the Public Protector Act 23 of 1994, see also the Consumer Protection Act 68 of 2008 and <http://ombudsman.ombudsmen.co.za/find-an-ombudsman/> (last visited on September 4, 2015).

<sup>21</sup> See <http://www.legal-aid.co.za/wp-content/uploads/2012/12/2014-Legal-Aid-REPORT.pdf> (last visited on September 4, 2015).



The Legal Aid Board uses justice centers, cooperation agreements with university law clinics, contracted private attorneys, and special impact litigation to fulfill its mandate of providing legal aid.

- **Justice Centers.** The justice centers operate in a similar fashion to private practice firms and are the primary source for applicants seeking legal aid in South Africa. Each justice center is headed by a principal attorney, with assistance from professional assistants, candidate attorneys and paralegals. Justice centers offer legal assistance for certain defined criminal and civil matters and the services offered include advice, referrals and litigation.<sup>22</sup> Through its justice centers, the Legal Aid Board provided general legal advice to 424,679 clients in South Africa between 2013 and 2014, accounting for 95% of all its work flow, the balance was handled through the appointment of private legal counsel in Judicare matters (as detailed below), and through cooperation agreements.<sup>23</sup>
- **Cooperation Agreements.** The Legal Aid Board enters into cooperation agreements with certain university law clinics and NGOs to provide additional legal assistance to the local communities. As of 2014, cooperation agreements were in place with law clinics at the following universities:
  - **Eastern Cape Province:** Rhodes University, University of Fort Hare, Walter Sisulu University, Nelson Mandela Metropolitan University
  - **Free State Province:** University of the Free State
  - **Gauteng Province:** University of Pretoria, University of South Africa, University of Johannesburg, University of the Witwatersrand
  - **KwaZulu-Natal Province:** University of KwaZulu-Natal, University of Zululand,
  - **Limpopo Province:** University of Limpopo, University of Venda
  - **North West Province:** North West University
  - **Western Cape Province:** University of Cape Town, University of the Western Cape, Stellenbosch University
- **Private Counsel.** The Legal Aid Board may appoint and pay private legal counsel (known as the "Judicare" system). Such appointments are voluntary and rates are agreed by contract. There is no provision in South African law for mandatory assignment of matters to private attorneys.
- **Special Litigation.** Special litigation involves cases which, if successful, would have a major impact on South African law. These types of cases primarily involve class actions suits as a means to challenge constitutional violations and require special teams of legal representatives to assist in litigating them. The legal representatives may be chosen from the justice centers or they may be private practice attorneys. The Legal Aid Board considers special litigation on a case-by-case basis, and the cost is covered through a dedicated fund.

The Legal Aid Board also continues to explore other access-to-justice models to complement the outlets outlined above pursuing and evaluating various pilot projects.

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<sup>22</sup> Matters eligible for legal aid are outlined in Chapter 4 of the Legal Aid Guide 2014. Criminal and civil matters eligible for representation are offense and jurisdiction specific. For example, legal aid may be granted in matters where District Courts have increased penal jurisdiction, such as theft, dealing in drugs and drunk driving. Legal aid is available for many common law offenses such as arson, assault, bribery, fraud, rape, murder, kidnapping, and robbery but is not generally available for criminal defamation, public indecency and contempt of court. Covered statutory offenses include those relating to children, mental disability, corruption and vehicle theft. Legal aid is also available for miscellaneous matters such as bail reviews, extradition and involuntary HIV testing (in the case of sexual offenders). In addition, legal aid is available for certain High Court appeals if the client qualifies under the means test. On the civil side, legal aid is available for family law issues including divorce, maintenance matters, child custody and domestic violence, as well as in a range of other civil matters such as housing law, asylum and certain labor disputes. There are many limitations placed on the scope of civil legal aid, such as no representation for certain personal torts (infringement of privacy and adultery); for cases in small claims court; and in the administration of estates.

<sup>23</sup> 2014 Legal Aid Report.



## Unmet Needs Analysis

While the efforts described above go some way to improving access to justice, significant hurdles remain. A prominent legal services NGO, the Legal Resources Center, points to a lack of state infrastructure, scarcity of legal skills in poor areas, illiteracy and low levels of education about legal rights and entitlements as some of the barriers to access to justice.<sup>24</sup> Notably, a high percentage of legal aid (approximately 85%) goes toward criminal law proceedings.<sup>25</sup> Given the socio-economic challenges evident in the country, there is a strong need also for civil proceeding representation (including administrative law matters touching on access to grants and social assistance programs). The Legal Aid Board acknowledges this imbalance and attributes it to funding shortages.<sup>26</sup> The private sector is slowly beginning to supplement the services provided by the Legal Aid Board, though funding and capacity remains strained in both spheres.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

Although pro bono work had been carried out by legal practitioners on an informal basis for many years, no formal initiative in respect of pro bono practice developed in South Africa until 2003, when one of the regional law societies regulating attorneys, the Cape Law Society, instituted a mandatory pro bono rule for its members. The Society's initiative was prompted by the recognition that the government's legal aid system was not adequate to address the South African public's legal needs— particularly those of the poorest members of South African society. Since then, each of the regional law societies has required their members to perform pro bono services; today the Law Society of South Africa mandates attorneys to provide 24 hours per year of free legal advice to members of the public who qualify for this service in terms of a means test. In most cases, refusing to perform pro bono services without good cause amounts to unprofessional conduct. Some law societies publish a list of services that, when performed by attorneys at no charge for those who cannot afford to pay, are recognized as pro bono services capable of being delivered in compliance with the provisions of the societies' pro bono rules.<sup>27</sup> Regional law societies typically have rules governing the reporting and recording of pro bono services, including matters addressed and hours of service rendered. The intention is to ensure the accountability of society members, and the Societies reserve the right to publish members' pro bono track records on their websites.<sup>28</sup>

In addition to the efforts of the law societies, individual legal practitioners and firms in South Africa are continuing to provide pro bono services on a voluntary and informal basis. Some of the country's large commercial law firms have adopted innovative policies towards pro bono; however the strategic approach and emphasis among firms varies. For example, ENSafrica (Edward Nathan Sonnenbergs) has established two dedicated offices located within underserved and poor communities (Mitchells Plain, in Cape Town and Alexandra Township in Johannesburg) where legal advice as well as rights education programs are provided. These offices are served by some permanent staff together with attorneys from the firm's other offices. The law firm Webber Wentzel (in alliance with Linklaters) has a permanent pro bono partner to coordinate that firm's pro bono practice. According to the firm's 2012 pro bono report, Webber Wentzel attorneys provided 10,596 hours of pro bono services—valued at over ZAR10 million—

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<sup>24</sup> See <http://www.lrc.org.za/focus-areas/access-to-justice> (last visited on September 4, 2015).

<sup>25</sup> 2014 Legal Aid Report, page 21.

<sup>26</sup> 2014 Legal Aid Report, Foreword of the Board Chairperson, page 13.

<sup>27</sup> Rule 21.4 of the Cape Rules.

<sup>28</sup> See for example Rule 24.11 of the Free State Law Society available at: [http://www.justice.gov.za/legislation/notices/2008/20080530-gg31083\\_a\\_pg68-80.pdf](http://www.justice.gov.za/legislation/notices/2008/20080530-gg31083_a_pg68-80.pdf) (last visited on September 4, 2015).



on a wide range of cases and issues including HIV/AIDS discrimination, land reform and housing and violence against women.<sup>29</sup> Bowman Gilfillan, another prominent South African law firm, reported that in 2014 their lawyers contributed 8,609 hours of pro bono work, with a value of over ZAR15.5 million. Bowman Gilfillan also places attorneys on six-month assignments with the State's Public Defenders' office and provides weekly staffing for the Domestic Violence Help Desk at the Randburg Magistrates Court. Other law firms, like Norton Rose, have focused their pro bono efforts on specific challenges facing the country, such as the xenophobic violence in 2015.<sup>30</sup>

At the University of Cape Town, and an increasing number of other law schools across the country, it is a compulsory graduation requirement for law students to complete a total of 60 hours of community service. The service need not be legally oriented but must provide a direct service or benefit to an underprivileged or vulnerable group or to a social or economic upliftment organization. The primary purpose of this compulsory requirement is to instill a sense of public service in each new lawyer joining the profession.

In addition to these opportunities, legal professionals may also provide pro bono services through legal NGOs. South Africa has a vibrant legal NGO community which is an important aspect of the access to justice landscape in the country.<sup>31</sup> Lawyers seeking opportunities for pro bono service may also contact the state's legal aid provider - LASA.

## Historic Development and Current State of Pro Bono

While the developing culture (and pride) in the delivery of pro bono legal services is encouraging, a number of factors hamper the roll-out of wide-spread pro bono legal services in South Africa.

Case-processing and organizational capacity for handling pro bono intake is constrained. According to the LASA's annual report, South African regional law societies received a total of 7,863 pro bono applications in 2014. However, only 3,701 (less than half) of these were approved and referred to attorneys. It is not clear whether this discrepancy is due to a lack of capacity on the part of the attorneys, a high number of inadequate applications or some other factor. Even when attorneys are willing to provide pro bono services they are not always able to reach people living in the rural parts of the country who need access to these services.

The supply of qualified legal practitioners also poses a barrier to greater levels of pro bono work. Several academics suggest that a lack of capable lawyers (South Africa has approximately one lawyer for every 2,273 people (well below the internationally recommended ratio of one lawyer to 600 people) is hampering access to justice,<sup>32</sup> and even economic growth.<sup>33</sup>

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<sup>29</sup> See <http://www.webberwentzel.com/wwb/content/en/ww/ww-pro-bono-report-new> (last visited on September 4, 2015).

<sup>30</sup> See <http://www.nortonrosefulbright.com/za/corporate-responsibility/xenophobia-has-no-place-in-africa/> (last visited on September 4, 2015).

<sup>31</sup> ProBono.Org (<http://www.probono.org.za/> (last visited on September 4, 2015)), for example, focuses specifically on connecting individuals seeking pro bono representation with attorneys. The Legal Resources Center ([www.lrc.org.za/](http://www.lrc.org.za/) (last visited on September 4, 2015)), Lawyers for Human Rights ([www.lhr.org.za/](http://www.lhr.org.za/) (last visited on September 4, 2015)), Center for Applied Legal Studies (<http://www.wits.ac.za/law/cals> (last visited on September 4, 2015)), Center for Child Law (<http://www.centreforchildlaw.co.za/> (last visited on September 4, 2015)), Socio Economic Rights Institute of South Africa (<http://www.seri-sa.org/> (last visited on September 4, 2015)), the Southern Africa Litigation Center (<http://www.southernafricalitigationcentre.org/> (last visited on September 4, 2015)), and Section 27 (<http://section27.org.za/> (last visited on September 4, 2015)) are all examples of NGOs offering pro bono representation or litigating social justice issues.

<sup>32</sup> See McQuoid-Mason, D., 2013. Access to Justice in South Africa: Are there Enough Lawyers? *Oñati Socio-legal Series*, 3 (3), 561-579. Available from: <http://ssrn.com/abstract=2272640> (last visited on September 4, 2015).

<sup>33</sup> See The Optimum Number of Lawyers: A Reply to Epp Stephen P. Magee, *Law & Social Inquiry* Volume 17, Issue 4, pages 667-693, October 1992 available at <http://onlinelibrary.wiley.com/doi/10.1111/lj.1747-4469.1992.tb00635.x/abstract> (last visited on September 4, 2015).



Substantive aspects of the legal system may also be deterring the bringing of pro bono matters, at least in the litigious context. As a general rule, the costs of legal proceedings follow the outcome. A pro bono (or state-funded) applicant is not shielded from an adverse costs order if his/her claim is unsuccessful. While this phenomenon may reduce the demand on an already over-burdened court system, its implications for access to justice are of concern. In addition, the class-action mechanism is fairly new and undeveloped in South Africa; the ability to litigate on this basis was introduced in 1996 for constitutional rights, and extended in 2013 to a broader array of matters.<sup>34</sup>

## Pro Bono Resources

ProBono.org, the Legal Aid Board<sup>35</sup> (<http://www.legal-aid.co.za/> (last visited on September 4, 2015)) and the law societies throughout the country offer the best resources for lawyers interested in providing pro bono representation. These organizations play a central role in providing and coordinating the provision of legal services to those who need it the most.

## CONCLUSION

Access to justice for the poorest in society is crucial to South Africa's ongoing development. South Africa has made significant strides towards developing a pro bono and state legal aid policy that encourages its legal professionals to engage in a new spirit of volunteerism. Mandatory pro bono initiatives have been introduced, a number of South African law firms have developed more structured pro bono practices independently and legal professionals can now engage in pro bono beyond their law firm in efforts like ProBono.org. The trend illustrates a renewed commitment to pro bono among formalized South African legal organizations. Nevertheless, access to justice, particularly for the poorest communities, continues to be a significant problem in South Africa. In light of numerous pressures on State funding, it is likely that the legal profession will increasingly be looked to, to develop and broaden voluntary pro bono practices in an effort to address the problem. In a country where the gap between the wealthy and the poor is vast, the need for pro bono legal services for South Africa's most underserved populations continues.

September 2015

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<sup>34</sup> See Trustees for the time being of the Children (050/2012) [2012] ZASCA 182.

<sup>35</sup> See(<http://www.legal-aid.co.za/> (last visited on September 4, 2015)