

OSALL

Organisation of SA Law Libraries

"OSALL aims to link and support everyone interested in Law Librarianship in South Africa"



NEWSLETTER

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OSALL

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Editorial

I wanted to share a short interaction I had recently with one of my candidate attorneys which left me feeling all gooey inside. She'd sent a research query and tacked on this P.S. "I started the Terry Pratchett series this weekend. Not sure if you have ever read any his works – amazing. Get on that." Little did she know that I am the ultimate Terry fan; I have his entire collection and have been fortunate enough to have met him the few times he came to South Africa. My signed copy of *Wyrd Sisters* is my most treasured possession (obviously if one discounts my two beautiful daughters). When she came down to collect the information, I mentioned that if she had a Kindle, she could get his entire series far cheaper. She looked at me as if to say 'are you mad, woman' and miming holding a book and smelling the pages she said "I prefer to hold the real thing" 😊

I have a slew of riveting reads for you this quarter.

Margaret Fish from ProBono.org describes the invaluable work they do in their organisation and I am sure they have helped many who ordinarily wouldn't have access to an attorney.

I guarantee you will have a good giggle when reading Gail Dendy's anecdote, it had me in stitches and I bow down to their awesomeness in staging a protest in that manner; doubt I'd ever be brave enough to do that! (bet you read her article first 😊)

Samuel Simango does a wonderful job of analysing the right to access of information from a Constitutional perspective and I give a short synopsis of our first OSALL meeting held in Cape Town earlier this year.

The best news of all? We now have our Publications Noted column back again thanks to our colleagues at the Stellenbosch University. Please welcome Pieter du Plessis and Samuel Simango; we are delighted and look forward to a long and happy partnership.

Lastly I'd like to offer huge congratulations on behalf of all us to Gail Dendy for achieving a "Highly Commended" for her debut novel *Rina* at the 2015 Dinaane Debut Fiction Award; you can read all about it [here](#).

News

ProBono.Org – protecting human rights through access to justice

By Margaret Fish

Manager: Operations, Grants & Communications

ProBono.Org was formed in 2006 to facilitate the provision of legal services to thousands of impoverished clients through the pro bono services of the private legal profession. The first and only organisation of its kind in South Africa, it has grown into an important social justice organisation on the landscape, working with attorneys, advocates, law societies, NGOs and members of the public to enhance access to justice.

With offices in Johannesburg, Durban and Pretoria, the organisation works in a number of ways. On the one hand it strives to attract and recruit attorneys and advocates to undertake pro bono work. On the other it finds clients, both individual and organisational (NGOs, CBOs and SMMEs), in order to ensure that private sector lawyers are furnished with matters and given an opportunity to use their skills. ProBono.Org's main aim is to build a culture of pro bono among the legal profession to ensure that there are always sufficient numbers of pro bono legal professionals available to provide a service to its clients. There is a constant need to ensure a balance between the numbers of attorneys and advocates available and the number of people seeking legal assistance.



Legal Clearinghouse and Legal Clinics

ProBono.Org acts as a legal clearinghouse where it assesses the cases of walk-in clients and refers their cases to law firms where appropriate. Referrals take place after staff have screened the cases for merit, determined that they are in the public interest, and that the client falls within a means test. In addition, it organises a number of legal clinics staffed by pro bono attorneys who deal with clients on a weekly or bi-weekly basis. These clinics cover, among other things, matters related to housing, consumer, family, labour law and refugees, and cases from these clinics are also taken on by attorneys. Last year alone, the referral rate rose from

14% of clients seen in 2013 to 18%, totalling almost 1 000 cases. The pro bono rules of the Law Societies of the Northern Provinces and KwaZulu-Natal, requiring attorneys to undertake 24 pro bono hours per annum, have been a factor in increasing referrals.

ProBono.Org now has over 2 000 attorneys, 1 900 advocates and 60 mediators on the pro bono panel. They are given public recognition for the cases they work on by way of the organisation's newsletters, annual reports and in other media. It is hoped that such affirmation will attract other legal professionals into doing pro bono work. In 2014 ProBono.Org held a Pro Bono Awards Ceremony to recognise and pay tribute to the excellent pro bono work done by attorneys, advocates and the media, which will now become an annual event.

Legal Education Workshops

ProBono.Org organises a number of workshops during the year, for both attorneys and communities. The training for attorneys and advocates aims to inform them about laws affecting ProBono.Org's clients so that they are able to offer an improved service. At training sessions they are able to network and be exposed to pro bono work being carried out by their colleagues. Legal workshops for communities provide education to enable them to better understand their rights and how to use legislation and the law to access them. Training covers a wide range of topics for both groups, which may include the law on deceased estates, wills, domestic violence, maintenance, customary law, refugees and housing. In addition, special events such as a Housing Day and Women's Day are held annually where communities can access information on these issues and have the opportunity to consult with attorneys on the day.

Special Projects

The One-Child-a-Year-Campaign

This project was initiated at the request of a Magistrate in a Children's Court who was concerned about the difficulties being faced by children. Around 15 cases per day are dealt with at most Children's Courts (abuse, abandonment, trafficking, removal of children from unsafe or violent conflict situations, etc.) where children usually have no legal representative. In response to this, ProBono.Org launched the One-Child-a-Year-Campaign aimed at securing legal representation for children in need through the commitment of attorneys and/or advocates willing to monitor the entire legal process for as long as it takes to ensure that these children are secure and protected. This could take at least a year or longer. Where children are involved in legal proceedings they should be able to have their own independent legal representatives.

High Court Help Desk

The Judge President of the North and South Gauteng High Courts, Judge Dunstan Mlambo, invited ProBono.Org, in partnership with the Law Society of the

Northern Provinces, to open help desks/legal clinics at the South and North Gauteng High Courts in order to assist indigent clients to navigate the complexity of the High Courts and obtain advice on their matters. These clinics will be staffed by pro bono attorneys and advocates.

Pro Bono Law

This is a constitutional law radio programme, aired every second Thursday on Radio Today from 18.30 to 19.00, hosted by Patrick Bracher of attorneys Norton Rose Fulbright SA. Guests this year so far have included Advocate Mohamed Ameerma of the S.A. Human Rights Commission; Lawson Naidoo of the Council for the Advancement of the South African Constitution (CASAC); David Cote of Lawyers for Human Rights; and Carina du Toit of the Centre for Child Law. Tune in to 1485 AM, DSTV audio channel 869 or live stream the broadcast on www.1485.org.za. Podcasts are also available on ProBono.Org's Facebook page and website.

Transformation of the legal profession

ProBono.Org is extremely heartened to see the progress in transformation taking place among legal professionals, which should have an enormous long-term impact. Certainly the younger attorneys who are just starting out have a greater interest in pro bono, and are beginning their careers with a thorough understanding that pro bono work is a fundamental and essential prerequisite of being a respected legal professional. In his address at the launch of ProBono.Org's Pretoria office in May this year, Justice Jody Kollapen said "Pro bono work is something we do because we are ethically and morally bound to put back, as lawyers can well afford to do."

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An anecdote By Gail Dendy

Library & Research Manager – White & Case



The slightly older librarians among us might remember the inimitable PQR Boberg – if for nothing else, then for the run of initials which would appear on the catalogue card (remember those?). For those who don't remember him, Paul was the authority in Delict at the Wits Law School for many years. In addition, he had a fearsome wit, and could be master of the put-down. Many students trembled in his class at the mere thought of his asking them a question.



Enter ... the librarian. In the mid-1980s the Wits Law School moved from the old to the new campus. Of course this entailed the transfer of the entire law library. This occurred at the end of 1985 and early 1986. Despite the fact that the books were being physically moved into the new venue, that venue wasn't fully complete. Indeed, there was no lighting, no air-conditioning (an aside: as a protest against the heat, we librarians decided to come to work one day wearing bathing suits. The protest was not a success in that no air-conditioning materialized, but there were one or two lecturers who appeared to appreciate 'the view!'), and no finalization on what shelves would be put where, or what would be put on those shelves.

Whilst this chaos was still occurring, Paul Boberg decided one day to visit the library. Not being able to find the Section (let alone the book) he was wanting, he collared the nearest librarian (no, that wasn't me) and said:

'I can't find what I'm looking for! Can you tell me what's the system here?'

Despite the searing under-roof temperature, the librarian coolly gazed at him and replied:

'It's very simple. The system here is that there's *no* system!'

That was probably one of the few times in his life that PQR Boberg was left speechless.

SAFLII and the right to access of information
By Samuel Simango
Law Librarian – Stellenbosch University

When the Southern African Legal Information Institute was formed its objective was to promote the rule of law and judicial accountability by publishing legal material for open access (SAFLII: 2015). The objective itself was based upon the objectives of the global Free Access to Law Movement. In terms of its mandate SAFLII hosts legal materials from Southern African countries. Included amongst such legal materials is a collection of South African legislation, court judgments as well as court rolls. The dissemination of such information appears to give effect to the right to access of information. This is rather remarkable as the right to access of information is one of the fundamental rights that are set out in the Bill of Rights of the South African Constitution. This outcome itself is rather curious as the protection of this right does not fall within SAFLII's direct mandate. Nevertheless it is worth reviewing (albeit briefly) the manner in which SAFLII's activities could possibly give effect to the right to access of information in South Africa.

The right to access to information is safeguarded by the provisions of section thirty-two of the Constitution of the Republic of South Africa, 1996 (referred to as 'the Constitution'). The provisions of this section are framed in the following manner:

- (1) Everyone has the right of access to -
 - (a) any information held by the state; and
 - (b) any information that is held by another person and that is required for the exercise or protection of any rights.
- (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

The most relevant parts of these provisions are to be found specifically in section 32(1)(a) and (2). The reason why sub-section 32(1)(b) would not be applicable is because it makes reference to persons. It is generally accepted that neither the courts nor the legislature are regarded as persons. Insofar as section 32(1)(a) is concerned reference is made to information that is held by the state. The question that remains is whether or not the courts and the legislature are considered to be part and parcel of the concept of the state. The term 'state' itself is not defined expressly in the Constitution. Nor is the term defined in any reported court cases. The few cases that have addressed the concept of the state such as *Holeni v Land and Agricultural Development Bank of South Africa* 2009 (4) SA 437 (SCA) and *Greater Johannesburg TMC v Eskom* 2000 (1) SA 866 (SCA) have refrained from defining the term in any general

manner. Perhaps a solution to this problem can be found in the national legislation that is mentioned in section 32(2) of the Constitution.

The provisions of section 32(2) make reference to national legislation that gives effect to the right to access of information. This legislation exists in the form of the Promotion of Access to Information Act 2 of 2000 (referred to as 'PAIA'). The provisions of PAIA set out the circumstances under which records can be accessed from private and public bodies. The term 'record' as defined in section 1 of PAIA essentially refers to recorded information. The two types of bodies from which such recorded information can be accessed are also defined in section 1 of PAIA. The definition of the term 'private bodies' refers to natural persons, partnerships and juristic persons (essentially people or organisations made up of people). Without necessarily going into the details it should be pointed out that neither the courts nor parliament fall within the ambit of any of these categories. The next question that would have to then be answered is whether or not the courts and parliament can be classified as public bodies.

The term 'public body' is defined in section 1 of PAIA as:

- (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
- (b) any other functionary or institution when -
 - (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation.

The first part of this definition would seem to be descriptive of the executive branch of state more so than the legislature or judiciary. The second part of the definition relates to two categories of functionaries/institutions. Firstly, there is a group of functionaries/institutions that performs duties in terms of the Constitution or a provincial constitution and then there is a group that exercises public powers in terms of any legislation. I shall focus my attention on the former – primarily because this is the group of functionaries/institutions that derives its mandate directly from the Constitution.

The courts and the legislature can both trace the source of their duties to the Constitution. Two of the chapters within the Constitution are specifically dedicated to setting out the structures, powers and duties of each of these two respective functionaries/institutions. Whilst the fourth chapter of the Constitution is devoted to regulations pertaining to parliament the eighth chapter

addresses matters relating to the courts (and the administration of justice).

When the provisions of section 32 of the Constitution are read with the provisions of PAIA it can be seen that there is a duty upon the courts and the legislature to grant access to certain information. The courts as well as parliament each produce different types of information. Whereas the courts produce case law in the form of judgments, parliament produces legislation. Although information contained in legislation and court cases is not explicitly identified as such information it is submitted that this may be the case. In any event the legislature does make an attempt to grant the public access to legislation. Such information may be accessed for a fee if it is accessed by means of the Government Gazette or content publishers such as LexisNexis and Sabinet Legal. More importantly, however, is the fact that legislation may be accessed for free through a number of websites such as the following:

- SAFLII (www.saflii.org);
- The South African Government's official website (www.gov.za);
- Polity.org.za (www.polity.org.za); and
- University of Pretoria Laws of South Africa Consolidated Legislation (www.lawsofsouthafrica.up.ac.za).

Unlike in the case of legislation, the accessibility of case law is restricted by cost factors. Whilst both LexisNexis and Jutastat publish reportable South African cases, access to such material by the general public is subject to a fee. Fortunately SAFLII has come to the table by publishing South African case law on its website. Although it will probably take some time before the amount of information available through this medium can rival that which is available through LexisNexis and Jutastat, the effort itself is quite commendable.

As was pointed out at the beginning of this article, SAFLII's objectives are formed by the goals of the international open access movement as opposed to the South African Constitution. In spite of this the organisation's efforts to disseminate legal information in the form of court judgments and legislation have given effect to the Constitutional right to access of information. Whether or not this has been a fortuitous result may not be too important. What matters at the end of the day is the possibility that exists for any person to retrieve South African legislation and some case law (free of charge) by means of a simple Google search.

Competitive Intelligence workshop - Cape Town **Tanya Hubbard** **Norton Rose Fulbright**

It gave Charmaine and I great pleasure to host the first OSALL event for 2015 in Cape Town at Norton Rose Fulbright and even if I do say so myself (and I do); the event was a huge success. Our catering department put on a spread that "skrik vir niks" and we had a wonderful turnout of librarians from around the Peninsula. Mzoxolo Gulwa is a fantastic speaker and incredibly passionate about his topic of competitive intelligence. Having already heard his talk at last year's AGM I was convinced I'd find listening again boring; but I couldn't have been more wrong. Mzoxolo is engaging; energetic (wish I could harness that energy, I reckon he'd be able to supply Eskom with more than they need☺) and throughout his talk there was lively interaction with the audience.

The whole concept of competitive intelligence is intriguing and I think many of our law firms are starting to see the benefit in it although we call it by a different name: business development. It makes abundant sense to want to keep tabs on what is going on around you and for years we've been doing this in the form of monitoring legal developments in the particular fields of law our firms practice. So why not extend that further to keeping an eye on developments in a particular sector and look further afield than just our own shores? It isn't difficult either, as librarians we already have the skills at our disposal; all we need do is use them and Mzoxolo gave some excellent tips on how to further develop them.

If you haven't yet had an opportunity to hear his talk, or having heard it, would like to explore the topic further his presentation is available, please email Charmaine Bertram and she'll forward it on. Unfortunately photographic evidence of this spectacular event is severely lacking; chalk it up to rookie error; next time I'll be there camera blazing ☺

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"The Librarian considered matters for a while. So...a dwarf and a troll. He preferred both species to humans. For one thing, neither of them were great readers. The Librarian was, of course, very much in favour of reading in general, but readers in particular got on his nerves. There was something, well, sacrilegious about the way they kept taking books off the shelves and wearing out the words by reading them. He liked people who loved and respected books, and the best way to do that, in the Librarian's opinion, was to leave them on the shelves where Nature intended them to be."



— [Terry Pratchett](#), [Men at Arms](#)

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Compiled by:
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Stellenbosch University



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Van Wyk, J Steyn, P. Planning Law Casebook. 9781485107231

Lexinfo

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The Protection of Personal Information Act 4 of 2013 Infopack

The InfoPack refers to:

- Book Reviews
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- Theses

A mini-summary is provided with every item and where possible a link to the full-text document (if the item is freely available in the public domain).

The Protection of Personal Information 4 of 2013 Infopack - a bibliography of resources available on the Act.

The InfoPack contains bibliographical references to various resources available on the Protection of Personal Information Act. This InfoPack is updated as necessary and available as an Ebook in .pdf format.

Items referred to are provided with a short summary, with references to the relevant sections of the Act. Chronological indexes to sections of the Act with references to case law and journal articles are included. This is a “must have” resource for legal practitioners with an interest in data protection and privacy.

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