Ensuring justice is served by providing access to the legal system

PRO BONO
& CSR

We are proud to support Ilitha Ntinini, junior rugby player at Connect Sports Academy, on his journey to sporting greatness. Connect is an NPO committed to the transformation of sports at grassroots level.
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For the financial year ending on 28 February 2017 our lawyers in South Africa invested over 11 000 hours in pro bono work amounting to just over ZAR 22 million.

Fatima Laher, Pro Bono Manager

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We also support a number of charities through volunteering our time, fundraising, or simply making donations.

Some of our pro bono and charitable work is highlighted in this report.

During the year ending on 28 February 2017, we serviced predominantly access to justice-based law clinics such as ProBono.org’s Refugee Programme and Housing and Domestic Violence Clinics in Johannesburg. We also assisted the Cape Town Magistrate’s Court help desk run by the Women’s Legal Centre while our Litigation Team in Johannesburg serviced the South Gauteng High Court help desk, a project run by the Law Society of the Northern Province.

Through our Ishishini Lethu small business project we rendered pro bono corporate legal services to qualifying small businesses and startups.

From a corporate social responsibility perspective, many members of our staff contributed meaningfully to needy communities by actively participating in a variety of our initiatives. I am thankful to all our members of staff for their generous support.

I am thankful to our lawyers for their dedication, commitment and support of our firm’s pro bono programme. Thank you, also, to our many stakeholders and collaborators who have partnered with us over the year.

Our pro bono and charitable initiatives are our commitment to ensuring access to justice and supporting the communities in which we operate. The results bear testament to the impact that our efforts are having.
Professional support lawyer, Jefrey Phahlamohlaka, received the Director’s Special Mention Award acknowledging his extraordinary contribution of 572 pro bono hours during 2015 at ProBono.org’s Annual Pro Bono Awards evening held at Constitutional Hill on 6 September 2016.
PRO BONO

Our firm’s flagship pro bono project providing legal services to start-ups and small businesses.

Launched in August 2013, our Ishishini Lethu Project creates a support system for emerging businesses working to establish themselves. We partner with non-profit organisations which refer clients in need of legal services to our firm. This allows our commercial lawyers to contribute to the communities in which we operate according to their areas of expertise.

ISISHINI LETHU
Helping African entrepreneurs prosper

WE PARTNER WITH NON-PROFIT ORGANISATIONS WHICH REFER CLIENTS IN NEED OF LEGAL SERVICES TO OUR FIRM
ALEXANDRA CHAMBER OF COMMERCE
Open day for start-ups

On 6 May 2016, lawyers from our firm attended the Alexandra Chamber of Commerce’s open day for small business enterprises (SMEs) in Alexandra. The aim was to connect these SMEs with financiers, legal advisors, accountants and well-established business enterprises.

Our team engaged with enthusiastic entrepreneurs like restauranteurs, bakers, construction and engineering companies, IT specialists as well as suppliers operating in the evening, manufacturing and textiles sectors.

We provided corporate legal advice covering the incorporation of companies, legislation relevant to operating companies, as well as the importance of knowing and observing the applicable taxation laws. A good amount of time was spent educating business owners hungry for information about business critical documentation (such as memoranda of incorporation, shareholders agreements and security registers) as well as the mechanics of each of these documents and how they would ordinarily interplay with one another in the context of a well-established business undertaking.

As many of the SMEs were unregistered, the basic concepts underpinning the formation of a company were eagerly received.

SPEED MENTORING
The Branson Centre of Entrepreneurship

The Branson Centre of Entrepreneurship hosted an insightful speed mentoring session for 20 Liberian entrepreneurs at its Braamfontein campus on 14 March 2016.

The aim was for the entrepreneurs (or mentees) to engage with mentors who had a range of business experience. Each mentee presented his or her business case and its challenges. Thereafter the business challenges and possible ways to resolve them were discussed in a timed mentoring session during which the mentees rotated every five minutes from one mentor to the next.

Our lawyers’ expertise in international trade, company, competition and intellectual property law and knowledge of the structures and regulations governing the banking and financial sectors was useful in contextualising the mentees’ issues. They also advised on general business expansion strategies such as the possibilities of franchising.

‘The mentees’ passion for their businesses coupled with the keen interest on the part of the mentors made for an effective information-sharing event.’ – Jefrey Phahlamohlaka and Alexandra Woods

WE SPENT OVER 1 700 HOURS VALUED AT JUST OVER ZAR 3.6 MILLION SERVICING OUR ISHISHINI LETHU PROJECT SMALL BUSINESS CLINIC

On 17 August 2016, our lawyers Keshni Pillay and Jefrey Phahlamohlaka, explained the applicability of the Basic Conditions of Employment Act and the Consumer Protection Act to SMEs.

On 19 October 2016, our lawyers Themba Zikhali and Jefrey Phahlamohlaka, presented on the Companies Act; the must-know provisions for entrepreneurs operating private companies and on commercial contracts as well as all significant elements to be considered by parties before signing.
ADAMS & ADAMS
Our pro bono partner on intellectual property matters

‘Bowmans is grateful to Adams & Adams, an important collaborator in our Ishishini Lethu project. We thank them for rendering sterling service to many of our small businesses with their Intellectual Property matters. The team is great to work with.’ – Fatima Laher, Pro Bono Manager

Adams & Adams:

‘Since the inception of the Ishishini Lethu project in 2013, Adams & Adams has consistently provided intellectual property services to small businesses and entrepreneurs who qualify for assistance through this project.

Our team of attorneys have dedicated approximately 100 hours to matters that have been referred through the project. Legal services that were rendered include:

- Conducting searches on the Trademarks Register to assess use and registrability of proposed trade marks
- Filing and prosecuting trademark applications

As prosecuting trademarks is not a quick process, we have engaged with clients along the way and witnessed their growth. It has been a joy seeing client products gracing shelves at various shops in Maboneng and Melville. We are privileged to have contributed to the growth of small businesses that have an impact on our economy.

We are proud to collaborate with Bowmans to make legal services accessible to small enterprises and entrepreneurs.’

PROTECTING LEGAL RIGHTS
SUPPORTING THE ARTS
Sokhulu & Partners

A local legal drama series, Sokhulu & Partners, aired in 2016 on South African TV. It explored, via impactful storytelling, the South African Constitution and Bill of Rights and how they apply in practice.

Some of the themes featured in the series included hate speech, customary law, dolus eventualis (a popular catch phrase following the Oscar Pistorius trial), and rape in the ukhutwala context (ukhutwala is the cultural practice of abducting young girls and forcing them into marriage, often with the consent of their parents).

We advised Penguin Films on this matter on a pro bono basis because we believed that the content of the series was in the public interest. In total, we contributed 234 hours valued at almost ZAR 400 000.

Legal Awareness Week is an annual national event organised by the Law Society of Kenya. Its main objective is to help the public become aware of legal issues.

We teamed up with various statutory bodies to set up booths at the event so that members of the public could visit and seek legal information relevant to their respective institutions.

Our IP team worked with Kenya Copyright Board members to advise on copyright issues relating to protecting learning materials, magazines and musical works. The collection and payment of royalties to the relevant Collective Management Organisation was a popular question.

From left: Member of the Kenya Copyright Board, Agnes Akal (Bowmans Associate) and David Opijah (Bowmans Senior Associate)

From left: Assistant Registrar of Trademarks with John Syekei (Bowmans Partner)

ADVISING ON INTELLECTUAL PROPERTY LAW IN KENYA

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From left: Assistant Registrar of Trademarks with John Syekei (Bowmans Partner)
PREMATURE BABIES AND BURIAL RIGHTS

Legal status

A timely intervention by our lawyers assisted a grieving couple to give their baby a dignified burial.

A couple’s infant baby was born prematurely and sadly lived only for a very brief time. Acting on the hospital’s advice, the couple produced an affidavit allowing the hospital to release the deceased’s body to them so they could bury their baby.

When they approached a funeral home to assist with the burial, they were informed that it was impossible without a burial order.

Because the baby was born at less than 26 weeks, the medical personnel refused to sign the relevant forms for Home Affairs, and attempts to persuade Home Affairs to issue a burial order without the signed forms were fruitless.

We prepared an urgent application to court but, whether as a result of common sense prevailing or simply out of sympathy for the parents, the medical personnel agreed to sign the relevant forms, and a burial order was issued by Home Affairs.

We were gratified to alleviate some of this couple’s stress during a heartbreaking period in their lives.

“Words cannot begin to express our heartfelt gratitude for all your help. You were certainly God sent. Thank you for all your efforts and hard work. It is profoundly appreciated.”

Parents

A CHAMPION FOR RIGHTS

Disabled people in the workplace

A tragic failed suicide attempt left our client with a facial disfigurement and a speech impediment.

On returning to his job as a general manager, his employer claimed that our client’s disability made him unable to do his job ‘fully’, despite medical reports confirming that he was fit and able to resume work.

We challenged the dismissal. The court declared it unfair and our client was awarded over ZAR 1.5 million in damages.

Apart from the terrible and too rarely acknowledged impact of depression, this case illustrates how little is understood by employers about the law protecting disabled workers. It also shows the devastating discrimination disabled workers face.

Through this case we were given the opportunity to make a meaningful difference in an individual’s life and at the same time protect the rights of disabled people in the workplace.
A HAND UP, 
NOT A HAND OUT

For learners:

Our Shipping and Logistics Practice was invited by Lawhill Maritime Centre (a part of Simons Town High School) to present a lecture on ‘Ship Arrests in South Africa’ to the grade 12 maritime economics students. The centre is wholly funded by the maritime industry and relies heavily on grants as well as industry professionals donating their time. We adopted the centre and host ongoing classes for the matric learners during the school term.

For a small business:

A sole proprietor was delighted to have her close corporation reinstated after fraudsters stole her details and had themselves added as co-owners. We were happy to be of service to the rightful owner who sent candidate attorney, Talia Ben-David, and associate, Sean Dayton, the following email of thanks:

'I thank you very much, to you and Sean – actually to Bowmans – for everything that you people did for me.’

For mothers and their babies:

‘On behalf of the Tales of Turning project, I would like to thank you for your contribution of legal services. Your legal services have helped us continue on our mission to empower vulnerable mothers in South Africa.

The Tales of Turning project runs mothers’ support groups which provide vulnerable women with the skills that they need to help their children reach their full potential. During the programme the mothers learn parenting skills as well as how to make educational activities for their children out of recyclable material.

The mothers learn how to build self-esteem and empathy in their children as well as how to keep their children safe. You can follow the progress of the project on www.talesofturning.co.za or on Facebook TalesofTurning.’

– Jenna-Lee Strugnell, Tales of Turning Project Manager
Rhino Pride Foundation (RPF) Founder and Chair Dr Jana Pretorius sent a letter thanking Bowmans for creating the RPF Trust and registering RPF as a PBO with the Tax Exemption Unit.

**PROVIDING LEGAL SERVICES TO CHARITABLE ORGANISATIONS**

**RHINO PRIDE FOUNDATION**

Letter of thanks

In July 2016, Health GAP was in South Africa for the bi-annual International AIDS Conference. AIDS 2016 was special because the conference returned to South Africa after 16 years.

South Africa is a country with the world’s largest HIV epidemic. In Durban, 16 years before, activists catalysed a sea change in the world’s response to the AIDS epidemic in the Southern Hemisphere.

Trudie Nichols, partner in our Durban office, was galvanized into activist action when Health Gap was prevented from engaging in a peaceful protest at a foreign consulate to challenge its crack down on civil society groups. Our involvement ensured the teams were free to continue their work in the fight for universal access to HIV treatment, prevention and care.

‘What many people don’t know is that our march to the Indian consulate was also a victory for the right to peaceful protest in South Africa. Ironically, before we could march, the Treatment Action Campaign and Section 27 had to go to court to defend our right to do so in the first place. A few days earlier, the South African Police Service had officially prohibited the march, effectively rendering participation in the action a crime punishable by up to one year’s imprisonment.

Lawyers from Section 27 and our attorney Trudie Nichols challenged the prohibition as an infringement of the right to protest in the Durban High Court hours before the march was scheduled to take place. Just one hour before the march, the court ruled in our favour. But we were fired up by our South African comrades who were ready to risk arrest and go forward with the march regardless of the outcome.’

- Jamila Headley, Health GAP

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From left to right: Sandile Khumalo, the KwaZulu-Natal provincial secretary of the Treatment Action Campaign, Advocate Sandhya Mahabeer, Trudie Nichols, Romane Paul, who was then a candidate attorney at Bowmans and who is now an associate. John Stephens of Section 27, and Toni Palmer who was then a pupil with Advocate Mahabeer and who is now an advocate.
Upper Tana-Nairobi Water Fund is a trust aimed at protecting the source of water for millions of Nairobi county dwellers and ensuring that they have clean water for generations to come. The water fund is seen as a sound investment by utilities and companies who rely on the Tana River. In fact, the fund’s business case showed that a USD 10 million investment in water fund-led conservation interventions is likely to return USD 21.5 million in economic benefits over a 30-year timeframe.
Our team in Kenya supported this sustainable cause by assisting with the incorporation of the trust along with drafting all of the related documentation and contracts required.
Former Constitutional Judge Justice Yacoob was the keynote speaker at our annual Pro Bono celebration in 2016.

He spoke about the notion of lawyers acting against government institutions. Justice Yacoob said that law should be used as a weapon to achieve greater good in society.

He explained that pro bono lawyering began in South Africa during the days of the struggle and the fight for a just society.

LAW SHOULD BE USED AS A WEAPON TO ACHIEVE GREATER GOOD IN SOCIETY
ANNUAL PRO BONO CELEBRATION IN 2016
Our support allowed Play Africa to pay for a shipment of giant blue blocks that will reach thousands of children, teachers and families around Johannesburg through Play Africa’s Children’s Museum.
MALANDELA MIGHTY HEROES

We sponsor the Malandela Mighty Heroes under 15 soccer team. Malandela Mighty Heroes is a NPO which uses soccer as a medium to uplift youth in Alexandra. They have 87 boys in their programme, ranging from the ages of 13 to 22.

Since our partnership started, our staff have met and engaged with the young players, run a needs drive which collected essential items from a wish list of sporting gear and equipment and even got a beating from them in a friendly soccer match.

DIGNITY CAMPAIGN

Keeping girls in school and learning

We teamed up with Imbali Legacy Project to collect and donate sanitary wear and pads to schoolgirls in and around Durban. Imbali’s goal was to collect 2,000 pads for the homes and schools they support. They also raise funds to donate washable pads and underwear for the girls.
Mandela Day is a reminder for us to help those who are in need, either because they are in poverty, conflict or face injustice. 2016’s Mandela Day highlighted education and literacy, food security, shelter and the environment.

In commemoration of Mandela Day and in commitment to the 67 Minutes Campaign, staff from our Cape Town office visited the Sibongile Day and Night Care Centre for Disabled Children in Khayelitsha to deliver donations and host a tea party. The Centre was founded by Mrs Nomasango Xabanisa and named after her late daughter who suffered from cerebral palsy. It houses 56 children with varying degrees of disability.

Donations were collected through a month-long drive spearheaded by the first year candidate attorneys who collected and delivered clothing, toiletries, cleaning products and food to the Centre. The visiting staff played games with the children and assisted with feeding the children. The day concluded with a tea party, where our team served food and treats to the caretakers.

Mrs Xabanisa thanked the firm and implored us to continue doing charitable work.

Overcoming poverty is not a task of charity; it is an act of justice. Like slavery and apartheid, poverty is not natural. It is man-made and it can be overcome and eradicated by the actions of human beings. Sometimes it falls on a generation to be great. You can be that great generation. Let your greatness blossom.

Nelson Mandela, former South African President
THE BABY HOUSE
Durban

Staff from our Durban office spent their 67 minutes on Mandela Day at the Baby House in Westville, a safe house for babies who have been abandoned and are awaiting adoption.

It was a lovely and rewarding time spent cuddling, feeding and helping out with the babies. Much-needed items necessary for the care and wellbeing of the babies as well as treats for the house mothers were donated. The board of the Baby House Westville was appreciative of the donations and time and sent the following warm letter:

[Letter from the Baby House Westville]

21 July 2016

To the management & staff of Bowman Griffins Inc. Durban,

The staff, board members and babies at The Baby House Westville would like to extend our sincerest thanks & gratitude to the management and staff of Bowman Griffins Inc Durban for your incredibly generous donation of baby items and the visit earlier this week - and a very big thank you to Action Governor for arranging and facilitating this contribution.

Your kindness and generosity are very much appreciated. The Baby House Westville relies on community involvement, support & donations to keep running and to create an nurturing & healthy environment for our babies to grow and thrive in until they are adopted by their forever families. We are very blessed to have such a generous and supportive community helping us to care for the precious babies in our care.

Please feel free to visit the babies whose lives you have touched. They love having new arms to cuddle in.

Thank you again for your kindness and generosity.
ENTOKOZWENI DAY CARE CENTRE
Johannesburg

Twenty-five enthusiastic volunteers from our Johannesburg office helped transform the Entokozweni Day Care Centre in Alexandra. The Centre takes care of preschool children up to six years old. Activities to improve the living conditions of the Centre’s occupants included painting, cleaning and gardening.

TAKE A GIRL CHILD TO WORK DAY
Cell C initiative

We participated in the Cell C Take a Girl Child to Work Initiative.

Seven excitable girls from Hout Bay High School located in the township of Hangberg were welcomed to our office in Cape Town. In Johannesburg, 16 girls from Tetelo Secondary School in Protea North joined us for the day. These schools are situated in areas that face a multitude of socio-economic issues including a high unemployment rate.

The scholars were exposed to the various fields of law and career paths that exist in a corporate law firm. The girls shadowed our associates and candidate attorneys throughout the day and participated in interactive sessions facilitated by the team. Here’s what some of the girls had to say:

Q: Which presentation was your favourite?
A: Lana’s presentation on being an attorney. She gave us a lot of information about being an attorney and I found it very interesting and encouraging.
– Mushfeeka Johnson, Grade 11

Q: What did you learn today?
A: I got a better understanding of what Corporate Law is about.
– Yonela Mblastha, Grade 12

Q: What did you enjoy most about the day?
A: The Pop Quiz! I didn’t realise that I actually absorbed and remembered so much information.
– Cordelia Opperman, Grade 11

Q: What did you enjoy least about the day?
A: Having to go home because I had so much fun here!
– Demi Solomons, Grade 10
SUPPORTING THE ARTS
Connecting local talent to willing buyers

We hosted an art exhibition at our Johannesburg office to promote local artists and showcase their work to an audience of willing, and mostly new, art buyers invited to the office for the occasion. As many as 85% of the exhibited pieces were sold.

YOUTH DAY
40TH ANNIVERSARY COMMEMORATION
John Brand interview

On the eve of the 40th anniversary of the 1976 student uprisings, we took time to commemorate the historical event through a conversation with one of our long-serving ex-partners, and current consultant, John Brand.

As a young associate at the then Bowman, Giffillan & Blacklock, John was involved with a large number of political cases in the wake of 16 June 1976. In particular, John discussed the Edelstein murder trial and the trial of 159 school children who had assembled illegally in the Johannesburg Library Gardens.

He not only touched on some historical aspects of the protests, the trials themselves and the practices of the security police and magistrates at the time, but also highlighted the timeless duty of attorneys to represent their clients to the best of their abilities.

The informative hour ended with an interactive discussion on the impact the work had on John’s career and some interesting questions from the floor about how it was that a corporate firm came to be one of the few willing to assist students arrested and charged after the 1976 protests.

The full interview is available on our YouTube channel.

History, despite its wrenching pain, cannot be unlived, but if faced with courage, need not be lived again.

Maya Angelou, author and activist
SOFT VENGEANCE SCREENING
The Alexandra Chamber of Commerce

As part of our Youth Day commemorations, we also collaborated with the Alexandra Chamber of Commerce to host a screening of the film Soft Vengeance (an award-winning film based on the life of Justice Albie Sachs) for students from high schools in and around Alexandra at the Kings Cinema in Alexandra.

Justice Sachs, who addressed the students, shared his experiences as an anti-apartheid activist and freedom-fighter. He was able to provide context and meaning to the film’s title. Having lost his arm when a bomb was placed in his car in Maputo, he explained to the students that his idea of revenge was not based on an ‘eye for an eye’ principle, but rather that he would realise his vengeance by obtaining a democratic South Africa, which he was ultimately able to achieve and share in.

It is remarkable that, having experienced such hardship and terrifying events in his lifetime, he was able to convey such optimism, hope and selflessness to all those present in the room. Amongst the foremost contributors to the drafting of the Bill of Rights, Justice Sachs was actively involved in the birth of South Africa’s constitutional democracy. It came as no surprise when he was appointed as one of the inaugural justices of the Constitutional Court. During his 15 year term, the judge handed down and contributed to many pivotal judgments, including the legalisation of gay marriages in South African and the abolition of the death penalty.

Justice Sachs conceded that although we may not live in a perfect South Africa, we live in the country he fought for. He concluded that South Africa is ‘a country where everyone has rights and freedoms, and where possibility, especially for the youth of our nation, is infinite.’

– Candidate attorneys Courtenay Stock, Liesl Vos and Ian Davis.
Every year on 9 August we celebrate Women’s Day in South Africa, a public holiday that pays homage to the women of our nation who fought against the apartheid government.

A team of women from our Johannesburg office visited the Alexandra Hospice and Rehabilitation Centre where the female caregivers and patients were pampered with various treatments. The pamper day was rounded off with a tea party and a generous donation of clothing, adult nappies and gloves.

The ladies loved their newly manicured nails and the treat of a high tea to mark a very important day in the history of South Africa.
Our annual Christmas collection for the Santa Shoebox Project.

Children’s books were donated to school libraries.

Moot court, where we sponsored a university’s mock trial competition on campus.
Bowmans managing partner, Alan Keep and Francisco Khoza, took part in The CEO SleepOut.

During the nation-wide student protests, staff collected and donated non-perishable food to Wits University.

We restored a water pump for a community creche.

We invest our time and resources in ensuring that the most vulnerable people in our society are protected by the legal system, because no one can prosper in a lawless society.

Robert Leigh, Chairman and Senior Partner
PERSPECTIVES

SIX MONTHS IN THE WILDERNESS AS CORPORATE GOES CRIMINAL

By: Mxolisi Ngubane

Family and friends were baffled when I chose the Public Defender as my next rotation, given that I was in a corporate law firm and was suddenly delving into the realm of criminal law. My response, in hindsight, was simple: I believe in the Constitution. Section 35 deals with accused persons and they too have a right to be represented.

Arriving at Legal Aid, I had mixed emotions. This was the start of what I believe I was born to do, which is to litigate. At the same time, I felt mildly anxious about how I would connect with my new colleagues and the people I would be representing over the next six months. As things turned out, that anxiety was needless. Although my colleagues and I were strangers on the first day, we had become as close as siblings by my last day, and we are still just as close.

The flow of court was largely the same each day. Court begins at 09:00 and we adjourn for tea at 11:00. We resume at 11:30 and continue until 13:00 when we adjourn for lunch, resuming again at 14:00. As per the Magistrates Court Act, court should adjourn at 16:00. Well at times 16:00 was just a guideline to the magistrate and at times to me. There were days when court adjourned at 17:00 and even at 18:00. An extra hour or so could make the difference between my client going home on bail, or returning to prison for a day or two or a week. I must admit that at times my drive for justice may have landed me on the wrong side of some prosecutors, but then again my role was to advocate for the best interests of my clients.

Learning the ropes

I do not know how many clients I assisted. What I do know is that at some point I found myself doing more and more inquiries dealing with the mental capacity of defendants. I became so familiar with these cases that the magistrate would even order that I come on record for those who insisted on conducting their own defence (as they are constitutionally permitted to do) but whose mental ability and stability the magistrate had reservations about.

The Constitution and the Criminal Procedure Act became my new points of reference. These two statutes are a defence attorney’s best friend. It is through them that the plea for prejudice against your client’s rights to a fair trial are taken more seriously by the court, and also how matters are struck off the roll. Magistrates never fail to remind legal practitioners that they are creatures of statute. That constant reminder made the task slightly easier: find a section that favours your case and argue it until the magistrate nods in agreement.

The clients I dealt with were from all walks of life in terms of race, gender and age. Nothing sank my spirit more than realising that my client was younger than me or old enough to be my grandmother. Then again, I would be shocked out of my skin when I received copies of the docket for a client who was my age and now possibly faced his or her tenth conviction. That is the mixed bag of clients who came my way. I could not choose them. They chose me.

The first time a client of mine was sentenced to direct imprisonment (for three years) my spirit sank. It sank so much that I think even the magistrate noticed it. After court she said to me, ‘Mr Ngubane, you did all that you could do. Do not let this wear you down.’ Well, I must say that I reached the point when I could predict the possible sentence each time a client faced a conviction or wanted to plead guilty.

MY BIGGEST ADVANTAGE CAME FROM REMEMBERING HOW SIMPLE MY TASK WAS: TO ADVOCATE FOR THE BEST INTERESTS OF MY CLIENTS

My biggest advantage came from remembering how simple my task was: to advocate for the best interests of my clients. I worked hard to do that. During my six months at the Public Defender, I submitted five representations to the Senior Public Prosecutor to have first-time offending clients avoid a criminal record and of those five, four were successful.

A day to remember

I never thought I would live to see the day when the gallery would erupt as I finished my argument in court. That day came during my last month at Legal Aid.

The argument was premised on a point of law, in particular section 67 and section 72 of the Criminal Procedure Act. The relevant factors of this argument were as follows: the accused had been released on bail whilst having
secured the services of a private attorney. He failed to appear in court and only appeared on the day of the final forfeiture of his bail money. However, he arrived late in court after the bail money had already been forfeited. The magistrate gave an ex tempore judgement just after lunch and then released the accused on warning.

When the accused appeared again in court, the magistrate decided to keep him in custody until he brought a new application for bail. My argument against that was primarily premised on the fact that on the day of the ex tempore judgement, the magistrate had opted to release the accused on warning. His detention later on was unlawful as he had not breached the provisions of section 72.

The magistrate disagreed. His understanding was that he had made the ex tempore judgement out of the goodness of his heart and had not intended for it to amount to releasing the accused on warning as per section 72. As part of my argument I submitted that when the court made the decision to detain my client, it in essence sat as a court of review/appeal in its own right, opening the door to legal uncertainty.

My submission on this point of law, that the detention of the accused was unlawful, lasted for an hour. The magistrate took a tea break adjournment to consider the arguments. When he returned, his opening remarks were, ‘Young man, you argued well. I just hope that your client will not bring a civil claim for wrongful arrest.’
By: Simphiwe Tshikila

I had the honour of spending the last rotation of my articles attached to the Johannesburg office of Legal Aid South Africa. This office services a number of criminal courts in the Johannesburg area, including the Johannesburg Central Magistrate’s Court, which is where I spent most of my time. I also had a few stints at the Hillbrow Magistrate’s Court.

Many at Bowmans before me have done this rotation, and have come back with varying levels of experience, but all have enjoyed their time there. Of course, there are certain things that do not change about this rotation, including the very heavy daily court roll that we’ve all had to deal with, and the many friendships we establish with prosecutors, magistrates, clerks of court, court interpreters and, of course, Legal Aid colleagues.

Like most candidate attorneys who have done so before me, I went to the Public Defender’s office specifically to gain some experience in litigation, especially as my transition to the legal profession had not been a conventional one. Before commencing my articles with Bowmans, I spent over 15 years in civil engineering. I therefore sought every opportunity that would take me closer to my dream of practising law, specifically as an advocate. The move to the Public Defender’s office was a perfect stepping stone to the Johannesburg Bar, where I am currently doing pupillage.

Thrown in at the deep end

I joined the Public Defender’s office on 1 August 2016. I had been warned by those before me that even though one would hope for some training before being set loose on the unsuspecting accused, nothing of that sort really happens. Legal Aid has limited resources and is always short-staffed due to the high number of accused people requiring legal assistance. Thus, I made my first appearance in court on my second day. (The only reason I did not appear on my first day was that I had not brought my gown to work.)

Like everyone else, I started at the reception court and ended up spending a lot of my time there. Briefly, the reception court is where the majority of the accused first appear. Once a person has been arrested (or summoned or warned to appear in court), he or she appears at the reception court. The accused will appear again on a number of occasions in this court until his or her matter is ready for trial (in which case it is transferred to a trial court); or the matter is finalised through a plea of guilty and sentencing, or charges are dropped for one reason or another. The reception court has, for obvious reasons, the busiest court roll of any of the criminal courts.

An ordinary day starts with case discussion at 07:30, with practitioners sharing ideas on cases due in court that day. Thereafter, we prepare for the day’s session before court, which starts at 09:00. If you are lucky, you get to consult with the accused before court is in session. In many instances, though, that consultation happens when the court is in session and dealing with matters handled by attorneys in private practice.

At the reception court, I handled bail applications, further appearances (whether postponements or guilty pleas), and various applications in terms of the Criminal Procedure Act. I was fortunate to handle some interesting matters.

Problem more serious than petty theft

A few weeks after I started, I represented a 50-year old lady on a charge of theft of a packet of sweets. It then transpired that she had eight previous convictions for theft, all within a period of three years and all for “petty” offences.
valued below ZAR 500. I considered it strange that someone would steal 11 chocolates, especially at that age.

After consulting with her husband, a working professional who adequately provided for the family, it appeared that she might be suffering from kleptomania. I duly made out a case, and applied for a referral for observation. The request was granted by the court. A few weeks later she returned to court with a report stating (I am told, as I had by then left the reception court), that she indeed suffered from kleptomania. Her family had by then instructed a private attorney to take the matter forward. I realised the importance of interacting closely with the accused because, had I not observed that something was amiss, she might have continued to “steal” and amass convictions in perpetuity.

Apart from the broad spectrum of interesting cases I encountered at the Public Defender’s office, I gained insight into things that would not easily be found in books or, even if they are mentioned in books, could easily be overlooked.

Even though I had set out to practise law at the Bar, the detour I took, first to join Bowmans, and secondly, to spend six months at the Public Defender’s office, was worthwhile. I must mention that when I got the opportunity to join Bowmans, I could not let that pass me by, and I was more than willing to put my ultimate interests on hold. I have not regretted my decision.

Anyone who has had the inconvenience of being diverted through a gravel road (the detour) due to roadworks on the main route, will attest to the frustration that goes with it. However, in my case, this was certainly not the situation. I enjoyed every moment of it and will build on it as I face new challenges.
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