

## **Saslaw *pro bono* NPC launched**

The South African Society for Labour Law (Saslaw) held a fundraising event that coincided with the launching of Saslaw as a non-profit company (NPC). The event was held in Johannesburg. Speakers at the event included the Deputy Minister of Justice and Constitutional Development, John Jeffery; Judge President of the Labour Courts, Basheer Waglay and Judge of the Labour Court, André van Niekerk.

### ***Pro bono* project**

Saslaw President Shamima Gaibie gave the welcome address. She said that the Saslaw *pro bono* programme was established as an indispensable part of the four Labour Courts across the country (in Durban, Port Elizabeth, Johannesburg and Cape Town) following the *pro bono* pilot project.

Ms Gaibie said that from February 2011 to February 2014, the Saslaw *pro bono* project saw more than 7 800 clients assisted by approximately 230 practitioners countrywide. She said that this equalled about 5 900 professional hours. 'Of the clients seen, approximately 15% of the cases that came through the project have been taken up and just over 7% of matters have been distributed to Legal Aid South Africa,' she said.

Ms Gaibie said that it seems inconceivable that the Labour Court had been able to function without this project.

### **Saslaw at *pro bono* clinic**

Judge Van Niekerk said that the judges valued the presence of Saslaw members at the *pro bono* clinic, adding that litigants were usually referred directly from the court to the clinic.

Judge Van Niekerk said that very often what is needed is an explanation as to why litigants do not have a case. He added that people who have access to that information or those who are advised properly of their rights often go away as satisfied as those who walk away with some sort of settlement or having won a case. 'While access to legal skills is an important component to access to justice, it is by no means the only one,' he said.

Judge Van Niekerk said that when the Labour Courts were set up, care was taken to put them in the areas of the city that were accessible to workers. 'That is why the Labour Court in Port Elizabeth is right in the taxi rank and the one in Braamfontein is close to Park Station. It was a conscious decision to have them there.'

According to Judge Van Niekerk, the Labour Court has taken the decision to send the court to where a large number of litigants are. 'For example if there is a big group in Mpumalanga, we will send a judge there instead of having 50 or 60 people coming to Johannesburg,' he said.

## Access to justice

Judge President Waglay said that the rule of law was not only a fundamental principle but was the point of departure for labour peace. He said that a shortage of judges, court rooms and legal representation not only led to a delay in matters being finalised but that it also had a direct and substantial impact on employment and denied access to justice, a basic right of every citizen, and in turn could lead to the erosion of the rule of law.

The Judge President said that over the past three years the Labour Court had called on labour law practitioners to sacrifice at least one week a year to act in the Labour Court in order to deal with the increasing number of matters that were ready to be heard but could not be allocated to the limited number of permanent judges. 'This is not an ideal situation and as a senior member of the Bar informed me, it is an exploitative practice,' he said.

Judge President Waglay said that there was a desperate need to address the issue of the shortage of judges. He added that addressing the issue would also mean addressing the need for increased infrastructure.

According to Judge Waglay, access to court is meaningless in the absence of legal representation. He said that the provision to access to justice for the poor was one of the biggest challenges for the state and the profession.

'Strike action raises the question of why the poor do not see the courts as an avenue for their grievances. The reason is that they see courts as complex. The reality is that the poor cannot afford the cost of a number of basic things that are relevant to us, the cost of litigation is one of those. I believe that every member of the profession should be strongly encouraged to provide *pro bono* services. This does not only benefit the litigant but also gives credibility to the rule of law,' Judge Waglay said.

Judge Waglay said that there was a perception that courts are institutions of trouble and harassment. 'This needs to change,' he said. He added that courts must be seen as institutions where people can obtain redress and human dignity. He concluded his speech by saying: 'We cannot have another Marikana. People must come to court to have their grievances dealt with.'

## The role of the profession and access to justice

Deputy Minister Jeffery spoke on access to justice, in particular the role of the legal profession and other stakeholders in the light of the Legal Practice Bill. Speaking on the issue of *pro bono* legal services he said that it is a known fact that most South Africans, particularly the working and middle class across all races, battle to afford the services of private attorneys. He added that it is also a known fact that most people, the ones who have no legal background or training, find the legal process and the justice system complicated and overwhelming.

'In most cases, people know that they have rights, but they have no idea how to go about enforcing those rights and especially in the area of labour law, where there is what Professor Barney Jordaan calls, "the inherently unequal relationship between employer and employee", the need for legal services becomes all the more apparent,' he said.

Deputy Minister Jeffery said that he recently heard someone comment that 'the law is a social process'. He added that this was true as the law was often the vehicle that brought about change in society and addressed various civil, political and socio-economic issues. 'In a country such as ours the disparity between rich and poor, between the haves and the have-nots, is glaringly obvious, and we are still struggling to redress the injustices of the past.

According to the Deputy Minister access to justice is often still the privilege of the wealthy. He added that this means that the demands for *pro bono* services and legal aid are ever-increasing.

'If we have more legal practitioners doing *pro bono* work it will make a significant contribution to increased access to justice. In South Africa *pro bono* work is governed by the rules of each province's law society and the various Bar councils. There have been significant contributions made by way of mandatory *pro bono* work, especially by some of the large law firms, who often go above and beyond the requirements set by the law societies. As an example, one firm, as early as 2006, contributed 8 432 hours to *pro bono* work. This amounted to 34 hours per practitioner, ranging from candidate attorneys to senior partners. In monetary terms, in 2006, this amounted to R 6,5 million. That same firm has in the past few years upped their commitment to *pro bono* work to 50 hours per year per practitioner,' he said.

Deputy Minister Jeffery spoke about community service, which is one of the provisions of the Legal Practice Bill. He said that the Bill provides that community service may include, but is not limited to,

- service in the state;
- service at the South African Human Rights Commission;
- service without any remuneration as a judicial officer in the case of legal practitioners, including as a commissioner in the small claims courts;
- the provision of legal education and training on behalf of the council, or on behalf of an academic institution or non-governmental organisation; or
- any other service that the candidate legal practitioner or the legal practitioner may want to perform, with the approval of the Minister.

He added that the Bill also states that the council may, on application and on good cause shown, exempt any candidate legal practitioner or legal practitioner from performing community service, as set out in the rules.

Deputy Minister Jeffery said that during the deliberations on the Bill there were many complaints about the community service clause, mainly that it will be impractical to implement and that it is too vague and unclear on issues such as who will monitor the process, who will remunerate them and who will have to serve and for how long. He said that there was not much opposition regarding community service for candidate legal practitioners and that opposition was mainly received with regard to recurring community service for existing practitioners, since practitioners felt that it would be punitive. He added that this was not the Bill's intention as the intention was for lawyers to give back by imparting their skills to others.

Deputy Minister Jeffery said that the Bill was just one aspect relating to improved access to justice. He said that the justice department was undertaking a variety of other initiatives and interventions to improve access to justice. He said that the department was on track in establishing small claims courts in every magisterial district in the country; the recently passed Superior Courts Act 10 of 2013 establishes a division of the High Court in each of the nine provinces, which opens up access to justice; and that the department was working on finalising the Traditional Courts Bill B1 of 2012 in order to bring the court's operation in line with the Constitution 'as these courts exist and provide access to justice and a mechanism for dispute resolution to many people in the rural areas'.

The Deputy Minister concluded by commending Saslaw and the members of its *pro bono* project and wished them the best in the endeavours of the *Pro Bono* NPC. He said: 'Every single person who is being assisted by this project is a person who is, through the project and its work, being guaranteed access to justice. Access to justice builds confidence and trust not only in the judicial system, but in the rule of law, our democracy and our constitutional dispensation.'

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