

# 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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## Editorial

Welcome to the May issue of the newsletter, which is also my final newsletter as editor. My four years as editor have been a richly rewarding experience. I may have entertained the thought of continuing as editor were it not that the Cape Town office of Bowman Gilfillan will be relocating in 2013 and the move to a new library will demand my undivided attention! Thank you very much to all who contributed in any way at all to the newsletter, for it is you who ensure the continuing existence of the newsletter.

Included in this newsletter is the paper Helen Schutte of the North Gauteng High Court Library delivered on the 15<sup>th</sup> March 2012 at the Johannesburg War Museum. Also in this newsletter, Charmaine Bertram of Norton Rose contributes a thought-provoking contribution on the state of our profession. I look forward to readers responses in the next issue of the newsletter! I know that I am guilty of spending too much time dealing with what needs to be done now and not enough time on where our library should be going.

Columnist Mary Bruce makes a welcome return with "Dotting the i and crossing the t". And last, but not least Nico Ferreira's informative column keeps us up-to-date on the latest in legal publications.

The 2012 OSALL AGM is due to take place on the 7<sup>th</sup> August at Cliffe Dekker Hofmeyr (1 Protea Place, Sandton). As this is an election year the incumbent Committee encourages OSALL members to join the Committee.

Lita Spreeth of SARS will speak at the AGM and explain the Legal and Policy Division part of the SARS website and how make optimum use of it.

RSVP Keke Maldi by Tuesday the 23rd July 2012.

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Cheers!

Diana

## News

### CIVIL TRIALS, JUDGMENTS AND COURT ORDERS: THE DIFFERENT COURT PROCESSES

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#### CIVIL TRIALS

You can differentiate between 3 types of civil trials.

With any civil trial you have to lodge an application. In the case of an "ordinary civil trial" the attorneys/advocates have to lodge an application to the Deputy Judge President of the applicable division. An "ordinary civil trial" lasts between 1 – 7 days.

The application for a "special civil trial" must be directed to the Judge President of the specific High Court division. Special civil trials" are trials that last longer than 10 days.

The last type of civil trial is called "civil trial draft orders".

#### ORDINARY CIVIL TRIALS

There are approximately 100 civil trials per day. These trials are heard by the Deputy Judge President and are allocated to trial judges that are available.

With a Civil Trial you have a Plaintiff and a Defendant.

When a matter goes on trial, the Judge either delivers a Judgment with an order OR he can reserve the judgment. When the judgment is reserved, it means the Judge will deliver the judgment at a later stage.

A judgment consists of two parts:

1. The Judgment itself contains the arguments that were heard in court as well as the evidence that was delivered in court.
2. The second part of the judgment is called The Order.

#### CIVIL TRIALS DRAFT ORDERS

A draft order is an agreement that has been reached between the attorneys of both parties, i.e. the attorney of the plaintiff and the attorney of the defendant. Agreement is normally reached 2 days before the Court sits on that specific matter. 98% of court orders are draft orders. On the day of the Court hearing the Judge makes the draft order an order of court.

In the news they refer to these cases as: "Agreement has been reached out of court" or in Afrikaans: "Die saak is buite die hof geskik".

#### UNOPPOSED MOTIONS

Unopposed motions is a short legal procedure to approach the court regarding a "semi urgent" matter. The applicant makes a statement under oath to provide the court with the necessary facts regarding a matter. The defendant has to deliver an opposing statement under oath. No evidence is necessary. After the Judge has read the statements he will make a court order. When the process is completed, the pleadings are closed. An unopposed motion just takes 10 – 15 minutes – the same as a divorce.

If evidence is required in an unopposed motion, the Motion application will become a TRIAL.

#### OPPOSED MOTIONS

With opposed motions you also have an Applicant versus a Respondent. An opposed motion can become a Civil Trial for e.g. when a dispute arises on the statements of oath, the trial Judge will refer the application to the testimony of witnesses. This means that the Court must now deliver a judgment with an order.

#### EX PARTE APPLICATIONS

With Ex Parte applications there is no Respondent – only an Applicant. For e.g. if a person becomes indebted he/she writes a letter to his/her creditor stating that he/she can no longer pay his/her debt. The debtor then brings an application for voluntary surrender of an insolvent estate.

#### 3<sup>rd</sup> COURT MOTIONS

A 3<sup>rd</sup> Court motion is a motion that last for more than one day. (Normal motions last about 10 – 15 minutes).

#### URGENT COURT

Each Judge gets a turn to be on Urgent Court duty. It is not only the Judge who is on Urgent Court, but with him is his clerk, a Registrar of the Court and the DCRS clerk who is responsible for the transcription of the proceedings in Court. Urgent court duties always start on a Friday afternoon and ends the next week on a Thursday evening. A Judge together with the other staff, as I have mentioned before, can be called out at any time of the day or night. It can even be at 12 o' clock or one o' clock at night. An example of an urgent court application is when one parent has already booked a flight to take the child to an overseas destination without the permission of the mother or father. An urgent application will stop the planned action to remove the child.

## REPORTING OF JUDGMENTS

All judgments are recorded electronically in Court by IAfrica. If a Judge decides that there are many similar judgments as the one that he has just delivered, he will not request the typing of the judgment by the current transcriber (IAfrica).

The Judge may also decide to record his judgment on a dictaphone machine. This judgment will then be typed by a more senior typist or by the Judges' clerk himself/herself. The Judge may also decide to write the judgment by hand which will then be typed either by a senior typist or the Judges' clerk.

On the front page of the Judgment there appears a stamp with the following questions:

REPORTABLE/NON REPORTABLE	YES OR NO
FOR INTEREST OF OTHER JUDGES	YES OR NO
SIGNATURE OF THE JUDGE	
DATE OF THE JUDGMENT	

Every judgment that is typed either by the senior typists or the judges' clerks or IAfrica is saved on our Court System, AND is also sent to Juta, LexisNexis and Saffli. Even if the Judge has marked it as NON REPORTABLE we will send it to publishers of law reports. If the publisher/s decides to report the Non Reportable judgment, they will first contact the Judge to obtain his/her permission.

We are only responsible for Judgments delivered at the NORTH GAUTENG HIGH COURT and not for judgments delivered at any other High Court or Appeal Court or Constitutional Court or Labour Court – just to mention a few.

COURT ORDERS are not reported but are available on our Court System. Recently the following court orders were recorded in newspapers:

1. A court order was issued where a neighbour was ordered to cut his grass.
2. Another court order was issued to noisy neighbours in Pretoria North. An elderly couple were the applicants in this case. Once the order was served on the noisy neighbours, they became provocative and victimised the elderly couple. Due to disregard of the court order, they were jailed for 6 months.
3. The order which dealt with Lobola was also very popular and often requested.
4. Another court order which evoked a lot of questions was the one brought by the Chinese Association. The order classified Chinese people as Black people. People expected Judge

Pretorius to deliver a Judgment to explain the reason for her order, but she said that a judgment was not necessary as she just confirmed what was already stipulated in two Acts – Employment Equity Act 55 of 1998 and Broad Based Black Economic Empowerment Act 53 of 2003.

## SABINET OFFERS ACCESS TO TRANSVAAL PROVINCIAL GAZETTES ARCHIVE FROM 1910 – 1994

Access to historical South African gazetted information made easy for researchers and the legal fraternity – fast, easy online access saves valuable man hours and boosts output and productivity.

Sabinet, a leader in the online information industry for the past 28 years, has been providing online South African Gazettes since 1994.

Sabinet launched its *Retrospective Transvaal Provincial Gazettes Archive* on 5 March 2012. This archive gives the legal and research sectors fast and easy online access to the full text of Transvaal Provincial Gazettes from 1910 to 1994.

Subscribers to the *Sabinet Retrospective Transvaal Provincial Gazettes Archive* will be able to find the information they need by using an efficient Google-like search interface. The text of the Gazettes is fully searchable and an automatic relevance ranking process ensures that the document searched for is likely to be displayed on top or in the first few results of the search. Faceted browsing is also available to assist with the finding of documents.

By using an online archive, institutions no longer need to store their own onsite paper archives. This can significantly reduce costs in terms of physical storage space as well as time spent searching through paper archives.

Complementary online services offered by Sabinet include a Provincial Gazettes service which provides subscribers access to gazetted information from 1995 to date; a Government Gazette service which gives access to gazettes from 1994 to date as well as the Retrospective Government Gazettes Archive containing gazettes from 1910 - 1993.

Annual scalable subscription options are available to accommodate various users, while ad hoc documents can be purchased on request.

For more information, please contact [info@sabinet.co.za](mailto:info@sabinet.co.za), the toll free telephone number 0800 118 595, or visit the website: [www.sabinet.co.za](http://www.sabinet.co.za)

## ARE WE FAILING OUR PROFESSION?

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What a loaded question. Before we can answer that we possibly need to unpack it.

Let us start by profession. What do I mean by profession? Do I mean knowledge management? Do I mean information management? Do I mean a library classified by library size?

Basically it is up to you. Whatever you see yourself as and whatever you can identify with: as long as it is linked to the purpose of providing access to information and helping users to find that information.

And if I say “we” who do I mean? Do I mean the associations like LIASA, SLIS, SAOUG and OSALL? Do I mean the universities teaching the degrees? Do I mean the Department of Arts and Culture? They are, after all, responsible for our profession. They are responsible for regulating our profession, our degrees. Or do I mean us – you and me, the members?

The easy answer would be to say ‘all of the above’. We all are part of this profession. We all contribute to the profession. But the big question is ‘how’. How do we contribute to the profession? We have a lot to think about and we most certainly have a lot to do and I am writing this article in order to make you think about what you are doing for your profession.

When you retire will your profession continue to exist? Or will it suffer a slow death into the abyss of the theory of knowledge management? Will our profession just become one more statistic of old-time professions that have ceased to exist because someone in a suit high up who does not use us, has decided that we are not needed?

Will we forever just be ‘the lady with glasses behind the counter who gives me a book when I am looking for it’? Or will we step out and become what we are meant to be: not just custodians of information but someone making a worthwhile contribution to the success of this country and your employer?

In order for us to properly understand the whole concept we need to understand who the role players are. I am afraid that most of you are in for a shock because most of you have not really thought about who the role players really are, and what all of their duties and their responsibilities are. So let us start from the top down, shall we!

The Department of Arts and Culture and its Minister together with the Department of Education and its Minister have dual custodianship. Granted they have gone some way in trying to make a difference. Through a national act of parliament they have created the National Library Council and have given the Council definite powers and functions.

The problem is that is where it stops. The relevant ministers are relying so heavily on the Council and what the Council is supposed to do and trusting so blindly that the council is actually performing its duties, that they just do not bother checking; or at least that how it seems.

For example: the Act stipulates that the council must present to the Minister, on a yearly basis, a report on its functions and what it accomplished during the year. If the Minister is satisfied with that report, the Minister must submit it to Parliament where it must be tabled and discussed in the relevant portfolio committee. The Act does not say “the minister may”, the Act does not say “the council may”: the Act explicitly says it must be done.

Yet no national council report has ever been submitted to parliament. Is the Minister failing us? Is the Department failing us? The short answer, based on what we see, is ‘yes’. They are failing us because they are not following up on the mandate that they have given the Council. They are not querying where those reports are; they are not issuing statements on why those reports were not compiled.

The Ministry did redeem itself in 2010. Towards the end of 2009, a report on the status of the profession of librarianship was commissioned. They funded it and it was a well-researched report if you take into account that the report mostly concentrated on public and government libraries, while commercial entities, like private sector libraries, were included as an afterthought. Most of the associations like OSALL and SLIS were contacted at a very late stage and may not have had the opportunity to properly present their case and participate in compiling the report.

I was however lucky enough to be one of the interviewees for the private sector and was quite candid in my answers and opinions. Following the interview stage a draft report was issued and a lot of the stakeholders, including me, were invited to Pretoria to participate in workshops.

Feedback afterwards was simply that a feedback session. Attendees to the workshop simply sat there and listened to the findings. No one queried anything; no one asked a question. The session I attended in Pretoria, generated a lot of debate. A lot of questions were asked. A lot of requests for clarification and a lot of problems

were brought to the attention of the report writers and compilers.

Some of those comments were actually taken into account when the final report was issued, and if you have not read that report yet, it is part of the reason why I say you are failing the profession.

If we go to the next level in the hierarchy of the library profession it would be the Council. Their mandate stipulates very clearly in section 3 of the Act that they should advise the minister on developing libraries for all communities and on how to provide optimal access to relevant information to every person in an economic and cost-effective manner. Some of the functions set out in section 4 include the promotion of co-ordination among library and information services: there are ten functions in total and four additional items starting with "The council must". I am sorry to say, it but in my opinion the Council is failing its mandate.

Firstly, they are not reporting back to us, the members, (the constituents of their existence) what they have done, why they have done it and how. They were involved in the previously mentioned report; they were possibly one of the drivers of the report, but since the report has been issued I have not seen one statement from them telling us what the way forward is. Surely they are our Council. It is their responsibility to look after us. Should it not then be their responsibility to liaise with us and give us feedback?

The next level in the hierarchy would be our National Body, LIASA. If you had read the report you would have seen a small paragraph in which it states that LIASA would like to become our regulatory body. My question to them is 'why'. We already have a regulatory body. True it is not functioning properly at this stage; true it could do more for the profession. But surely LIASA's job or function should not be to regulate us. LIASA's function should be to ensure that there is enough debate so that our Council which is our regulatory body starts functioning the way it should.

I see LIASA's role as a unifying body which is there to ensure that everyone (under all of the sub-groups and under all of the independent associations) knows what is going on in our profession. They should market us; they should go to schools, to career days; they should put information out there to make our profession known; they should lobby with educational institutions; they should make recommendations to our Council on standards. The list of what LIASA should be doing is very long. The list of what they are doing for government and public libraries is very long. The list of what they are doing for private and corporate institutions is incredibly short.

The perception out there is, if you work in a corporate or a private library, you have lots and lots and lots of

money. You have an unlimited budget, you earn more than you would in a government and public library; therefore why should we take care of you? Why should we bother looking after you? And this is where our smaller independent associations come in, OSALL, SLIS and SAOUG. It is their responsibility to liaise with LIASA to ensure that they stay on the Council's agenda and to make their functions and all of their lobbying actions known to us as the members. However, this is where probably the biggest problem comes in.

An association like OSALL can only do as much as the people who are serving on the committee are capable of doing. And they can only do as much as their budget allows them to. And who drives those two factors? Not LIASA, not the council – it is you! You and me! Do you in fact belong to these associations? Have you renewed your membership? Have you in fact paid your membership? Have you told your employer about these associations? Have you asked your employer about what they can do to help you do for these associations?

I recall an open letter on the OSALL list last year written by Danielle Botha. It dealt with the question of why people should serve on the committee. An OSALL member actually asked her "why should I stand for the committee". I recall this letter as a well written piece which made everyone think. Yet, following that piece, and that open letter, very few people stepped forward to say "I volunteer my services for the committee".

We still see the same faces; we still see the same people doing the work, although the complaints about what they do and how they do it increases by the day. Our sister organisation SLIS is in real danger of closing down. And, as a matter of fact, the only reason it could not close down or it still exists is because at the AGM last year not enough members attended the AGM to vote on whether the association should disband. That in itself is so sad.

The fact is: they need a 2/3 quorum to make that decision and not enough people attended that meeting to vote. People should start realising that these associations are driven by the members serving on those committees. Those committees are run by people who have a full time job. They have to take time out of their day and if their employer would not allow it, they have to take time out of their evening to do committee work. We do have a number of dedicated people who work really hard, but not enough.

I guess you now realise that I have come to the last tier of the hierarchy – you and I, the members. The people in this profession, the people who are too ashamed to say "I am a librarian". People who change their titles to knowledge manager, information manager, information centre manager – oh, the list is long. People who are too ashamed to say "I am a librarian. I help others find information. I help make my company profitable". Why

are you ashamed of your profession? Why are you not doing more for the image of the profession? Why are you not shouting from the rooftops, that you are proud to be a librarian?

It is time that you and I, members of the profession and members of OSALL, SLIS, SAOUG and LIASA wake up and take responsibility for our own careers. Look around you. How many of you are close to retiring. How many of your colleagues are close to retiring? At the SAOIM conference two years ago I received probably the biggest and scariest wakeup call of all.

At the beginning of the conference the chair, Glenda Myers, said she wanted to ask a very non-PC question. She said would everyone above 50 please put up their hands. And half the room's hands went up. And then she did it for 40, between 40 and 50, and then she did for 30 to 40. And every time the hands became less and less, and then she said below 30 – and FOUR hands went up! That was probably the scariest moment of my career. Then I realised that all my colleagues whom I respect will be retiring soon. And I am looking at those younger members and I am thinking wondering 'where are the next leaders coming from'. If we do not have enough members below 30, where are we going to find the leaders of tomorrow?

It is time that we start taking responsibility for our own careers. Now the big question is how do we do that. The first step would be to start with yourself. YOU, you yourself have to start making an effort. When the OSALL newsletter comes out how many of you look at Nico Ferreira's column on journal articles? How many of you look through it and think "Oh, that is an interesting article on 'cataloguing' or 'that is an interesting article on library management'. Maybe I should make an effort to get a copy of it. Maybe I should read it. How many of you have done that in the last year, or even in the last two or three years? How many of you belong to the other associations? Or read up on what library blogs and librarians on their blogs say? Did you know that there is a new cataloguing standard? AACR2 no longer exists – there is something new in its place, more modern, more up to date. Did you know that there is such a thing as the RDA ....?

What else can I do? I can make sure that my employer understands my value and that my employer understands the value of an association like OSALL. It is not difficult to make a contribution. It is as easy as thinking to yourself, "We have a nice sized boardroom, maybe I can tell OSALL that they can host a meeting in our building". It is also normally not that expensive and if your organisation is not able to do it by themselves it is possible to do these things in conjunction with other companies eg. our good friends, publishers like LexisNexis, Juta and Sabinet. It is possible to do a combination of things. One firm gives the venue, another firm sponsors the drinks, another

sponsors the food. It really is not that difficult and the end result will be a meeting where like minded people meet; where they discuss the profession; where they talk about what we all do; where we talk about best practices and where we help each other.

My intention writing this article is not to step on toes. It is not to make people feel ashamed. It is to get people thinking – "What can I do to ensure that my profession exists long after I do not"; "What can I do to make sure that people respect my profession"; and "what can I do to make myself feel proud"?

## Dotting the "i" and Crossing the "t"



<http://pinterest.com/>

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### *Piqueing your Pinterest*

One could be forgiven for feeling that social media has peaked and is unlikely to produce anything to further pique our curiosity. Therefore I didn't take much note when 'Pinterest' icons started appearing at the end of news articles and elsewhere on the Internet. In fact, I didn't even read up about it immediately but it is now obvious that it has indeed brought something new to the drawing board and fills a niche.

Pinterest has been around for a little over two years but by August 2011 Times magazine included it in the best websites of that year and by December it ranked among the top ten social network sites. It's another story of small makes good which I always find heart-lifting.

The best introduction would be to visit the homepage and look around for yourself. I anticipate a good many happy hours of discovery ahead and there is sure to be plenty to grab the attention of even the most jaded eye as one delves into it.

Pinterest is a collection of 'pinboards'. Those who have signed up can load their own material or link to other websites (hence the burgeoning number of 'pinterest' icons to be seen around). Links can be to video clips or anything else of interest. Individual users create new boards for different themes which has made this a seriously nifty way of sharing one's own hobbies and finding others with similar interests. Tweets sending readers to Pinterest boards are becoming increasingly frequent and are a good way of drawing attention to less

obvious information. Visitors are able to add comments and 're-pinning' of existing pins is accepted, expected and encouraged.

There is a system of etiquette to be followed. Wikipedia provides a useful general background<sup>1</sup>.

Pinterest did bump its head on copyright issues to begin with but has accepted legal advice and adapted its terms and conditions accordingly.

Getting started is as easy as asking a friend who is already in the network to send an invitation; in my case I requested an invitation directly from Pinterest. This arrived by email within about twenty-four hours. I am still browsing around acquainting myself with the hows, wheres and whys but suspect it could easily become a consuming hobby in its own right.

It is however so much more. Do read the article Pinterest as a learning tool: do the two compute?<sup>2</sup>. The potential for sharing information and communicating it to others is immense. Considering the attention the role of mobile phones as tools for educators is currently receiving, it will be more than surprising if Pinterest doesn't grow exponentially in the next couple of years.

I hope to write a follow-up article later in the year once my pinboard/s are up and running and would love to hear from others in this regard. Shall we make it a challenge to create our own interest groups and share our experiences in a few months?

In the meantime, do visit Pinterest; you are sure to love it. Here's a link to start you off: <http://pinterest.com/search/?q=library>.

It's already lead me to <http://pinterest.com/pin/108508672242125310/> which has inspired some home-improvement ideas and then I need to show Lydia and . . .

Opinions expressed in this column are my own and not necessarily those of my employer.

Please send suggestions and contributions for future columns to [mary@lawsoc.co.za](mailto:mary@lawsoc.co.za) and/or [d.riley@bowman.co.za](mailto:d.riley@bowman.co.za)

<sup>1</sup> *Wikipedia.Pinterest*  
<http://en.wikipedia.org/wiki/Pinterest>

<sup>2</sup> Pinterest as a learning tool : do the two compute? / Charlie Osborne. 24 April 2012

<http://www.zdnet.com/blog/igeneration/pinterest-as-a-learning-tool-do-the-two-compute/16100>



## Publications Noted

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[SAILER = Staffing of African Institutions of Legal Education and Research]

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