



Much to my astonishment, he then stopped off at the Canadian version of Makro (called Costco) and proceeded to do a month's shopping, as prices in Quebec are higher than in Ontario. An hour later we were finally on the road, I was a little worried but he assured me we would make it. At about 2pm we stopped for lunch, and then he said he must make a quick call to his friend in Quebec, as we were running a little late. Half an hour later he came out the phone booth and we were finally off again.

By this time we were really late, only at about 6pm did we finally enter the City. Not having a map, we had to ask around until we found the hotel. At 6:45pm we found the hotel, but not the bed and breakfast where I was supposed to stay, so he climbed out to make a call and find out where it was. It was 7:15pm before we found the B & B and I was still in jeans and sneakers! I've never dressed so fast in my life! At 7:30 I was finally at the Hotel, but of course everyone had left without me. I stepped into a cab and rushed off to the restaurant.

And that, ladies and gentlemen of the jury, is why I was half an hour late for the Presidential Dinner.

The Dinner itself was worth the 35 hours travel. Janine was most kind and could see I was stressed and flustered, and calmed me by saying: "You're here now, just relax." Which I did. It was a lovely French restaurant, the waiters were handsome, and the food, well, everything they say about French cuisine is true.

After a good night's rest I attended the First Timer's Program and Breakfast at 7am. We then split up to attend various CALL committee meetings. I chose the Committee to Promote Research, and learnt about the sponsorships offered by CALL to

help law librarians who wish to take on research projects that would promote the law library field in general. We also discussed finding a better name for the committee, and were trying to avoid names whose acronyms would spell something disastrous e.g. the Committee on Research Activities Projects = CRAP.

After the Grand Opening of the Exhibits and lunch, we attended a session discussing the Supreme Court of Canada copyright decision and its implications. The room was wired with tension as the counsel for the publishers and the counsel for the LSUC aired their views on the copyright issue. It became clear that despite the decision of the court, this discussion is far from over. However, libraries should make sure that they have written copyright policies and appropriate signage by self-service copiers.

Various publishers' demos were then shown to the delegates. I attended the LexisNexis Canada (Quicklaw) presentation and was pleasantly surprised by its capabilities, for example you could search on "unfair dismissal" and "no. of years employed" and the system would pull up all people who were unfairly dismissed after for example 12 year's employment.

It also has a new function called "copy with citation", which then automatically copies the case citation together with the case to your Word document. All acts are also archived when they are replaced. Another function allows you to search for registered domain names.

That evening, the Opening Reception was held at the Musée national des beaux-arts du Québec, and this was my first opportunity to admire genuine Picasso artworks, as his ceramic creations were on display. I found this to be one of the highlights of the conference and felt very fortunate to have been able to experience such cultural heritage.

On Monday morning, after the first part of the CALL AGM, Susan Freeman, who had delivered Sunday's keynote address on "Understanding Emotional Intelligence", continued to teach us and this time the topic was: Showing Leadership at Work.

Monday's luncheon was most interesting as I sat next to Richard Stock, a consultant who

works out difficulties between attorneys and their clients. I'm not sure how we got onto the topic, but he agreed that law librarians were underpaid, and proposed that we change perspective and compare our salaries not with each other, but with other professionals whose length of education at tertiary level is similar to ours. He also advised that law librarians should if possible bill clients the same amount for research as what legal professionals do, then approach their boss and let them know how much they've billed per year and explain why they should earn a professional's salary. It was quite awesome to meet a consultant who knew so much about law librarians and their day-to-day activities.

Monday afternoon I attended the session on Blogs, RSS and Content Streaming by Peter Scott, which I found to be practical and valuable. I created a blog when I returned to work as a result of what I had learned at the session. Blogs are a great way of updating users with what's new in your library.

I also attended the session on Electronic Citators: an evaluation of their accuracy and efficiency, which was a comparison of the three Canadian Electronic Citators. The results were astounding as the researchers, who were recipients of a CALL Research Grant, had done a study of 182 cases and showed how inconsistent the citators were, as citations missed by one citator were picked up by one or both of the others, and that as a result librarians or lawyers could not rely on one citator alone. This study was done mainly by law librarians, sponsored by CALL, and should keep publishers on their toes. It clearly shows the power librarians wield when it comes to maintaining levels of accuracy and comprehensiveness of legal information and legal research tools.

After the Exhibitors' Wine and Cheese Reception, Janine was so kind as to invite me to the excellent President's Reception.

As the rest of the evening was free, and we had not seen Quebec City yet, which tempted us every day with glimpses of

her beauty, I decided, together with some friends I had made at the conference, to take a horse and carriage tour. Our guide was a very handsome and enthusiastic young Frenchman, who in a heavy French accent enchanted us with tales of the awesome city's history, and especially of the battles between the French and the English on the Plains of Abraham. The French defeat so long ago still rankles deep in the hearts of the Quebec nationals.

On Tuesday morning we had a session on Recipes for Failure in Knowledge Management (KM), by Kingsley Martin, which was a thorough, down-to-earth discussion of KM. He pointed out that KM is not just the use of technology, but consists out of lots of work done by many people. The role of librarians is mainly to organise external collections by working closely with outside vendors. KM, on the other hand, encompasses the organising of internal collections by working with internal organisation groups. Librarians can be collaborators in KM, but there is much risk involved for librarians to switch to KM. There are definitely great opportunities for librarians in KM, but these are subject to this risk.

After the Awards Luncheon, we listened to the captivating Ulla Smith, who taught us about "Relationship Management Strategies for Future Success". This was an excellent session, and Ulla advised us to choose two or three things to do really well over the next few years, and to concentrate on those instead of choosing about 17 new projects, as we tend to do.

Ulla then concentrated on our image. The image we have in an organisation boils down to the fact that "Perception is Reality". Competence is not enough – being good at what we do does not guarantee success, you have to have an impact on your

users/clients day-to-day lives. How can we find out how clients and other staff see the library staff? Doing a survey ourselves won't be useful as people won't be honest with us. Using an outsider like a consultant would be the best. We may find that others focus on aspects we had not considered important.

Some tips from Ulla: when an attorney thanks you, never pretend it was easy, or say, "Oh, it was nothing." The next time they'll give the job to their secretaries. Put boundaries on your lawyers; don't allow them to give you big projects at the last minute. Make a map: who knows you and what are their positions in the firm? Concentrate on making relationships with the strategic leaders of the firm. If you are not naturally outgoing, don't worry, skills in relationship building can be learnt. Be out there, do demos, follow up on problems, share ideas. The bottom line is that the organisation must benefit from you. Thank you, Ulla!

The final Tuesday session was by Stephen Abram, who will also be speaking at this year's SLIS/OSALL conference. The topic: "It's all on Google – NOT! Selling yourself in competitive times". This session updated us on the world of search engines; according to Stephen only three major search engines remain: Google, MSN and Yahoo. Over 100 search engines died last year. A search engine also cannot search past 200 000 hits. Also, only about 13% of online information is available free on the Internet. An attorney or manager who says to you: "We don't need a library, we'll find it on the Net" is actually saying that his firm/organisation will be doing business with same competitive information that is available to any kid who can read, or with which any firm starts out with anyway.

Tuesday ended with a bang at the elegant Imperial Theatre, where we were all entertained by a talented band and singers and of course the free bar. Enough said!

Wednesday finally dawned. I had been looking forward to it as the foreign delegates each had an opportunity to speak at the AGM. I introduced myself and then spoke about OSALL, what we are all about and the projects with which we are involved. It was an amazing experience to be the pioneer South African delegate at the conference.

Afterwards was rather a sad time of saying goodbye to everyone and especially the friends I had made, and of course Janine, who had helped make this all possible.

With a final farewell to the magical city, I caught the bus and started my thirty-five hour journey home. On Air Canada I got the same movies I had on the way to Canada, i.e. Big Fish, but by this time I was so tired I could sleep on a cactus. On the final flight back to my homeland, the movie was "Lord of the Rings, Return of the King", and by now I was feeling like Frodo and Sam suffering through that last, never-ending stretch of their journey (except for the hunger and thirst, of course, SAA certainly have talent to keep those at bay).

I don't remember much about the landing; I slept two days after the journey. But there is a phrase in Big Fish that sums up everything neatly: "The harder something is to do, the greater the reward at the end!" Thank you, Janine, CALL, OSALL and Brink Cohen Le Roux Inc. for having made this unforgettable experience possible.

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## Who goes where

**Netlaw.** Alison Smith, previously a librarian at the Johannesburg Bar Library, and Deneys Reitz, is responsible for Netlaw, which is one of Sabinet's products. It is a wonderful and most useful product. Congratulations, Alison!

**Johannesburg Bar Library.** Elise van der Pijl is the Library Manager at the Bar Library in Johannesburg, where she moved in March 2003. The Bar Library is housed in two geographical areas now – the "main" library consisting of essentially Southern African materials is still in the centre of Johannesburg, at Innes Chambers, and a branch library, containing material on overseas jurisdictions is in Sandton, at The Chambers, Protea Place. Elise is assisted by a very able team, consisting of Lynette Davis, Diana Shield, Bridgette Williams, Jean Aspeling and Joyce Nukeri.

**Pretoria Bar Library.** Rosalie Cloete, the Librarian, is the proud mother of a new son, Ivan Christopher. Linda van Ryneveld joined Rosalie, as the Assistant Librarian on the 1<sup>st</sup> November 2003.

**Edward Nathan.** Bheki Kubheka joined the Knowledge Centre team on 10 May 2004.

Liza van Heerden made a lateral move within the firm to be responsible for internal and external communications, amongst other things.

**Hofmeyr Herbststein Gihwala Cluwer Walker Inc.** Sandra de Beer became the Librarian in March 2002, when Hanlie Bossert left. Hanlie and her husband started a coffee shop / kiosk, on the beach at Ballito, in KwaZulu- Natal which has been a roaring success. Sandra is assisted by Adrienne Warwicker, who became the Assistant Librarian in 2003.

**Cliffe Dekker.** Gill Rademeyer took over the running of the library at Cliffe Dekker, in January 2004. Gill married John Baty on the 6<sup>th</sup> December 2003. Congratulations, Gill!

**Moss-Morris.** Martie Penning is now in charge of the library at Moss-Morris, where she moved in April 2003. She was previously the librarian at Wits Law Library. She is assisted by Lynette Miller, who moved up from the Cape last year.

**A new member of OSALL**  
Welcome to Gertruda Elizabeth du Toit, who is a final year student at UNISA.

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## The Courts

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Section 34 of the Bill of Rights in our Constitution says everyone has the right to have any legal problem or case decided by a court or an independent body.

The courts are used to make people obey the law. They do this by deciding disputes brought to them.

The ordinary courts are:

- Constitutional Court
- Supreme Court of Appeal

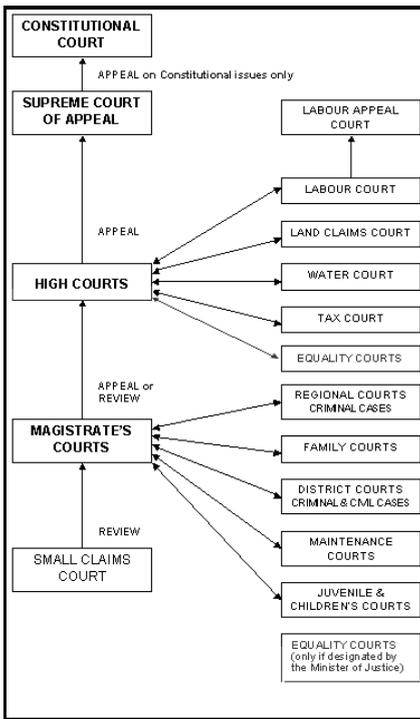
- High Courts (and the High Court of Appeal may be established)  
○ High Courts in different provinces  
○ Local divisions, for example Witwatersrand Local Division
- Magistrate's Courts
- Regional Magistrate's Courts
- District Magistrate's Courts
- Small Claims Courts

Courts that deal with special kinds of cases:

- Labour Appeal Court: deals with appeals from the Labour Court
- Labour Court: deals with disputes under the Labour Relations Act
- Land Claims Court: deals with land claims
- Family Courts: deals with all family matters, like divorce
- Tax courts
- Water courts
- Equality courts

These courts hear all the different kinds of cases between all people in South Africa. In the rural areas, customary chief's or headman's courts still do hear disputes, for example if there is a dispute over ownership of cattle. Anyone who is not satisfied with the decision in a chief's or headman's court can take their matter to the ordinary courts.

## THE DIFFERENT COURTS IN SOUTH AFRICA AND APPEAL OR REVIEW PROCEDURES



Court, no other court can change a judgment of the Supreme Court. Only the Supreme Court can change one of its own decisions. But if parliament does not like the way the Supreme Court interpreted a law, then parliament can just change that law.

**The High Courts**

These are the higher courts. The High Courts can hear any type of criminal or civil case. The High Courts usually hear all the cases that are too serious for a Magistrate's Court. It also hears appeals and reviews against judgments in the Magistrate's Court.

Cases in the High Courts cost more money.

All cases in the High Courts are heard by judges. Judges have many years of practical experience as lawyers. The Judicial Services Commission recommends who should be appointed as judges to the President, who then appoints judges. Judges are paid by the state. In **civil cases** usually only one judge hears the case. But if the case is on appeal then at least two judges must hear the case. In **criminal cases** only one judge hears the case. Sometimes in very serious criminal cases the judge appoints two assessors to help a judge. Assessors are usually advocates or retired magistrates. They sit with the judge during the court case and listen to all the evidence presented to the court. At the end of the court case they give the judge their opinion. The judge does not have to listen to the assessors' opinions, but it usually helps the judge to make a decision.

**The different high Courts**

- High Courts:
- Bophuthatswana High Court in Mmabatho
  - Venda High Court in Toyandou
  - Transvaal High Court in Pretoria
  - Free State High Court in Bloemfontein
  - KwaZulu-Natal High Court in Pietermaritzburg
  - Eastern Cape High Court in Grahamstown
  - Transkei High Court in Umtata
  - Ciskei High Court in Bisho
  - Northern Cape High Court in Kimberley
  - Western Cape High Court in Cape Town

**Local Divisions:**

- Durban and Coast Local Division in Durban
- Witwatersrand Local Division in Johannesburg

South Eastern Cape Local Division in Port Elizabeth

Some of the High Courts will be changed in 1998 or 1999 to ensure that there is a High Court in each of the 9 provinces.

**Appeals and reviews from a High Court**

To appeal against a court's decision means to ask a higher court to consider the evidence again and see whether the lower court was wrong in its decision. If your case was decided by only one judge, you can also appeal to have the matter considered again in the same court by three judges, called a full bench.

If you want to appeal against a decision of a High Court to the Supreme Court of Appeal, you must first get permission to appeal from that High Court. This permission is called 'leave to appeal'. For example, if your case was heard in the KwaZulu-Natal High Court, then you must apply to the same High Court for leave to appeal to the Supreme Court.

If this permission is refused, you can ask the Supreme Court itself for permission to appeal. The right to appeal is not an automatic right. Sometimes the judge will not give permission for you to take the case on appeal.

If you think that the proceedings in the High Court were unfair or not according to the law, you can ask for a review. Reviews happen automatically in certain circumstances. In other cases, you have to ask for a review.

**Magistrate's Courts**

These are the lower courts. They deal with the less serious criminal and civil cases. There is usually a Magistrate's Court in every town. It is cheaper to bring cases in the Magistrate's Court than in the High Court.

The magistrate makes the decisions in a Magistrate's Court. Magistrates are appointed by the Minister of Justice.

**The Constitutional Court**

The Constitutional Court is in Johannesburg. It is the highest court in South Africa. It deals only with constitutional issues. There are 11 Constitutional Court judges but cases only need to be heard by at least 8 of the judges. No other court can change a judgment of the Constitutional Court. Even parliament cannot change the decisions of the Constitutional Court. If the Constitutional Court makes a decision that says a law must be amended or it cannot be passed because it is unconstitutional, Parliament can decide to change the law in order to make it constitutional.

**The Supreme Court of Appeal**

The Supreme Court of Appeal is in Bloemfontein in the Free State. Except for the Constitutional Court, this is the highest court in South Africa. It only hears APPEALS from the High Court. All cases in the Supreme Court are heard by three or five judges. Except for the Constitutional

They do not have to have a university degree like lawyers. They can qualify by writing a Department of Justice examination. Some magistrates were lawyers before. A system of lay assessors is being introduced in the Magistrate's Courts. This means that two respected members of the community sit with the magistrate and help to make the decisions in cases. Magistrate's Courts can be divided into two different types:

- Criminal Courts
- Civil Courts

### **Criminal Courts**

In Criminal Courts the state prosecutes people for breaking the law.

Criminal Courts can also be divided into two groups:

- Regional Magistrate's Courts
- ordinary Magistrate's Courts (also called District Courts)

### **Regional Magistrate's Courts**

At the Magistrate's Court in a big town or city you will find a Regional Court. The Regional Magistrate's Courts deal with more serious crimes than the ordinary Magistrate's Courts - for example, culpable homicide, rape, armed robbery and serious assault.

The Regional Magistrate's Court may hear all criminal cases, except cases of treason and murder. These cases can only be heard in the High Court.

They can sentence a person to a maximum of 10 years in prison, or a maximum fine of R200 000. In some cases about serious crimes, they can give sentences of up to 30 years.

The Regional Courts do not deal with civil cases. They only deal with criminal cases.

### **Ordinary Magistrate's Courts**

These courts try the less serious crimes. They cannot try cases of murder, treason, rape, terrorism, or sabotage. They can sentence a person to a maximum of 3 years in prison or a maximum fine of R60 000.

### **Juvenile Courts**

A juvenile is a child under the age of 18 years.

Children accused of crimes are tried in the ordinary criminal Magistrate's Courts. In the larger cities, special Magistrate's Courts are set aside as Juvenile Courts. Court cases involving juveniles are not open to the public and if possible the parents should be present. Sometimes during the trial of a juvenile the court might send the child to the Children's Court. This will happen if the court thinks that the child's parent or guardian may be unfit or unable to look after the child, or if there are no parents or guardian.

### **Civil Courts**

The ordinary Magistrate's Courts can hear civil cases when the claims are for less than R100 000.

They cannot deal with certain matters, such as:

- divorce
- arguments about a person's will
- matters where it is asked if a person is mad or sane

### **Maintenance Courts**

The Maintenance Court is one of the courts found in the Magistrate's Court. Mothers who do not get support for their children from fathers can go there to claim maintenance from the fathers. There is a Maintenance Officer in charge of the Maintenance Court. He or she will help you with your claim. You do not need a lawyer to claim maintenance. The Maintenance Officer will help you to fill in the necessary forms. It is only if the father of the child refuses to pay maintenance that the case must go to the Maintenance Court. If so, the Maintenance Officer will tell you when to come to Court and which Court to go to. This is called appearing in Court.

### **Children's Courts**

These courts are supposed to protect

children. If the child is transferred from the criminal (juvenile) court to the Children's Court, the criminal case must wait until the Children's Court comes to a decision. If the Children's Court decides that the parents are fit and able to look after the child, then the case is referred back to the criminal court and the trial will continue. If the Children's Court finds that there are no parents or guardian, or that the parents or guardian are not fit or able to look after the child properly, then the court may order that the child be removed to a 'place of safety'.

### **Family courts**

In some areas there are Divorce Courts. Divorce Courts will come to an end when Family Courts are established in 1998 or 1999. Until then, you can still bring divorce cases in either the Divorce Court or the High Court. The Magistrate's Court Amendment Act of 1993 created new family courts to hear different kinds of family law cases. These courts are being piloted (tested) around the country before being set up in all the courts. If there is no Family Court in your area, you will still have to use the High Court.

### **Equality courts**

Equality courts have been created by the Promotion of Equality and Prevention of Unfair Discrimination Act also called the 'Equality Act' to hear cases about equality and non-discrimination (but not employment discrimination, which is dealt with by the Labour Courts). The Equality Courts will be based in magistrates' courts and in the High Courts. Certain magistrates will be trained specifically to hear matters on equality and discrimination. They will have powers to conciliate and mediate, grant interdicts, order payment of damages or order a person to make an apology.

Any person or an association, acting on their own behalf or on behalf of others can bring a case to the Equality Court. For example, a non-governmental organisation (NGO) can bring a case on behalf of the public. The South African Human Rights Commission or the Commission for Gender Equality can

also bring a case to the Equality Court.

### **Appeals and reviews from a Magistrate's Court**

If you are involved in a criminal or civil case in a Magistrate's Court, you can ask the High Court to look at the decision of the Magistrate's Court and decide whether it was correct. This is called an appeal. You ask the High Court to change the decision of the Magistrate's Court.

If you want to appeal against a decision of a Magistrate's Court, you must first get permission to appeal from that Magistrate's Court. This permission is called 'leave to appeal'. For example, if your case was heard in the Wynberg Magistrate's Court, then you must apply to the same Magistrate's Court for leave to appeal to the High Court. If this permission is refused, you can ask the High Court itself for permission to appeal. The right to appeal is not an automatic right. Sometimes the magistrate or judge will not give permission for you to take the case on appeal.

If you think that the proceedings in the Magistrate's Court were unfair or not according to the law, you can bring the case to the High Court. This is called a review. Reviews happen automatically in certain circumstances. In other cases, you have to ask for a review.

### **Small Claims Courts**

These courts were first started in 1984. If you want to find out if there is a Small Claims Court in your area, ask at the Magistrate's Court. If there is no Small Claims Court in your area, you must bring your case in the Magistrate's Court.

The aim of the Small Claims Court is to make it easier and cheaper for people to use the law. The court charges only about R15

to cover the cost of the summons and the sheriff of the court. There is no magistrate or judge in the Small Claims Court. The Commissioner is the person who makes the decision about who is right and who is wrong. The Commissioner also helps both sides and asks all the questions. You cannot use a lawyer in the Small Claims Court, but you can get advice from a paralegal or a lawyer to prepare for your case in the Small Claims Court. In some areas these courts also hear cases in the evenings. This means that workers can use the court without losing time at work.

### **What can you use the Small Claims Court for?**

You can only use the Small Claims Court for certain 'small' civil claims. A 'small' claim is a claim with a value of up to R3 000. If your claim is for more than R3 000, you can give up part of your claim so that it is R3 000 or less. Then you can bring the claim to the Small Claims Court. But some claims cannot be heard in the Small Claims Court even if their value is R3 000 or less. Examples of these claims are:

- divorce
- matters concerning a will
- malicious prosecution
- wrongful imprisonment
- seduction
- breach of promise to marry

The Small Claims Court will also not hear cases which the Commissioner thinks involve difficult questions of law and so should be heard by a Magistrate's Court. The state may not use the Small Claims Court, and you may not use it against the state, for example, to make a case against the police. You can use the Small Claims Court to claim from an organisation, a town council or a company. But an organisation, town council or a company may not use this court to claim against you.

Examples of cases you can take to the Small Claims Court:

- You work as a domestic worker and have not been paid for three months. You want to claim wages from your employer.
- You bought a second-hand tape player which stops working after the first month. You can claim against the seller.

- You are assaulted and have to have treatment for your wounds. You can claim against the person who assaulted you for pain and suffering, lost wages, medical fees, and so on.
- Someone negligently drives into your car causing R1 800 worth of damage. You can sue the driver of the other car for this amount.
- You paid someone to do work for you and they did not do it properly. You can claim some of your money back.

REMEMBER: in the Small Claims Court the claim must be for an amount of R3 000 or less.

### **Appeals and reviews from Small Claims Courts**

You cannot take the decision of the Commissioner of the Small Claims Court on appeal.

But you can take the Commissioner's decision on review, if you think that the Commissioner was biased or did not give each side a fair hearing - for example if he or she did not allow one of the parties to tell his or her story.

### **The Labour Court**

The Labour Court is a special court for hearing labour cases that fall under the Labour Relations Act. So this court is used only for matters between employers and workers or workers' unions. The Labour Court starts in 1998. The Labour Courts are based at the High Court of each province.

### **What does the Labour Court do?**

The Labour Court interprets all the labour laws. It says which things are unfair labour practices - for example dismissing a worker without giving notice. It can order an employer or worker or union to stop committing an unfair labour practice. It can give jobs back to workers who lost their jobs unfairly, and so on.

### **Appeals from the Labour Court**

The Labour Appeal Court hears appeals against decisions in the Labour Court.

The Labour Appeal Court is the highest court for labour appeals.

### **The Industrial Court**

The Industrial Court started in 1979 and is being phased out. It will only hear the remaining cases that were registered with it before 11 November 1996, and then it will stop existing.

### **Who works in the legal system?**

#### **Judges**

Judges are appointed by the President. Judges hear and decide cases in the Constitutional Court, Supreme Court of Appeal and High Courts. They often decide cases by themselves, but sometimes more than one judge will hear a case together.

#### **Assessors**

In serious criminal cases in the High Courts, two assessors are appointed to help the judge. Assessors are usually advocates or retired magistrates. They sit with the judge during the court case and listen to all the evidence presented to the court. At the end of the court case they give the judge their opinion. The judge does not have to listen to the assessors' opinions but it usually helps the judge to make a decision.

#### **Magistrates**

Magistrates are appointed by the Minister of Justice. They hear and decide cases in the Magistrate's Courts.

#### **Lay assessors**

Lay assessors are recruited through community organisations, so that the organisations can identify people who are respected by their communities. They are given basic training on legal procedures, but are not trained as lawyers nor magistrates. Lay assessors sit with the magistrate in the criminal courts and participate in the court processes. It is their job to help the

magistrate reach a fair decision in criminal cases. The purpose of having lay assessors is to make the courts more representative and accessible to people. They also help magistrates to understand the background to the issues in a case.

#### **Director of public prosecutions (Attorney General)**

At each High Court, there is a Director of Public Prosecutions (DPP) with a staff of assistants. (DPPs used to be known as Attorney Generals.) The DPPs are appointed by the Minister of Justice.

The DPPs are responsible for all the criminal cases in their province, so all the prosecutors are under their control. The police bring the information about a criminal case to the DPP. The DPP then decides whether there is good reason to have a trial, if there is enough information to prove in court that the person is guilty.

There is a National Director of Public Prosecutions who is in charge of all the DPPs.

#### **Prosecutors**

The prosecutor represents the state in a criminal trial against people who are accused of committing a crime. Before the trial, the prosecutor works with the South African Police Services to find out all the facts about the case, and to prepare state witnesses who saw what happened or who have other information.

The prosecutor then presents all this information in court and tries to convince the judge or magistrate that the accused person is guilty. The prosecutor does this by asking the state witnesses to tell their stories. The prosecutor also cross-questions the witnesses that the accused person brings to court, to try and disprove what these witnesses say.

#### **Attorneys**

When you need legal help, you normally go to a lawyer called an attorney. The attorney will listen to your problem and prepare the case if you are going to court. If it is a complicated case, the attorney will employ an advocate to argue the case in court.

#### **Advocates**

Advocates are lawyers who specialise in arguing cases in court. They also give advice on complicated parts of the law.

#### **Public defenders**

If a person who is accused in a serious

criminal case cannot afford to pay for their own lawyer, their case will be taken by a public defender. Public defenders are lawyers who are paid for by the state.

#### **Paralegals**

Para-legals are people who have had non-degree training or informal training so they cannot act in formal legal proceedings. They give advice to people and organisations on different aspects of the law, including advice on their rights and ways of protecting their rights. They also provide basic legal education to communities or organisations. Para-legals are not entitled to charge for their services like lawyers nor can they pretend that they are lawyers.

### **Trials, appeals and reviews**

#### **What is a trial?**

A trial is a court hearing in a Magistrate's Court or a High Court, called the trial court. The magistrate or judge listens to all the people who have information about the case. This information is called the verbal or oral evidence. The court also looks at the physical evidence, for example, a knife or a letter. These are called exhibits in the trial. The magistrate or judge listens to the evidence from both sides. If it is a criminal trial, the magistrate or judge listens to the state and its witnesses. Then he or she listens to the story of the accused and to the witnesses called by the accused.

The magistrate or judge then makes a decision, called a judgment.

#### **What is an appeal?**

If you lose a trial, you can appeal. This means you ask a higher court to change the decision of the trial court. Usually this appeal court will not listen to any new evidence. It will only read the report from the lower court to see what evidence was given. So it is very important to say everything you want to say in the first court that hears your case. A case in the Magistrate's Court can go on appeal to the nearest High Court, and then to the Supreme Court of Appeal. A case heard in a High Court

can go directly on appeal to the Supreme Court of Appeal. The Supreme Court of Appeal only listens to appeals - it does not listen to any trials.

In a civil case, the person who loses the case must usually pay the costs of the person that wins. So if you lose the appeal, you usually have to pay the legal costs of the other party for both the trial and the appeal. In a criminal appeal, you pay your own legal costs, whether you win or lose. It is very expensive to take a case on appeal.

### What is a review?

A higher court can also be used for a review. If you think proceedings in a Magistrate's Court or High Court were unfair (for example, the magistrate or judge was biased), or not according to the law, you can take the case on review to a higher court.

### Automatic review

Sometimes a review is automatic. In other words, you don't have to ask for it yourself.

For example:

- In a criminal case, a judge will review your case automatically if you do not have a lawyer, and the sentence is more than 6 months in prison or the fine more than R10 000. That means the judge will decide if the magistrate made the right judgment according to the law.
- If you do not have a lawyer in a criminal case, and your sentence is more than 3 months in prison or a fine of more than R5 000, AND you are sentenced by a magistrate who has worked for less than seven years as a magistrate, then your case will also automatically be reviewed by a judge.

### Asking for a review

If you think things did not happen in the right way in the court, then you yourself can ask for a review. This means you can ask for a review if you think that the court procedures were unfair or irregular.

For example:

- you may think that the magistrate or the judge did not give you a proper chance to explain yourself clearly
- you may think that the judge or the magistrate was against you even before the case was finished

If you ask for a review, you must give the courts papers to show why you feel the judgment should be reviewed. You will probably need a lawyer to help you.

### Outcome of the review

The higher court may change the judgment, or may correct the procedures, or may say that there must be a new trial.

### Costs of the review

A review may cost money:

- In a criminal case you only pay the cost of your lawyer if you ask for a review. If you handle your own case it does not cost you lawyer's fees but it may cost you in other ways, for example, you will have to make copies of the court record which can often be very long.
- In a civil case the other side must pay your legal costs if you win. If you lose, you must pay the other side's costs and your own.

### Settling disputes outside courts

Many legal problems can be settled without going to court. Usually court procedures are slow and expensive. If you go to court, you usually need a lawyer. This is expensive. You do not need a lawyer if you use the Small Claims Court, nor if you take a labour dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). Often people solve problems without going to a court at all. These are some different ways of trying to solve disputes without going to any of the courts:

- negotiation
- mediation

- arbitration
- campaigns

### Negotiation

Negotiation means that people who have a problem talk to each other about their problem and try to solve it by coming up with a solution which suits both sides. Negotiations can happen at a national level, for example, when political parties come together to negotiate how political prisoners will be released. At a local level, civic organisations can negotiate with the local authority about land rights in the area.

Sometimes people hire lawyers to negotiate for them. For example, a person involved in a motor car accident may hire a lawyer to negotiate for them with an insurance company. People involved in a court case and their lawyers will often negotiate an agreement (also called a settlement) before the case gets to court, because this saves time and money.

### Mediation

Mediation happens when people with a problem agree to have a third person as a go-between to help them settle their problem. For example: two neighbours are always fighting about the noise coming from each other's houses. A mediator will bring the neighbours together and try and make them talk about the problem and make both agree to compromise on the noise.

The mediator does not act as a judge. He or she makes no decision which the parties must follow. The mediator listens to both arguments and tries to get the parties to compromise and to come to some agreement.

Mediation is often used in worker disputes, but is also used by community and church leaders in disputes in a community.

### Arbitration

Arbitration takes place when people who have a problem agree to have a third person (called an arbitrator) to

listen to their arguments and work out a decision. The arbitrator acts like a judge and both sides usually agree to follow whatever decision the arbitrator makes.

Arbitration is used mostly in disputes between workers and employers. It is usually quicker and more informal than a court case.

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ETU can not respond to requests for legal advice, contact the organisations listed under Resources.

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## Song to Librarians

Contributed by Gail Dendy,  
Case and White,  
[gdendy@whitecase.com](mailto:gdendy@whitecase.com)

With a challenge to other Osallites to add on couplets, so as to make a 'composite poem'—

Song to Librarians  
(sung to the tune of: These are some of my Favourite Things)

Stars in the heavens do not shine  
as brightly,  
Librarians are better -- we say this  
quite rightly,  
For we order and cat'logue and do  
lots of fine things,  
We're often so fast you would  
think we wore wings!

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## How would you like to be called a....

Lydia Craemer,  
Moodie & Robertson,  
[library2@moodierobertson.co.za](mailto:library2@moodierobertson.co.za),  
sent us these alternative names for librarians that she came across:

“Dinobrarian”

“Info Diva”

Please send any other suggestions to the editor!

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## Publications Noted

Nico Ferreira  
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### A final thought –

“Never doubt that a small group of thoughtful, committed people can change the world. Indeed, it is the only thing that ever has”. – Margaret Mead .

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