

**Biography**

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# Letter from Carol Clark in South Africa ....

It was in an e-mail from Christine Miskin discussing what I could write about in this article that I learnt of the death of Gillian Sands. I was saddened by this news as although I never met her in person, we did “meet” via e-mail. Only a couple of weeks before her death she responded to a request we had sent out on the listserv for an obscure English case. Her friendliness and willingness to assist a colleague were immediately apparent. Her name was also familiar to me from articles she had written for *Legal Information Management* and I know that the librarian in our London Office had contact with her when she worked at the Institute of Advanced Legal Studies. To Gillian's family, friends and colleagues we extend our deepest sympathy.

As the third “international correspondent”, I am going to find the erudition of Professor John Eaton and his very interesting article on the Canadian copyright decision a hard act to follow! Not being a lawyer, I have elected to give you a bulletin of South African legal developments with a human interest angle and some news from the library world.

## Black Economic Empowerment

Transformation is a very large and hot potato in South Africa. It is a subject of much debate in boardrooms, dinner parties and in the Press. Broad-Based Black Economic Empowerment or “BEE” is now part of our national lexicon.

In March 2003 a Strategy Document was published, providing a vehicle for defining policy and guiding private and public sector participation. It established the “scorecard” approach to BEE. The scorecard measures an entity's contribution to BEE in the areas of ownership, management, employment equity, procurement and enterprise development.

The Broad-Based Black Economic Empowerment Act 53 of 2003 (the BBEE Act) came into force on 21 April 2004. It seeks to empower previously disadvantaged people and to transform South Africa's corporate and economic landscape into one more representative and inclusive of the population as a whole.

The objectives of the Act, as stated in the preamble, are to “Promote the achievement of the constitutional right to equality by increasing the broad-based and effective participation of black people in the economy; and establish a national policy to promote the economic unity of the nation, protect the common market and promote equal opportunity and equal access to government services.”

One of the chief features of the Act is the wide powers granted to the Minister of Trade and Industry to issue codes of good practice aimed at using economic incentives to encourage businesses to achieve the BEE goals set out in these codes. The Draft Codes of Good Practice were launched on 9 December 2004. Being draft codes they must allow for public comment and consultation for a period of 60 days. Serious and intensive debates on these codes is anticipated and cognisance of all views will be taken before finalising them. Some of the salient aspects are:

Measuring BEE – framework and scorecard; Codes of Good Practice on Sector Charters and Codes of Good Practice on Measuring Ownership and Management.

The Minister must also publish and promote a transformation charter for the different sectors of the economy, once he is satisfied that that charter has been developed by major stakeholders in that sector and advances the objects of the BBBEE Act. At the time of writing this article charters for the Mining, Financial, Agricultural, Maritime Transport and Service, Forwarding and Clearing, Tourism, Petroleum and Liquid Fuels and IT industries have been published with several others in the pipeline. An area of some debate, at present, is whether the charters developed before the Draft Codes comply with the codes in their present form. It is not clear what the consequences for those charters will be if they do not.

I have laid out in a simplistic way the legislation for what is a highly complex strategy that has many ramifications and murky areas. There is a plethora of journal articles, press cuttings, documents etc on BEE with endless criticisms and discussions about the pitfalls, hazards of implementing this strategy, the effect it will have on foreign investment etc.

Should you be interested in reading the Act or any of the documents I have mentioned, you can find them all on the Department of Trade and Industry website [www.dti.gov.za](http://www.dti.gov.za) where there is a section on BEE.

### **The State v Anne-Marie Engelbrecht (Case Number 64/2003 Witwatersrand Local Division - Unreported)**

Coming up next are two items of “human interest”. The first concerns a judgment which made newspaper headlines in February this year. In the case of *State v Engelbrecht*, a young woman who was convicted of killing her husband after suffering years of physical and emotional abuse from him, was sentenced in the Johannesburg High Court “to be detained until the rising of the court”. This is a landmark case as it sets the parameters for the legal defence available to women who are trapped in abusive relationships and who kill their husbands. It also sets out appropriate sentencing for such women. In addition, it is the most detailed case dealing with abused women in our law to date. There are other women serving life sentences and death sentences which have not been commuted. The Women for Justice Alliance is seeking to obtain parole for these women.

We were pleased, not only for Anne-Marie Engelbrecht herself, but also for one of our partners who heads up our pro bono department and who put a lot of effort into this case.

### **Makuleke: In re Pafuri area of the KNP (Case number 90/98 Land Claims Court Unreported)**

Another landmark case revolved around a successful land claim by the Makuleke Community. Their story is heart-warming. Discriminatory legislation allowed the apartheid government to remove black people from land capable of generating great wealth, and to resettle them on land that left them impoverished. The Makuleke were forcibly removed from their ancestral land (which lies within South Africa’s Kruger National Park) in 1969 to make way for expansion of the Park. They were moved to an area which reduced them to poverty and dependency on providing cheap labour in industrial Johannesburg.

In 1998 the Makuleke had ownership of their 25,000 hectare (61,775 acre) piece of land restored to them and were also compensated for their forcible removal. The community elected not to resettle on their original land inside the Kruger National Park, which would have resulted in the destruction of wildlife, but instead decided to allow their land to remain as a protected area upon which development opportunities can be pursued which will generate income, create jobs and transfer skills to members of the community. Our firm acted for the Makuleke Community in achieving this. Renowned private sector operators were selected to assist in the construction and operation of 4 luxury eco-tourism lodges. The lodge operators pay a percentage of the turnover of the lodges to the community, engage with locally owned small business and have strong skills development obligations. At the end of the concession period granted to the operators, the community will have acquired a valuable asset and the core skills to allow them to run the business on their own.

This successful land claim and subsequent land-use concept in the form of a “contractual park” owned by the Makuleke and jointly managed by them with the South African National Parks is groundbreaking in that it marries concepts previously considered antithetical – conservation and community development.

### **From the library world**

Something which will be of interest to those wishing to find South African legal material, is a document published by Amanda Barratt and Pamela Snyman of the University of Cape Town Law Library. It is entitled “Researching South African Law” and was published in the March issue of *Globalex*. Updated and more comprehensive than the version published on LLRX in October 2002, it contains a wealth of very useful information and guidelines and can be found at <http://www.nyulawglobal.org/globalex/South%20Africa.htm>

In conclusion I should like to mention a wonderful achievement on the part of the Constitutional Court Library – the launch of the Constitutional Court website [www.constitutionalcourt.org.za](http://www.constitutionalcourt.org.za). After undertaking a mammoth task so successfully and with such expertise, I should not like to steal their thunder in any way by telling you any more about it. Perhaps this could be a topic for a future bulletin from South Africa. Be sure to have a look at this dynamic national and international legal information resource in the meantime! The launch

was marked by a sparkling occasion held at the Constitutional Court on 16 February 2005. The hard work of all those concerned was acknowledged in glowing terms. All the “big wigs” were there, too, and what an honour and a privilege it was to meet some of those judges face-to face.

If you have read this far and would like to have copies of any of the judgments or legislation that I have written about, or indeed any other South African legal material, please contact me at [carolc@wwb.co.za](mailto:carolc@wwb.co.za).

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# Checklist for Law Firm Mergers

By Margaret Jones (Lester Aldridge) and Claire Groom (Freelance)

## Introduction

My hypothesis on the thinking behind this list is that libraries are organisations which are dynamic self evolving complex systems and so I have applied the simple systems theory template to how to merge two libraries. I think the key thing to remember is that systems cannot change radically or quickly and that they depend on feed-back to adjust their equilibrium. That said it follows that any merger, with its implications of big rapid change, will be difficult for any library system. It will be essential to keep open channels of communication and feed-back both within the immediate environment (the law firms themselves) and the external environment (publishers, service providers, journal subscriptions)

### Margaret Jones

We both feel in the light of recent experiences that when firms merge the problems to be dealt with fall into two categories – the practical and mundane and the personal and often emotional ones.

While dealing with the practical issues is essential in order to maintain an ongoing efficient service, it is equally important to ensure that all staff in both firms are kept fully informed of changes and reassured that their concerns will be considered and resolved.

Prioritising these two issues can be difficult but long term user satisfaction and respect for the service your department can offer are more likely if you take the time in the early post merger period to communicate as much as possible and understand and respond to fee earners' concerns.

### Claire Groom

## Before the merger takes place

### Practical tasks

- Make contact as soon as possible with the librarian(s) of the merging firm if they have one! This is not always possible until the deal is actually done but is the first and most important thing to do
- If there is no librarian, endeavour to find out who is responsible for book ordering and managing any subscriptions
- Enquire from your own management what money is available in the budget for the merger, as there are hidden and unexpected library costs and partners are not always aware of this aspect of a merger.
- Engage in preliminary PR. Meet the solicitors and staff and show willingness to be of service