

1. THE HISTORICAL DEVELOPMENT OF THE SUPREME COURT OF SOUTH AFRICA:

The historical development of the Supreme Court of South Africa was influenced, primarily, by considerations of “how **efficiency, justice** and **humanity** could best be promoted”, as also political considerations and an ongoing tension between the executive and the judiciary.

A look at the historical development of our High Courts provides insight into what the original practices of the day were and the philosophies which formed and guided them. Aspects which are relevant to the current report are the following:

- overcrowded prisons, unacceptable awaiting trial times and case backlogs, are just as much problems of the present criminal justice system as the past;
- the drive for greater productivity, likewise, led, as early as the nineteenth Century, to various measures being employed, such as sitting more hours each day, altering the number and length of recesses, enlarging the Bench, creating more Courts, giving increased jurisdiction to the lower Courts and increasing the number of circuits;
- the development of our legal system has been guided by the principles of speedy and accessible justice, tempered by cost factors;
- one of the few ‘innovations’ which our twentieth Century legal system has contributed, is the concept of a defined **criminal term**

and **shutting down** the criminal justice machinery for recess periods: historically, **civil terms** were a defined period, with a starting and closing date, whereas **criminal sessions** had only a commencement date and would “*continue by adjournment, as the case may require*”¹;

- over the years, there seems to have been a great capacity (and appreciation of the need) for **flexibility** in ‘thought, word and deed’.

1.1 The Supreme Court at the Cape, its offshoots, the Eastern Districts Local Division and Griqualand West Local Division, and the Natal Supreme Court²:

Within the South African legal context of the nineteenth century, the pre-eminent legal tribunal was the **Cape Supreme Court**³ and, to a lesser extent, its offshoots, the Eastern Districts Court and the High Court of Griqualand⁴.

In 1891, the Supreme Court took over the functions of the Vice-Admiralty Court, and before the end of the decade, was empowered to hear appeals from, *inter alia*, the Matabeleland High Court, British Bechuanaland and the High Court of Southern Rhodesia.

¹ This may, however, have been more attributable to a dearth of criminal cases, rather than industry on the part of the judges.

² For a brief history of the development of the Transvaal Provincial Division and the Orange Free State Provincial Division, see Appendix B.

³ While every attempt has been made to keep this historical development truncated, more detail has been given in regard to the Cape Supreme Court than any other, as this was the ‘mother colony’, which gave birth to much of the historical development of the other major divisions in South Africa.

⁴ By the first decade of the twentieth century, the two major courts in South Africa had become the Cape and Transvaal Supreme Courts, and they over-shadowed the subsidiary Cape courts and the Natal and Orange River Colony Supreme Courts. – A History of the District and Supreme Courts of Natal, 1846 – 1910, Spiller, Butterworths, 1986, p.112 – 113.

This exalted position was achieved chiefly as a result of three significant events which took place in the **early 1800's**, during the **second British Occupation**, namely:

- the Proclamation of 5th July, 1822, whereby **English** became the official language of the colony,
- the appointment (by the Imperial Government) of a **Commission of Inquiry**, and
- the new machinery of justice set up by the **Charter of Justice**⁵, expanded and modified by a **Second Charter**.

The **Charter** made provision⁶ for the establishment of an **independent Supreme Court**, consisting of a Chief Justice and three puisne judges (although later economic considerations led to the Bench being reduced, for a while, from a total of four, to three judges).⁷

Later, it was decided to appoint a **fourth judge** to the Bench⁸ as an extension of the circuit system (to **three circuits**) was envisaged⁹ and

⁵ The first Charter of Justice came into operation on January 1, 1828, spurred by the Proclamation of 5th July 1822 which made January 1827 the effective date for the use of English in the courts. The first Charter was subsequently followed by a second Charter, constituted by letters patent of 4th May 1832, and coming into operation on 13th February 1834, which superseded and modified it in certain respects.

⁶ *Inter alia*, the Charter provided for: -

- o circuit courts
- o trial by jury
- o the right of appeal to the Privy Council
- o the sheriff
- o the registrar
- o the master
- o minor officers of the court
- o legal practitioners
- o appointments and financial arrangements

The changes introduced by the Charter resulted in the complete separation of the executive from the judicial power.

⁷ When, in 1831, it was decided that the colony should become self-supporting financially, it became necessary to reduce both the number and salary of some officials. One of the most noteworthy reductions in status was that of the Chief Justice, whose salary was reduced from £2,500 to £2,000; in addition, he was henceforth required to go on circuit, whereas previously only the puisne judges were called upon to do so.

⁸ The Better Administration of Justice Act, Act No. 10 of 1855, section 2.

⁹ This plan was implemented by Sir George Grey before the judges had submitted their written opinions on the subject, and was met with much resistance from that quarter. See The History of the Cape Supreme Court and

the number of judges were insufficient to hold courts '**as frequently as the wants of the inhabitants required**'¹⁰ (but the fourth appointment was only made in 1858)¹¹.

The **Supreme Court** at the Cape, sitting with open doors, had full original and review jurisdiction. In civil cases, the Chief Justice and two judges formed a quorum. Civil appeals lay to the Privy Council as of right in matters above £1,000, otherwise only by special leave of that body. Criminal trials came before one, or more, of the judges and a jury of nine men whose verdict had to be unanimous. Criminal sentences of death, transportation or banishment required executive fiat.

Civil terms were to be held in March, June, September and December and there were to be **eight criminal sessions** every year. While the civil terms had set starting and closing times, the criminal sessions were stipulated "*to be continued by adjournment, as the case may require, until the whole of the criminal business is disposed of...*"

The court would also **sit during vacation** and provision was made for one of the judges to attend at chambers.

During the next seven years, the judicial system in the Cape was completely transformed. Furthermore, the new and revolutionized legal order was to have a profound influence on subsequent legal developments in Southern Africa.

its Role in the Development of Judicial Precedent for the Period 1827 – 1910, unpublished dissertation by H. B. Fine, University of Cape Town, 1986, p. 195ff

¹⁰ Preamble to the Better Administration of Justice Bill, 1855.

¹¹ In March 1856, the Finance Committee of the House of Assembly considered the disparity that existed between the salary of the Chief Justice and the puisne judges – at that time, the latter received a salary equivalent to three fifths of that of the former. After debate and the input from various interested parties, they decided to maintain the *status quo*, aligning themselves with Judge Bell's view that "*the colony would gain more than the difference in money [was] worth from an officer who, as Chief Justice, lived in the style and dignity becoming his position.*" Cape of Good Hope Parliamentary Papers, Select Committee Reports, 1856.

With a **Supreme Court** at Cape Town and **Circuit Courts** staffed by judges of the Cape bench a **centralized system** of judicial administration had been put into practice at the Cape.

The period **1834** to Union (**1910**) saw representative government in 1854, leading to responsible government in 1872; a great territorial expansion of the Colony, bringing in its wake the founding of two offshoots¹² of the Supreme Court, the Eastern Districts Court (E.D.C.) in **1864**, and the High Court of Griqualand (H.C.G.) in **1880**.¹³

In order to provide for the new courts, the Supreme Court Bench was enlarged from time to time until, in 1882, the Kimberley (Griqualand) Bench was enlarged to three judges¹⁴ and the structure of all the superior courts made uniform (Administration of Justice Act, No. 40 of 1882).

In **1900**, crimes arising out of the South African War created pressure on the system. A special court was set up to hear these matters and the quorum of the Supreme Court and district courts was reduced to a single judge. These courts themselves created further pressure and meant that the judges could no longer cope with the work if still required to sit in pairs in civil trials. Thus, in 1904, such a **single member court**, termed a **divisional court**, was empowered to sit at all times.

When the **union** of Southern African States was achieved in 1909, a single Supreme Court of South Africa was established 'with an Appellate Division at its apex, and provincial and local divisions at its foundation.'¹⁵

¹² See Appendix A for a brief history of the development of these courts.

¹³ Hahlo and Kahn: South Africa, the Development of its Laws and Constitution, p. 208.

¹⁴ By 1907, when the diamond rush had ended, the High Court of Griqualand was again reduced to a single judge court.

¹⁵ Hugh Corder, Judges at Work: The Role and Attitudes of the South African Appellate Judiciary, 1910 – 1950, Cape Town : Juta, 1984, p.21.

The Cape Supreme Court became a **provincial division** of the Supreme Court; and the Eastern Districts Court, the High Court of Griqualand and the various circuit courts became **local divisions**. The Cape courts retained their original jurisdiction and the judges remained in office with the same rights to salary and pensions as had prevailed in the colony.

1.2 The Natal Provincial Division

On 31 May 1844, Natal was annexed by the British as a separate District of the Cape Colony and when, at the end of **1845**, the new British administration arrived to take up its duties, it also set up a **District Court**¹⁶ with one judge (styled a 'Recorder'), administering Roman-Dutch law as applied at the Cape¹⁷. The Court had its seat at Pietermaritzburg.

The system of Roman-Dutch law which Ordinance 12 of 1845 introduced into Natal was that "accepted and administered by the legal tribunals of the Colony of the Cape of Good Hope."

Natal remained a District of the Cape Colony until **15 July 1856**, when a Charter established Natal as a **separate Colony**. Befittingly, the District Court was abolished and, in its place, in **1857**, a new Supreme Court, with full original competency and comprising a Chief justice and 2 puisne judges, was set up.

The restyled Supreme Court commenced sittings on 15 April 1858 and enjoyed 52 years of Supreme Court jurisdiction under British colonial rule¹⁸.

¹⁶ The District Court was established as a kind of circuit court of the Cape Colony: a right of appeal was granted to the Cape Supreme Court in civil matters, and criminal cases could be removed to Cape Town for the determination of points of law.

¹⁷ Ordinance No. 14, patterned on the Charter of Justice, was passed by the Cape Parliament in 1845, creating a District Court of Natal.

¹⁸ In the Supreme Court, in non-jury civil cases, two judges made up the quorum. An appeal lay from a non-jury civil judgement of a circuit court to the Supreme Court. A verdict by a criminal jury could be rendered on the strength of a six to three majority and Privy Council appeals remained on the old basis. Later there were many changes, including the granting of civil jurisdiction to a single judge sitting in chambers in the Supreme Court,

Natal kept her judicial seat at the capital, **Pietermaritzburg**, while Durban, her commercial centre and main urban area, was granted only a circuit court, which sat every alternate month.¹⁹

At Pietermaritzburg, during 'term' months (alternate months of the year), a full Bench heard most civil matters, and a judge and jury conducted criminal cases. During the alternate months, the judges rotated the duty of hearing matters in chambers, in the early years of the Court they conducted further criminal sessions, and in the later years heard civil cases with a jury²⁰.

'The Natalier'²¹ sketches a picture of persons abandoning small civil claims rather than risking costs of a Supreme Court suit, and of lengthy pre-trial detention periods of accused persons.

On 31 May 1910, the Colony of Natal entered the Union and the Natal Supreme Court became the **Natal Provincial Division** of the Supreme Court of South Africa.

1.3 Management of the Supreme Court:

The historical development of the Cape Supreme Court, as sketched briefly above, was primarily dictated by issues relating, firstly, to the

the creation of a separate hierarchy of native tribunals, the conferring on the Supreme Court of the power to hear appeals from all single-judge court, and the repeal of statutory provisions relating to appeals to the Privy Council.

¹⁹ Laws Nos. 9 of 1866, 15 of 1868, 3 of 1885.

²⁰ Spiller, Natal Supreme Court, p. 253-4 and Rules of Court of 28 January 1885, October 1903 and 11 March 1908.

²¹ 28 July 1846.

management of both its **human** and **financial**²² resources, and, secondly, the need for an **efficient, speedy** and **accessible (criminal) justice system**.

The Circuit Courts, productivity and accessibility to justice:

The introduction, development and history of the circuit courts show an enormous **commitment**, on the part of the judges, to productivity and speedy and accessible justice. These courts were often held under intolerable conditions, and there was a constant tension between the **needs** of both the inhabitants and the judges, as countered by the **costs** involved in conducting these courts.

The object and intention of introducing circuit courts was, in essence, to make justice as widely **accessible** as possible or, as stated by Judge Menzies, "*[t]o bring the administration of criminal and civil justice by superior tribunals of the colony as near to the residences of the inhabitants as the extent and circumstances of the colony would permit...*"²³

In the Cape, when appointing the time and place of the circuits, the Governor had to bear the **convenience** of the inhabitants and the **'health and proper comforts'**²⁴ of the circuit judges in mind, subject only to the requirement that at least **two circuits** were to be held every year.

²² In June 1827, the Secretary for Colonies informed the Governor that thirty thousand pounds had been set aside for the judicial establishment. The importance of keeping within the budget was stressed, and it was suggested that, if necessary to achieve this aim, some of the positions in the judicial establishment should remain vacant. Later, in August 1827, a request for law books was turned down as it exceeded the limits of the contingent expenditure which had been allowed for the judicial establishment.

When the new judges, unaccustomed to local regulations and practice, requested that the opening of the Supreme Court be postponed pending the establishment of the new rules of procedure, they were informed that the government could not afford to pay both the 'new' servants as well as the 'old', even for a few months; accordingly, the new system and new appointees had to take up the reins as previously decided.

²³ Report from the Committee of Inquiry into the Judicial Establishment, Cape Town: Saul Solomon, 1845, p. 71.

²⁴ G. M. Theal, Records of the Cape Colony, London, 1897 – 1905, vol. 32 (of 36), p. 260

After his October 1828 circuit, Judge Menzies penned the following report:

"I was able to accomplish it in nine weeks, only by continuing the sittings of the court, at the different towns, frequently till eleven and twelve o' clock at night, and sometimes till the morning of the following day, and by riding at the rate of between sixty and seventy miles a day, for several days successively and, on one occasion, riding eighty four miles, and, on another, one hundred and thirty miles in one day. I was sometimes under the necessity of causing the waggons [sic], which conveyed the circuit clerk and my baggage, to travel all night in order that it might be able to reach the circuit towns in proper time.

During the nine weeks of my absence from home, I can safely say that, at a very moderate average, I was either on the Bench or on horseback, for ten hours a day...

*During the journey I was often compelled to sleep in the waggon...[sic] From the experience I have acquired, during the last circuit, I feel myself warranted in stating that 'due regard to the health and proper comfort of the judge on circuit' requires that some alteration should be made on the present arrangements for holding the circuits."*²⁵

Circuit courts were held twice a year in each of the districts into which the colony was divided and the Colony was divided into three distinct circuits, that is, the **western** circuit, the **eastern** circuit and the **midland** circuit.

The circuits were carefully worked out having regard to the **distance** between the various districts and the time it would take to travel there by wagon. By way of example, the route from Cape Town to Swellendam would take 27 hours by wagon, and from there a further 23 hours to get to George, 50 hours to Uitenhage, 26 hours to Grahamstown, 22 hours to Somerset, 20 hours to Cradock, 17 hours to Colesberg, 37 hours to

²⁵ Judge Menzies' account of the October 1828 circuit, Colonial Office 372, 1829. Observations on some parts of the Judicial System and Civil Establishment of the Colony of the Cape of Good Hope. In fact, in Cape Parliamentary Papers, G.45-'59, in a letter dated 12 January 1859, it was suggested that the deaths of Judges Menzies and Musgrave had been accelerated by the rigours of the circuit system

Beaufort, 31 hours to Patats River, 18 hours to Worcester and then, finally, 23 hours to get back to Cape Town, resulting in a total travelling time of 312 hours²⁶.

In order to retain **three judges**²⁷ for **duty** in the Cape Supreme Court at all times, **no two circuits** were to be held at the same time. For the expenses incurred by the circuit judges, the princely sum of six hundred pounds was allocated annually, such allowance to be disbursed in proportion to the length and expense of the circuit.

The **costs** in maintaining the circuit courts, in particular, were of great concern to the Government, and a Commission of inquiry was formally instituted in 1845.

Instead of the terms of reference provided by the Governor, however, the majority of the Commissioners decided to adopt, as their frame of reference, a general test of how "**efficiency, justice and humanity could best be promoted**".²⁸ This included the principle that an accused should obtain an impartial trial as soon after his committal as was consistent with the ends of justice, regard being had to the nature of the country and the extent of its financial resources²⁹.

As a result of their investigations, the **majority report** concluded, *inter alia*, that –

*"the system of dispensing criminal justice in the country districts, by means of circuit courts, was attended with **serious evils** both to individuals and society, because of the **long***

²⁶ Fine, *op. cit.* p. 259.

²⁷ In civil suits a single judge sat, but there was a right of appeal to the Supreme Court in matters above £100, otherwise only by leave of the court *a quo*. Criminal cases came before a judge and a jury consisting of not less than six nor more than nine jurors. Provision was furthermore made for the establishment of courts having jurisdiction in civil cases of small amount or value and in cases of crimes or offences not punishable with death or transportation.

²⁸ Addenda to the Report and Minutes of Evidence of the Committee of the Legislative Council on the Judicial Establishment, Cape Town: Saul Solomon, 1846, p. 5.

²⁹ Fine, *op. cit.* p. 120

period that often intervened between the committal and the trial of accused parties”

and

*“the administration of civil justice in the country districts would be rendered **cheaper and more accessible**, if the court sessions were held more frequently.”³⁰*

These conclusions were based, at least in part, on the statistics gathered during their investigation, as shown on the table below.

For example, it was ascertained that during the period 1828 – 1833, **awaiting trial prisoners** who were facing prosecution in the Supreme and circuit courts, spent an average of **119,1 days** in **custody**. In Cape Town and the Cape district, where quarterly sessions were held, the average period of detention was 53,6 days. In country districts, where twice yearly circuit courts were held, the average period of detention was 134,8 days.

The Average Period of Confinement for Prisoners Awaiting Trial, during the Period 1828 – 1833

Court where held	No. sessions/year	No. tried during 6 yrs	No. committed	No. bailed	No. fined for 100 days & more	% of the no. committed	Ave. length of confinement
Cape Town	4	307	294	13	9	3,0%	53,6 days
Graham’s Town	2	230	184	46	123	66,8	141,9
Uitenhage	2	187	162	25	84	51,9	115,6
Somerset	2	206	177	29	128	72,3	153,8
Graff-Reinet	2	261	241	20	147	61,0	157,1
Stellenbosch	2	110	99	11	44	44,4	98,1
Worcester	2	191	191	0	104	54,5	122,7
George	2	35	25	10	12	48,0	83,9
Swellendam	2	82	64	18	38	59,4	127,2
Beaufort	2	103	99	4	76	76,8	178,1
Clanwilliam	2	47	47	0	36	76,6	181,6
		Total no. tried	- - - - -		1760		
		Total no. bailed	- - - - -		175		
		Total no. Committed	- - - - -		1585		

³⁰ Report, *loc. cit.*, p. x – xi.

In **1858**, it was decided to **increase** the number of circuits to **three** per year in the hope that this would **reduce** the **detention time of awaiting trial prisoners**³¹.

At that stage, the prevailing **court calendar** comprised the holding of **four civil terms, four criminal sessions** and **two circuits** during the year. The civil terms, which lasted a month, were held in February, May/June, August and November/December. The circuit therefore travelled throughout the second and fourth civil terms with its attendant Bar. This meant that there were only two civil terms in the year during which the full strength of the Bar was in Cape Town.

The proposed increase, to three circuits, was met with the united **opposition** of the Bench. This opposition notwithstanding, the three-circuit plan was put into operation during the middle of February, 1859. In 1860, however, the contentious third circuit was discontinued, ostensibly on the ground that there had been a **reduction in crime figures** in the colony.

Other measures were then adopted in an attempt to **reduce** the **detention time of awaiting trial prisoners**, such as (in 1860) granting resident magistrates **increased sentencing jurisdiction**. Cases which had originally been intended for trial in the Supreme and circuit courts, were instead remitted for trial to the resident magistrates, who could now impose sentences of up to two years' imprisonment.

Despite these measures, however, the circuit court business continued to **increase**.

³¹ Fine, *op. cit.* p. 202.

In 1865, when a **separate** court was established in the **Eastern districts**, many of the problems were resolved and, in future, simultaneous circuits could be held in both the Eastern and the Western provinces.

Table depicting the number of <u>Criminal</u> and <u>Civil</u> Cases tried in the <u>Supreme</u> and <u>Circuit</u> Courts, during the period 1854 to 1863, both inclusive³²				
YEAR	SUPREME COURT		CIRCUIT COURTS	
	CRIMINAL	CIVIL	CRIMINAL	CIVIL
1854	43	382	307	443
1855	45	475	242	578
1856	56	439	230	521
1857	43	380	306	280
1858	42	325	398	258
1859	42	422	729	348
1860	48	606	466	324
1861	40	563	406	287
1862	52	855	344	485
1863	66	1286	512	573

Today, the position regarding the circuit courts is governed by section 7 of Act 59 of 1959, which states that the Judge President may divide the area under his jurisdiction into circuit districts, in which circuit courts shall be held at least twice every year. The times and places of such circuit courts are to be determined by the Judge President.

1.4 Natal Circuit courts

In Natal, circuit courts of a single judge were established. During the years 1846 – 1858 (the District Court years), conditions in Natal were described as being "*rude and plain*".³³

For example, the following description is provided by Spiller³⁴:

"In April 1856, such heavy rains fell that the Recorder had to swim the local river to reach the court-house. He was greeted by a crowd gathered with sandwiches and 'grog' for the

³² Table adapted from Fine, *op. cit.* p. 221 – 222.

³³ *The Natal Mercury*, 4 September 1901.

³⁴ Spiller, *A History of the District and Supreme Courts of Natal, 1846 – 1910*, p.12

eagerly-awaited session, but the session was postponed because the witnesses (unlike the judge) were unable to master the floods. The Recorder's journeys by ox-wagon to the Durban Circuit Court were nightmarish, but the local government was unable to afford even the improvement of a mule-wagon. By the early Supreme Court era, ... the government allowed a mule-wagon for circuits, but conditions remained extremely uncomfortable and even dangerous. In 1864, the travelling judge narrowly escaped drowning in the flooded Sterk Spruit River, and lost his cart, guns, gown, bands, wig and books. Williams J, on the Bench in the early 1880's, described the up-country circuits at Estcourt, Ladysmith and Newcastle as involving 'the really terrible fatigue of a fortnight's tumbling and jolting about in a mule-wagon on the veldt.'"

During vacation months, the judges proceeded separately on circuit to other centres of the Colony. The pre-eminent and most regular circuit session was held in Durban.

From the commencement of Durban circuits in 1851, until 1886, sessions were held up to three or four times a year. Thereafter, statute required the holding of a Durban circuit every month. This remained the position until after the turn of the century, when the amount and importance of Durban litigation required more frequent visits from the judges.

By 1908, a Supreme Court judge or commissioner visited Durban every month, and alternately conducted civil and criminal sessions³⁵.

Periodically, the judges would also visit centres such as Ladysmith and Newcastle, and by the 1900's other towns such as Dundee and Umzinto had been added to the itinerary.³⁶ However, long periods would elapse between the sessions held in outlying areas: for example, in March 1908, Vryheid held its first circuit court in three years³⁷.

³⁵ Rules of Court of 11 March 1908.

³⁶ Natal Mercury, 16 August 1902 and 19 May 1904.

³⁷ Natal Mercury, 17 March 1908.

Eventually, the Rules of Court of 1908 committed the Bench to holding bi-annual circuits in the up-country, midland and coastal districts, where necessary³⁸. To a limited extent, then, the Supreme Court achieved one of the purposes of its creation: that of carrying justice to every man's door³⁹.

1.5 The Supreme Court to date

Today, the position of the Supreme Court⁴⁰ is governed by the **Supreme Court Act**⁴¹, and owes its legitimacy to sections 166 and 169 of the Constitution of the Republic of South Africa, Act 108 of 1996.

Act 108 of 1996 also makes provision for a Constitutional Court overseeing all matters relating to the Constitution, a Supreme Court of Appeal, Magistrate's Courts and other Courts.

The Supreme Court Act provides for the following divisions⁴²:

- i. Cape of Good Hope provincial division of the High court of South Africa with its seat in Cape Town (**CPD**);
- ii. Eastern Cape division of the High court of South Africa with its seat in Grahamstown (**ECD**)⁴³;
- iii. Northern Cape division of the High court of South Africa with its seat in Kimberley (**NC**);
- iv. Transvaal provincial division of the High court of South Africa with its seat in Pretoria (**TPD**);

³⁸ Rules of Court of 11 March 1908.

³⁹ See Spiller, *A History of the District and Supreme Courts of Natal, 1846 – 1910*, p. 65.

⁴⁰ The erstwhile Supreme Court is now called the High Court. Depending on the context and the era to which it refers, either name is used in referring to that Court.

⁴¹ The Supreme Court Act, 1959 (Act 59 of 1959).

⁴² It should be noted that provision has been made for concurrent jurisdiction between provincial divisions and the local divisions within their area of jurisdiction. This means that the parent provincial divisions are not denied jurisdiction in a cause of action merely because the facts determining jurisdiction fall within the area of their local divisions.

⁴³ The Eastern Districts Court, under the new name 'Eastern Cape Division', was elevated in status to that of a provincial division in 1957.

- v. Natal provincial division of the High court of South Africa with its seat in Pietermaritzburg (**NPD**);
- vi. Orange Free State provincial division of the High court of South Africa with its seat in Bloemfontein (**OPD**);
- vii. Durban and Coast Local Division of the High Court of South Africa, with its seat in Durban (**D&CLD**)⁴⁴;
- viii. Witwatersrand Local Division of the High Court of South Africa (**WLD**);
- ix. South-Eastern Cape Local Division of the Supreme Court of South Africa, with its seat in Port Elizabeth (**SECLD**)⁴⁵.

In addition to the above structure of our courts, the courts of the **TBVC States** have now been re-incorporated into the SA judicial hierarchy and also need to be mentioned briefly:

- x. On 18 July 1978, the supreme court of **Transkei** was constituted.
- xi. On 25 June 1982, the supreme court of **Bophuthatswana** (BSC) was established.
- xii. On 10 May 1984, the supreme court of **Ciskei** was established.

In addition, an **appellate division** was later established in each of these states.

A **provincial division** consists of a judge president and, if the President so determines, a deputy judge president, and so many judges as the President may from time to time determine⁴⁶.

The President can appoint any 'fit and proper person' to **act** in the place of any judge, or in addition to the judges of a particular division, or in any

⁴⁴ The Witwatersrand Local Division and Durban and Coast Local Division have continued to share the judges of the provincial division of their areas, and (unlike the G.W.L.D.) to be devoid of circuit courts or appellate jurisdiction.

⁴⁵ This new local division was established in Port Elizabeth under the Eastern Cape Division. It was established after the Honourable Mr Justice F L H Rumpff had investigated the position and had found that the creation of such a division was justified. General Law Amendment Act, No. 68 of 1957, s. 2(1) (a), subsequently superseded by Act No. 59 of 1959, s. 1(ix).

⁴⁶ Section 3(2), Act 59 of 1959.

vacancy in a division, whenever it is expedient to do so, for **such period** as he may determine, on the advice of the Judicial Service Commission.

In terms of section 174(7) of the Constitution (Act 108 of 1996), **other judicial officers** are appointed in terms of an **Act of Parliament**, which must ensure that the appointment, promotion, transfer or dismissal of, or disciplinary steps against, these judicial officers take place without favour or prejudice.

The **Minister** is able to make any acting appointment – this power, however, is limited to appointments for a period **not exceeding a month**⁴⁷.

The most notable **differences** between **permanent local** divisions and **provincial** divisions are that the former, except in the case of the Witwatersrand Local Division, have **no appellate or review** jurisdiction in respect of the proceedings in lower courts, do not have their own **Judges President** or Masters and, except again in the case of the Witwatersrand Local Division, do not have their own **Directors of Public Prosecution**. For administrative purposes, a local division falls under the Judge President of the provincial division.

The divisions as described above are **permanent** divisions. Apart from these divisions, there are also **circuit** courts, which go on circuit at least twice a year to the outlying districts of a province.⁴⁸ These circuit local divisions are constituted by the Judges President of the provincial division of the Supreme Court.

⁴⁷ Act No. 68 of 1957, s. 13, subsequently superseded by Act No. 59 of 1959, s. 10(4).

⁴⁸ Section 7, Act 59 of 1959. It should be noted that provision has been made for concurrent jurisdiction between provincial divisions and the local divisions within their area of jurisdiction. This means that the parent provincial divisions are not denied jurisdiction in a cause of action merely because the facts determining jurisdiction fall within the area of their local divisions.

1.6 Lower Courts

In the lower courts, there are **Regional Courts** that have jurisdiction in all matters except treason, and **District courts**, which have jurisdiction in all matters except treason, murder and rape.

A **Regional court** may impose imprisonment not exceeding 15 years and/or a fine not exceeding R300 000,00 (or other amount as determined by notice in the Government Gazette). The jurisdiction of the Regional Court in terms of offences, as well as its penal jurisdiction, has been amended/increased from time to time.

More than **90%** of the serious criminal matters are dealt with by the regional courts. In certain cases, where minimum sentences apply, the Regional Court may impose sentences of up to **30 years' imprisonment**⁴⁹.

The **District court** may impose imprisonment not exceeding 3 years and/or a fine not exceeding R60 000 (or other amount as determined by notice in the Government Gazette).

Magistrates, excluding assistant magistrates, are appointed by the Minister of Justice, after consultation with the Magistrates' Commission. No such consultation is required in respect of the appointment of either **additional** or **assistant** magistrates.

The **vacations** of the judicial officers in both these courts are **staggered**, that is, not all the judicial officers take leave at the same time; magistrates with less than 10 years' experience are entitled to 30 calendar days' leave and those with more than 10 years' experience, 38 calendar days'.

⁴⁹ See footnote 164 *infra*