

**“All hands on deck to speed up change”**

**Provincial Annual Conference – Northwest**

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**The role of education participants in promoting constitutional rights and values at schools**

## **Introduction**

Perhaps the most valuable and much applauded directive in our Constitution (Constitution)<sup>1</sup>, *A child’s best interests are of paramount importance in every matter concerning the child*, sound reassuring, as if guaranteeing that we would have **safe schooling** for all our learners, in more than merely the physical sense. Such a hope would definitely be understandable when we think of the following explanation<sup>2</sup> of the word **safety**:

A narrow view of safety focuses only on physical harm and encompasses such serious problems as assault, armed robbery, and homicide. A broad view of safety, on the other hand, addresses psychological as well as physical safety. *Any threat to an individual’s well-being*, self-inflicted or otherwise, is regarded as a safety issue.

At the public schools we have lately placed much emphasis on the legal duties and liabilities of the School Governing Bodies<sup>3</sup> and the educators<sup>4</sup>, but no emphasis has been given to the specific rights and responsibilities of parents/caregivers. This does not augur well for what is called *the impact on school climate*<sup>5</sup> and therefore for promoting constitutional rights and values especially at our schools.

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<sup>1</sup> Constitution of the Republic of South Africa, Act 108 of 1996.

<sup>2</sup> Duke, DL. 2002. *Creating safe schools for all children*. Boston: Allyn and Bacon, xvi.

<sup>3</sup> See fn 2.

<sup>4</sup> De Waal, E. 2000. *The educator-learner relationship within the South African public school system: an educational-juridical perspective*. Unpublished PhD, PUCHE, Republic of South Africa.

<sup>5</sup> Perkins, BK. 2001. Judgement handed down by Albie Sachs in the case of Doreen Harris versus the Department of Education: comments. *Perspectives in Education*, **19(4)**, 35-37.

This is ironic when we remember that educators' responsibilities and duties are based on the fact that they enjoy an *in loco parentis* position, with the law expecting them to act like *the careful leaders of a family* or *diligens paterfamiliae*. But it seems as if the educators have usurped the parents' position.

### **Current focus**

The emphasis on the roles of School Governing Bodies and educators may be because the South African Schools Act<sup>6</sup> highlights learners' rights as well as educators' responsibilities, without really mentioning the role of parents/caregivers. This, too, is understandable, as the Constitution refers only obliquely to the parents' role in terms of parental care<sup>7</sup>.

Perhaps what we need on the one hand is *to pass legislation which clearly sets out the rights of children and the duties of parents and the State in relation to those rights*. Then on the other hand a major challenge now lies in ***interpreting our fundamental rights document***. With such improved guidelines, parents/caregivers could be led to become more involved in the intellectual welfare of the learners, instead of simply handing over the responsibilities for this to the educators. We should take a lesson from the United States of America where parents have the fundamental right to direct the upbringing of their children<sup>8</sup>. Let us never forget that children need parental assistance in exercising their rights<sup>9</sup>.

### **Closer to home**

The South African educator-learner relationship is a cause for concern because all the parties involved are endowed with individual rights and freedoms. Unfortunately the focus often falls on the ***freedoms*** only, neglecting to prioritize the duties which everyone needs to fulfill.

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<sup>6</sup> *South African Schools Act, Act 84 of 1996.*

<sup>7</sup> Section 28(1)

<sup>8</sup> McCarthy, MM, Cambron-McCabe, NH and Thomas, SB. 1998. *Public school law*. 4<sup>th</sup> ed. Boston: Allyn & Bacon, 109.

<sup>9</sup> Robinson, JA. 1995. An overview of the provisions of the South African bill of rights with specific reference to its impact on families and children affected by the policy of apartheid. *Obiter*, **16**(1), 99-114.

- (1) Educators and parents stand in a legal relationship to one another on account of both parties' position of authority concerning the formal teaching and general education of the child.
- (2) Children and their parents stand in legal relationship to one another.
- (3) A general as well as a specialized legal relationship exists between educator and learner.

Numerous rights and duties actually evolve from these general and individual relationships, as the right of one person sometimes actually imposes a particular duty on another person.

While section 1 of the Constitution points out the values of “*human dignity, the advancement of human rights and freedoms, democratic government to ensure accountability, responsiveness and openness*”, section 3(2) reminds all citizens that they are ***equally subject to the duties and responsibilities of citizenship***.

In terms of the Constitution it is commonly accepted that all of our fundamental rights are subject to some form of constraint: the range and scope of one person's rights are influenced by the mere existence of another person's rights.

The equality clause, section 9 of the Constitution, speaks of ***unfair discrimination as being unconstitutional***. There is therefore something such as *discrimination*. At the same time, educators must be made aware of the fact that a learner's rights are not co-extensive with those of an adult. Section 9 is an example of a situation where certain limitations are inherent in the very definition of the concept: “*equal protection*” then requires per definition that unequals (such as learners and educators) be treated unequally in some instances. Also learners frequently share in the education responsibility, as is evident in ***the contributory fault principle***.

So: what can we make the education participants aware of as we strive to promote constitutional values and freedoms at our schools?

- The South African learner is obliged to submit to authority, discipline and punishment. He has the duty to subordinate himself to the school's code of

conduct. Moreover, he has the obligation to comply with compulsory schooling and participate in extra-mural activities. The learner thus **shares** in the education responsibility, and the educator in needs to take action if the learner fails to obey him.

- Both the Constitution and the Schools Act provide for the learner's right to procedurally fair administrative action. The latter comprises the *audi alteram partem* and *objectivity* principles. Although the learner also has the right to be part of the governing body of his school, he enjoys protection based on his status as a minor in private law.
- Administrative acts which are performed at school must comply with the general prescriptives of the law, which are legal empowerment, lawfully constituted authority, compliance with circumstantial and procedural prerequisites, reasonableness, fairness and liability equal to that of private persons in the case of action taken without legal authority. The bona fides of the author of an administrative act cannot change an invalid act into a valid act. The court will only interfere in administrative decisions if there is evidence, *inter alia*, of **ultra vires, prejudice or mala fides**.
- **Natural justice** concerns itself with the fact that a person affected by an administrative act, such as the learner, is entitled to a fair, unprejudiced hearing. Yet the application of natural justice need not be rigid, since the circumstances of the case, the nature of the investigation and the specific infringement point to its flexibility. By upholding the principles of natural justice, the educator accepts *accountability* for his actions
- Based on the *in loco parentis*-position of South African educators, they exercise both delegated and original authority over their learners at school, and carry great responsibility regarding their legal duty towards caring supervision and the accompanying right to maintaining fair discipline.
- Contributory fault of the learner can be established when the learner is partly to blame for the damage which occurred because of the educator's wrongful and negligent conduct.

- ☺ We must be able to play both sides... be able to get under each other's skins: see the world through their eyes... play from the other viewpoint.
- ☺ We must change the shape of the world one drop at a time... depends on where the drops fall... will bubble up in unexpected places...
- ☺ The enemy = those who do a bad thing and then call it good....
- ☺ Comparisons are foolish/ petty – self-centred.....and fools made fools of all of us as we fought to stop a war until the disgusted sky washed us away...
  
- ☹ The trolls unite and we have the same tired old war; followed by centuries of skirmishing; the sad, stupid history of the trolls and the dwarfs then turned in our minds into sad, brainless monsters...
- ☹ There is no darkness: only absence of light...
- ☹ There is no cold: only absence of heat...
- ☹ What kind of creature defines itself by hatred?

***It requires wisdom to understand wisdom: the music is nothing if the audience is deaf.... Walter Lippmann***

- ☞ Be careful of your thoughts → they can become words → can become actions → can become habits → can become your character...