

Introduction to Education Law

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It is now a decade since the South African Constitution and Bill of Rights were introduced and the Republic is striving to achieve higher standards of education against considerable difficulties including: unemployment, which is exacerbated by a high level of illegal immigration from other African countries; low professional standard of many of the nation's teachers; the extent of social and cultural problems to do with violence, and incurable diseases such as HIV/AIDS. It is against a background of considerable social and economic difficulty that *Introduction to Education Law* has been framed. It is this background, moreover, that leads the authors to claim that, in order to achieve security and stability in the nation's schools, students (learners) and teachers (educators) need to have an enhanced awareness of their mutual responsibilities and rights and that a knowledge of education law will make a significant contribution to this understanding.

Although *Introduction to Education Law* is not a large work it provides the reader with a comprehensive coverage of the main areas of law that influence education in South Africa. The authors research, teach and write in education law at the Potchefstroom campus of the North-West University.

There are six chapters in this work:

Chapter 1 - **Security as a *sine qua non* for education** – provides information to substantiate the use of education law as a means by which greater security might be brought about in schools in South Africa. The authors are quite unapologetic in advancing this claim as they firmly believe it is only by teachers and students understanding their responsibilities and their rights that the changes needed to advance education will be realised. It hardly needs adding that such awareness and understanding will also have a marked impact outside of the school context. While this Chapter does provide startling scenarios to do with incidents as yet not witnessed on a similar scale in Australia, it also provides recommendations by which the problems of physical injury of students as well as drug abuse, physical violence, sexual abuse, and incurable diseases might be addressed. While it might be too much to hope that education law will provide the panacea to remediate the ills of the wider community, there is good reason to believe that adherence to its principles would reduce much of the tensions faced in classrooms and on the grounds of South African schools.

Chapter 2 – **Legislation as a source of Education Law** – This chapter commences with a brief overview of the sources of education law which the authors see as comprising legislation, common law and case law. A discussion of the central importance of the Constitution is then undertaken and this includes brief analyses of sections dealing with equality, human dignity, privacy, freedom of religion, fair labour practices, the rights of the child, education, cultural rights and international and foreign law.

Throughout the Chapter, indeed the whole book, readers are referred to relevant cases and other authorities to further elaborate the discussion. The *National Education Policy Act*, the

SA Schools Act, Employment of Educators Act, the SA Council for Educators Act and finally certain general legislation are identified and the relevance to education of specific provisions commented on. In examining the topic of constitutional provisions regarding education it is noted that while everyone has a right to education ‘this right is not unlimited’ in that it is restricted to a basic education for students up to the age of fifteen years. There are however, provisions that allow adults who have not previously attended school, or have attended for only a short period of time, to receive the same basic level of education as non adults. The SA Schools Act fleshes out the Constitutional provisions by providing for the organisation, management and financing of schools.

The educator as a professional person forms the theme for Chapter 3 and addresses issues to do with what it means to be a professional and community expectations related to the profession. Central to this chapter is a discussion of the Code of Professional Ethics that was developed by the South African Council for Educators and which outlines important matters to do with proper relationships and attitudes to students as well as providing brief comments on relationships with parents, the wider community, colleagues, the employing authority and the profession generally.

Chapter 4 – **Labour relations in education** – provides a discussion of topics that have the objective of overcoming problems associated with a lack of knowledge in this area. The authors argue, for example, that lack of knowledge of labour relations’ matters might lead to frustration in the workforce that in turn leads to ‘ineffective service, following wrong procedures and even misconduct’. This is an important chapter and one that provides an example of an area where more attention might be given to employment concerns in Australia and particularly with regard to novitiate teachers starting out on their careers. One area where Australian educators might be better informed is in relation to the possibilities for grounds for dismissal and the appropriate procedures that must be followed to ensure substantive and procedural fairness requirements are met. The information contained in Chapter 4 provides a template which Australian educators and employing authorities might use to ensure a wider understanding of employment law and relations is advanced.

In recent years considerable debate has taken place on the topic of rights and in relation to schools, those of students. Chapter 5 - **Learners’ rights and obligations** – deals with this issue in relation to school students but against a wider background of the rights owed them from a more general perspective. In view of the importance now given to children’s rights in all common law countries, it is hardly surprising that most books on education law contain chapters or sections dealing with this topic but as is pointed out by Dr Rossouw in this Chapter ‘... research shows that the majority of educators have only a vague general idea of human rights and obligations’.

The Chapter commences with an outline of the history of the development of children’s rights and then leads the reader on to a discussion of these rights in relation to private law. However the discussion of the provisions contained in the Republic of South Africa Constitution dealing with the rights of learners (students) is arguably the most important and these include the inalienable right to a basic education as well as provisions - that Australian readers familiar with the United Nations Convention on the Rights of the Child will readily recognise – to do with the right to freedom of expression, right to privacy and right to access information. Interestingly there is also a provision that provides for rights of students in relation to language where students have a right to be taught in ‘an official language’ of their choice. This provision is included so as to ensure that no student is prevented from receiving an education because of a lack of knowledge of, for

example English or Afrikaans. The provision is, however, tempered by the ability of a school or the State to meet the demands that providing instruction in the ‘mother tongue’ might impose.

In all matters to do with students in South Africa, as in other countries including Australia, it is a requirement that principles of natural justice or fairness such as those associated with due procedure, are strictly adhered to. In this regard it is pointed out in *Introduction to Education Law* that the South African Bill of Rights (s33(1)) ‘stipulates that everyone has the right to administrative action that is lawful, reasonable, and procedurally fair’. Notwithstanding the international recognition given to such principles, it is evident that, as is the case in Australia and elsewhere, many of the staff in South African schools, teachers and administrators alike, are unaware of their responsibilities to do with principles of fairness and justice.

The final Chapter – **Educators’ rights and obligations** – provides another example of where Australian research and publications have been noticeably absent. No doubt this has been due, in part, to a taken for granted assumption that educators in this country are well aware of their rights and obligations. There is, though little evidence to support such an argument and this chapter serves as a valuable reminder of the need to give this topic greater consideration here.

The reader will, however, notice differences between the South African and Australian approaches with one example being to do with the doctrine of *in loco parentis* which, to a very large extent, has little legal meaning in Australia. South Africa on the other hand closely embraces the concept which is seen as providing authority over students as well as imposing an obligation on educators for the ‘caring supervision over the learner’. Greater emphasis is given in this chapter to the obligations of educators to students rather than to the rights educators enjoy. There is, too, an underlying and understated belief that teachers and school administrators often fail to exercise the degree of responsible behaviour expected of them as persons in authority over students.

In a very real sense the discussion takes the reader back to the first Chapter where situations in which educators were seen to have taken advantage of students were described and this includes incidents that are increasingly observed in schools in Australia including sexual and other abuse as well as various forms of bullying. An interesting issue raised in this chapter deals with ‘possible liability for psychological and emotional injuries’.

Conclusion

As the title clearly indicates, *Introduction to Education Law* is just that – an introduction. Nonetheless for such a compact volume a considerable number of very important issues are raised and, albeit briefly, discussed. Despite the origins of education law in South Africa being different from those in Australia this book provides a yardstick against which it is possible to measure topics of importance to teachers and school administrators in this country. The authors are to be congratulated on producing a work that has been, by and large, translated into terms and language that Australian readers can readily understand and which addresses issues with which we can identify.

The principle aim of this book is to heighten awareness of the rights and responsibilities of educators and those being educated. As previously noted the authors write against a background, which is in many ways in stark contrast to every day life in Australian schools. While the book is written with the objective of making a significant contribution to the improvement of practices and procedures in schools in South Africa it also provides a useful reminder to practitioners in this country of our own legal obligations and rights. In this way there is much we can learn from each other.

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