INAUGURAL LECTURE

of

Prof JP Rossouw

The security of the professional educator – an Education Law perspective

10 May 2013
The security of the professional educator - an Education Law perspective.

INAUGURAL LECTURE

Prof JP Rossouw

10 MAY 2013

Contents
1 Problem statement .................................................................................................................. 2
2 Education Law as academic discipline ............................................................................. 5
  2.1 The ontological premise of Education Law as academic discipline ...................... 5
  2.2 The ontological premise of Education Law research ............................................. 7
3 Factoring the deterioration of SA public education ......................................................... 11
  3.1 The destructive influence of specific trade unions .................................................. 12
  3.2 Employer incompetence ......................................................................................... 14
4 Security of the professional educator ............................................................................. 15
  4.1 Research in two integrated focus streams .............................................................. 15
  4.2 Fundamental rights and values underpinning educator security ......................... 16
  4.3 Labour law and educator security ......................................................................... 17
    4.3.1 Finding 1 – An over-emphasis of learner’s rights adversely influences educators’ rights .......................................................... 18
    4.3.2 Finding 2 – The security of Early Childhood educators needs particular attention 20
  4.4 Sport law and educator security ......................................................................... 22
    4.4.1 Finding 3 – The juridification of sport adversely influences educator-coaches’ security ........................................................................... 23
    4.4.2 Finding 4 - Educators lack basic knowledge of delictual liability ...................... 24
    4.4.3 Finding 5 - Over-awareness of liability is not in the best interests of the child .... 26
  4.5 Strategies towards increased security ................................................................. 26
    4.5.1 Acknowledge education an essential service ................................................. 27
    4.5.2 Hold incompetent officials and politicians liable in their personal capacity .... 29
    4.5.3 Create and protect the security of educators ............................................... 31
  4.6 Concluding remarks ................................................................................................. 32
1 Problem statement

Since the genesis of this young South African democracy close to 20 years ago, there has understandably been a prominent focus on the extent to which human rights are protected. The lack of a comprehensive acknowledgement of everyone’s human rights in the previous era ensured that, after 1994, a true democratic approach, marked by noticeable equality amongst individuals and groups, was envisaged. Section 12 of the Bill of Rights refers to everyone’s right to freedom and security of the person, while section 27 provides for social security. In addition, various other provisions are directly or indirectly associated with the notion of security. Ironically, and contrary to these expectations and provisions, the South African “open, democratic society”, as stipulated in the preamble of the Constitution (SA, 1996a), does not facilitate increased security and protection for its citizens. The expected entrenchment of fundamental rights has up till now not realised in the everyday life of South African citizens.

In the educational sphere, and more specifically in the public school system, the lack of security is particularly discernible. The types of threat to security vary from one school to the next, ranging from environments that are physically unsafe (Lessing & Dreyer, 2007:120) to those where psychological security is on the decrease. For the purpose of this paper the term security will be used to include both psychological security and physical safety, unless otherwise specified. The focus is, however, on psychological security.

In South Africa, educators’ security and the protection of their rights are influenced by a variety of factors inside and outside schools and the school system, some of which will be touched upon in this paper.

The South African educational scenario is currently characterised by an array of totally contrasting elements. Two clearly distinguishable subsystems can be observed in the public school system: within the boundaries of a single city or town, examples can be found of highly effective, well-performing schools, where the academic results and management systems compare well to the best in the world. In contrast, there are those, unfortunately by far the majority, that are under-performing. This subsystem includes an
unacceptably large number of dysfunctional schools, when compared to international standards.

The National Department of Basic Education annually celebrate slight increases in the matric pass rates. Unfortunately this cannot conceal the fact that the South African education achievements on average are still worse than much poorer African countries. Ironically, a large portion of the annual State budget is allocated to education. In 2013/14 South Africa has budgeted a total of R234-billion for education “as the country continues to increase funding for the Grade R year and steps up its school infrastructure backlogs programme” (Gordhan, 2012).

International benchmarking statistics are provided by the International Study Center at the Lynch School of Education in Boston in the form of the annual PIRLS\(^1\) and TIMMS\(^2\) reports. These reports serve as objective and authoritative indicators of the unacceptably low performance standards of South African learners. Locally, the ANA\(^3\) reports are released by the Department of Basic Education. In 2011 for example, the average Grade 3 Literacy score was 35%, and for Numeracy it was 28%. In Grade 6 it was 28% for Languages and 30% for Mathematics. These low scores can be regarded as a direct result of ineffective teaching and school management in numerous schools. The highly effective schools, with matric results that reflect a pass rate of 90% or more, are in the minority, and cannot make an adequate impact on the overall dismal state of public education in South Africa.

Logic reasoning would suggest that a causal link exists between such an underperforming education system and the performance of the educators employed in the system. This cause and effect situation is the result of a reciprocal influence. Careful inquiry will point out whether specific educators are the victims or the perpetrators. Educators regularly report feelings of a lack of employment security, emotional security and even physical safety. During a survey that was carried out by the Human Sciences Research Council, it was found that 55% of the educators that acted as respondents indicated that they intend leaving the profession due to inadequate remuneration, increased workload, and lack of

---

1. Progress in International Reading Literacy Study
2. Trends in International Mathematics and Science Study
3. Annual National Assessments
career development. (Anon, 2005:1.) It has since been empirically established that
diligent, professional educators experience a loss of security, and are convinced that their
rights are not protected (Rossouw, 2007:212; Rutherford, 2009; Keating, 2011). The
security of the educator in South-African public schools is under pressure.

In the light of above problem statement, a specific knowledge gap was identified at the
outset of the research that is reported on in this paper. Clarity had to be found regarding
educator security and educator rights. It is argued that the educator stands central to the
success or failure of the system, and has a major role to play in the pursuance of the best
interests of the child. There was a clear need for a focused inquiry to increase theoretical
knowledge, eventually leading to the practical implementation of research findings
stemming from such research. What needed to be established through literature analyses
and empirical research were, inter alia, prominent factors that influence educator
security, the effect of these factors on teaching and learning, and which legal remedies
are available. One crucial question had to be answered as to whether the application of
the law can remedy, or at least make in notable impact on the ills of the public school
system.

Commendable solutions for above challenges, needs and problems in South African public
education can also be found in the fields of educational management and educational
psychology, as well as in curriculum studies or human rights education. Russo and
Stewart (2001:18) pointed out a decade ago that it has become necessary “for
administrators, teachers, and other staff to have expertise in a wide array of educational
matters, including sufficient legal literacy to meet increasingly sophisticated management
and teaching responsibilities, from the moment they appear at schools.” Beckmann
(2007:211) and Oosthuizen (2009) add that there is a need of a greater awareness of the
law amongst principals and other educators. The legal implications of statutory provisions
and legal principles pertaining to education should be well known to these professionals.
An absence of basic legal literacy might leave them in a very vulnerable position.

Education law as an academic subject and distinct field of research has a remarkable
potential to make a valuable contribution through both research and tertiary tuition.
Before reporting on some of the central findings of the research project, a brief overview of the field of education law is therefore essential.

2 Education Law as academic discipline

A wide variety of school-related statutes have been promulgated to regulate education, and court cases on education are regularly decided, clarifying the interpretation of the law. In the light of such legal determinants, a basic question is whether the academic discipline called Education Law does exist as an independent discipline. One alternative is to merely refer to the general application of the law in education, and in so doing deny the existence of such academic discipline.

If it can be substantiated that Education Law as academic discipline has been established, it should logically be determined which role Education Law can play, both as a field of research, and as an instrument to bring about change to the illnesses in the public school system. The law does not normally make much of a difference unless it is correctly applied and enforced.

In the discussions that follow, a distinction is made between the academic research discipline Education Law, and education law as that body of statutes and case law that apply to education, and which is consulted and applied in the daily practice in schools, in education related court cases and other dispute related matters such as looming industrial action.

2.1 The ontological premise of Education Law as academic discipline

Brown and Zuker (2002:v) regard Education Law, as perceived from a Canadian point of view, as “a dynamic, invigorating, and intellectually stimulating discipline that is constantly evolving.” Russo and Stewart (2001:19), from a US and Australian perspective, point out that education law should constantly be developed “to meet the needs of today’s schools.” In South Africa, the ontological premise of Education Law can be found in concepts such as justice (Beckmann, 2013) and geborgenheit (Oosthuizen, 2009). Smit (2012a) refers to this central position of geborgenheit when he contends that the ontology of Education Law prescribes that this field of study
... focuses on determinants such as the organisation and regulation of education, the managing, leading and governance and administration of education institutions and in order to enhance the *geborgenheid* and ensure the overall functionality of the education system. This applies from the level of the State to the very activities and relationships in the classroom. This endeavour is approached from a legal perspective.

Joubert and Prinsloo (2009), other South African scholars, refer to “the law of education”, and do not use the term Education Law, while Mawdsley and Visser (2007:1) ask the question of whether Education Law is a separate legal field, merely because “a collection of judicial decisions, legislative statutes or administrative regulations”, all with the common theme of education, exists. In the USA Education Law has developed over the past 5 decades into an established interdiscipline, partly due to between 1500 and 2000 federal and state court cases that are reported every year. School administrator preparation programs in all 50 states require courses in Education Law, and in the USA it is “the second most commonly taught subject in the wide array of leadership programs” (Russo & Stewart, 2001:22).

Mawdsley and Visser (2007:159) point out that, compared to the USA much, less litigation takes place in South Africa, but a reasonable body of judgments have been built up, many of which are cases where the various departments of education are the defendants. South African legislative and policy developments are well established, with about 250 national and provincial statutes focusing on education. A national association (SAELA) has been established in 1995, offering annual international conferences. This association has strong ties with similar associations in Europe, Canada, the USA, Australia and New Zealand. The Interuniversity Centre for Education Law and Policy (CELP), of which five northern universities are the founding members, and organisations such as the Federation of South African School Governing Bodies (FEDSAS) have as their central focus legal matters pertaining to schools. In all these structures lawyers and educators take hands, including both academics and practitioners.

Analysing the respective reasons for and contributions of those academics and practitioners who are involved in Education Law is an intriguing exercise. Beckmann (2007:206), in his obituary in honour of the late Hans Visser, one of the founders of Education Law in South Africa, points out that Mawdsley and Visser (2007) distinguished
between two types of “consumers” of education law: law-trained persons who analyse case law and statutory law, and those persons, non-lawyers, who operationalise the legal requirements and principles in an educational environment. In most meetings concerning Education Law matters, members from these two groups will be present, forming a strong partnership in which each of the two parties has a unique contribution to make. To effectively serve the educational goals, they are often interdependent to get to the essence of education related legal problems.

Convincing arguments exist that Education Law has been established as an independent discipline. Pre-graduate and postgraduate courses and modules in Education Law have been developed in both law and education faculties in some South African universities, including Honours, Master’s and PhD studies. In some universities Education Law is linked to Policy studies or Educational Leadership, while in others it has long been established as a separate subject and field of research.

2.2 The ontological premise of Education Law research

In the past five years several special editions of South African law journals were devoted to Education Law, a further indication of the progress regarding recognition of this discipline in the field of law. These publications, as well as advanced studies in Education Law in the form of Masters’ and PhD theses, resulted in valid questions regarding the ontology of Education Law research that would be descriptive of its exact nature.

Research in Education Law has an ontological basis that can be distinguished clearly from that of Education Law as a discipline or academic subject. It is clear from the outset that, despite the fact that Education Law has been established as a legal discipline, research in Education Law is not conducted in the traditional way that legal academics would approach such research for publication. Defining the nature of legal research, Russo (2005:42) contends that “systematic inquiry in the law is a form of historical-legal research that is neither qualitative nor quantitative.” Legal research focuses on precedent (stare decisis - to abide by) by looking “to the past to locate authority that will govern the disposition of the question under investigation.” Russo adds that the main sources of legal inquiry in the USA and other Western-style liberal democracies are the
Constitution, legislation (statutes), regulations and judge-made law, called common law in the USA and case law in South Africa.

Legal research in South Africa also entails the analysis of legal determinants (the Constitution and other statutes), case law and the South African common law that was inherited from the Roman-Dutch and English legal systems. Education Law research adds one more source, especially when conducted within the field of education. It often includes empirical components which are analyses of qualitative or quantitative data generated by means of a variety of empirical research methodologies. Besides the establishment of a legal framework, those Education Law researchers belonging to the educator segment are also interested in capturing and understanding the perceptions of stakeholders in education, or to predict certain effects of legal provisions, in order to eventually ensure justice or create geborgenheit.

Mawdsley and Visser (2007:161) conclude their argument on the current position of education law with a rather debatable statement, when they declare that “it is usually only legal academics who would involve themselves with theoretical and systematic principles of education law as an interdisciplinary field of scientific study”. An overview in South Africa of the presence of scholars in the field of Education Law might show that a reasonable number of education academics also engage in thorough analyses of legal determinants, the application of complex legal principles to the educational environment, and the critical examination of case law, admittedly not on the same theoretical level as the legal experts. The law is, while complex and broad in scope, also accessible for nonlawyers. The same goes for lawyers entering into the extensive academic field of education. All lawyers are not well versed in matters typically associated with Education Law. The important factor is that all entering into the “other” field of this interdisciplinary, must know and acknowledge their limitations, and should refrain from making claims about matters beyond their level of expertise.

In the light of those academics that become involved in Education Law research from the field of education, and who did not engage in formal studies of the law, an important question to be asked is to what extent a legal underpinning, legal questions and a legal conundrum should be part of a product that would be classified as Education Law
research. A similar question can be asked regarding the educational component of a publication as to what extent the argument should contain references to educational principles and other elements of purely educational nature. The further question is whether a balance can be struck in this interdiscipline. Van Rooyen (2013) is opposed to attempts to determine such a balance.

To shed light on the ontological premise of Education Law research I recently conducted a survey amongst a limited number of academics worldwide to determine their views on how they perceive Education Law research. This inquiry into Education Law research should be expanded in future, but some informative insights have already emerged during the analysis.

Huisman (2013), professor of Education Law at the Erasmus School of Law in Rotterdam, strongly supports the combination of traditional legal research with empirical work:

A stronger connection to the empirical sciences in education is not only useful because it would enhance findings in Education Law, societal and policy relevance and content. Through that connection - a more evidence-based approach - we could get better research. It could lead us to stronger legal-normative findings and assessments in education law.

He does, however, not regard studies mainly focused on pedagogical matters or learning outcomes as Education Law research because of a relative absence of a legal focus.

In reaction to the request to define Education Law research, and to comment of the notion of a balance between the legal and the educational component in Education Law research, two responses from South African scholars were:

- Education law research should respect the traditions and conventions of both the law and education. Law specialists doing research in the field in Education Law are first level consumers of education law and focus on legal conundra of a legal-technical nature. Education specialists are second level consumers and apply legal principles to conundra embedded in education. My plea is that second level consumers should not pretend that they are first level consumers (Beckmann, 2013).
- It might be presumptuous of an education specialist to come up with a legal opinion or for a law specialist to give advice of educational nature. The purpose of
research outputs will differ between educationists and lawyers – the former will attempt to solve or understand an educational problem, while the latter will investigate the legal implications of legislation or case law related to education. No attempt to ‘balance’ the two components should be made. (Van Rooyen, 2013).

According to a Brazilian commentator, Ranieri, legal elements in Education Law is a priority, but an exclusively legal approach may lead to an old-fashioned positivistic interpretation of the law. In Brazil, teachers and prosecutors have different perspectives about the essence of education law matters such as disabled children’s rights and how these rights should be guaranteed. (Ranieri, 2013).

Huisman (2013) is of the opinion that Education Law, as it has developed in the Netherlands, can be a (purely) legal discipline, or an interdisciplinary area. Education Law is mainly situated in law faculties, where there are several endowed chairs for Education Law. It is, even when looked at from a legal research point of view, “a difficult and complex area”. No individual researcher can cover all the areas. The complexity is a result of the following:

- Education Law includes private and public law, and a variety of legal disciplines;
- it has to be versatile to accommodate municipalities and the national authorities;
- it is internationalized and has to act according to human rights treaties and the European Union law;
- it has to contend with large differences between the sectors within education; and
- it requires certain knowledge of historical, social science and policy contexts.

This limited survey indicates that academics involved in Education Law research do not approach this field of research in the same way – it largely depends on the individual researcher’s background and specialist knowledge. It should however be noted that a number of scholars do have formal qualifications in both areas and can speak with equal authority on legal as well as educational matters.

This brings us to the initial question of the survey as to what the bottom-line is for research to be regarded as Education Law research. This survey indicates that, to qualify as Education Law research, the research question, focus or conundrum should include a clearly distinguishable legal element, embedded in the field of education. Irrespective of the individual researcher’s background or main interest, an underdeveloped or absent
legal framework may disqualify such research as Education Law research, whether it is in the form of a dissertation, thesis, journal article or conference presentation. Merely mentioning relevant legal provisions without an analysis of sufficient extent does not suffice. What is essential, is a proper analysis of legal determinants that provides the theoretical framework for the subsequent empirical research, should that be included in the research design.

3 Factoring the deterioration of SA public education

In labour relations much attention is often paid to the constitutional, human or labour rights of employees and that of the employers. While an awareness of rights is not per se improper, a selfish approach is often witnessed when individual or group rights are at stake. Corresponding obligations and duties associated with the rights are regularly underplayed, and in certain circumstances ignored. In education, the employer’s duties are numerous, but few can be more important than to create and maintain a secure environment. This should be seen as a basic prerequisite for educators to eventually provide such a safe, nurturing space for learners. Employees, in turn, have the legal duty to care for and supervise learners, and to demonstrate professional conduct and diligence. In the discussions that follow, mention will be made of the respective obligations of employers (to ensure educator security) and employees (to render professional service.) Without a balance between these two, most attempts to remedy the education system might be a futile exercise.

It has been stated that a reciprocal causal link exists between an underperforming education system and the performance of the educators in the system. It can further be argued that the quality of such an education system to a great extent also determines the level of security generally experienced by the educators in the system. It is not claimed that there is an absolute causal link between the two – some examples have been found where educators experience security and fulfilment despite unfavourable working conditions. More instances, however, were found where educators blame their lack of security on the poor state of the national and provincial departments of education, and on the school where they are employed.
In the development of theory regarding the security of the professional educator, certain prominent factors related to the deterioration of SA public education have been identified through an analysis of the education scenario. These factors guided the identification and development of specific foci for a variety of inquiries within the research project. Two factors unquestionably have a notable influence on educator security: the harmful, even destructive influence of specific trade unions, and employer indifference and incompetency. These two factors reflect to a great extent the current position of SA public education, and the discussions that follow form the background for findings reported later in the paper.

3.1 The destructive influence of specific trade unions

Unionism, in particular the actions of some teacher unions, has a detrimental influence on the education sector. Intimidation, violent behaviour and vandalism regularly prevail during industrial action where educators are involved. This influence exists due to the fact that the leaders of unions such as SADTU demonstrate a predominantly non-educational approach to their activities. School campuses are abused to further their objectives, and during strike actions they unscrupulously violate the constitutional rights of children to receive education. This adverse influence is most notable when the members of these unions demand employment benefits through aggressive and sometimes violent demonstrations of power during industrial action, which includes assaults on non-striking colleagues. In the process the image of the profession is tarnished. Less conspicuous, but more harmful in the long run, are instances of inappropriately influencing teacher appointments, where union affiliation and ideological considerations are more important than competence. Union officials often provide unreasonable protection of educators who are accused of misconduct, and tolerate tardiness and a lack of professional diligence amongst their members (Rossouw, 2010:63). This negative influence of unions was summed up by Jansen (2010:8) when he mentioned that South Africa is one of few countries in the world “in which the unions rather than government run the schools”.

Unionism and party politics in South Africa often run parallel and is to a great extent integrated. The links between the ruling party, the ANC, and COSATU, of which SADTU is
one of the largest unions, is a prominent and well-known fact. As a result, many schools are politicised, which is evident in the 2011 amendment to section 33 of the SA Schools Act, in which political activities are prohibited during school time, including “campaigning, the conducting of rallies, the distribution of pamphlets and fliers, and the hanging or putting up of posters and banners”.

Irrespective of whether the activities have political or mere unionist motives, these are examples of unprofessional and unethical conduct. Referring to strikes where intimidation, violence and destruction of property prevail, Landman (2011), chief executive of the Ethics Institute of South Africa and professor of philosophy at the University of Stellenbosch, points out that “union and political leaders refuse to take a principled stand against this”. He adds that “too many top leaders are light weights in heavy-weight positions who do not understand or do not take seriously enough the attendant responsibilities.”

Carefully considering above description of unionism in education, educators place themselves in one of two categories: professional educators or unprofessional teachers. The first group is characterised by diligence and commitment to their profession, high work ethics, an educational focus on teaching and learning, and a balanced approach to the best interests of the child. Unprofessional teachers, on the other hand, are intent on union activities, do not regard teaching as their primary duty, do not act in the best interests of the child, and resist forms of control and performance assessments. The outcry in 2013 against the proposed electronic biometric monitoring of educators’ presence at schools is one example of this resistance. The SADTU leader, Mugwena Maluleke, declared: “We will not take instruction from the ministry of department”. This shows a hostile opposition to desperate disciplinary measures of the employer to demand basic service from public servants, in this case consistent teaching by educators, or, at the minimum, the presence of teachers on the school premises.

Where these groups, respectively professional educators and unprofessional teachers, are working in the same staff, the security of the professional educator is adversely influenced by the unprofessional teacher. The professional is perceived as a threat due to his or her higher work ethics, and experience antagonism. During industrial action,
numerous examples have been reported of intimidation of and even assaults on fellow educators who are unwilling to support specific demonstrations and who would rather engage in educational activities.

3.2 Employer incompetence

This second factor impacting upon educator security entails the incompetency of provincial departments of basic education that are the employers of educators in public schools. This represents the other side of the coin: while educators as employees regularly make themselves guilty of totally unacceptable forms of misconduct, as previously discussed, the employer is also to be blamed for the current state of the public school system.

The professional educator has to deal with an employer – via his provincial department - that is by and large in disarray, a factor that impacts negatively of the motivation and morale of diligent educators. This lack of efficiency, which also manifests itself in the indifference of numerous provincial officials who act as representatives of the employer, was illustrated by the outcomes of various recent court cases. In the case of *FEDSAS and others v MEC, Dept of Basic Education, Eastern Cape* [2011] Case 60/2011 (EC), whereby the Department of Education (Eastern Cape) was put under administration. One important reason for this prevailing incompetency in the education system is the appointment of staff without the necessary skills, experience or the required work ethics that are essential for success and proper service delivery (*Maritzburg College v Dlamini NO & others* [2005] JOL 15075 (N)). This is often due to an obsession with transformation during appointments, where proven skills are put second to either political affiliation or reaching affirmative action targets (*Governing Body Point High School v Head of Western Cape Education Department* [2006] 14188/2006, Cape of Good Hope).

Effectively functioning schools are regularly targeted and receive much negative attention by officials of departments, often leading to court cases regarding inter alia language policies, admission policies and alleged discrimination (*The Governing Body of Mikro Primary School v The Western Cape Minister of Education* [2005] 332/2005 Cape of Good Hope). In the series of court cases during the past ten years, the majority of which the respective departments of education have lost, the impression has been created that the
autonomy of school governing bodies are not respected, and that effective schools have to pay the price of poor planning in education provision by departments of education. The ineffectiveness and even dysfunctionality of numerous schools are not addressed. Poor service delivery of numerous unprofessional educators is not challenged effectively, often due to the improper protection from teacher unions.

The educator security project was conceptualised and structured against above background. Other factors, over and above the teacher unions’ influence and the incompetence of the employer, were also identified and factored into the various research designs and objectives. During the unfolding of the research project two major focus streams emerged after ongoing, extensive analyses of legislation, the common law, court cases, academic literature and empirical data related to the topic.

4 Security of the professional educator

4.1 Research in two integrated focus streams

As illustrated in Figure A, the research project consists of two distinct focus streams, respectively centred around research topics related to the legal disciplines of Labour Law and Sport Law. What binds these two focus streams to ensure coherence, is their constant connectedness with and focus on the notion of educator security and educator rights. Some studies (with Bothma, Niemczyk) have expanded the focus to Higher Education, where the security and rights of selected tertiary education role-players are being investigated. The primary researchers, postgraduate students and international collaborators are indicated in Figure A, as well as those colleagues who act as study supervisors of postgraduate students.
4.2 Fundamental rights and values underpinning educator security

Research and tuition in Education Law are intrinsically and primarily linked to the South African Constitution, as the supreme law of the country, which rests upon the founding values dignity, equality and freedom. Prominent ideals of the Constitution are to “heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights”. South-African citizens should strive to make a
contribution towards “an open and democratic society based on human dignity, equality and freedom”, as set as ideal in section 36 of the Constitution.

Other values that receive regular attention include fairness (one basic premise of labour relations), and a number of educational values (as part of the right to education). Provisions in statutes, including human rights, are systematically interpreted according to established rules of interpretation. In a Constitutional dispensation such as South Africa the rule of law is the basis of legal certainty and proper order in the developing democratic society. A balanced approach is promoted, according to which both rights and their accompanying obligations are considered.

Mere adherence to legal principles without a complementary ethically correct approach does not guarantee sound employment relations. Specific attention has therefore been given in the project to the influence of ethics. Educators’ conduct should be based on the Code of Professional Ethics in the SACE Act. Educational leaders’ successes are often more dependent upon the correct ethical approach than merely adhering to applicable regulations or law. In the process, ethical conduct becomes a more prominent warranty to ensure fairness than legal provisions.

One of the reasons for the state of disarray in the education system is the lack of effective and ethical leadership by politicians and governmental structures such as the department of education on national and provincial level. Landman (2011) states that a lack of ethical leadership has become common practice in the public life in SA. He points out that some top leaders are establishing a culture that puts ethical and democratic values second to their own political agendas. In comparison, Landman draws attention to the fact that former president Nelson Mandela during his term of office honestly and frequently admitted his mistakes, but nowadays some leaders refuse.

4.3 Labour law and educator security

This focus stream encompasses those factors that relate to the employment of educators nationally and internationally. Focusing on the educator as employee, the inquiry is mainly from the perspective of labour law as applied to education, and includes an analysis of a variety of employment issues.
Initial findings of this research project indicated that many educators in South African public and independent schools experience unfair labour practices. Reasons mentioned in interviews relate to excessive work load, poor or inappropriate employer involvement and support, deficiencies in their employment contracts, and being exposed to undue pressure from parents and learners. Some of these initial findings then called for further inquiry and a search for solutions, based on scientific methodologies.

In the sections that follow, some of the most prominent findings related to labour relations and educator security will briefly be discussed.

4.3.1 Finding 1 – An over-emphasis of learner’s rights adversely influences educators’ rights

An unfortunate outcome of the prevailing ills in society, characterised by violence, corruption and a general atmosphere of lawlessness, is the gradual decline in order and discipline in numerous schools. The general decrease in respect in society is also visible in schools. The deficient leadership by ill-disciplined or unmotivated staff members and inefficient management inevitably result in misbehaving learners, and in severe cases a total lack of consistent control. Criminal learner conduct and incidences of crimen iniuria aimed at educators are not uncommon. (Masitsa, 2007:155; Wolhuter & Van Staden, 2007:293.)

Research pointed out that various stakeholders should take care not to over-emphasise learners’ rights (Rossouw & De Waal, 2003). Aiming at positive learner discipline and avoiding immediate resorting to punishment per se, our recommendations were:

- Move away from an over-emphasis of learners’ rights, to an awareness of stakeholders, including learners, of obligations and duties towards a balanced, well-disciplined school society.
- Replace the approach of many rules and disciplinary measures that would force learners to obey and conform.
- Adopt a more positive approach: stronger relationships with learners, better preparation for classes and the enhancement of values.

Recent empirical work by Bartlette (2013:113-114) regarding the effect of serious learner misconduct on educator security found that educators find it difficult to accept that little protection is available against arrogant and even aggressive learners, despite the fact that the necessary legal provisions exist. Various participants expressed their frustration that
their human dignity is regularly seriously infringed by learners who are overly aware of their rights, but who do not hesitate to violate the rights of educators.

Attempts were made to find solutions to the negative effects of learner misconduct on educator security. Continuously disruptive, delinquent and especially dangerous forms of learner misconduct that grossly infringe the rights and security of educators should be met with strict measures, that would normally start with proper investigations at school level, according to the governing body’s disciplinary policy and the school’s code of conduct.

In an attempt to find positive, proactive ways of handling discipline, Rutherford (2005) made the claim that the brain dominance of both the learner and the educator has definite implications for the positive maintenance of discipline in class. She concludes that knowledge of and the correct implementation of brain dominance theory can ensure much better understanding of the behaviour and expected reactions of specific learners to certain school rules. Educators who know the effect of their own brain dominance cope better with the conflicts that may arise during interaction with learners with a dominance different to their own. In order to enhance educator security, Rutherford (2009) applied creativity theory to the education scenario, and established that the development of creativity amongst educators has the potential to have a positive effect on their security in the workplace. In conclusion she states that “… the literature and findings revealed that creativity programmes which could inter alia enhance attitude and general health should include aspects such as problem solving processes, the development of positive attitudes and the enhancement of the psychological work environment.”

As employers, the provincial departments of education can and should play a prominent role in the solution of the problem, by actively enhancing the professional status of the educators and proper protection of their interests. An all-encompassing plea and recommendation, therefore, is that the department of education should actively support educators in their quest for order and stability, especially in cases of serious learner misconduct where educators’ dignity is violated. This prevailing injustice should not be tolerated and the dignity of the educator must be restored by the state. Of crucial
importance is the reinstatement of the authority of principals and educators in those cases where it has collapsed, by effectively balancing the rights of learners against the fundamental rights of all educators.

4.3.2 Finding 2 – The security of Early Childhood educators needs particular attention

One specific group of educators that deserved attention in this research was those working in Early Childhood education. One segment of this level of education is that of pre-primary education, in South Africa associated with Grade R. While Grade R teaching has become one of the main focuses and priorities of recent developments in education policy, this is not characteristic of the first decade of the new democracy. In the 2000 case of Federation of Governing Bodies of South African Schools (Gauteng) and Palm Pre-primary School v Member of the Executive Council for Education, Province of Gauteng (case 00/21268 of 2000.11.24) it was agreed that all public pre-primary schools in Gauteng would be closed down. The rationale behind this policy change was that the inequalities in education had to be addressed and a constitutional obligation rested on the State to pursue equal treatment of all children in South Africa. The pre-primary schools also cost the State R48 million per year, which was regarded as being too costly. This short-sighted decision by the State, confirmed by the court, can be seen as an indicator of the general sentiment regarding pre-primary schools at that time. Soon afterwards very few public, state-aided pre-primary schools remained in the country. Ironically, this decision is currently being reversed by reinstating Grade R classes in all primary schools - a costly process.

Palm may have created the impression that pre-primary education is not affordable for developing countries, and can only be seen as “a luxury and a distant goal to be addressed after other goals are achieved” (Jalongo et al., 2004:143). This sentiment is, however, both an ill-considered one and contrary to reality. International research proved repeatedly that quality pre-primary education constitutes a successful and cost-effective counteraction to the prevention of early grade failure. By preventing this failure, it has long lasting positive outcomes in low income countries (Berlinski et al., 2009:232; Berlinski et al., 2008; Clasquin-Johnson, 2007:27). On this basis, the South African government decided to expand early childhood services throughout South Africa as part
of the SA government’s War Against Poverty. This new policy entails the integration of Grade R, the year before compulsory education, into primary schools as from 2008. The initial goal was that, by 2013, every child who enters Grade 1 should have been in a Grade R class. This date has been postponed to 2019. The expansion of early childhood development (ECD) services is seen as providing an effective, quality educational base for pre-schoolers, and it is envisaged that it will promote the economy in the long term and fight poverty.

The High/Scope Perry Pre-school Programme aimed at focused intervention amongst children from lower socio-economic groups also resulted in decreased criminality, increase in income and economic status. A well-known cost-benefit analysis conducted on outcomes at age 27 concluded that for every public dollar spent on the intervention, the public benefited a net return of 7.16 dollars (Sylva et al., 2006:77). This cost-effectiveness of intervention programmes is believed to come about because of their high-quality content and targeted delivery to disadvantaged children.

Sylva et al. (2006:77) state that findings from non-experimental studies include the following:

- Higher quality early childhood education predicted less problem behaviours, higher social competence, positive skilled peer interaction and lower impulsiveness in 4 year olds.

- The Cost Quality and Outcomes Study followed over 800 preschoolers for 5 years and found that high-quality programmes and close relationships to the teacher predicted better subsequent language and maths skills, independent of their school experiences.

- Cognitive gains persist at least throughout the age of 8, when the basis should have been laid firmly for further development.

In this research project Keating (2011) focused on the security of the Foundation Phase educator. She found that the rights of the educator are perceived to be of secondary importance compared to those of the learners, despite of the well-developed legal
framework in South Africa. It became evident that the lack of learner discipline, which can be partly attributed to a lack of parental involvement, contributes to declining educator security. Workplace related findings reflect the teacher-learner ratio as being problematic. In addition, the lack of resources in some schools, as well as a classroom environment that is not conducive to effective teaching and the educators’ workload all impact on educator insecurity.

In her study on work fulfilment of Grade R educators, Rossouw (2011) found that, in spite of the existence of legislation which in principle should provide for physical and psychological security, educators still experience insecurity and therefore a lack of work fulfilment. The two main reasons are the ignorance of most role-players of the existing legal provisions, and the associated ineffective implementation of law and policy.

Widespread ignorance regarding the nature of quality education in grade R exists and the insistence on educator centralised teaching limits the work fulfilment of especially well-trained educators. Awareness of the advantages of a play based, whole-child approach has to be developed. This approach, as well as knowledge of legal determinants, promotes work fulfilment, since both serve the best interests of the child as well as the educator.

One noteworthy finding by Rossouw (2011) was that some of the Grade R educators that took part in the research demonstrated a passion to make a difference in the life of the child. These educators rather base their work fulfilment on their contribution towards the children’s education and development than on their own, often unfavourable working conditions. They show a remarkable professionalism in their willingness to make sacrifices towards the best interests of the child.

4.4 Sport law and educator security

Focusing on legal aspects of sport coaching, but also directly linked to educator security, focus stream 2 pays attention to elements of delictual liability of educators in their roles as specialised teachers in Physical Education and as sport coaches, organisers or match officials. The main focus of this research is an inquiry into those aspects of the law of delict that impact upon educator-coaches, according to the premises of Sport Law as law
discipline, as it is currently developing as a new internationally recognised law discipline. The research in this focus stream includes established national and international components and collaborators.

As one outcome of the new democratic dispensation, and a growing awareness of children’s’ rights, court hearings concerning alleged delictual liability of educators linked to injuries of learners are regularly reported. Educators now carry a heavier burden than previously when they have a supervisory role. As part of the emerging human rights culture, some parents who were previously reluctant to sue the Department of Education, school or a specific educator in cases of injuries to learners, have changed their approach. This can be evidenced through the increasing number of court cases in which schools (via governing bodies) and departments of education have become involved.

In this research project, what needed to be established through literature analyses and empirical research was a greater awareness of the nature, effect and indicators of malpractices in coaching, so that stakeholders such as sport coordinators, principals and school governing bodies can be given appropriate guidance to protect the interests of participants and educator-coaches in school sport.

4.4.1 Finding 3 – The juridification of sport adversely influences educator-coaches’ security

Greenfield, Osborn and Rossouw (2011) compared approaches to risk management in school and junior sport in England and South Africa. While England organise junior sport in privately owned clubs, junior sport participation in South Africa is closely linked to the school system and the creation and maintenance of a safe and protected environment for children is usually a prominent objective of every school. The vast majority of the coaches involved are educators at public schools.

National sport authorities and school governing bodies have become aware of the importance of making sport safer. In rugby, the main thrust was the increase in serious injuries to players. Singh (2005:123) argues that risk management should form an essential part of the sports industry of the 21st century:

The law expects sports managers to develop risk management and loss control programmes to ensure a safe environment for all who participate in sport. Risk
management has become as important a function as budgeting, scheduling, contracting, financial management, and other related duties.

In terms of juridification it was found that in both countries safety measures were introduced “that not only aim to protect children but also protect coaches, and others, from being held liable or to at least limit their liability”. (Gaskin, 2006; Boksmart, 2011.) Despite the growing tendency in South Africa to sue, more leeway is still given to the South-African educator as coach: many of the requirements that are mandatory in England are in fact discretionary in RSA. A key point is that coaches in England take a very cautious position making advisory policies to the point of refusing to allow participation.

Greenfield, Osborn and Rossouw (2011) concluded that it is likely that coaches and educators will find themselves under increased pressure to conform from both a general fear of litigation and a changing internal regulatory regime.

4.4.2 Finding 4 - Educators lack basic knowledge of delictual liability

The inquiry in the project repeatedly established that educator-coaches, who represent a considerable percentage of educators in the public school system, experience a lack of security due to uncertainty about their exact legal position regarding their duties, rights and supervisory roles. Generally speaking about knowledge of the law, this is also true of most educators.

Empirical studies in this project that involved scholars and collaborators such as Karstens, Keet, Doubell, Jurgens, Marx, Greenfield and Osborn clearly showed that most educator-coaches are aware of their legal duty of care at school in a variety of sport-related contexts that may jeopardise the well-being of participating learners. This awareness is, however, limited to the delictual elements of negligence, and only regarding serious physical injuries. Coaches generally do not realise that inappropriate training methods, overtraining and illnesses are also forms of damage. They know that the human dignity of children should be respected, but seldom link abusive language during coaching and other forms of non-sexual abuse with delictual liability. The irony is that abusive conduct by coaches are often condoned, and even supported by parents, in the name of better achievements. Wilders (2013) expressed himself unambiguously against the “deplorable”
approach to “bulletjie” rugby matches between boys of a young age due to the overly competitive way in which it is currently approached by schools, during which parents often take the lead. The best interests of the children exposed to these competitions are not served.

For educators to cope, knowledge about legal principles, and the correct application thereof, has become increasingly important, as was clear from cases such as *Lubbe v Jacobs* [2002] (High Court of South Africa: Transvaal) and *Hawekwa Youth Camp v Byrne* (615/2008) [2009] ZASCA. This research unveiled low levels of legal knowledge amongst educator-coaches, lacunae in coaching courses related to legal matters, and underdeveloped legal risk management strategies in schools in especially high risk sport codes such as rugby. Diligent professional educators, who have become more aware of the risks, consider quitting education as career. There is, similar to what was found amongst Early Childhood educators, also those educators who maintain their enthusiasm and diligence in coaching, despite their uncertainties and the growing possibility of being held liable for physical injuries to learners.

Much of the uncertainty of educator-coaches regarding liability is the result of their ignorance, and ungrounded. In reality, the law makes ample provision for legal liability of educators who may be found negligent in performing their duties. The State, being responsible for the provision of education, is held liable in terms of section 60 of the SA Schools Act in cases of injuries to students sustained during school activities. Teachers who are coaching as part of their regular duties will not be sued in their personal capacity in cases of negligence. This liability is linked to the fact that the injury occurred during a school activity. In such cases, as was confirmed in both Hawekwa and Louw, the State is held liable. In the case of Louw a young child sustained serious brain injuries during obligatory swimming activities supervised by an educator employed by the Ficksburg Primary School. The Supreme Court of Appeal ruled that it was the State and not the School Governing Body as employer, who was held liable for the damage.
4.4.3 Finding 5 - Over-awareness of liability is not in the best interests of the child.

A certain amount of risk is inherent to many types of sport. While this characteristic of sport does create certain problems for participants, it is simultaneously the very reason for participation – take away the risk and the interest will dwindle.

Conference presentations in Australia (Newman, 2011) and Canada (Peden & Morris, 2011), an analysis of court cases in those countries, and the subsequent informal inquiries pointed at a hypersensitivity amongst education authorities as well as schools and educators regarding potential injuries to children. This is due to an unbalanced intolerance amongst parents and a tendency to sue the authorities and schools for all injuries to children, even for injuries that occurred on the way to schools, where no supervision by educators can realistically be expected. As a result, attempts are made to eliminate all risks in physical and other educational activities. Experienced and enthusiastic educators avoid initiating any activity with the slightest potential of injuries to children.

The irony of an avoidance of risk-laden activities is that children become increasingly vulnerable. They do not learn how to cope with dangers and challenges, how to control their bodies when balance, strength or agility is needed, and grow up becoming timid and fearful. As from (and especially during) their early childhood stages, which is characterised by rapid development, they are prohibited to develop their natural exploring spirit, their willingness to cope with risks, and their gross motor development. Exactly the opposite of what is intended, safe participation and a balanced, independent appreciation of risks, is achieved.

In the school context a careful balance should nevertheless be struck between risk and safety, through proper supervision and competent coaching.

4.5 Strategies towards increased security

In the light of the findings discussed above regarding the deterioration in educator security, risks, deficiencies in the education system and the resulting general decline in the quality of education provision, solutions and remedies have to be identified to counter this tendency. As said, many of the deficiencies in South African public education
can be approached from the perspective of the research fields of education management, educational psychology and other disciplines. A search for solutions may and should be conducted by all disciplines associated with educational sciences.

However, the final question here is as to whether the law can remedy the prevalent education ills. It should be determined whether an education law, in conjunction with legal disciplines such as labour law, administrative law, constitutional law, the law of delict and the law of contracts, can make a notable difference in the quest for quality education for all, improved educator security, and a public education system that can be on the same level as that of other comparable countries.

My final claim, which will be presented in the form of three recommendations, is that the legal system can provide, given certain limitations and conditions, the necessary remedies and thus mend this deterioration of the system. In this context the legal system would include the legislator, judiciary and executive. The properly developed legal framework, including the Constitution, in principle does provide the necessary support for the system, but the improper way in which these legal principles are put into operation currently leads to further deterioration. Approached from a legal perspective, the provision regarding the rule of law as entrenched in section 1(c) of the Constitution as part of its founding provisions, should be recognised as one of the cornerstones of this democracy, and should without doubt be considered as part of the solution and remedial function of the law. The rule of law is directly linked with the supremacy of the Constitution, and both these notions may be harnessed to respond to the deterioration of the education system.

4.5.1 Acknowledge education an essential service

Statutory provision is made to regulate industrial action, and to limit it where necessary. In section 65 of the Labour Relations Act (SA, 1995) the right to strike is limited when essential services have to be rendered. According to section 213 of the LRA "essential service" means a service, the interruption of which endangers the life, personal safety or health of the whole or any part of the population".
The prohibition of essential services to strike in terms of section 65 can be seen as a powerful mechanism to maintain a certain level of functionality in public services. The Labour Relations Act regulates the relationships between all employers and employees in both public and private employ, including educators at public schools. If education is classified by the essential services committee as an essential service, similar to the defence force, police service, and nursing, such a step has the potential to drastically reduce the disruptive effect of teachers’ industrial action. This suggested amendment to labour law, as was announced (and later withdrawn) by the Minister of Basic Education.

Role-players and commentators react differently to such a proposed amendment, ranging from full support to a total rejection. The latter group primarily refers to the Constitutional right to strike which will be limited, which to them is unacceptable. The teacher unions are unanimous in their rejection of such a possibility, because they build their power, if not the reason for their existence, on the right to strike. They point out that the LRA definition of an essential service is consistent with that of the International Labour Organisation. SADTU reacted negatively to the announcement, and issued the following press statement:

We don’t believe that declaring education as an essential service will address the challenges facing education. We firmly believe that if problems of overcrowded classrooms, school violence, inadequate infrastructure and learning materials and under qualified teachers can be addressed, education in South Africa will improve significantly. Dealing with corruption and decisively so will guarantee quality education and is urgent rather than enriching bureaucracy.

Most observers will agree with some of these arguments, but this union does not take into consideration its own contribution towards the decline in education standards, that has lead to the proposal. If their members were encouraged to be professional, diligent educators, there was no need for such a measure.

Deacon (2012) reasons that South Africa has “sufficient laws regulating strikes and, particularly, protest action or picketing” and is not in favour of further law amendments. The amendment is supported by Reyneke (2012), Smit (2012b) as well as Prinsloo and
Beckmann (2012). Such an amendment implies that the existing definition of essential services might need to be expanded to also include possible damage to the psychological and academic well-being of learners, over and above threats to their physical safety and health. In so doing, the devastating influence of some teachers’ unions could be curbed. In turn, this might be the start of building (or bringing back to where it once existed) a culture of teaching and learning conducive to quality education. It must be added that the mere promulgation or amendment of a law does not guarantee any change – the existing legislation is frequently ignored by striking workers, including educators, leading to unprotected strikes. It cannot be accepted that such amendment will be respected.

Irrespective of whether the State eventually officially declares education as an essential service, with all the labour implications, education should be acknowledged as being essential for the future well-being of the nation.

4.5.2 Hold incompetent officials and politicians liable in their personal capacity

This recommendation relates to the principle of legality and rule of law. Consistent adherence to the rule of law by public officials and politicians can remedy certain ills of the education system. Some officials in provincial departments of basic education have made themselves guilty of contempt of court orders and a general disrespect of the legal system. This attitude of not taking the judiciary seriously can be effectively countered if the verdict in Maritzburg College v Dlamini NO & others [2005] JOL 15075 (N) is consistently applied.

The judge in Maritzburg referred to the unwillingness of the HOD to expeditiously make a decision on the expulsion. The HOD regarded it "utterly unreasonable" to expect him to make a decision within two months. The judge finally contended that

... consideration must be given in future, in my view, where litigants are forced to come to court to compel public servants to carry out their duties where they have failed to do so, that such officials be ordered to pay the costs incurred, personally.
It is therefore recommended that stakeholders should work together towards respect for the rule of law, and if non-adherence is observed, these stakeholders should consider bringing lawsuits against transgressors in their personal capacity.

Following the Maritzburg case, the case of Coetzee v National Commissioner of Police and others 2011 (2) SA 227 (GNP) can serve as a landmark case in curbing both incompetence and mala fide conduct of state officials. Arguing the appropriateness of de bonis propriis cost orders against government officials, Du Plessis AJ specify actions by such officials “that cause unnecessary litigation and costs, that are unreasonable, reckless and dishonest”. He also quotes Plasket J in Venbor (Pty) Ltd v Vendaland Development Company (Pty) Ltd t/a Campstore 1989 (2) SA 619 (V) who indicated that officials acting in bad faith should be ordered to pay the legal costs in their personal capacity. This is consistent with international case law: in the Canadian appeal case Re West Nissouri Continuation Board (1970) 38 Ontario Law Reports 207, Riddel J, referred to officials found guilty of misconduct and said: “... nor can they be allowed to use public money to pay for the results of their own misconduct.”

Du Plessis AJ, in Coetzee, said that in his view

... the time has come for courts to impose the full extent of the law upon government officials who arrogantly act in breach of the constitutional imperatives referred to above, who act with impunity, and who are not taken to task by government, mostly because of inability, unwillingness or political reasons.

The time has come to order such public officials, not only to right the wrong that has been caused, and not only to avoid the taxpayer to fund their unlawful frolics of their own, but also to act as a deterrent to public officials in future, to grant an order in terms of which all the costs of the litigation caused should be carried by those responsible.

The South African legal system, including the legislative, the judiciary and the executive, does (albeit in principle) provide the remedies needed to rectify the deficiencies in the education system. The prerequisites for this process to succeed, is respect for the rule of law, adherence to the principle of legality, and proper functioning of the whole legal
system. The ideals for education can be reached if the adverse effects of teacher unionism as well as the incompetence of provincial departments of education are effectively and decisively dealt with.

The question arises as to who should take up abovementioned tasks. In South Africa numbers, and not reason or quality, is often the decisive factor. The only group that is more plentiful than members of trade unions, departmental officials or bureaucrats, or politicians, are the parents. As primary educators of their children, yet dependent on the quality of education provision, they should voice their dissatisfaction and set their demands. They should explore various ways in which they can collectively contribute towards realising some elements of the preamble of the SA Schools Act, of which the first part reads as follows:

... this country requires a new national system for schools which will redress past injustices in educational provision, provide an education of progressively high quality for all learners and in so doing lay a strong foundation for the development of all our people's talents and capabilities, advance the democratic transformation of society, combat racism and sexism and all other forms of unfair discrimination and intolerance ...

This preamble is laden with political rhetoric, which is understandable taken into consideration the dominating sentiments of 1996. Now, in 2013, objectives such as “education of progressively high quality for all learners” should become the primary driving factor. Not only upholding the rights of all learners, parents and educators, but also visibly meeting these stakeholders’ respective obligations, should now be the norm.

4.5.3 Create and protect the security of educators

The employer, and school governing bodies and principals where applicable, should watch over the best interests and security of educators to ultimately serve the child’s best interests. This includes the facilitation of courses, formal qualifications and any other means of ensuring that educators gain knowledge of the most important aspects of education law in order to heighten their security. Training institutions such as faculties of education cannot do enough to properly prepare pre-graduate students for the profession, regarding both academic subject knowledge, best practices in teaching, and to become professional educators.
4.6 Concluding remarks

For educators to wait for the employer and other parties to ensure their security might be in vain. They themselves can and should make major contributions towards their own security. Since enhanced professional development and the extension of their knowledge regarding legal issues have an influence on the level of security, they should make sure that they use their opportunities in this regard. Where offending learners threaten to eradicate their security, they should take a proper stance to maintain good discipline with the support of their school governing bodies. Where union leaders make decisions that tarnish their public image and status, educators should reject this leadership by terminating their membership. Educators should find their security in the fulfilment of their professional duty. Aiming at legally sound conduct and an ethical approach towards their profession will build the security of the professional educator. A change to higher levels of ethical conduct seems to be the ultimate solution.
Bibliography


Beckmann, J. 2013. Professor of Education Law and Policy, Pretoria University. Personal communication. 19 March.


Huisman, P. 2013. Professor of Education Law at the Erasmus School of Law in Rotterdam.


Landman, W.A. 2011. Sake 24: Ethical, responsible leadership is far too rare. *Beeld*. 4 February


Peden, R.W. & Morris A.A. 2011. A School Board’s Duty to Supervise Students in School, on Trips and Through Third Parties: Legal Considerations and Practical Solutions Conference Proceedings. CAPSLE, St John’s, Canada. 2-4 May.

Ranieri, N. 2013. Advisor: São Paulo State Governor, Brazil. Personal communication. 15 March.


Date of access: 12 March 2013.


Rutherford, R.M. 2009. A creativity development model to enhance educator security – a labour law perspective. Potchefstroom: North-West University. Potchefstroom Campus. (Thesis - PhD) 322 p


Smit, M.H. 2012a. Education Law staff member, NWU. Personal communication. 11 November.


**Court cases**

*Coetzee v National Commissioner of Police and others* 2011 (2) SA 227 (GNP).

*Federation of Governing Bodies of South African Schools (Gauteng) and Palm Pre-primary School v Member of the Executive Council for Education, Province of Gauteng* (case 00/21268 of 2000.11.24).

Governing Body Point High School v Head of Western Cape Education Department [2006] 14188/2006, Cape of Good Hope.

Hawekwa Youth Camp v Byrne (615/2008) [2009] ZASCA.

Louw en ’n ander v Lid van die Uitvoerende Raad, Vrystaat, Onderwys en Kultuur en ander [2006] 4 All SA 282 (O).

Lubbe v Jacobs 2002 (High Court of South Africa: Transvaal Provincial Division, case no. 1225/2001).

Maritzburg College v Dlamini NO & others [2005] JOL 15075 (N).

Minister of Education and Culture (House of Delegates) v Azel 1995 (1) SA 30 (A).

Peter Wynkwart v Minister of Education, Highlands Primary School 2002 (High Court of SA: Cape of Good Hope).


Venbor (Pty) Ltd v Vendaland Development Company (Pty) Ltd t/a Campstore 1989 (2) SA 619 (V).