

JURIDICAL ASPECTS OF TEACHER MISCONDUCT: A MANAGEMENT PERSPECTIVE

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DEDICATION

This thesis is dedicated to the memory of my late beloved parents - *ntate Molahlehi* and *mme Mmataba* who supported me against all odds at the time when they were still living in this world.

ABSTRACT

Many researchers who conducted studies in management and leadership concentrated mostly on the private sector. However, researchers have aggressively started conducting management and leadership research in the public education sector using the management and leadership concepts and ideas that are used in the private sector. It must however, be mentioned from the outset that some of the concepts used in the private sector are not applicable to education. For example, the situational approaches are relevant to both the private and the public education sectors. When the situation in schools have to be diagnosed, there are unique situational variables that have an adverse impact on the management and leadership skills and techniques of principals.

In this study, qualitative research was conducted, and the researcher used a constructivist approach which calls for hermeneutic, phenomenological and dialectic methods, and it was found that the situational variables that seem to be affecting the management and leadership of principals in a given situation are the following: unionism, the legacy of the political struggle, lax and laissez-faire conduct, misconduct and insubordination, and the pressure exerted on the school management teams by the supervisors. These variables render principals ineffective and inefficient. The Grade 12 pass rate, the appearance of school surroundings and the behaviour of educators at many schools controlled by the erstwhile Department of Education and Training (DET) support this view, and they also suggest that some educators attached to these schools are not yet ready to embark on meaningful teaching.

The lax and laissez-faire situation which is prevalent in many schools controlled by the now defunct DET led to the lax morals which result in educators committing misconduct and insubordination. Among others, the following are mentioned as examples: 'unfair dismissal' and harassment of principals by the unionised educators and inciting of learners by some of the unionised educators against the principals. All these and other unfair labour practices suggest that principals to whom these are meted out are traumatised; and a traumatised person is not self-confident and self-reliant, hence it is necessary to professionally counsel the affected principals.

In the light of the above, many principals of the traditional black schools are demoralised, dispirited and demotivated. As a result, they are unable to carry out their management and leadership activities effectively and efficiently. This belief is supported by the outcome of the interviews and discussions that the researcher had with the educator unions/organisations, the principals and the school management developers of the four project schools.

In this study, an attempt is made to examine the outlined problems in accordance with the law in general, and the relevant sections in the Employment of Educators Act (EEA), (Act 76 of 1998) and Labour Relations Act (LRA), (Act 66 of 1995) in particular. At the same time problems are identified for future or further research.

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LIST OF ABBREVIATIONS AND ACRONYMS

ANC	African National Congress
AZASM	Azanian Students' Movement
BCEA	Basic Conditions of Employment Act No. 75, 1997
BEA	Bantu Education Act No. 47, 1953
COLTS	Culture of Learning, Teaching and Service
COSAS	Congress of South African Students
COSATU	Congress of South African Trade Unions
CPA	Criminal Procedure Act No. 51, 1977
DBE	Department of Bantu Education
DDTA	Drugs and Drug Trafficking Act No. 140, 1992
DET	Department of Education and Training
EEA	Employment of Educators Act No. 76, 1998
EEA Regs	Terms and Conditions of Employment of Educators Determined in Terms of Section 4 of the Employment of Educators Act No. R. 222, 1999
EGT	Evaluation and Grading of Teachers
ELRC	Education Labour Relations Council
Equity Act	Employment Equity Act No. 55, 1998
ETA	Education and Training Act No. 90, 1979
GEAR	Growth, Employment and Redistribution
HOD	Head of Department
IPS	Institute of Public Servants
LFs	Learning Facilitators
LRA	Labour Relations Act No. 66, 1995
MEC	Member of the Executive Council
NECC	National Education Co-ordinating Committee
NEUSA	National Education Union of South Africa
NPCSCER	National Policy on the Conduct of the Senior Certificate Examinations 1999, SA Gov. Gaz. vol. 409
OFSATA	Orange Free State Teachers' Association
OHSA	Occupational Health and Safety Act No. 158, 1993
PASO	Pan African Students' Organisation
POPCRU	Police, Prison and Civil Rights Union
PSA Regs	Public Service Act Regulations No. R. 1091, 1994
PSA Regs	Public Service Act Regulations No. R. 679, 1999

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RGA	Regulation of Gatherings Act No. 205, 1993
SACEA	South African Council for Educators Act No. 31, 2000
SACE	South African Council for Educators
SADTU	South African Democratic Teachers' Union
SATU	South African Teachers' Union
SAPS	South African Police Service
SASA	South African School Act No. 84, 1996
SASAWU	South African State and Allied Workers' Union
SDA	Skills Development Act No. 97 of 1998
SDTs	Staff Development Teams
SGB	School Governing Body
SMDs	School Management Developers
SMTs	School Management Teams
UNISA	University of South Africa