

## CHAPTER 1

### ORIENTATION

#### 1.1 INTRODUCTION

The professional development of the senior education manager is one of the prerequisites for ensuring quality education. This can be brought about by developing a coherent strategy of support for staff, which is required for qualitative improvement in learning and teaching. Developing a coherent and a systematic strategy for professional development has a better chance of ensuring quality service and public accountability in education than an ad hoc approach. Pignatelli (1991:2) observes that "... the development of every individual is essential to the qualitative improvement of the education service." He further emphasizes that all staff have "rights and responsibilities" in this connection. This view is supported by the observation made by Burke (1987:3) who holds that teachers are learners and that they are required to show evidence of learning in order to gain legal entry into the profession. He further argues that if educators have knowledge of their subjects and professional requirements, they will be successful in directing the learning of others. The professional development of the senior education manager is thus about capacity building for the purpose of the improvement of quality management, teaching and learning.

The Task Team on Education Management Development (EMD) (Department of Education, 1996:24) makes an important point in their argument that "Management is about doing things and working with people to make things happen ... a process to which all contribute and in which everyone in an organisation ought to be involved." They also emphasize that the primary purpose of education management development is to improve the quality of teaching and learning practice in education.

Success in achieving the above depends upon the extent to which management capacity building is provided in the whole system, starting from school level. If teachers perform their duties, their integrity as a body of professionals will be enhanced. Where the service delivery

is perceived to be inadequate and hopelessly poor and where the practitioners project a negative or low image to the public, the latter is obliged to attached a low and negative status to the relevant profession. The relevant body of professionals is thus bound to be denigrated. Where the career image is high, the public honours and respects the teaching profession. What has been said above emphasizes that effective and efficient performance of one's duties has a positive impact on one's image, dignity and status.

It is also important to emphasize, however, that professional development is also enhanced by the profession's ability to:

- Provide quality service to the public.
- Produce committed and competent practitioners who are well prepared to render quality service to their respective communities.
- Enforce the observance of a work ethic and code of practice, thereby regulating the professional integrity of the practitioners.
- Produce practitioners who will be "... accountable for their actions to both the law and the controlling group" (Searle, 1987:2).

The above could be achieved if educators possess the required knowledge regarding their rights as ordinary citizens as well as their employment rights. The objectives of the Educational Labour Relations Act (ELRA) (Act 146 of 1993) are reflected as follows in Section 4:

- To maintain and promote labour peace in education.
- To provide labour disputes in education.
- To provide mechanisms for the resolution of disputes between employers and employees, and between employer organizations and employee organizations.
- To regulate collective bargaining.

The passing of the Labour Relations Act (Act 66 of 1995) repealed the Education Labour Relations Act of 1993 and changed the law governing labour relations by providing simple procedures for labour dispute resolution and by regulating employer and employee rights and

other related matters in order to give effect to Section 23 of the country's Constitution regarding the employment of educators and their rights.

## 1.2 PROBLEM STATEMENT

This study was necessitated by perceived uncertainty about the extent to which senior education managers receive guidance and support concerning their responsibilities and right to professional development.

The main questions considered in this study are the following:

- What impact does provision of professional development courses have on the management performance and service delivery of senior education managers in the education profession?
- What do provincial education departments in South Africa do to promote the professional development of senior education managers?
- What types of programmes/courses are desirable for enhancing the professional development of senior education managers and the protection of their individual and employment right?
- How does lack of knowledge of human rights, professional and ethical skills, obligations and responsibilities in education affect the senior education managers' professional development?
- What role does a professional code of conduct for senior education managers play in their professional development?
- Who are the role players in the professional development of senior education managers?

According to Burke (1987:3) an educator requires enough knowledge with quality and substance. Lack of this has serious implications for professional development in education management. The perceived nature and magnitude of the problem facing education administrators and managers today cannot be over-emphasized. There is considerable

ignorance of juridical matters. This problem also has a negative implication for professional development in education management.

The above observation is also true of senior managers who also need adequate knowledge in order to obviate negative juridical consequences in the performance of their management duties.

In reality, senior managers are occasionally faced with industrial action arising from day-to-day interaction with one another. In some cases senior education managers find themselves on the wrong side due to failure to apply appropriate procedures. This failure could be attributed to a lack of knowledge in these matters. The possible causes for the lack of appropriate knowledge is that most of the senior education managers are not given the support they need. During the nineties (90's), there was inadequate literature on legal aspects that focused on the rights and responsibilities of educators.

In schools previously controlled by the then Department of Education and Training and the education departments in the former homelands, problems associated with unfair labour practices usually prevailed. In most cases this phenomenon revealed itself in the rejection of some senior managers by educators on the grounds of alleged incompetence and other considerations. In most of these cases procedures were violated due to errors of judgement which resulted in labour disputes and usually necessitated legal intervention. Under such circumstances the violation of human and employment rights is unavoidable.

Between 1994 and 2000 a number of senior education managers in some provinces either voluntarily left their departments due to a lack of adequate guidance and support resulting in stressful work situations or faced suspension or dismissal due to misconduct arising from ignorance and perceived unprofessional or unethical execution of their duties and responsibilities. An example of this may include the unreasonable raising of examination marks in the name of moderation. Moderation of marks during examinations is allowed, but it should be done professionally and must, as far as possible, reflect a relatively realistic performance standard of the learners who are affected. This suggests that senior education

managers lack the kind of intervention which will provide them with adequate professional and ethical skills.

In the following paragraph the hypothesis emerging from these questions will be stated.

### **1.3 HYPOTHESES**

The main hypotheses in this study include the following:

- Providing professional development courses to senior managers in education will improve their management performance and service delivery as well as create a sound climate for professional duties.
- A senior education manager who participates in professional development courses performs his/her management duties and responsibilities effectively and efficiently.
- In provincial departments the opportunities for professional development of senior education are inadequately supported.
- Provision of relevant professional development courses to senior education managers enhances effective and efficient job performance, thus improving their image, dignity and integrity.

In paragraph 1.4 the purpose of this study will be discussed.

### **1.4 THE PURPOSE OF THE STUDY**

The purpose of this study is to investigate the rights and responsibilities of senior education managers concerning professional development. It is envisaged that this investigation will establish whether professional development is recognized as an important factor in performance management and service delivery of senior managers in the education profession. The problem stated in paragraph 1.2 will form the basis of the questions to be investigated in this study.

The findings emerging from this research project will enrich our understanding of senior managers' challenges regarding professional development and will determine the kind of strategies to be applied in providing an effective professional development programme for educators. Such findings will be disseminated to practising senior managers with a view to equipping them with the desired knowledge regarding their professional rights and duties. It is envisaged that some recommendations based on subsequent findings will be made on the areas in which senior education managers require strengthening. It is anticipated that this research project will reveal inadequacies in senior education managers' knowledge of their personal and employment rights, job content and other critical areas. This will enable the researcher to make informed conclusions emerging from this study.

## **1.5 DELIMITATIONS OF THE FIELD OF STUDY**

This research project notes that several studies have been made on in-service training and staff development with regard to the subject teacher, departmental head, deputy principal and the principal. Studies by Cawood and Gibbon (1985), Knoetze (1978), Schreuder, du Toit, Roesch and Shah (1993) and Calitz (1990) provide sufficient evidence to that effect. There seems, however, to be inadequate evidence of research conducted, if any, on the professional development of senior managers in education in the ranks of Deputy Directors of Education (or equivalent ranks) and above. The focus of this research project, therefore, is on the professional development of educators with reference to the senior managers in education in the Mpumalanga and KwaZulu-Natal Provinces (as defined in paragraph 1.7.2 below). The target respondents included circuit managers, subject/curriculum specialists, deputy directors and above responsible for various functions.

## **1.6 RESEARCH METHODOLOGY**

### **1.6.1 Choice of method**

The nature of a problem to be studied in a given research project determines the research methodology. Hart (1998:28) defines methodology as a system of methods and rules to

facilitate the collection and analysis of data. It provides the starting point for choosing an approach made up of theories, ideas, concepts and definitions of the topic. Methodology is therefore the basis of a critical activity consisting of making choices about the nature and character of the social world.

Research techniques, therefore, constitute an application of methodology. Hart (1998:44-45) further asserts that the bulk of research in the social sciences mainly aims at explaining, exploring and describing the occurrence and/or non-occurrence of some phenomenon. This means that scientific knowledge is obtained through the use of some types of methods which are dependable (reliable).

Mouton and Muller (in Mouton and Muller, 1998:2) define methodology as a “logic of social inquiry.” It is a systematic approach to research which involves a clear preference for certain methods and techniques within the framework of specific epistemological and ontological assumptions. They further make a distinction between methodology, methods and techniques. They contend that whereas methods and techniques refer to research tools such as survey, case study, statistics, experiments etc. methodology refers to the logic or underlying principles that are presupposed in the usage of such methods and techniques.

They further classify methodology into 2 main approaches to empirical social inquiry, namely:-

- The quantitative
- The qualitative

A quantitative approach was used to this study.

This involved the use of a questionnaire for data collection.

Various techniques and approaches in descriptive studies are interviews, questionnaires and standardized tests of performance (Cohen and Manion, 1995:83; Cates, 1985:95). Formal interviews and standardized tests were, however, not used in this study. Informal discussions



were held with some senior managers regarding the suitability of the design and content of the questionnaire.

The use of questionnaires was preferred for the advantages attached to it as discussed later in this paragraph and in paragraph 5.1.

The structure of the questionnaire and types of questions are discussed in paragraph 5.3.

Cates (1985:96) divides surveys into two types according to the length of time during which the researcher gathers data. Namely:

- **A cross sectional survey** which refers to a survey in which the researcher gathers data only once on the sample. This may include the use of questionnaires.
- If the researcher collects data repeatedly over a period of time, such a survey is known as a **longitudinal survey**. This type of survey could be divided into two as indicated below:
  - **A trend study**  
In which data is collected from all members of the same sample
  - **A cohort study**  
In which the researcher repeatedly draws samples from smaller specific populations over a period of time.

Mouly (1978:79) refers to a survey as “... a broad classification of research methodologies, comprising a variety of specific techniques and procedures similar from the stand point of their common purpose which is to determine the present status of a given phenomenon.”

Mouly (1978:79) further distinguishes between descriptive and analytical studies. The former focuses on testing, evaluating and what may be called the questioning method, namely the use of questionnaires and interviews. On the other hand, the analytical approach is said to involve observation, rating and other analytical techniques. According to Mouly (1978:179) surveys



must do more than merely uncover data; they must interpret, synthesize and integrate the data in relation to the problem and point to their implication and interrelationship.

In surveys two major tools are used, viz. questionnaires and interviews. The major advantages of questionnaires are that they permit wide coverage at minimum expense in terms of both money and effort. Questionnaires not only afford a wide geographic coverage, but also reach persons who are difficult to contact. It offers greater validity through the selection of a large and more representative sample.

In this study questionnaires were mailed to respondents. Using of mailed questionnaires was chosen due to the fact that the researcher would not be able to reach all the respondents of the target group personally due to geographical reasons. To reach all the respondents of the target population or even a sample thereof, personally more time and money will be required. The use of this instrument therefore saves time and money. A questionnaire is easily standardized. Very little training of researchers is required. Further advantages in the use of questionnaires appear in paragraph 5.1.

Informal discussions were held with some senior education managers. This technique was applied to compensate for possible inherent weaknesses in the use of questionnaires. This activity clarified otherwise unclear responses to some questions contained in the questionnaires. Informal discussions were also considered because formal interviews were not conducted.

A structured (closed) questionnaire contains questions and suggests answers to the respondents, whereas unstructured (open) questionnaires do not include suggested answers (Ary *et al.*, 1972:170). Cohen and Manion (1995:92) speak of self completed and posted questionnaires to distinguish them for interviews. Cohen and Manion (1995:96) further highlight the following as important factors which may secure good response rates to postal/mailed questionnaires:

- Clarity of wording and simplicity of design

- Giving a variety of questions to allow respondents to express their view as well, rather than a one word answer to the questions
- Providing a covering letter to indicate the purpose of the survey (Cates 1985:97)
- Providing for follow-ups

Cates (1985:97) highlights the reliability and consistent presentation of items as advantages of the structured questionnaires. According to Ary *et al.*, (1972:170) a structured questionnaire is easily administered and results lend themselves to easy analysis. A few disadvantages which have been noted regarding mailed questionnaires include the following:

- Low return and sometimes non-returns
- A possibility of misinterpretation of questions due to poor formulation
- Difficulty to interpret subjects' responses
- Difficulty to check that the subject understands the questions
- Possible response bias

According to Wierma (1980:146) the use of questionnaires often comes under severe criticism for various reasons including the following:

- There is excessive non-response
- Items are often poorly constructed and organized
- Respondents are not truthful in their responses. This is a threat to the validity of results
- Questions are often perceived as dealing only with trivial information
- Data from different questions are difficult to synthesize

### **1.6.2 Pilot Study**

Macleod (in Terre Blanche and Durrheim 1999:298) observes that pilot studies are used to identify possible problems with proposed research using a small sample of respondents before the main study is conducted. He further highlights that pilot studies are conducted with either a sub-sample of the proposed sample or a small sample representative of the proposed sample.

There are two forms of pilot studies. These are:

- The so-called “free range with open-ended questions’ which allows for expression of opinion by respondents. Such opinions are used to improve the research.
- The second one is more structured. The advantages of the structured pilot study include the following:
  - It ensures that no ambiguous language is contained in the questionnaire
  - It helps the researcher to check the clarity of instruction and questions, administration time, layout, coding and data input
  - To conduct a preliminary data analysis.

In some instances a pilot study takes the form of interviewing respondents regarding their response (Macleod in Terre Blanche and Durrheim, 1999:298).

Peter and Franks, and Allison and Cassid cited in Mouton & Muller (1998:278) argue that in order for a pilot study to be conducted, there is a certain amount of background research to be done before preliminary questionnaires can be conducted.

A pilot study is conducted basically to:

- Fine-tune the interview/questionnaire
- Establish survey logic
- Uncover any hidden agenda (Franks & Cassid in Mouton & Muller 1998:279).

In this study the researcher discussed the questionnaire with some senior education managers regarding the essence of the study, questions construction, the length of the questionnaire and related aspects. The aim of this discussion was to enable the researcher to identify inherent weaknesses of the questionnaire before distribution to the respondents. This discussion basically aimed at ensuring the reliability of the research instrument and the validity of the research findings.

A study is said to be valid if the statements on the investigated hypothesis theories can be justified by the empirical results of the study. A study is, however, invalid if flaws in the study are detected which raise doubts about the justification of the statements (Mellenbergh in Mellenberg & Ader; 1999:325).

The discussion of the questionnaire with senior education managers in this study was also done as an alternative to an ordinary pilot study. The researcher therefore made use of a mailed questionnaire augmented by limited group discussions regarding the questionnaire.

### **1.6.3 Literature Study**

In this research project literature study was conducted for various reasons. Hart (1998:27) gives the following as the purpose of literature review in research:

- Distinguishing what has been done from what needs to be done
- Discovering the important variables relevant to the topic
- Synthesizing and gaining new perspectives
- Identifying relationships between ideas practice
- Establishing the context of the topic or problem
- Rationalising the significance of the problem
- Enhancing acquiring of the subject vocabulary, understanding the structure of the subject, relating ideas and theory application, identifying the main methodologies and research techniques used and placing the research in historical context.

The literature study on research methods, education policy, education management, professionalism and professionalisation, law and legal processes and procedures, in-service training, staff development and many others, provided an adequate framework for understanding the significance of the nature and importance of professional development of a senior education manager.

## 1.7 DEFINITIONS

### 1.7.1 Professional development

The word **professional** refers to belonging to a calling, a vocation requiring specialized knowledge and often long and intensive academic preparation (Longman Dictionary of the English language 1984:1178).

**Professional** also refers to belonging to, or connected to a profession/someone who is engaged in a pursuit of activity professionally. The South African Council for Educators (SACE) as a registered professional council, was established as per Government Gazette No 16037 of October 1994. With this development, the professionalism of the teaching profession was enhanced. In terms of the provisions of the SACE, educators have, since its establishment, been required to register and discharge their duties in a professional manner. The SACE Code of conduct regarding the educator and the profession provides that an educator should promote the ongoing development of education as a profession and that he/she has a professional obligation towards education and the induction of new members into the profession (De Villiers and Wethmar, 2000:37).

Authors have varying definitions of the concept *development*. According to Gregorc as quoted by Cawood and Gibbon (1985:15), there are four phases of a teacher's development, viz. *becoming, maturing, growing and full functioning*.

Cawood and Gibbon (1985:12) hold the view that in-service training and staff development promote the teacher's continued professional growth. Prinsloo and Beckman (1988:325) assert that all professions are subject to a process of development. The emphasis on what is developed varies. This means that different professions emphasize or highlight their characteristics in different ways.

The Task Team on Education Management Development (Department of Education, 1996:16) holds the view that South Africa's strategy for education management development should embrace three elements, viz:

- The ethos and practice of management, e.g. the development of managers, including education, training and supporting managers.
- People development, e.g. the development of management, which involves the articulation, and operationalising of the principles of good management practice.
- Organisational development, e.g. the development of organizations which includes developing and sustaining effective structures, systems and procedures for improved management.

The above observation suggests that the professional growth of the senior education manager reveals itself in a variety of competencies that are improved or activated according to needs. The ability to master and apply certain skills in one's duty, work or job is one of the indications of professional growth. If one no longer has such mastery, it suggests a need for empowerment through a designed programmed according to the needs, e.g. on entry into a new work situation or changed rank or job-description.

Professional growth is an outcome of a process of professional development. Dean (1993:3-4) states that terms, like *staff development*, *in-service educational training* and *professional development* tend to be used interchangeably for both the process of individual development and that of organizational growth.

In a nutshell, *professional development* refers to the provision of skills, competencies and attitudes required for efficient job performance by senior managers. The mastery of these skills leads to the improvement of quality education. In-service training tends to focus on specific skills or competences. Professional development focuses on broad issues such as attitudes, organizational cultures, etc.

In this study professional development should be understood to include all that is done to build and improve the capacity of senior managers in order to improve the quality of teaching and learning. It is important to take into account the above views of the Task Team on Education Management (Development of Education, 1996) regarding the elements of management development in understanding the meaning of professional development.

### 1.7.2 Educator

The word **educator** (instead of teacher) is used in recent South African education legislation like the Employment of Educators Act (EEA) (Act 76 of 1998).

In the SACE Code of Conduct (1999:9), the word *educator* means any person who teaches, educates or trains other persons or provides professional therapy at any school, technical college or college of education or assists in rendering professional services or performs education management services or education auxiliary services provided by, or in a department of education and any other person registered with the Council. Such a person's conditions of employment are also regulated by the Employment of Educators Act (Act 76 of 1998) and by the Manual for Development Appraisal (Department of Education, 1999:10).

To teach is to give systematic information to a person about skills or a subject, to enable a person to do something by instruction or training; to advocate a moral principle (e.g. tolerance) or to influence a person by example. The concept *educate* as defined by the Concise Oxford Dictionary (1990:373) has a broader meaning than the word *teach*. To educate is to give intellectual, moral and social instruction to somebody, especially as a formal prolonged process; a development of character.

An educator is therefore somebody who does not only teach but also imparts values, virtues, and norms to others. In education an educator is known by different ranks according to the focus of his/her function, e.g. deputy principal, principal, inspector, advisor, planner, director, Secretary for Education, education manager and many others. In this research project the term



educator will be used to mean senior education manager (see paragraph 1.7.3), unless the context in which it is used indicates otherwise.

### 1.7.3 Senior Education Manager

In this research project the term senior education manager will refer to out of school educators in senior positions, e.g. subject specialists, circuit manager and upwards. The term teacher will be used, as far as possible, to refer to school educators not in the rank of senior education managers.

Reference to the concept teacher(s) will be unavoidable in some instances due to the fact that one of the roles of senior education managers is that of enabling and assisting teachers to perform their duties effectively and efficiently.

### 1.7.4 Rights

According to Bray (2000:41), the right to ownership denotes having the power and capacity to do or exercise or account, the capacity to sell, use or destroy anything. This suggests that the word right has more than one meaning as will be seen in the following paragraphs.

Squelch (1999:14) observes that the term *right* implies the ability to claim something. This ability is synonymous with what Bray (2000:41) calls capacity or power as discussed above. The words *right* and *duties* should be understood within the context of a framework of relationships. While *right* refers to capacity or ability, duty implies an obligation to perform, e.g. a manager has a right to a salary while the employer has an obligation to ensure that he/she pays the employed manager.

From the Concise Oxford Dictionary (1990:1037) there is evidence that the word *right* has numerous meanings depending on the usage, e.g. *right* away, which means immediately; *right* means just or that which is morally or socially correct or fair. Prinsloo and Beckmann (1988:32) observe that the concept *right* is etymologically related to *right* in the sense of *right*

and *wrong*, and as such it is linked to *justice*. They acknowledge that it is also linked to the idea of entitlement. They also refer to Barrow who states that to have a right means to claim something. Cohen as quoted by Prinsloo and Beckmann (1988:32) observes that justified claims, which are regarded as entitlements, are contrasted it seems there is some subtle distinction perceived by Cohen. If you are *allowed, permitted or favoured*, it does not necessarily mean that you are entitled to the claim concerned.

Wringe as cited by Prinsloo & Beckmann (1988:32) distinguishes between “active claim rights of freedom” and “passive claim rights of freedom”. The former type refers to “a right to do something without interference by someone else”. The latter refers to “the right to be left alone and not to be hindered or harmed”. This has a prohibitive connotation. An important observation by Prinsloo and Beckmann (1988:330) is the fact that a right may be recognized or enforced by legislation. They also refer to Aiken and La Follette’s list of action that may be performed in respect of rights, i.e. rights may be exercised, confirmed, claimed, relinquished and waived by a person possessing particular rights. On the contrary, persons not having particular rights may respect, grant, allow, deny, restrict, infringe and violate them.

*To put right* means to correct a mistake or restore order; *in one’s right mind* means sane; *right angle* refers to an angle of 90 degrees. Right also refers to a legal entitlement, a justification, a fair claim. Jordan, Heaton, Blackbeard and du Plessis (1990:13) state that “... right denotes legal relationship.” There is always a right to things and a right against one another in respect of the objects (things) of their rights. The bearer (person) of rights is defined by Jordan *et al.* (1990:13) as the legal subject while the object of a right refers to everything to which one has a right.

Barnard, Cronje and Olivier (1986:1-2) make an important point on the implication of the relation between the legal subject and the legal object in respect of the legal object of a right. They state that “... A person’s right to an object, therefore, creates obligations for other legal subjects *vis-à-vis* the bearer of the right”. A full discussion of the kinds or categories of rights appears in paragraph 2.4. In the light of this connotation of right, the senior manager as an employee has a right to expect to be offered an opportunity for capacity building, which aims

at improving his/her capability to render quality service in education. This is what Prinsloo and Beckmann (1988:32) call a positive right. In this study, therefore, the connotation of rights as claims to entitlement will be maintained.

In this sense the relationship of rights and duties invokes an obligation and duty on the part of the employer to offer an opportunity to the senior education manager for professional development. On the other hand, the senior education manager should accept the responsibility to use the opportunities provided to improve his/her professional service performance.

### 1.7.5 Legal

Legal means *based on law* which could denote various sources such as the following listed by Bray (2000:57-60), viz., the Constitution, legislation, case law, common law, custom and others, which are discussed in greater detail in paragraph 2.2.

Bray (2000:10) summaries the characteristics of the law as follows:

- The law is a body of norms and rules that governs private (personal) and public (governmental) action and interaction.
- Society must accept these norms and rules as the law.
- The law must create (legal) order and certainty in society.
- The law is applied and enforced by instructions of the state such as department and courts.
- When the law is disobeyed, the offenders are punishable.

According to the Concise Oxford Dictionary (1990:676) the descriptive word *legal* means *based on law, falling within the province of law, required by law, permitted by law, recognized by law*. This word is derived from the concept *law*.

Writing about the link between rights and duties, Prinsloo and Beckmann (1988:33) observe that if a child has a right to be cared for, the parent/guardian has a moral and a legal right to educate the child.

Power as cited by Prinsloo and Beckmann (1988:35) also makes an important observation regarding education as follows: “Everyone should be offered enough opportunity to realize or actualized personal capacity”. According to Prinsloo and Beckmann (1988:35) “... Every person may ... justifiably expect an opportunity to transform his potentiality into reality”. This emphasizes also that employees are not entitled to capacity building (or professional development) only but will expect to be given the opportunity to develop.

The senior education manager as an employee is legally entitled to professional development in terms of the Labour Relations Act (Act 66 of 1995) which aims at improving his/her capacity to render quality service to clients on behalf of employer. The professional development of a senior manager is discussed in greater detail in Chapter 3.

## **1.8 ORGANISATION OF WORK**

**Chapter 1** contains the orientation to the study. It discusses the nature and scope of the problem, research method and the desirability of the project. It contains certain hypotheses and the purpose of study. Key concepts from the title of this project are clarified.

**Chapter 2** contains a literature review. In this chapter a literature study will be conducted with a view to establishing what the functions of law in education are. It also explores the question of rights as well as the responsibilities of the senior education manager.

**Chapter 3** deals with professional development of the senior education manager as a prerequisite for efficient and effective job performance. It discusses the characteristics of a profession, the desirability of professional development and the role of the professional organizations such as SACE, the GTC and Ontario College of Teachers.

**Chapter 4** deals with the legal status of the senior education manager and some problems affecting the senior education manager's professional development.

**Chapter 5** deals with a description and the application of research instruments. It also gives an analysis of data collected.

**Chapter 6** presents a review of the study, a summary of findings, conclusions and recommendations.

## **1.9 CONCLUSION**

This chapter gives a brief account of the background to the study, and highlights the nature of the problem. It indicates the scope, research method and the hypotheses. It defines terms and discusses the organization of the study. It therefore provides a point of departure for the subsequent chapters. The definition of the key concepts in paragraph 1.7 enabled the researcher to form a solid idea of the nature and scope of the study. This chapter, as such, forms a critical source of reference for the whole research project.

The functions of the law and the senior education manager's rights will be discussed in chapter 2.

## CHAPTER 2

### THE FUNCTION OF THE LAW OF EDUCATION\* AND THE SENIOR EDUCATION MANAGER'S RIGHTS REGARDING PROFESSIONAL DEVELOPMENT

#### 2.1 INTRODUCTION

Bray (2000:10) defines law as a body of norms and rules that must be accepted by society as its legal system. This chapter focuses on the nature and functions of law in general and of education law in particular. The discussion also explores the nature of the senior education manager's rights and duties as well as how these are related to his/her professional development. The critical issue in this Chapter is the importance of understanding the reason why senior education managers should have knowledge of their rights in relation to their own duties and responsibilities *vis-à-vis* others. Such a discussion will constitute a suitable theoretical framework for the subsequent chapters in this study.

#### 2.2 SOURCES OF LAW

In this section the researcher will give a brief account of the sources of South African law. Bray (2000:57) gives a brief discussion of these as indicated below:

- **The Constitution**

This, together with the Bill of Rights, is the supreme law of South Africa. Therefore no other law should be in conflict with it.

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\* The terms *education law* and *law of education* are used interchangeably in this study. They refer to legal principles applied in the field of education derived from the sources of law as discussed in paragraph 2.2

- **Legislation (laws or statutes):**

This constitutes a primary source of law, e.g. the Employment of Educators Act (Act 76 of 1998), The South African Schools Act (Act 84 of 1996) and the Labour Relations Act (Act 66 of 1995)

Original legislation passed by Parliament in the sphere of national government includes the South African Schools Act (Act 84 of 1996), the Labour Relations Act (Act 66 of 1995) and the Employment of Educators Act (Act 76 of 1998). Within the provincial sphere legislation includes the School Education Act 6 of 1995 (Gauteng) and the School Education Act 9 of 1995 (Northern Province). The sphere of municipal or local government legislation includes by-laws that are normally not relevant to education.

Subordinate legislation may be passed by MECs, including legislation on school rules and regulations, e.g. school constitutions, school policies and codes of conduct. Such legislation is enacted on authority contained in original legislation.

- **Case Law**

This refers to court decisions used to determine or provide guidelines in the application and interpretation of legal norms and standards in specific cases, e.g. *Sv Williams* 1995 SA BCLR 632 (CC) wherein the Constitutional Court interpreted the legal norm relating to corporal punishment of juvenile criminals. In judging the application of The Criminal Procedures Act (Act 57 of 1977), it was found that it was in conflict with the security of the person as contained in the Bill of Rights. Therefore the court declared the corporal punishment of juveniles unconstitutional.



- **Common Law:**

This includes mainly unwritten law of a country on the basis of which e.g. school rules may be formulated, such as the application of the *in loco parentis* principle (i.e. an educator acting on behalf of the parent in the school environment).

- **Custom:**

This is made up of unwritten rules of the community, e.g. customary law. The requirements are that it:

- \* must be reasonable
- \* must have existed for a long time
- \* its content must be clear, and
- \* it must be generally recognized and observed by the community.

Central to the law is the notion that the law characterizes the environment in which the senior education manager performs his/her functions or duties.

### **2.3 THE FUNCTIONS OF THE LAW**

Before the functions of the law are discussed, it is desirable to highlight the fact that there is a distinction between the mode of control of natural phenomena and that, which is applicable to human beings. It is important to note that natural phenomena (forces) such as gravity, motion and others are said to have no social law to obey or disobey. According to Hosten, Edwards, Nathan and Bosman (1983:3) natural phenomena are governed by the laws of the universe, which produce uniformity amongst the phenomena themselves. In this sense law is seen to connote a rigid uniformity.

On the other hand, human beings are subject to what is called a mechanism of social control which includes all the means at a society's disposal to "... persuade its members to think and

act in compliance with the norms (normative systems), that make up its culture” (Hosten et al., 1983:2). These include legal systems, ethics, etiquette and social conventions. Law is therefore one of the instruments of social control. The views of various authorities concerning the functions of the law will be discussed in the following paragraphs.

**2.3.1** According to Prinsloo and Beckmann (in Bondesio, Beckmann, Oosthuizen, Prinsloo & Van Wyk, 1989:6) “National law... **regulates the conduct of persons** on a large scale so effectively that peace and order are kept through a state or country...” This function of law emphasizes the notion of law as a means to an end, namely it harmonizes the co-existence of the people of a country. It further suggests that the law focuses on the conduct of individuals.

**2.3.2** Hosten *et al.*, (1983:16) states that the immediate object of law is the **resolution of social conflicts in order to preserve order and promote justice**. This observation suggests that the normal day-to-day interaction of individuals in a given society is bound to produce conflicts. Law therefore provides the possibility of a constant mechanism for solutions wherever the conflict occurs. Wille as cited in Searle (1987:104) sees law as “instruments of social control”.

**2.3.3** Wille as quoted in Searle (1987:104) contends that, in the widest sense, “... laws are simple rules of action... which oblige people to do certain acts and abstain from doing others.” He further argues that the laws of the state are not only binding but are also enforced on all inhabitants of the state. In this way they fulfil the function of regulating the conduct of persons on a large scale so that law and order can be maintained. What has been said above emphasizes the notion that **the law has a regulatory function** in a country.

**2.3.4** According to Barnard, Cronje and Oliver (1986:3), McQuaid-Mason, O’Brien and Greene (1995:10), the law has the function of regulating man’s relations with his / her fellowman with regard to objects/ possessions. Therefore **the law has a dual control function**: it involves the question of **protection of the right of an individual to**

**possessions and also imposes a duty (obligation) to respect other people's property.** This point is also emphasized by Beckmann, Klopper, Maree, Prinsloo and Roos (1995:10).

Bray (2000:85) discusses two forms or ways of enforcement of education law, namely:

- **Administrative (internal) control** that is applied/ effected by the school governing bodies, staff and other relevant stakeholders associated with the institution. It involves investigations and the resolution of disputes inside the education institution concerned. Such investigations are governed by internal procedures and remedies (Bray, 2000:86) within the framework of the South African Schools Act (Act 84 of 1996).

Bray (2000:87-88) emphasizes that "... all acts performed by the education administration must comply with the requirements for lawful administrative acts". The Constitution (Bray, 2000:89) refers to administrative acts as "administrative justice" which include the following:

- The administrative body / official must act within the ambit of his/ her authority.
- Administrative justice forms the basis of fair, just and reasonable conduct.

**Section 33 of the Bill of Rights provides that:**

- Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

The above-mentioned comments regarding the rights that are protected are supported by Rautenbach and Malherbe (1999:18). Referring to the provision of Section 33 of the Bill of Rights concerning the rights to be protected, they reaffirm that everyone has "... the right to

lawful, reasonable and procedurally fair administrative acts, and the right to be given written reasons when your rights have been adversely affected.” They concur with the observations of Bray as discussed above.

Bray (2000:89-90) further clarifies the following keywords used in the discussion. She states that “ to perform a **lawful act** means that all the requirements of the law must be complied with.”

Reasonable action requires that a decision taken by an official must be justifiable in terms of the offence that has been committed. Fair procedures refer to the manner in which the investigation / hearing has been conducted. This means the accused has to be informed of the charges against him/her, of the hearing/ enquiry, has to have the assurance that he/ she has to be assured that he/she will have an opportunity to present his/ her side of the story, has to have adequate time to prepare his/her defence, and that he/ she will receive written reasons no matter what decision will be taken.

It is only in this way that the law of education will be seen to regulate man’s relationship with his/ her fellow colleagues reasonably and fairly within the education administration.

- **Judicial Control**

Much has been said about administrative control as a form of the law of education. If a decision taken by the internal (administrative) control office is perceived by parents, teachers, etc. to be unfair, unreasonable, unlawful or unprocedural, the aggrieved has “... the right to have access to the courts, or where appropriate, another independent and impartial tribunal, to have legal disputes settled in a fair and public trial” (Rautenbach and Malherbe, 1999:18). This is provided for in Section 34 of the Bill of Rights.

An appeal by an aggrieved person will lead to a judicial review in which the court may decide to uphold or reject the previous decision. The judicial decision constitutes an authoritative decision that may be published in the law reports (Bray, 2000:86).

The high court also applies legal rules and principles to determine whether the investigation/ hearing has been procedurally correctly conducted and whether the decision is reasonable.

The courts follow specific procedures including following the application of the doctrine of precedents, regarding what type of evidence is allowed. Criminal cases are conducted in terms of the rules of criminal procedure; in civil cases the rules of civil procedures are followed, etc. (Bray 2000:92-93).

- 2.3.5** The desirability of professional control, according to Searle (1987:2), arises from four primary considerations, e.g. societal needs, societal expectations, the laws governing the rights of citizens as well as the need to develop services to society in an orderly manner. This emphasizes the role of law in providing a mechanism for professional control. It is important to note that the services rendered by a body of professionals may not automatically conform to the standards and norms set for good services.
- 2.3.6** In the teaching profession it is also desirable to promote and protect good professional practice by means of an effective mechanism that has a legal base. This has great significance. Prinsloo and Beckmann (1988:192) emphasize the reason for the development of an ethical code. They argue, "... An ethical code... articulates its professional ethics very clearly and simultaneously offers the community a guarantee that the service will be rendered in accordance with certain norms". They also rightly refer to the observation by Spies as cited by Prinsloo and Beckmann (1988:192) that "... the ideal mode of conduct of the professional person in the execution of his occupation as well as the fundamental principles which should apply in relationships with colleagues as well as relationships between the person rendering a service and the person receiving it, are laid down systematically and bindingly". This emphasizes that such mechanisms for social control should have the force of law. This is more so in order not only "... to protect the community against possible malpractices but, also to promote the community's confidence in the profession."

Regarding professional practices Searle (1987:2) states that practitioners have over time “... made a formal study of their area of practice and begun to organize themselves into professions ... to ensure development and to define standards of practice in the interest of the public service”.

The law governing the profession referred to above operates within the same frame of principles as those guiding the operation of the teaching profession. Professional registration, under a particular act of parliament, should therefore be understood in the light of an attempt to ensure that practitioners are properly educated and trained for their profession and that control over their practices is exercised by statutory means in the public interest.

#### 2.3.7 According to Kleyn and Viljoen (1998:12):

- Law consists of rules or regulations facilitating and regulating human interaction.
- It orders society and gives certainty about issues and norms.
- It is applied, interpreted and enforced by institutions of state in the form of prescripts and sanctions for non-compliance with legal rules. This means that at the centre of law there is regulation of human interaction.

On the functions of the law of education, Oosthuizen, Botha, Bray, Marais, Mentz, Van der Westhuizen and Van Schalkwyk (1992:4), advance the following important points:

- The law of education regulates the rights and obligations of the interested parties equitably. This implies recognition of the rights of stakeholders in education. According to Bray (2000:24) the law governs various legal relationships. In this way it brings about order in society.
- It contributes to the creation of harmony in the co-operation of all participants. Writing about the characteristics of the law, Bray (2000:24) observes that the law



maintains harmony (order) in society and restores the legal balance where legal rules are ignored or disobeyed.

- It creates a clear framework for the role of the teacher as a professional.
- It interprets the given statutory position to establish workable structures for education management, a view also expressed by Van Wyk (1987:11).
- The law of education establishes the authority of the teacher, especially that of the education manager. In this way the law of education does not only create order and harmony, but also it especially provides a secure educational environment in which the pupil may develop. Oosthuizen *et al.*, (1992:4) concur with the view of the function of law as that of creating harmony and order.

Central to the views of the various authors referred to above, is the notion that the law has a regulatory and harmonizing function in society in general and in education in particular. The discussion above has emphasized the notion that legal norms regulate human conduct and that they do not only impose a duty on legal subjects but they are also enforceable by organized bodies. It is important to refer to the view of Hosten *et al* (1983:11) regarding the role of legal and social norms. Hosten *et al* (1983:7) also recognize the fact that the rules of natural law are binding and enforceable on all the inhabitants of the state. It is also acknowledged that other normative human laws are neither universally binding nor invariably enforced. Such norms seek to regulate human conduct and share with other instruments of social control the same characteristics of a normative system.

The only distinction that can be made is that, while social norms are enforceable by communities, organized bodies enforce legal norms. Kleyn and Viljoen (1998:12) observe that the rules are interpreted, applied and, if necessary, enforced by institutions such as the police, traffic police or prison authority/ sheriff.

In paragraph 2.3.4 the enforcement of education law by means of administrative and judicial control was discussed. Section 34 of the Bill of Rights grants everybody the rights to have access to the courts to have legal disputes settled in a fair and public trial (Rautenbach and



Malherbe, 1999:18). This suggests that senior education managers should be knowledgeable about these provisions. An educator, who believes that his/ her case has not been handled in a fair manner administratively, has a right to appeal through the right channels, up to the High Court if necessary.

Writing about the importance of education law, De Groof (in De Groof and Bray, 1996:211) argues that education law is linked to social and social security laws (social status of staff members, students and teachers, application of labour law), civil law in general (individual and family rights, liability law), criminal law and tax law. In this way education law has the same function as that of the law in general.

De Groof (in De Groof and Bray, 1996:212) further asserts that education law has a service-based role according to which "... it can also spur on the reform process, establish a legitimate basis for a refurbished educational system and... provide a framework for lending support to democratization... when a society reaches a turning point in history."

The above observation emphasizes the role of education law as an interdisciplinary science as it cuts across different social sciences.

The law of education not only defines the role and duties but also protects the rights of educators and other stakeholders. The South African Council for Educators (SACE) defines certain conduct expected of educators in terms of which their professionalism is evaluated. The LRA, EEA, and SACE code of conduct provide regulatory frameworks for educators. The institution of disciplinary measures for misconduct in education is governed by the provisions of law contained in the sources referred to above. It is in this manner that order in the education sector is brought about.

From the above discussion it is clear that education law regulates the provision and management of education, and the rights, responsibilities and obligations of parents, educators and other bodies and organs responsible for education.

It is required of senior education managers to have a full understanding of the importance of legal rules in education, as these protect the interests of stakeholders and promote harmony in the education sector. The above statement is supported by the observation of Beckmann *et al.*, (1995:8) who see education law as a collection of legal rules that it regulates. In this manner it makes order and harmony possible in education. The following section will consider the question of senior education managers' rights and their relationship with the law.

## 2.4 CLASSIFICATION AND TYPES OF RIGHTS

As the above clarification has been made, a discussion of the types of rights follows:

### 2.4.1 Types of rights

There is agreement on the classification of rights between Bray (200:43), Jordan *et al.*, (1990:14) and Myburgh (1985:14). According to Jordan *et al.* (1990:14) rights are divided into four types, viz.

- **Real rights** which refer to the right to material things (i.e. right of ownership). e.g. of a pen, car, flock of sheep, etc.
- **Rights of personality** which refer to the right to personality, i.e. an object of right with broad economic value that may be irreplaceable, e.g. status, good name, reputation, privacy, honour and integrity. When the integrity of an individual is threatened, his dignity is also undermined.

Neethling, Potgieter and Visser (1996:26) provide a classification of personality rights. These include the:

- Right to physical liberty
- Right to dignity or honour
- Right to feelings
- Right to privacy

- Right to identity.

All these rights are protected in terms of the provisions of the Constitution and are justifiable.

- **Immaterial property rights** which refer to the right to things relating to creations of human intellect, e.g. works of art, literary works (invoking copyright), inventions, trade marks, patent trade names, etc.. Bray (2000:43) calls these intellectual property rights.
- **Personal property rights** ( obligatory rights) which refer to human action (as performance) consisting of the right to do something or not to do it, e.g. delivery of purchases, goods etc.

The above classification is similar to the one provided by Bray (2000:42). She observes that private law distinguishes between the above-mentioned four groups of rights that a legal subject can have.

#### 2.4.2 Categories of human rights

In a report on the need for the incorporation of the Bill of Rights into the Interim Constitution of South, the South African Law Commission (1991:11,12.17 & 18) highlighted the following **categories of human rights**:

- **First generation rights**

Bray (2000:46) also refers to them as *blue rights*. Maree (1995:2) refers to these as the most basic level of rights and observes that they are also known as civil rights, procedural rights or political civil liberties. These are classical Western civil and political rights centering upon the individual. It is important to note that the rights of an individual enjoy primary protection as opposed to other categories of rights. In the 1996 constitution the following are included:

Personal rights, e.g. the right to the protection of life (S.11), liberty and property (S.25).

Civil/ political rights, e.g. freedom of speech (S.16), of movement (S.21), of citizenship (S.20), freedom to privacy (S.14), to vote and be represented in government (S.19), to have legal representation (S.19) to assemble (S.12) and demonstrate (S.17) and not to be arbitrarily detained.

The above category of rights accentuates the privacy of an individual as a legal subject in all aspects of life. Maree (1995:3) observes that the first generations of rights are designed to limit state power and protect individuals against the state.

- **Second generation rights**

Bray (2000:46) refers to these as *red rights*. They are regarded as socio-economic rights and are said to be associated with a socialist view of the role of the state.

They are protected in terms of relevant sections in the Constitution, as indicated below: e.g. rights to social security (S.26+S.27), to own property (S.25), to contract, to join trade unions (S.23), the freedom to work, to choose one's occupation, to fair wages (S.22).

The choice of a career is facilitated by knowledge of the conditions of service of various careers.

- **Third generation rights**

Bray (2000:46) also refers to them as *green rights, solidarity rights or people's rights*.

They are regarded as the most recent ones, which include what are termed *people's rights* (Cachalia, Cheadle, Davis, Hayson, Maduna and Marcus). These include the right to peace, self-determination, control over natural resources, development and information, minority

rights and the right to clean and safe environment. According to Maree (1995:3) this category of right can be found in the African Charter on Human Rights.

Depending on the circumstance, all three of the categories of rights may apply to senior education managers' work.

This research study is about the senior education managers' right to professional development. Knowledge, application and protection of these rights are needed for the professional growth and enhancement of senior educators' professional status. If educators/senior managers are involved in litigation as a result of ignorance of their rights and obligations, their professional image and status are severely tarnished.

What follows is a distinction between the senior education manager as an ordinary citizen and practitioner with rights.

## **2.5. THE SENIOR EDUCATION MANAGER'S DUTIES AND RIGHTS**

### **2.5.1 Ordinary citizen's rights**

Prinsloo and Beckmann (1988:208) refer to the right of citizenship as "... a political status within the sphere of the public law, indicating the totality of a person's rights and competencies." They further clarify that the teacher is a citizen of the RSA and that he /she has particular civil and political rights. These rights, they argue, should not be negated.

They also refer to the provision in the ordinances on the educator's civil and political rights, the scope of which, they argue, should be clearly defined in the interest of the child's education. There seems to be evidence that it would be required of educators to exercise extreme responsibility in the expression of their civil and political rights while engaged in the education of the pupil. The above observation is also true of the senior education managers who should also exercise their civil and political rights in a responsible manner.

In his examination of Makarov 's combined theory, Venter as quoted by Carpenter (1987:374), concludes that citizenship is a legal condition, that determines status, depending on its fulfilment of legal requirements laid down by a particular state. It gives rise to a legal relationship from which reciprocal rights and duties arise; and these rights and duties have a bearing on the fact that a legal bond exists between the state and the individual. This view seems to be in agreement with those expressed by Prinsloo and Beckmann (1988:208) as well as Wiechers as cited by Carpenter (1987:372). The latter holds that citizenship indicates the citizen's status on the aggregate of an individual's political and civil rights. Van der Vyver as cited by Carpenter (1987:94) discusses the main categories of rights, which are protected and guaranteed. These are referred to as substantive and procedural rights.

According to Van der Vyver as quoted by Carpenter (1987:372), substantive rights are protected in terms of the relevant sections in the Constitution. These were discussed earlier in paragraphs 2.4.1 and 2.4.2.

The Bill of Rights grants rights to everyone, including educators and senior education managers.

Rautenbach and Malherbe (1999:16) refer to the right to have one's dignity as a human being protected. Senior education managers have a claim right to their dignity as contemplated in Section 10 of the Constitution. The dignity of a person requires that he/she has to be respected.

Further to this, section 23 of the Constitution states that a person has a right to fair labour practices and the various rights of workers, employers' organizations (Rautenbach and Malherbe, 1997:17)

Section 34 of the Constitution provides that an individual has a claim/right to have access to the courts, or where appropriate, another independent tribunal and to have legal disputes settled in a fair and public trial.

These are but a few of the rights being protected.

Senior education managers, like ordinary citizens, have claims to these rights.

A senior education manager, whose economic rights are guaranteed, has a greater chance of successful professional development than the one whose economic rights are either unknown to him/her, or not respected at all.

On the other hand, **procedural rights** relate mainly to the administration of justice. They include a fair trial in an open court by impartial, independent and qualified judges, legal representation, legal aid, no detention without trial, no cruel and inhumane punishment and no retrospectivity of charges or punishment.

The senior education manager as an ordinary citizen has a right to the categories of rights described above. Any infringement of these rights by another person constitutes a serious violation of a most important human right, which may serve as an indication of undermining of the integrity of the senior education manager as a citizen of a country.

Squelch (1999:36) refers to the procedure followed in the suspension of educators. Senior education managers should know these procedures and apply them fairly and justly in the administration of justice. They should also see to it that the procedures are fairly applied to them where applicable.

It is a requirement in terms of the Labour Relations Act (66 of 1995), that before suspending an educator, the employer has a duty to notify the educator in writing and inform the educator of the employer's intention to suspend the educator from the duty and reasons for the suspension (Squelch, 1999:35). This would be in compliance with Section 33 of the Constitution.

In the case *Moletsane v Premier of the Free State and Another* 1996(2) SA 95 (OPD) cited by Squelch (1999:35), the School Board suspended an educator pending a departmental investigation into alleged misconduct. The letter by the Head of the Free State Department of Education, suspending the teacher, reads as follows:



“ It has been decided in terms of Section 14(2) of the Educator’s Employment Act 138 of 1994, that you be suspended with immediate effect, pending a departmental investigation into alleged misconduct on your part.”

A closer look at the letter reveals that the reasons for suspension were not specified. The educator contended that this notice was invalid as it lacked reasons to justify her suspension.

The Court held that sufficient reasons had been given. The Court found that, notwithstanding the provision of Section 34(c) of the Constitution according to which “reasons” for a decision to suspend an employee should be given, the department’s decision was legitimate.

The lesson learned from this case is that the nature (seriousness) of the allegation determines the decision to be considered by the Court.

The various sources reveal evidence of agreement in support of the notion that the senior education manager as an ordinary citizen has rights that must be protected. The above discussion reveals that the senior education manager as an ordinary citizen is a legal subject with legal capacity. Barnard *et al.* (1986:2) define a legal subject as “...any entity which is recognized as such by the law and to which the law attributes the particular competency to have rights, duties and capacities.” The person’s attributes to which the law attaches certain consequences are central to the person’s capacity to be the bearer of rights.

Barnard *et al.* (1986:332-34) mention three competencies conferred by law on a person as a legal subject, namely (1) legal capacity, which means capacity to have rights and duties; (2) a capacity to act, which means a capacity to participate in legal interaction or to perform valid juristic acts. Barnard *et al.* (1986:33) further argue that valid juristic acts can be brought about if the law attaches consequences to a person’s declaration of intention; and Malherbe (1999:16-19) have listed the 30 rights that are protected. Each right is protected in terms of an enabling provision of the Constitution.

Section 34 of the Bill of Rights provides that everyone has the right to have access to the courts, or, where appropriate, another independent and impartial tribunal, to have legal disputes settled in fair and public manner (Rautenbach and Malherbe, 1999:18). This suggests that the capacity to appear in court is protected by law. The Bill of Rights guarantees that there will be no arbitrary decisions or exploitation of the accused.

Central to the capacities that have been discussed above is the understanding that a legal subject has status. The latter will be defined and fully discussed in paragraph 3.2.

A natural person has fundamental human rights, which are protected by the Bill of Rights. Infringement of these rights bears the consequences of legal liability. It is important to be extremely careful in interacting with fellow men and to bear in mind that they have rights as well.

This section dealt with the senior education manager as an ordinary citizen with rights that are protected and upheld. It has been established that the law of the country protects the rights of citizens. Infringements thereof constitute a serious violation of man's most important legal possession, *viz.* his psychophysical integrity.

The senior education manager as an employee is required in terms of the LRA to render the services agreed to with his/her employer in terms of a contract or terms and conditions of employment in terms of the Personnel Administration Measures (PAM) of 1999 (Squelch, 1999:15). Details of these duties are discussed and reflected in paragraph 2.4 above. In return the employer is required to provide the necessary facilities, remunerate the employee and provide safe and healthy working conditions to his/her opportunities for professional development to equip himself/herself to perform his/her work better.

The paragraph that follows below discusses the senior manager as a practitioner with employment rights.

### **2.5.2 The senior education manager's employment rights.**

In section 2.5.1 emphasis was placed on the importance of recognizing the fact that the senior education manager, as an individual citizen, has legal rights which require protection. This section discusses the protection of his/her employment rights. It therefore deals with the instruments, which exist to promote the employment rights and interests of the senior education manager, mainly by eradicating unfair labour practices.

According to Squelch (1999:15) the duties of employees (senior education managers included) in terms of common law are the following:

- to render the services agreed to.
- to fulfill their tasks with reasonable competence and efficiency.
- to carry out lawful instructions of the employer; and
- to be respectful and obedient.

This means that the senior education manager has to know the conditions of his/her employment. According to Prinsloo and Beckmann (1989:21), a link exists between rights and duties. While the senior education manager has a right to give orders relative to duties assigned to sub-ordinates, the latter, in return, have an obligation to perform the assignment / duties in accordance with the expected level. The sub-ordinates have a right to expect fair treatment (Wringe 1985:27).

In writing about trade unions in education, Prinsloo and Beckmann (1988:214-215) affirm that the Labour Relations Act (Act 28 of 1956) governed collective bargaining in South Africa. It did not allow public servants (including teachers) to establish trade unions, which did not have the right to negotiate conditions of service. It reinforced the fact that the senior education manager had an unequal relationship with his/her employer. This was applicable to the period before 27 April 1994. Act 28 of 1956 was repealed and replaced by the new Labour Relations Act (Act 66 of 1995). With the introduction of the Education Labour Relations Act (Act 146 of 1993), the position in the education sector has changed dramatically. The introduction of this

Act constitutes the greatest advancement in education management regarding the promotion and the protection of employment rights and the interests of educators. This Act provides broad aims whereby it seeks to bring about the following:

- The regulation of certain aspects of labour relations in education, including collective bargaining.
- The establishment of an Education Labour Relations Council.
- The registration of certain organizations in the profession to the council.
- Provision of matters connected with these issues.

Act 146 of 1993 was also repealed and replaced by the new Labour Relations Act (Act 66 of 1995). This means that the provisions of Act 146 of 1993, as amended, are now contained in Act 66 of 1995. The ability of educators to engage in negotiations and collective bargaining through an established negotiation chamber presents favourable opportunities for professional growth and development.

It is important to note that the Education Labour Relations Act (Act 146 of 1993) not only deals with the provision of a mechanism for the promotion of professional growth of the senior manager only, it also highlights the fundamental rights the law protects. In the above-mentioned Act the following fundamental rights of employees (i.e. educators) were entrenched:

- a) The right to establish or, subject to the rules of the organization concerned, to join any employee organization of their own choice, or to refrain from establishing or joining any employee organization.
- b) The right to negotiate collectively with the employer on matters that may arise out of the normal working relationship between employer and employees in their capacity as employees.
- c) \*The right to conclude agreements with the employer.

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\* Through this study unless the context indicates otherwise, the term “teacher” includes the term “educator”. The term “senior educator manager” refers to the out-of-school educator in a senior position such as circuit manager, curriculum specialist, deputy director or higher ranks.

- d) The right to defend the interests of the employee by taking appropriate lawful action.
- e) The right to have access to dispute settlement procedures with regard to dispute of rights as well as disputes of interest.
- f) The right to be protected against unfair labour practices.

The above exposition is congruent with the 1993 Constitution (Act 200 of 1993) with regard to the protection of the employee's and the employer's rights. Section 27 of Act 200 of 1993 provides for the protection of the employee's rights as follows:

- 1) Every person shall have a right to fair labour practices.
- 2) Workers shall have the right to form and join trade unions, and employers shall have the right to form and join an employer's organization.
- 3) Workers and employers shall have the right to organize and bargain collectively.
- 4) Workers and - shall have the right to strike for the purpose of collective bargaining.
- 5) Employers' recourse to lock-out for the purpose of collective bargaining shall not be impaired, subject to Section 33(1)

It is important to state that the senior education manager is entitled to professional development, which is a prerequisite for effective professional practice. It is important to note that, although the LRA (Act 66 of 1995) repealed the ELRA, resolutions concluded under the ELRA largely remain in force as if the ELRA were not repealed, subject to collective bargaining that may alter them (Item 12(2) of part C of Schedule 7 of the Labour Relations Act of 1995)

This discussion indicates that there is a need to recognize the relationship between employment and the fundamental rights of employees. Prinsloo (1993:7-8) rightly observes that “Die fundameteelste van menseregte is die reg van die mens om fisiek en geestelik te bestaan ... die sogenaamde reg op bestaan ... Die beskerming van die werker bly dus ‘n vereiste en vind nog steeds langs twee weë plaas, naamlik, deur die wetgewing van staatweë, en deur die vorming van werknemersorganisasies.” Job satisfaction rests on the premise held by Prinsloo that the rights of employees and those of the employer are protected by law.

The desirability of the State ‘s responsibility regarding the relationship between the employer and the employee emanates from the premises “... dat daar histories ‘n botsing van belange bestaan tussen die belange van die werker en werknemer” (Prinsloo, 1993:8-9). This means that, historically, conflict existed between the interest of the employer and that of the employee. Prinsloo argues that neither the employer nor the employee is in a position to resolve the conflict. He cites Kastner’s observation who held that, “In order to create an equilibrium of interests to promote sound labour relations and create dispute settlement mechanisms and taking national into account, labour policy was formulated and embodied in the various acts, regulations and other policy directives” (Prinsloo, 1993:9).

This observation clarifies and accentuates the desirability of the establishment of public policy governing the interests of the employer and the employee. Kahn-Fêud as quoted by Prinsloo (1993:9) rightly states that the aim of labour law is to regulate, to support and to restrain the power of management and the power of organized labour. It is also essential to agree with Prinsloo (1993:9) that the democratic labour rights of an employee flow from the premise that the employee has the right to work, the right to associate, the right to withhold labour, the right to protection and the right to development. These rights are also protected in Section 22 and 23 of the Constitution of 1996.

## **2.6 CONCLUSION**

This chapter deals with the function of the law of education and the senior education manager’s right and duties. It highlights the importance of law as regulating the conduct of persons, rights

and obligations of interested parties, thus bringing about order and harmony in the interaction of people in society.

The critical issue in this chapter is that senior education managers should be conversant with the rights so that they can apply this knowledge in relation to the execution of their own duties and responsibilities vis-à-vis others.

The law of education ensures the protection of the rights of practitioners in relation to their roles, duties and obligations. The enforcement of education law is by means of administrative and juricial control.

It does not only recognize the role of education administration (e.g. school governing bodies, educators, etc) in the enforcement of control, but also ensures that this is done in compliance with the requirements for lawful administrative acts. This chapter, therefore, forms part of the foundation and framework for this research project.

The next chapter deals with the professional development of the senior education manager.