

CHAPTER 4

THE SENIOR EDUCATION MANAGER'S LEGAL STATUS

4.1 INTRODUCTION

In this chapter the importance of the status of the educator in the realization of educational aims and objectives is discussed. The factors that enhance this status as well as the need to protect the integrity of the senior education manager will also be explored.

The position of the educator in the development of equality and quality in education is identified by De Groof (in De Groof, 1995:7) as crucial. This means that all debates and contributions in education should take into consideration the abilities and the role of the educator and senior education manager.

De Groof (in De Groof, 1995:7) further refers to the guiding principles of the recommendations made by the joint Committee of the International Labour Organization (ILO-UNESCO), namely that advancement in education "... depends largely on the qualifications and ability of the teaching staff in general and on the human, pedagogical and technical qualities of the individual teachers". Although the above observation refers to the teacher specifically, it also applies to the senior education managers as well. At the center of all educational development the senior education manager plays an important role of ensuring that educators carry out their duties professionally. For these objectives to be realized there is a need for the senior education manager to have certain qualities and qualifications.

The recommendation further states: "The status of teachers should be commensurate with the needs of education as assessed in the light of educational aims and objectives; it should be recognized that the proper status of teachers and the due public regard for the profession are of major importance for the full realization of these aims and objectives: (De Groof, 1995:7)

The above is also true of senior education managers. Senior education managers have a duty to promote effective education by guiding educators and encouraging them to perform their duties professionally. They have to monitor the manner in which education is provided as custodians of quality assurance in education and deserve to be accorded proper status and public regard.

There is a relationship between the quality of the educator, his/her ability to make contributions and his/her status.

The professional recognition of a career is determined by its status in the eyes of the public in general and of its members in particular. Where the service rendered leaves much to be desired, the career image tends to drop. The subsequent effect is that the public tends to attach a low status to the profession concerned. Where the profession appears to render quality service, its image becomes favourably high, resulting in high professional status.

In this chapter the teaching profession is described as a career that allows self-determination and self-development as well as mechanisms for self-control. It is management quality that plays a role in the improvement of the quality of education. In thus renders a profound service to the community. The education profession possesses legal status, which entitles it to defend and protect the rights of its members and to promote its professional image and enhance its professional integrity. Like any other career, the education profession has certain obligations to fulfill and duties to perform. Its major obligation is that of teaching the child and educating him/her in *loco parentis*.

According to Oosthuizen (in Oosthuizen *et al.*, 1992:45) a teacher derives his/her in *loco parentis* position from the authority delegated to him/her among others by parents as well as from the primary authority. Educating the child is one of the community services that guarantees community development and self-sufficiency. For the education profession to render credible and quality service, it should encourage and promote an on-going process of professional development amongst its members. Senior education managers should provide support and encouragement to educators to attend management development courses. In addition, senior education managers also need on-going professional development courses.

4.2 THE SENIOR EDUCATION MANAGER'S LEGAL STATUS

4.2.1 Meaning of the word status

Before a full exposition of the senior education managers' legal *status* is given, it is desirable to clarify the views of scholars about the concept *status* and its sources first. Scholars such as Luthans (1995), Rao (1985), Neethling *et al.*, (1996) are in agreement on the meaning of the concept status. Luthans (1995:148) defines status as the relative ranking that a person holds in a group, organization or society. He further contends that there is a common misconception amongst people that status means "high status". He argues that everyone has status, which may be high or low, depending on how the relative positions are ranked.

Status determination (ranking higher/lower) depends upon the prevailing cultural values and social roles of given cultures. Some of the cultural values, which have an impact on status, include personal qualities of people, e.g. in African and Indian communities the older people are accorded higher status. Luthans argues that in other cultures, once a person reaches a certain age, his/her status decreases.

In the professional world, achievements like academic qualifications and attaining promotional ranks are regarded as major sources of status more than for adequately qualified incumbents within career situations, e.g. universities, government departments, etc. in state departments, parastatals or the private sector chief executive (CEO), a head of department (HOD) or a director-general (DG) is accorded the respect or status commensurate with his/her position. Such recognition is even enhanced by the manner in which a respective CEO/DG/HOD performs his/her duties. An ill-disciplined CEO, who does not carry out his/her work professionally and diligently, may not be accorded the respect normally given to exemplary officers. He/she will be denigrated to the detriment of his/her status.

Luthans (1995:148) states that status is highly volatile and changes with times and circumstances. This dynamic nature of status suggests that different situations/circumstances/cultural settings are responsible for the manner in which people are ranked.

It may be stated that circumstances such as transitional periods in given political climates also exercise influence on the status of personnel. Some senior education managers who were accorded higher status by virtue of positions they held, as well as duties and responsibilities they performed prior to the new dispensation in South Africa, experienced a change in status with the restructuring process resulting in some posts being reclassified and some positions being abolished or phased out. Such managers either found themselves occupying positions lower than they had previously occupied, e.g. in a given situation a head of a division would hold the rank of a deputy director, whereas in another he/she would hold the rank of an assistant director.

Rao (1985:233) defines status as a position occupied by an individual family or kinship grouping in a society relative to others. It determines the nature and extent of individuals' relationships with other persons. Rao (1985:23) further argues that it has a hierarchical distinction in which a few persons occupy the highest positions. It thus connotes evaluation. This signifies that concepts like honour and esteem are synonymous. In this sense, status is perceived as gratification and its loss signifies a deprivation.

Neethling *et al.*, (1996:27) provide a classification of personality rights. They state that in factual reality, personality interests exist independently of any legal recognition, and they thus enjoy legal protection. They refer to Joubert's view that there are two sides to personality, namely, the physical and the spiritual-moral value of man.

The right to a good name (reputation) falls under spiritual moral values. Neethling *et al.*, (1996:31) observe that a good name deserves protection as an independent aspect of personality. They argue that any action which tarnishes, lowers a person's reputation in the community. The lowering of the reputation of a person could be seen as defamation of character.

Infringement of personality rights constitutes the infringement of the dignity of a person and, as such, affects his/her status. In order to establish liability for the infringement of a

personality right, there must be an element of wrongful intention to harm the individual's dignity or standing.

Neethling *et al.*, (1995:57) refer to the fact that there is a relationship between human consciousness and personality infringement. They argue that personality infringement constitutes damage in the form of non-patrimonial loss.

Being conscious of one's intention to harm or tarnish the good name/reputation of one's fellow man constitutes a justification for liability for one's actions. Neethling *et al.*, (1996:65) argue that the intentional infringement of personality rights is the basis of the *action iniuria* through which the plaintiff recovers damages in the form of satisfaction. This is justifiable in view of the fact that a person's status is at stake here.

Van Wyk (1991:81) observes that status refers to persons' legal position in the eyes of the law. This means that a person as a legal subject has certain competencies in terms of which he is capable of obtaining rights, fulfilling certain obligations and executing juridical acts. This observation is in agreement with that of Barnard, Cronje and Oliver (1986:32). The latter state that the word *status* is derived from the Latin verb *stare* which means to stand.

According to Zelditch as cited by Rao (1985:233), when status is threatened, its loss is resisted. It should be noted that Rao's approach to *status* has much in common with the presentation by Datta (1987:115). These authors present *status* as finding its full meaning within the context of a social system. This assertion can be supported by the researcher's experiences of what prevailed at some colleges such as Mgwenya College of Education of Mpumalanga, of which this researcher was a rector in the 1980s.

The policy of the then Department of Education and Training (Act 90 of 1979) made provision for a one year special teacher training course as a contingency measure to supply teachers, to address the severe shortage of qualified educators especially in the rural areas.

The introduction of a one-year Special Primary Teachers' Course (S.P.T.C.) was seen by the profession and other concerned stakeholders as what Sutherland (in Department of Education Management, 2000:99) calls an unprincipled and *ad hoc* response to teacher shortages. This feeling was based on the observation that such teachers were seen as not only under qualified for their job, but also that the quality of such teachers was far below the minimum expectation.

Dove (1986:97) distinguishes between personal and occupational status. Personal status refers to the regard, appreciation or esteem which teachers as individuals earn from those who know them, i.e. pupils, parents and the community (Dove, 1986:98). Dove further asserts that status depends on the unique relationship that a teacher as an individual establishes with others. The level of public esteem, which an individual commands or attracts, has an effect on the self-esteem and morale of individuals. *Status* is earned with regard to who one is and how one conducts oneself across the range of human relationships. This means that for individuals (senior managers included) to earn status, they have to exemplify good behaviour, professional and ethical practices.

De Villiers and Wethmar (2000:37-38) refer to the writing of Van Loggerenberg regarding an educator's professional status. They observe that "... professional status cannot be demanded. The educator can only acquire status through diligent execution of his tasks and through careful adherence to the norms and standards of the [SACE] Code of Conduct of education." Diligent execution of duties by an educator is possible if an educator continuously participates in in-service training courses to acquire new knowledge and skills for his/her tasks. Participation in courses exposes the senior education managers to best practices in management, which is necessary for ensuring quality education.

With regard to the distinction between personal and occupational status, Dove (1986:97) argues that it is difficult to judge a person purely as a person distinct from what he/she does for a living. The two dimensions of status are thus interlinked. The above observation suggests that members of particular occupations command status conferred on their respective occupations. This means that any individual who previously commanded or enjoyed status of the occupation with which he/she was associated, loses this as soon as his/her association with

the said occupation ceases. This is true of senior education managers when they go on retirement.

Dove (1986:108) relates *professional status* to certain employment requirements rights and privileges. To this effect he observes that low professional status has to do with low salaries, poor working conditions, poor career prospects, low levels of qualifications and alack of professional training for many teachers. The above-mentioned observation also suggests that the opposite is true. That is, high professional status is determined by the respective factors alluded to above.

By quality Dove (1986:108) means improvement in the way teachers teach and the production of better educated pupils. Dove (1986:108) asserts that full professionalisation is a goal, which governments and teachers themselves should jointly pursue. In this sense it may be justifiable to regard professionalisation as a process.

The above discussion reveals that a number of factors determine the status of individuals and bodies or organizations. This is also true of the teaching profession.

Doves' view as expressed above suggests that the employer (Educatin Department) and employees (Educators) have certain roles to play in the professionalisation of the teaching profession. While the employer is required to ensure that the welfare of educators is guaranteed through the improvement of working conditions, remuneration, service benefits, conditions of service and promotion prospects, senior education managers on the other hand, should constantly expose themselves to professional development courses which will enable them to improve their management competence which will result in the improvement of quality education and service delivery.

Doves' study (1986:99) emphasizes the following factors, which enhance the occupational status of teaching, viz. salary, working conditions, career opportunities and service benefits. This observation is also espoused by Datta (1987:115). The latter states that ... "every society,

occupational categories and groups are accorded different places or statuses in the social hierarchy”.

Improvement of the competence of senior education managers increases the possibility of effecting quality education and enhancing the status of the education profession. The improvement of the qualifications of educators and the impact thereof on the professionalisation of the profession is further discussed in relation to the contribution of Sutherland (Department of Education Management, 2000:98), which will be highlighted in the next paragraph.

Sutherland (in Department of Education Management, 2000:98) refers to conditions under which the General Teaching council (GTC) was established in Scotland. He observes that the Council was set up following a period of considerable disquiet and unrest in the Scottish teaching profession which arose from a number of factors, including the following:

- A chronic and worsening shortage of teachers.
- Concern about standards of entry to the profession.
- Dissatisfaction with the inconsistency of standard of teaching.
- Low morale.
- Salaries which are not comparable with those of other professions.
- A perception that the profession is consistently undervalued and lacking in status and prestige.

A feeling that scant regard was paid to the views of teachers who were given little opportunity to control or even influence their own professional affairs.

The GTC was established within the context of the profession feeling powerless and undervalued. Some of the major concerns for improvements highlighted by Sutherland (in Department of Education Management, 2000:102) included the need to:

- Improve the professional morale and standard of educators.

- Maintain professional standards by ensuring removal of incompetent educators and unqualified persons from schools, as well as an application of a national system of probation and uniform standards across the country. The control of these standards is to be in the hands of the professionals.
- Regulate entry to the profession and train educators professionally, including rigorous student selection, making course content more relevant, better organized and more structured school placement.
- Have a professional voice by providing educator representation on a wide range of subjects, thereby advising government on professional issues.

Senior education managers believe that they are required to maintain professional standards. They, too, have a right to have a professional voice to advise government on professional issues. From the researchers' management experience, senior education managers hold a view that they have a duty to regulate entry to management position in order to prevent appointment of persons who are not yet ready/ill-prepared for management and responsibility. This researcher believes that, if senior education managers have a professional voice to advise government and other stakeholders, they can make a contribution in promoting the provision and maintenance of quality education.

Sutherland (in Department of Education Management, 2000:105) further clarifies that this professional council is not a trade union. The latter is seen to be concerned with conditions of service, salaries and other contractual matters while the professional council (GTC) is concerned with professional issues such as qualification, training of new teachers and the management of a probation service. It is in this light that Sutherland (in Department of Education Management, 2000:102) argues that there is evidence to suggest that the status of the Scottish teacher is higher than that of their peers in other countries, including England and Wales. Other councils were established following the successes of the Scottish model.

In South Africa, the entrance requirements to training courses were raised. In colleges previously controlled by the Department of Education and Training (DET) entry requirements to a two-year Primary Teachers' Course (SPTC) was introduced for unqualified teachers who had at least three years of teaching experience. These qualifications were seen to be inadequate to ensure quality education.

In the interim, colleges which were then under the control of the Department of Education (House of Assembly and House of Delegates respectively) offered four year Diplomas in Education. Pressure from many stakeholders in education such as educators, politicians, business, researchers and many others led to the review and upgrading of these qualifications.

The PTC and JSTC were replaced by three-year qualifications, viz. the Primary Teachers' Diploma (PTD) and Secondary Teachers Diploma (STD) respectively. The minimum entrance qualification for these diplomas in a Senior Certificate. At the end of the three-year post-matric course an educator would be placed in category C (M+3). This also meant improvement in terms of salary scales.

Steyn (1991:125-135) discusses the role of the organized teaching profession regarding the process of further professionalisation of education. He highlights the assumptions held regarding teaching and the definition, which clarifies some essential features of a profession. He furthermore discusses the core implications regarding the recognition of a professional status ("Professionalisering van onderwys"). The tendency is to assume that education does not enjoy the status of a profession. He further refers to Mayhew's definition of a profession, which sheds light on the concept. According to Mayhew as quoted by Steyn (1991:125) "... a profession consists of individuals with specialized knowledge obtained through intensive education which allows them to provide esoteric services in a near monopoly fashion to a public which recognizes and accepts the utility of the monopoly".

From the definition, the issue of acceptance and recognition of the utility of the service provided by the educator seems to be one of the important requirements for granting the group

a monopoly of practice. It also refers to the possession of specialized knowledge, which has been obtained through intensive education.

Steyn argues that education (teaching) does qualify to be called a profession as it possesses the characteristics of a profession. The above arguments suggest that a monopoly in the practice of a profession could be granted to a group of professionals, if there is a demonstrable reason that such a service is in the best interest of the public. Steyn (1991:125) further refers to the view of Bull that "... die gebruiker (kliënt) deur die wetlike en ander maatreëls rakend die verskaffing van die diens beskerm moet word". This means that client's protection should receive top priority. It is in this light that the community awards certain competencies on the group to claim a monopoly over the service.

The following are some of the conditions suggested by Steyn (1991:126) which a practice should comply with in order to be accepted as a profession:

Steyn argues that, contrary to the popular notion that status is almost exclusively associated with financial aspects and autonomy in decision-making, it appears that the essence of professionalism resides in the delivery of essential service, recognition by the community that the body of professionals (educators) is indeed properly equipped to provide and have control over such essential services.

The above suggests that the essential nature of the service provided by senior education managers, recognition by the community that the practitioners have the expertise (knowledge) to deliver the service, and that the practitioners have the capacity (contemplated in the SACE code of conduct) to manage the delivery of the service, are the key requirements for acceptance and giving of due regard to the characteristics of a profession. In paragraph 3.2 the conditions under which education may enjoy recognition as a profession were discussed.

These include having specialised knowledge, professional autonomy, commensurate remuneration, and others which are discussed below.

What has been argued is emphasized by an international view contained in the recommendations of the ILO-UNESCO concerning the status of the teacher (De Groot in De Groof, 1995:7), "... the status of teachers should be commensurate with the needs of education as assessed in the light of educational aims and objectives. It should be recognized that the proper status of teachers and due public regard for the profession of teaching, are of major importance for the full realization of these aims and objectives."

De Groof (1995:8) further argues that the legal position of the teaching profession is a precondition for a properly functioning education system. The above observation emphasizes that there is a relationship between the material benefits which senior education managers derive from their occupation and the subsequent status accorded to them by the public in recognition of their noble service. It is evident that once the public has accepted the value of a particular occupation, the social standing of the respective occupation is also enhanced. This further suggests that, if an occupation projects a very low service image, the corresponding status will be negatively affected and will be low. A close study of Verbruggen and Fiers's article (in De Groot, 1995:45-55) suggests that the legal status of educators in Europe, if not throughout the world, is determined by, *inter alia.*, a number of factors. Some of the factors will be discussed below.

- **The level of education at which the educator exercises his/her profession**

Educators who are employed at institutions of higher education like technikons, universities and colleges enjoy higher *status* than those in secondary, primary and nursery schools. The educators at these institutions provide education at a high level of sophistication based on researched knowledge. They possess abilities which enable them to provide thinking and reasoning at high level.

Senior education managers with higher qualifications such as degrees and postgraduate qualifications enjoy a higher status than those with certificates or undergraduate qualifications.

- **Employment contracts**

Public servants enjoy a higher status in communities than other workers. This is so for they provide essential services to these communities.

- **Employers (state, local community)**

State employed workers enjoy a higher status than community employees. They enjoy service benefits which community workers do not have.

- **Career opportunities**

Employment with high salaries, promotions and permanent employment enjoys relatively higher status than temporary workers whose employment does not guarantee promotion or higher salaries

- **System of recruitment**

Professionally recruited employees enjoy relatively higher status than those who are not recruited by means of personnel processes which involves e.g. advertisements, interviews by panels and clarity of criteria that could be regarded as transparent and professional. Glendenning and Whelan (in De Groof, 1995:211) state that the status of Irish teachers, senior education managers, included, has traditionally been high and that the profession attracts a high caliber teaching force. It is also clear that educators enjoy national recognition as part of the public service, though they are appointed in terms of different conditions of service. They, however, enjoy the protection of modern employment legislation.

Squelch (1999:37) observes that educators in South Africa are protected against arbitrary decisions by education officials and administrators. The Labour Relations Act (Act 66 of 1995) protects educators against unfair dismissals, discrimination and other unfair labour practices. This Act promotes fairness in the application of labour principles regarding

dismissals. It is argued that dismissal is fair, if there is fair reason for dismissals. It is argued that dismissal is fair, if there is fair reason for dismissal and that such an act is exercised in accordance with fair procedures (Squelch 1999:37). The status of educators may be enhanced if labour relations principles are not applied in cases of misconduct as it would amount to unfair labour practices or discrimination.

Thembele (1980:6) aptly captures the perception held by the public regarding the Black teachers in relation to the service they render. He observes that "... teachers are lamentably looked down upon, yet teaching is the mother of all professions." This suggests that the status of the senior education manager is bound to be low if the service he/she renders does not meet public expectations.

If there is demonstrable evidence that senior education managers lack commitment to good quality education and self-development; if in their professional practice they are perceived to pay more attention to personal gains at the expense of providing services for which they are employed, a negative professional image is subsequently projected. The above does not imply that a senior education manager is not entitled to individual and professional development and integrity.

Beckmann *et al.*, (2000:60) observe that the Bill of rights guarantees a number of rights affecting the labour relations of employees, employers and their representative bodies as contained in section 23 of the Constitution (Act 108 of 1996). Beckmann *et al.*, (2000:60) further state that employers and employees enjoy a mutual right to fair labour practices, whereas their representative bodies have the right:

- to determine their own administration, programmes and activities;
- to organize;
- to form and join a freedom;
- to engage in collective bargaining.

The claim right to the above is essential for enhancing the professional status of the senior education manager.

Employees have a right to form and join trade unions, to participate in union activities and programmes and to strike. On the other hand employers have the right to form and join employers' organizations.

The success of senior education managers in the exercise of their rights enhances their professional status.

Regarding human rights and education human resources, Beckmann *et al.*, (2000:50) observe that it is important for a Human resources manager to bear in mind that the challenge in labour relation lies in striking and maintaining an appropriate balance between the rights and freedom of the employees and the rights and interest of employers as well as of other interested parties. In this way the Labour Relation Act finds appropriate regulatory essence. Thembela as quoted in Vanguard (1980:6) further argues that "... if all teachers have a good background like doctors and lawyers, if all teachers possess professional competence, if all teachers work under comfortable conditions and receive proper salary, their status as professional people would improve." The assertion above is also true of senior education managers.

Regarding the factors influencing a person's juridical status, Barnard *et al.*, (1986:33) and Van Wyk (1991:81) concur in their reference to age, sex, race, matrimonial state, mental healthy and legitimacy as some of the factors determining status of a person. This set of factors applies to the personal/juridical status of individuals. This means that the distinction between personal, occupation and professional status made by Dove (1986:99) is based on the factors which are identifiable as discussed above.

Hosten *et al.*, (1983:284) concur with Barnard *et al.*, (1986:35) on the observation that only the supreme court can hear cases arising from interference with a person's status. Interference of this nature amount to tempering with a person's social standing.

Van Wyk (1991:81) observes that there is a distinction between formal and material status. Formal status is said to be determined by training, skill and appointment to a particular teaching post. Material status on the other hand is related to the fact that the senior education manager acts on behalf of the parents.

There is agreement between this observation and that made by Rao (1985:233). The latter speaks of ascribed and achieved status. *Ascribed status* is said to be acquired at birth or conferred automatically by hereditary succession. This is similar to Van Wyk's *material status*. Achieved status is synonymous with Van Wyk's *formal status*. It is earned on the basis of an individual performance rather than on factors inherent or present at birth. From the above it should be clear that material or ascribed status confers authority on the senior education manager to fulfil his particular duties. It is further asserted that this authority manifests its self in relation to the education authority, school, parents, organized teaching profession, society, the teacher's individualized relationships with the child, the principal, his colleagues and individual parents. Van Wyk (1991:81-82) further discusses the limit in problems of the teachers' status. With regard to the limit of authority, he argues that:

- authority is limited to the special tasks and of other parties, e.g. teachers, parents and colleagues;
- it is also limited to the special tasks and responsibilities the teacher has to carry out.

Senior education managers are accorded higher status than those with lower ranks. Juridical authority consists of rights and powers. Senior education managers have juridical authority to perform and account for their duties and responsibilities.

With regard to problems associated with authority, Van Wyk (1991:81-2) mentions that:

- a person may exceed the limit of his authority. His action will thus be regarded as *ultra vires*, which means that the action is outside the authority conferred on him. It is also required that delegated authority should be granted in a clear and unambiguous manner. It is essential to recognize that possession of authority imposes certain responsibilities. The

senior education managers' rights to expect obedience from the educator imposes a duty on the latter to obey. The position of authority of a senior manager in terms of an employment contract confers status on the educator. Subordinates are obliged to obey lawful order from senior managers. Bray (1988:27) affirms that rights and duties develop from a position of status and are embodied in legislation supplemented by common and case law. It is argued that by virtue of his/her status the educator may claim damages for unlawful dismissal or when his/her service benefits are withheld. He/she may also claim restitution of his/her formal status.

Beckmann *et al.*, (2000:19) observe that the general public service and public service education sectors have their own legislation regulating resignation, retirement and dismissal. With the coming into operation of the Labour Relations Act (Act 66 of 1996), its provisions became generally applicable to the entire HR field. Beckmann *et al.*, (2000:19) further state that the LRA provides a mechanism for protecting employees from unfair dismissal. Beckmann *et al.*, (2000:18) refer to Section 185 of the LRA observing that it established the right of employees not to be unfairly dismissed. Unfair dismissal may have discriminatory connotations. This means that any act of dismissal that is not based on the employee's conduct, capacity and the employer's operational requirements could constitute unfair dismissal. This suggests that, for dismissal to be regarded as fair, it must be substantively and procedurally accounted for. That is to say that the employer must prove that there is valid and fair reason and that fair procedures are followed in effecting a dismissal. It is obligatory for senior education managers to know and apply this legislation correctly in order to achieve professionalism in education management.

Because of the belief of society about the educator as a role model, educators are accorded high status. However, should they be seen or perceived to be non-exemplary to the public, the trust and confidence parents have in them, suddenly collapses. This is also true of senior education managers when dealing with their management duties and responsibilities. A senior manager who is perceived to lack professionalism in his/her performance of duties immediately loses credibility, e.g. failing to meet deadlines, lack of punctuality for reporting on duty, abusing the authority, disrespect of authority and colleagues, etc.

The above discussion has touched on various interpretation of the word *status*. It has been established that most of the authors refer to the Latin origin of this word which has been defined earlier as meaning the legal position or standing of an individual to which the law attaches consequences. The above information will facilitate an understanding of this concept and its application to the right professional development and integrity of senior education managers. If senior managers give effective guidance and leadership to educators, they earn respect which enhances their professional status.

It is now necessary to return to a brief discussion of the sources of status.

4.2.2 Sources of Status

The preceding discussion in paragraph 4.2.1 has referred to formal achieved *status*, Reference has also been made to Dove's classification (1986:97) of *status* in personal, occupational and professional categories. Central to the distinction that is made regarding the classification of *status* in the above categories is the notion of the sources of *status*.

The constitution of a country is the primary source of a person's status. It defines an individual's position or standing in society. This definition of the individual's relationship with others within the community or society is central to the definition of the person's status. Various authors such as Van Wyk (1991:81), and Van der Westhuizen (1992:75) refer to the source of education law as statutory, common and case law. These sources of education law confer particular authority, powers and status on legal subjects in their relationship with one another and with various legal subjects. The provisions of Sections 10 and 14 of the Constitution regarding an individual's right to dignity and privacy respectively, touch on issues of the individual's status which must be protected, the infringement of which is contestable in court. The constitutional provisions regarding the protection of personality rights are of critical importance for our understanding of the sources of status.

Instances which may serve as sources of status include the following:

- **A person's constitutional position before the law within a social system**

This means that the constitution or legislation or custom confers certain competencies in terms of which a person is capable of obtaining rights, fulfilling certain obligations and executing judicial acts (Van Wyk, 1991:81; Barnard *et al.*, (1986:32), e.g. the President and the Public Protector.

- **Profession/occupation**

This may include positions such as managing director, principal, teacher, medical doctor or policeman (Dove, 1986:97; De Villiers & Wethmar, 2000:37-38) and senior education manager.

- **Common law**

A senior education manager in a fiduciary position outside the school situation (La Forest, 1997) is held in high esteem. If he/she is seen/perceived to act or performs his/her duty professionally.

- **Custom/tradition**

Cultural values play an important role here. In the African, Indian and Afrikaans communities, parents or older people enjoy high respect and command higher status than young people. Reference to Luthans's view (1995:148) on this issue has been made in paragraph 4.2.1. In traditional/rural communities traditional leaders (chiefs) have higher *status* than ordinary civilians in their respective traditional communities.

This suggests that older or experienced senior education managers may enjoy higher status than young inexperienced ones in these communities.

- **Qualifications and institutions**

Highly qualified persons enjoy *status* than inadequately qualified persons do. University staff command a higher *status* than staff of primary and nursery schools. This is also true of senior education managers who are in a fiduciary position outside a situation. Reference to Luthan's view (1995:148) on this subject has been made in paragraph 4.2.1. Senior education managers with good qualifications have better chances of enjoying high *status*.

Status, like power and authority, therefore emerges from various sources ranging from constitutional provisions to personal/charismatic endowments. Loss of status is a loss of a valuable intangible asset which is difficult to regain. The power and authority possessed and exercised by legal subjects determine the nature and extent of the status of the respective individuals. This point was discussed in greater detail in paragraph 4.2.1.

Status, therefore, also originates from the different kinds/sources of law which define the duties, responsibilities, and obligations, rights and authorities of each legal subject viz. statutes (legislation), common law and case law.

4.2.3 Distinction between authority and power

These two concepts are also closely related to status. A person who has power and authority commands considerable status. Anderson and Grinberg (1998:333-335) refer to the importance of Foucault's view of power. Foucault proposes a microphysics of power that disciplines the body, mind and soul. He observes that power is embedded in social relations. It manifests itself through self-discipline. Through disciplinary practices, learners in a given classroom may be kept working independently in the absence of an authority figure. Power is exercised through a process of socialization or disciplinary practices.

Luthans (1995:321) refers to the views of various authors about power and authority. Reference is made to Max Weber who defines power as the probability that one actor within a

social relationship will be in a position to carry out his will despite resistance. The ability to influence an individual or group to do things suggests the existence of power and ability to manipulate or change others. Power does not always need to be legitimate. Authority, on the other, is the right to manipulate or change others.

From the above-mentioned sources of status an individual derives his/her power and authority. He/she therefore derives certain competencies and obligations to act and to be held liable and accountable. Van der Westhuizen *et al.*, (1992:75) as cited by Theron (1989:75) discuss power and authority as determinants of the *status* of the educator. They argue that at face value the two concepts appear to have identical meanings, yet it is actually not the case. A distinction can be made between the two.

Van der Westhuizen *et al.*, (1992:75) refer to Stone's definition of power as a person's capacity to influence other people's behaviour and attitudes. He argues that power is attached to a person other than his/her position. This suggests that a person's ability to relate to others in a manner that will positively or negatively influence their thinking, behaviour or response reflects the power which that person can command. Senior managers who are capable or influencing others positively have higher status. Authority is defined as the right of a person to take certain decisions, to give instructions and to act in a particular way; such a right has a juridical basis attached to a particular position or post other than a person him/herself. (Van der Westhuizen *et al.*, (1990:76). The view is also espoused by Robbins (1980:240). The distinction between power and authority lies in the fact that power refers to the influence a person has on others. Authority on the other hand, refers to the right or mandate a person has to do certain things. This means that a senior education manager has to have the right to act in accordance with the mandate given to him in terms of delegated authority.

4.2.4 The power base of the senior education manager

According to Luthans (1995:321) authority is the source of power of managers. As a distinction between power and authority has been made, a more detailed discussion of these

concepts will follow. Van der Westhuizen *et al.*, (1990:76) refer to the view of Robbins and Stoner on the power basis in an organization as follows:

- **Coercive power**

This refers to the ability to influence the behaviour, attitude, or thinking of others through the use of coercion. This, for example, may take the form of physical force, denigration of others or the withdrawal of certain privileges (Van der Westhuizen *et al.*, 1990:76).

Van der Westhuizen *et al.*, (1990:76) also refer to Froyen's view that it may lead to negative results such as vandalism, dishonesty, retardation, restless and revenge amongst pupils. This may also lead to pupils avoiding teachers to the extent that relations between teachers and pupils may deteriorate. Exercising coercive power may have negative effects in the case of senior education managers and educators in management.

Senior education managers are the bearers of authority in terms of delegation. They have the ability to exercise the delegated power. This ability/power is based on the sources of power. For this power base to bring about a desired effect, the principle is that of instilling fear in the subordinates instead of love and a sympathetic attitude towards them. The ability to inflict punishment or adverse consequences on another person characterizes this type of power (Luthans, 1995:322).

- **Reference power**

This refers to the ability to influence the behaviour, attitude and thinking of others on the basis of the respect one commands from these colleagues, the admiration and disposition towards influencing those who have power (Van der Westhuizen *et al.*, 1990:77). Central to this power base is the inclination of subordinates or pupils to identify with a person who reflects a humane and positive attitude. According to Robbins as cited by Van der Westhuizen *et al.*, (1990:77), this power base has a positive effect in that individuals who admire a person on the ground of the good qualities he/she shows, tend to aspire to be like

him/her. It is for this reason that senior education managers are required at all times to reflect professional and exemplary behaviour towards parents and pupils. Senior education managers who project a positive image are emulated by educators who serve under them. This means that the behaviour of educators should be compatible with that of an exemplary senior education manager (Shrigley, 1985:66). The only observable danger within this power base is the possibility that senior education managers may be inclined to gain cheap popularity at the expense of professionalism. This may take the form of overlooking the misconduct of educators (Shrigley, 1985:57).

Senior education managers with reference power must be able to impress subordinates so that the latter may aspire to be identified with them (Luthans, 1995:324). Role models play an important part with regard to wielding referent power in organizations.

- **Reward power**

Van der Westhuizen *et al.*, (1990:76) define this as the capacity of a person to influence the behaviour, attitude and the decisions of others. Reward is one of the more positive forms of educational motivation. In its simplest form it may be an expression of appreciation and approval of tasks accomplished well.

The recognition of, and praise for assignments well done has positive effects in confidence building amongst the learners and subordinates in a work situation. The status of an authority figure who has the ability to influence others through positive rewards is likely to be healthier than that of a person who relies on negative extrinsic motivation. It is important to stress that any form of reward in an effort to motivate learners or workers should be genuine and should be based on the ground of merits.

Luthans (1995:322) advises that the recipient of the reward holds the key. This means that senior managers should be certain that what they give as a reward is acknowledged as such by the recipient.

- **Expertise power**

This refers to the ability of a person to influence the behaviour, attitudes and thinking of others as a result of his knowledge, skills and expertise in a specific fields. Van der Westhuizen *et al.*, (1990:77) assert that “hierdie kundigheid kan gegrond wees op ervaring, natuurlike talent en/of akademiese kwalifikasies.” Specialisation and specialized knowledge have become the most powerful power base in modern life. A senior education manager with expertise commands higher status and esteem than the one who lacks expertise. This is essential for performance or rendering of service with confidence. Senior managers with expertise are capable of rendering reliable service.

A senior with vast knowledge, experience and expertise in his field commands great respect from the public. This can only enrich and enhance his personal and occupational status. According to Luthans (1995:324), experts are perceived to have knowledge in special fields which earn them *status* and honour. This means that the target must perceive the agent to be credible, trustworthy and relevant.

A senior education manager who commands expertise in given areas will exercise power with more success than the one perceived to lack knowledge. Luthans (1995:124) observes that credibility comes from having the right credentials, *i.e.* a person who claims knowledge of something must show tangible evidence of having such. A senior education manager who exercise his/her legitimate power effectively has better chances of influencing educators to carry out their duties without reistance.

- **Legal power**

Legal power refers to the capacity possessed by an individual in authority whereby he/she influences the behaviour, thinking and decision of subordinates through exercise of authority attached to the position he/she occupies. (Van der Westhuizen, 1990:77). This is an important element which is central to the extent of his delegation authority. The senior education manager as the bearer of authority exercises the power to the extent of his

delegation. The educator accepts the orders of the senior education manager in terms of legal power conferred on the senior education manager to influence the behaviour and actions of subordinates. Luthans calls this legitimate power.

This kind of power has its source from the position the educator is occupying. Luthans (1995:323) gives three sources of this power:

- From designated/appointed/elected positions;
- From cultural/organizational positions; and
- From accepted social structure positions.

Senior education managers are required to utilize all the sources/bases of power in order to improve job performance and the quality of education. What has been discussed above has implications for professional status.

4.2.5 Authority base of the senior education manager

Although Van der Westhuizen *et al.*, (1990:78) discuss educators' base of authority, this also applies to senior managers. With regard to the authority base of the educator, Van der Westhuizen *et al.*, (1990:78) refer to the following sources of the educator's right to exercise his/her authority:

(a) The senior education manager and his God-given authority position

Van der Westhuizen *et al.*, (1990:78) refer to the Biblical origin of the authority of the educator as God who has absolute and final powers. In terms of the above view, God is regarded as the author of all authority and confers this on educators and senior education managers in order to maintain order within their work situations. In Christian communities this forms the basis for understanding the source of authority. Senior education managers likewise are regarded as servants of God and derive authority from him. They are expected to exercise such authority for the performance of management duties. This then explains the source of their status.

(b) The juridical sources of the position of authority of the senior education manager

(i) Legislative/statutory sources

The sources of law have been discussed in paragraph 2.2, therefore details will not be given in this section. Bray (2000:57) discusses these major sources, viz. the constitution, legislation, common law, case law, custom and others. Senior education managers' authority comes from all legal sources.

The senior education manager's main sources of authority are the same those as indicated above, including other authoritative sources which are not in conflict with the Constitution, e.g. regulations based on the South African Schools Act (Act 84 of 1996).

(ii) Implied (tacit) authority

Bray (1988:39) observes that legislation does not always provide a clear description of power. According to Baxter (1984:404) "... powers may be presumed to have been conferred because they constitute a logical or necessary sequence of powers which have been expressly conferred because they are ancillary or incidental to those expressly conferred." This suggests that it is desirable to recognize the existence of presumed authority or tacit/implied competence. Decision-makers usually make their judgement deductively or based on inference in terms of discretionary powers. Tacit powers are those not embodied in legislation expressly but implicitly necessary.

Kerr (1993:39) distinguishes between two implied competencies as follows "... those which the parties had in mind but did not express and those imposed by law in the absence of both expressed terms ...". Bezuidenhout (1994:5) explains that tacit authority or competence means that which is suggested/implied by legislation in order to give effect to the intention of the legislature. Bezuidenhout (1994:41) further observes that the senior education manager will, from time to time, find himself/herself in situations where he/she has to take decisions on a discretionary basis. That means that he/she has to exercise his/her

implied/tacit competence to execute his/her tasks. But this does not mean his/her decision should be arbitrary. It should be governed by legal principles. Tacit authority also plays an important role in education management. The delegation of these powers is said to be found within the three basic relationships of authority, viz. the mandate, deconcentration and decentralization. Van der Westhuizen *et al.*, (1990:79) refer to the view of Baxter (1984:404) and observe that “Geïmpliseerde gesag is daardie optredes wat logieserwys of noodsaaklikerwys nodig is om uitvoering te gee aan ‘n opdrag of bevoegdheid wat uitdruklik gemaak is.” Tacit authority refers to the activities which are necessary, for the execution of instructions or competence that is expressed. From the above observation it is clear that the delegation of discretionary powers operates within the principle of desire to bring about effective division of work within a particular hierarchy.

The assumption that the higher authority remains the competent body implies that the subordinate body will act on behalf of the competent one (Bray, 1988:37). The discussion on the issue of implied/tacit competence should be understood as an integral part of delegated decision-making in particular and education management in general.

Bezuidenhout (1994:40) refers to a distinction that is made by Oosthuizen *et al.*, (1992) regarding the management task of an education manager. They assert that the management task of an education manager could be divided into administrative and discretionary management practices. According to Oosthuizen (in Oosthuizen *et al.*, (1992:82) “... die administratiewe handelinge word gekenmerk deur geprogrammerde gesag gekoppel aan vrye oordeel, wat uitgeoefen word binne die konteks van heersende omstandighede.”

As mentioned previously the existence of discretion does not mean that there should be arbitrariness. Discretion should enhance and facilitate the process of administrative co-operation.

(iii) Common law

Several authors are in agreement on the definition of common law as the uncodified legal tradition derived/inherited (Bray, 2000:59) from Roman-Dutch and English law, developed and adapted to the circumstances of the South African legal background and culture (Oosthuizen *et al.*, 1992:40). According to Bray (1988:18), common law is non-statutory – the common law practice of *in loco parentis* for instance. This means that in the school environment the educator/senior education manager acts as the parent (Bray, 2000:59).

(iv) Case law

The doctrine of precedent (*stare decisis*) holds that a previous (court) judgement may influence a later judgement (Oosthuizen *et al.*, 1992:47). This means that previous court decisions on a particular matter are taken into account when a similar matter requires judgement.

Senior education managers have a mandate to implement government policy on a variety of issues in education. In delegating responsibilities and also in the case of a hearing, senior managers will be required to be extremely careful. It is expected that whenever they take management decisions, such decisions should be fair and just, and based on relevant legal principles. In handling a case for which a decision is required, senior education managers may be required to examine previous cases to establish how such cases were treated. In terms of judicial precedent, previous court decisions on a particular issue may be taken into account to effect a decision on an issue at hand. Should there be no evidence of a similar case dealt with by the courts in this country, guidance is sought from international law and other legal documents. However, the country's courts may not necessarily apply principles of international law without carefully checking on the applicability to their own country and resulting implications.

Bray (2000:52-55) deals with an imaginary case study on the freedom of expression affecting the suspension of Mrs Liberal's son, John, who continues to wear the badge

‘promoting a left-wing political party’. In this case it would be required to examine all available legislation that protects freedom of expression, e.g. the Constitution, education policy and school policy in order to determine how to deal with John’s rights to express his freedom of expression verbally, in writing or by way of conduct through wearing a badge as he does. To establish the possible decision regarding John’s case, examining the various documents referred to above would be a starting point.

Bray (2000:5) observes that the South African courts have not yet dealt with a case on freedom of expression in the school environment and that other cases regarding the general interpretation of human rights do not provide guidance on how this right would be applied in a school situation. This implies that, with regard to John’s case, guidance has to be sought from international convention and other legal documents. The following could be examined:

- The United Nations Universal Declaration on Human Rights of 1948; and
- The United Nations Convention on the Rights of the Child.

Reference is also made (Bray, 2000:56) to the case of *Tinker v Des Moines Independent Community school District (1969) 393 US 503* in the USA in which a group of students were suspended for wearing black armbands to demonstrate their objection to hostilities in Vietnam. The court ruled against the school banning the wearing of the armbands on the following grounds:

- Undifferentiated fear of disturbance does not constitute an adequate reason to overrule the right to freedom of expression.
- Students’ constitutional rights transcend home and school boundaries and do not cease when the learners enter the school gate;
- School authorities may consider enforcing reasonable regulations which are necessary for the proper function of the school rather than the banning of armbands which constitute an infringement of freedom of expression of the students.

Bray (2000:59) further refers to the case of *S v Williams 1995 3 SA BCLR 632 (cc)* relating to inflicting corporal punishment on juvenile criminals in terms of the provisions of the Criminal Procedure Act of 1977. The Constitutional Court interpreted and examined the applicability of the legal norm as contemplated in the above act. It was found that the provisions were in conflict with the fundamental right to security of the person as contained in Section 12 of the Bill of Rights. Therefore the court declared the provisions in the said Act as unconstitutional. A knowledge of the functioning of judicial precedents will enable senior education managers to be very careful in the application of legal principles during management decision-making processes.

v) Status agreements

In terms of status agreements, the senior education manager obtains authority which enables him to exercise educative activities in public. Such agreement are characterized by certain rights, competencies, liberties and obligations which should be exercised (Bray, 1988:27).

One of the main characteristics of a profession is that it has a professional council which enables it "... to watch over selection, training, registration of its recruits and determination of the conditions of service and professional discipline" (Prinsloo & Beckmann, 1988:326). This means that a profession that has some kind of overseeing capability as indicated above, has a better chance of maintaining standards and the professionalism of its members than the profession which does not follow standards. The above observation is supported by that of Schreuder *et al.*, (1993:10) according to whom a profession has a controlling body which "... controls admission to the occupation and determines its code of behaviour." Schreuder *et al.*, (1993:10) further state that a professional body has disciplinary and supervisory duties and responsibilities, which include dealing with misconduct or failure to provide satisfactory service to the community.

In South Africa the three major bodies of the organized teaching profession are represented in the Bargaining Chamber of the ELRC, viz. the National Professional Teachers' Organisation of South Africa (NAPTOSA), The South African Democratic Teachers' Union (SADTU) and the

Suid-Afrikaanse Onderwysersunie (SAOU). The existence of these bodies in the organized teaching profession is in line with the constitutional provision regarding the freedom of association in terms of democratic principles and the right to self-determination. Beckmann *et al.*, (1995:38) refer to Section 17 of the Constitution, which reads as follows: “Every person shall have the right to freedom of association”.

It should be recognized that each member of the respective bodies of the organized teaching profession exercises his/her constitutional rights in his/her choice of the organization with which he/she is associated. In terms of this section it is clear that the right of individuals within, and those of their respective organizations are recognized and thus protected. The said rights are however, not absolute. They are subject to the limitation clause contained in Section 36 of the 1996 Constitution (Beckmann *et al.*, 1995:37).

The establishment of the SACE brought about a regulatory framework in the organized teaching profession which will enhance the professional status and integrity of the senior education manager. This requires that senior managers perform their management duties professionally, just and fair.

Squelch (1999:31) highlights the following primary functions of the SACE:

- Registration of education
- Determination of registration procedures and criteria
- Establishment of the code of conduct and the nature of disciplinary measures for misconduct.

The code includes, *inter alia*, the relationship between the educator and the learner, the parent, the community, the professional, the council, the employer and colleagues. Violation of these relationships is liable to disciplinary action (De Villiers & Wethmar, 2000:2-47).

From the above discussion it is clear that the Education Labour Relations Act (Act 146 of 1993) has brought about uniform recognition of the organized teaching profession. This

assertion is supported by Maree (1995:12) who observes that "... the most important gain for the teaching profession contained in this Act is the fact that the principle of equity and fair play is entrenched, for the first time in history, in legislation pertaining to the conditions of employment of South Africa teachers. The Act prohibits unfair labour practices. It also gives teacher access to industrial courts."

The above observation accentuates an important development regarding the legal status of the senior education manager as a practitioner with integrity and as a member of a professional organization. The right of the educators, senior managers included, as professionals is protected in terms of Section 5 of the Labour Relations Act (Act 66 of 1995).

According to Kruger *et al.*, (1986:152), the existing teachers' organizations in South Africa did not seem to be prepared to be absorbed into a national teachers' association due to the diversity of interests and strong desires to maintain their own identity. This, however, does not mean that the various bodies of the organized teaching profession represent opposing camps, each with its own irreconcilable agendas. In terms of Section 17 of the constitution (Act 108 of 1996), freedom of association of individuals is granted. It seems obvious that the various bodies of the organized teaching profession will be inclined to maintain their individual organizational identity. But this does not mean that they will have absolute rights over one another. Registration with the SACE is a positive indication that the uniform code of conduct is a unifying instrument for all bodies of the organized teaching profession. This is more so because the professional activities of educators are regulated by one council. The various member organizations forming part of the SACE may have minor differences in terms of approaches with regard to individual policies, e.g. some may strongly believe in radical approaches when dealing with government. Others may adopt a much more modest approach based on their professional policy.

Regarding the background of the establishment of the General Teaching Council for Scotland, it suffices to refer to Sutherland's observation discussed in paragraph 4.2.1. While in Scotland the GTC serves as the "voice" of teachers, the organized profession in South Africa receives directives from the SACE regarding professionalism. The choice of the title "General

Teaching Council” in Scotland is appropriate as it was based on the notion that it is about teaching and not teachers. The Council is composed of representatives of universities, other trainers and educational senior managers. This composition reflects the notion that people from different walks of life have an interest in the teaching of the child. The GTC is therefore quality-oriented. As the functions and powers of the SACE have been discussed above, the functions of the Scottish GTC will now be examined. The functions of the Council may be summarized as follows:

1. To keep under review standards of education, training and fitness to teach appropriate persons entering the teaching profession and to make to the Secretary of the state from time to time such recommendations on such matters as it thinks fit or as may be referred to it by the Secretary of State.
2. To consider and make recommendations to the Secretary of State on matters relating to the supply of teachers.
3. To keep itself informed of the education and the training of the teachers in relevant institutions and to undertake such other functions in relation to them as may be assigned by the Secretary of State.
4. To establish and keep a register containing the names, addresses and such qualifications and other particulars as may be prescribed of persons who are entitled to be registered and who apply in the prescribed manner.
5. To determine whether in any particular case under its jurisdiction, registration is to be withdrawn or refused. (General Teaching Council, 1997:7-8).

From the above discussion it is obvious that the functions of the GTC for Scotland are similar to those of the SACE. The emphasis with the GTC is the maintenance and review of education and training standards; advising the Secretary of State on the supply of teachers, registration of teachers and dealing with disciplinary cases if they arise. Both councils are quality-oriented.

4.3 Some problems negatively affecting the senior education manager's professional development

The integrity of a profession is promoted by the value and the importance attached to the service it renders to the public. The regard accorded to the said service as evidence by the level of appreciation of the duty performed by the senior education manager and the competence in performing it are visible indicators of the perceived professional integrity. In the nursing profession, for instance, it is affirmed that the practitioners have a profound duty to take care in the practice of their profession. Searle (1987:137) observes that "... midwives have a duty to ... practise their profession within the constraints of the laws of the country and the ethical code of their profession." Searle (1987:137) further observes that "laws governing professions require the practitioners to do certain acts and refrain from doing others. Such laws are not divorced from fundamental common law principles that apply to all citizens."

It is important to note that some factors which negatively affect the professional development and the integrity of the senior education manager are both of an internal and external nature. Internal factors refer to those which are perceived to be emanating from the senior education manager himself. Those factors perceived to be originating from beyond the individual's control are regarded as of external origin.

4.3.1 Internal factors negatively affecting the professional development of the senior education manager

Beckmann *et al.*, (200:28) refer to the provisions of Section 11 of the Employment of Educators Act (Act 76 of 1998) regarding the reasons for the dismissal of educators. They observe that "... an employer may dismiss an educator from service with due regard to the LRA:

- a) On account of continuous ill-health.
- b) On account of the abolition of the educator's post or any reduction in or re-organisations or re-adjustment of the posts, establishment of department schools, institutions, office or centers.

- c) If , for reasons other than the educator's own unfitness or incapacity, the educator's discharge will promote efficiency or economy in the department, school, institution, office or center in which he is employed or will otherwise be in the interest of the state.
- d) On account of unfitness for duties attached to the post or incapacity or to carry out these duties efficiently.
- e) On account of misconduct.
- f) If the educator is appointed in a post in question on grounds of misrepresentation made by him/her relating to any condition of appointment.
- g) If, in the case of an educator appointed on probation, the educator's appointment is not confirmed."

The above constitutes broad grounds for the dismissal of any educators. Care must be taken to ensure that the unfair dismissal of any educator is avoided by complying with the applicable labour law principles and collective agreements. Squelch (1999:43) refers to the two requirements for fair dismissal as stipulated in Section 188(1) of the Labour Relations Act (Act 66 of 1995) viz.:

- That there should be a fair reason for the dismissal; and that
- It is exercised in accordance with a fair procedure; i.e. it must be substantively and procedurally fair. This is equally true of the treatment of senior managers. It is essential that the senior managers have full knowledge of this legislation.

To be able to comply with the procedural requirements, if there is a valid reason warranting the dismissal of an educator, standard steps should be followed. Squelch (1999:44) discusses a number of steps examined by Grogan (1999:109). These steps are summarized below:

- An investigation has to be conducted to determine the grounds for dismissal prior to the hearing in order to collect relevant and factual evidence.
- Formulation of the precise charge and notification of the employee regarding the hearing and the said charge.

- The employee should be given an opportunity to present his/her side of the matter (respond) as he/she has a right to be heard in terms of common law principles.
- An impartial presiding officer is required to facilitate the hearing in order to ensure fair weighing of evidence to avoid unfair decision or judgement of the matter.
- Due assistance should be allowed for the employee to present his/her case reasonably well. This may include interpretation where needed, representation by a union or fellow employee, etc.
- The employee should be informed of the outcome (decision) of the hearing, e.g. dismissal and the reason(s).
- Section 25 of the Employment of Educators Act (Act 76 of 1998) provides for an appeal against the findings of a disciplinary tribunal.

Every aggrieved employee has a right to appeal against any decision which he/she believes was unfairly taken against him/her.

The discussion below will focus on some issues that have the potential to affect the professional development and status of senior managers negatively. These factors are regarded as internal because the senior manager may be able to do something about them, as opposed to most of the external factors about which employees may not be able to do anything.

- **Incompetence in education managements**

Squelch (1999:53) argues that, although the Labour Relations Act (Act 66 of 1995) does not provide a definition of incapacity. In general it means that if an employee cannot perform duties owing to illness, ill-health, inability, poor performance, etc., this constitutes grounds for transfer, reduction of salary or transfer to another post which is considered to be suitable or additional to the establishment. It is, however, desirable for the employer to be extremely careful in determining the relevant procedure if an officer appears to lack capacity due to ill health rather than due to others factors such as negligence. Beckmann *et al.*, (2000:29) also allude to the fact that an educator who is unfit for the duties attached to the post or incapable or carrying out those duties efficiently, could be considered as incapable or inefficient. This may

reveal itself in the educator's inability to plan for his/her classroom discipline which is a condition for effective teaching. This means that the senior education manager's inability to facilitate effective achievement/realization of the teaching and learning objectives constitutes gross incompetence.

Before a charge is laid against an employee, it is essential to analyze the nature of the incapacity. Poor work performance may be caused by negligence or indolence in the execution of the duties on the part of an educator. This may be regarded as incompetence. Incompetence is normally caused by factors which the educator may be able to control. In such circumstances, attempts may be made to remedy the situation to the extent that the employee's performance improves. In this case, the onus may lie with the educator to improve. On the other hand, an educator may show poor performance due to factors beyond his/her control, such as ill-health. In such circumstances an investigation would be required in order to obviate the problem of unfair dismissal.

Failure to carry out duties adequately may therefore be caused by different sets of factors, some of which may be beyond the educator's control. Others may be within his/her capacity to deal with. Based on the above observation, it may be stated that there is a slight distinction between incompetence and incapacity. With the former an element of fault is present, whereas with the latter the element of fault is absent (Squelch, 1999:54). In both cases the employer would be required to conduct an inquiry into the allegations in order to establish the causes and determine an appropriate remedy.

De Villiers and Wethmar (2000:22) refer to concern raised by the Minister of Education that some teachers are indolent and do not perform their professional tasks well or in the interest of learners but draw an unmerited salary. They are therefore abusing their positions for personal gain.

Knowledge of legal procedures will enable senior education managers avoid wrong approaches to management tasks.

- **Misconduct arising from disclosure of confidential information**

In the performance of professional duties, senior education managers will from time to time deal with confidential matters. Access to confidential information with the intention of utilizing it negatively to harm the person concerned, is liable to disciplinary action. Harming the person's good name and reputation is misconduct. In terms of the Code of Conduct of the SACE "... an educator should refrain from discussing confidential and official matters with unauthorized person's", De Villiers and Wethmar (2000:22). Confidential and official matters that concern the school in general or the principal, educator and learners in particular are not to be discussed with unauthorized persons. Disclosure of information without permission amounts to misconduct in terms of the Employment of Educators Act (Act 76 of 1998) and also to a breach of the SACE code of conduct, and thus entails ethical and legal repercussions (De Villiers & Wethmar, 2000:42-43). What is critical here, is the motive behind the disclosure or discussion. Senior education managers should be knowledgeable about these legal issues.

- **Abuse of personal rights**

The abuse of personal or professional rights may assume different formats. Reference has been made to educators who abuse positions they hold for financial, political or personal gain. These include a lack of accountability and commitment, neglect of profession duties, demonstrating poor role models as educators, coming late and leaving early, a senior education-manager who uses state property, e.g. a vehicle, house etc. for his/her own personal gain, is guilty of misconduct.

Hosten *et al.*, (1983:476) argue that if a right is exercised with the sole purpose of harming another without furthering a reasonable interest of one's own, abuse of a right occurs. According to the doctrine of reasonableness, the defendant is expected not to act beyond the bounds of his/her rights if he/she exceeds, it constitutes an abuse of rights. Hosten *et al.*, (1983:477) argue that the general premise is that anyone exercising a right cannot be said to act wrongfully if there is no sole motive of harming another.

The above comments are true in respect of a senior education manager who is equally liable to disciplinary action if, in the exercise of his/her rights, it is established that the authority for the exercise of such rights has been exceeded intentionally.

The following is a discussion of the treatment of the external factors which undermine the senior education manager's professional and integrity.

4.3.2 External factors undermining the professional development of senior education managers

These factors are mostly beyond the senior education manager's control. Van Wyk (1991:95) argues that every person has an obligation to respect the good name, reputation, honour and dignity of others. It should be recognized that everybody attaches values to his/her rights.

According to Neethling *et al.*, (1996:139), the right to a good name involves the area of the law of defamation. Any action which reduces a person's status infringes his/her good name as it diminishes the esteem in which he/she is held in society. If the senior education manager's good name, reputation, honour and dignity are impaired, this may seriously prejudice his educational tasks and chances of promotion. This may also adversely affect the professional integrity of the educator.

The external factors which are perceived to undermine the professional integrity of the senior education manager will now be discussed. In this discussion attempts will be made to make a clear distinction between the concepts *defamation*, *libel* and *slander*. According to Kahn and Forsyth (1982:51), English law distinguishes between written and spoken defamation, while South African law does not.

Kahn and Forsyth (1982:111) define defamation as "... the lawful and intentional written or verbal publication of anything which tends to harm the reputation of another, i.e. communication orally or writing anything about a person to any other person which tends to

lower the reputation of the former.” This definition emphasizes the harmful and negative effect of the words which are either written or oral.

For a further understanding of the concept defamation, a brief discussion of what Neethling *et al.*, (1996:151-153) regard as examples of defamation follows. They discuss six categories:

- Derogatory remarks regarding a person’s physical disability or mental disposition, e.g. insanity, deformedness, racial remarks, etc.
- Allegations regarding a person’s character, thus placing him/her in a bad light such as that he/she is guilty of criminal behaviour, unchastely, has displayed improper conduct towards others, is perceived to be dishonest.
- Words or behaviour reflecting negatively on a person’s character or public life as a politician, e.g. that he/she has acted dishonestly, is corrupt or has improper motives.
- Statements casting suspicion on a person’s vocational capabilities or competence, e.g. neglect of patients, teachers failing learners, etc.
- Adverse reports about a person’s financial position e.g. insolvent, or not creditworthy.
- Contemptuous remarks regarding a person’s race or racial views. This may include the use of words that are unacceptable, like referring to a person as a Nazi, Hottentot, Kaffir, etc.

In other words, the defamatory nature of words or publications finds its essence in the existence of elements of wrongfulness in terms of the criterion or wrongfulness. The question of intention to harm or tarnish someone’s good name or other personality rights, was discussed *inter alia*, in paragraph 4.3.3.

Neethling *et al.*, (1996:145) quote the view of the courts that “... in the opinion of the reasonable man of ordinary intelligence and development, the publication of any words or behaviour that has the tendency to undermine, subvert, or impair a person’s good name, reputation, regard or the esteem in which he is held by the community is defamatory and in principle (*prima facie*) wrongful as regards that person.

Neethling *et al.*, (1996:147) postulate what is called the objective reasonable man test, as an effective measure whereby the defamatory nature of words and behaviour are established. The elements of the objective reasonable man test include the following:

- That the reasonable man is balanced, right-thinking, neither hypercritical nor oversensitive and that he/she has normal emotional reactions. This implies that such a person may not simply utter defamatory words or behave in a manner that would have defamatory effects on the fellow man concerned.
- The reasonable man is a member of the community as a whole and not a particular group or segment of the community.

Defamatory connotations should be in terms of accepted universal norms based on national customs and values.

Wethmar (1998:37) discusses issues of morality and how these may assist education managers in making decisions that are ethical in executing their professional duties. Neethling *et al.*, (1996:147) further observe that the application of the reasonable man criterion depends upon the circumstances surrounding a particular case. The interpretation of allegation or words should be based on the context in which they are said and the type of audience/readers who are being addressed. This implies that the gravity of the defamatory words or action should be established within the context in which they appear.

- The use of abusive language does not necessarily constitute defamatory connotations and may not lead to the lowering of a person's status and dignity. However, insulting words could be regarded as constituting an infringement of the person's dignity.
- Neethling *et al.*, (1996:148) observe that normal words have primary (*prima facie*) meaning and secondary meanings. In their primary nature, words do not have defamatory connotations. It also is stated that words which originally did not have defamatory

connotations may now have a secondary defamatory meaning. The onus lies with the plaintiff to prove derogatory or defamatory nature of words.

- Double or ambiguous meanings of words: An assumption exists that the words are innocent until the plaintiff proves the contrary on a balance of probability (Neethling *et al.*, 1996:148). This implies that, in the use of words that are believed to be defamatory, it has to be proved that they are indeed defamatory. If not, the defendant may not be held liable. Allegations must be proved.

Neethling *et al.*, (1996:150) also refer to the need to take into account the context in which defamation has taken place, whether or not the target person to whom such words were directed is identifiable. In the event that remarks are made about a group, the aggrieved individual should advance evidence that the words are in fact related/directed to him/her personally and that they are, in fact, defamatory. This argument suggests that defamatory words directed at a group and not at a specific individual within a group are regarded as having no defamatory effect.

In the case *Kinghorn 202, A. Neumann cc v Beauty Without Cruelty International 1986 4 SA 675(C) 681* and *Bane v Calvin 1959 18 A (C) 867* as cited by Neethling *et al.*, (1996:151), reference is made to the factors that play a role indetermining the defamatory effects of words on a group. Neethling *et al.*, (1996:151) observe that "... if the group is so small or easily identifiable that something said of the group substantially applies to each member thereof, each individual member has a claim for defamation". The most important requirements is the ability to prove defamation by means of evidence. From the discussion of Neethling *et al.*, (1996:151) referred to above, it is evident that there are numerous dimensions to the nature of defamation. However, the question of contention and proof thereof seems to be central to justify liability for defamation.

The definition of defamation given by Kahn and Forsyth as cited above agrees fully with that given by Hosten *et al.*, (1983:496). In both sources the notion of deliberate intention to injure

somebody without justification and the fact that this is a specific form of infringement of a personality right, is emphasized.

In his discussion of the concepts *libel* and *slander*, Van Wyk (1991:96) makes a clear distinction that libel is related to a written statement while slander is conceived to be related to an oral statement through which a person's good name, reputation, honour or dignity is impaired. This suggests that the difference lies in the method of communicating the words that have a harmful effect on the person. Prinsloo and Beckmann (1988:235) define libel as "... the unlawful use and intentional publication of words or conduct in respect of a particular person by which his good name, reputation or esteem in the community is injured or impaired." This is also true of senior education managers. A senior manager has no right to publish any defamatory information in respect of his/her junior and *vice versa*.

From the above discussion the definitions of the concepts *libel*, *slander* and *defamation* show great similarities. The notion of oral versus written communication of defamatory words does not affect the substance or the actual meaning of these words. It is necessary now to examine the requirements for and the defence against an action for defamation.

4.3.3 Some requirements for establishing the defamatory nature (wrongfulness) of words

Various sources concur in many respects regarding the defamation. Neethling *et al.*, (1996:140) define defamation as "... the intentional infringement of another's right to his good name, or ... the wrongful intentional publication of words or behaviour that has a tendency to undermine his status, good name or reputation." It is clear that there is a sanction on any defamatory act subject to verification of intention to do harm, the origin of the defamatory remarks or any other person who repeats, confirms, directs attention to them, as well as the one who publishes or plays a role in the distribution/spreading of the defamatory information (e.g. editor, printer, media etc.) (Neethling *et al.*, 1996:143-144).

According to Kahn and Forsyth (1982:111) the defamatory words must be conveyed to a person other than the one defamed. It is also contended that the matter must be understood to refer to the person defamed and must lower the esteem of the person to whom it refers.

It is argued that any defamatory statements are recorded as non-defamatory if uttered or directed to the person concerned (Kahn & Forsyth, 1982:51). Defamation is perceived to be usually in the form of a moral attack, stating that the person has committed a crime or was dishonest, corrupt, untruthful or disreputable. This may, for example, include referring to circuit manager's private life when addressing parents or other educators.

In short, the publication of defamatory material creates a presumption of both wrongfulness and fault. However, if it is proved that the defendant was not aware of the wrongfulness of his act, the grounds of justification are seen not to have been exceeded.

It is also admitted that a fault may occur when an individual publishes defamatory material in the mistaken belief that he/she is entitled to do so. According to Hosten *et al.*, (1983:497), there should be an intention to harm in the words uttered to a person. This may include informing an SGB about the alleged misappropriation of state property by a senior education manager in a defamatory manner.

- **Fault/blameworthiness**

The conscious intention to defame someone is presumed to be grounds of justification and thus liability for a lawsuit may arise (Kahn and Forsyth, 1982:54). It is possible for the defendant to justify or excuse his publication of defamatory statements. If not, he should be prepared to pay damages.

- **A mistake and lack of intent**

South African law requires that the defendant must intend defaming the plaintiff when he utters or writes the defamatory words. If he is in error, and thinks that what he is saying is not

defamatory whereas in fact it is, he is not liable unless he acted recklessly. Lack of intent must be proved by the accused.

The instrument which is used in determining the wrongfulness of words and thus suspected to be defamatory, is called a bystander test (Hosten *et al.*, 1983:497). According to this test the generic question is: what would a reasonable man have understood by these words? Kahn and Forsyth (1982:111) present the question: Will the public regard the published matter as likely to lower the esteem of the affected person?

- **Defence against an action for defamation**

Kahn and Forsyth (1982:56) discuss the question of who is actually held liable in the case of the expression of defamatory words. They argue that the actual person who has uttered these remarks remains liable. However, in other instances a number of people can be sued, especially if defamation is printed or broadcast.

In case of broadcast defamation, the radio or television company can be sued. In the case of printed defamation the following can be sued: the writer, the printer and the publisher. It is asserted that in some instances the bookseller may face a lawsuit. Lastly the editor of the newspaper/magazine, may be sued. Several circumstances may lead to *prima facie* defamatory behaviour or words being found not to be defamatory. The following have been discussed by a number of scholars:

- (i) **Privileged circumstances**

Regarding the grounds of justification relevant to defamation, Neethling *et al.*, (1996:155) argue that a privileged occasion exists when someone has a right or duty to make defamatory assertions about another if the person to whom the assertions are made have a corresponding right to learn from such assertions. This suggests that care should be exercised in determining the circumstances.

A senior education manager may make adverse remarks about an officer under his/her supervision on the understanding that such remarks are made under privileged circumstances. Under such circumstances there may be no justification for the claim arising from the said adverse remarks affecting that officer.

Kahn and Forsyth (1982:56) observe that the expression of words or remarks in instances which are regarded as privileged occasions, is not libelous. This observation concurs with that of Hosten *et al.*, (1983:497). The latter hold that if someone has a right to make certain remarks to persons who have a right to learn of them, this is regarded as privileged circumstances, e.g. discussing a teacher's misbehaviour with a management council. Hosten *et al.*, (1983:498) distinguish between absolute and relative privilege. A member of parliament may not be held liable even if the words were irrelevant or uttered with malice. In parliament relative privilege on the other hand, refers to a situation where the defendant does not enjoy protection for his/her words or actions if he exceeds the bounds of his/her privilege.

The requirements for a privileged occasion, as presented by Van Wyk (1991:96) are the following:

- The obligation to make such a statement should exist.
- The statement must be made to someone who has an interest in the matter.
- The object must be positive and must be made within certain limits, e.g. and educational purpose.
- The statement must be made within certain limits, e.g. discussions between parents, principals and inspectors regarding teachers, conversations during management meetings and when teachers admonish, warn or reprimand pupils.

Van Wyk (1991:96-97) and Prinsloo and Beckmann (1988:238) refer to court reports relating to slander:

In the case of *Jordan v Van Biljon* (1962(1): 286), it is reported that parents submitted a petition to the school commission charging a teacher with incompetence. They claimed that he

showed no concern regarding the progress of pupils and that there was no evidence of any progress being made by them. The teacher sued the parents.

The court, however, ruled that the parents made this statement during a privileged occasion because they and the commission had an interest in the educational welfare of the pupils. It was therefore held that there was no malicious motive in the statements made by the parents. The defence was thus successful.

In the case of *Holzgen v Woolwright 1928* as cited by Prinsloo & Beckmann (1988:237) and Van Wyk (1991:96-97) the principal sent a report to a medical fund in which derogatory remarks were made about a medical practitioner who had treated a pupil. It is reported that the court found the matter to be so trivial and that the negligence was so slight that it did not warrant any charge. The court *ipso facto* dismissed the charge. In this case the defence was not successful.

Prinsloo and Beckmann (1988:237) discuss what is called grounds of justification as the basis for a decision to declare an act lawful. They argue that grounds of justification indicate that in certain cases there is no unlawfulness or unlawful conduct. This means that certain facts or circumstances justify the impression that an act which *prima facie* appears to be unlawful, is, however, lawful. Privileged occasion described above is recognized as one of the examples of grounds of justification.

Prinsloo and Beckmann (1988:237) stress that the teacher's privilege is, however, relative and not absolute. They argue further that relative privilege often arises when the occasion is privileged at face value, but the plaintiff is allowed to prove that the defendant exceeded the limits of his rights.

From the various cases it is clear that senior education managers should be aware of and cautious about the legal implications of the manner in which they interact with educators in the performance of their management duties.

Neethling *et al.*, (1996:156) assert that "... privilege authorizes the defendant to publish the defamatory words or behaviour and thereby sets aside the *prima facie* wrongfulness of his conduct." They further distinguish between absolute and relative privilege.

For instance, a Member of parliament is completely protected against liability for any defamatory remarks if he/she may make during parliamentary debates in terms of statutes such as the "Power and Privileges of Parliamentary Act" (Act 91 of 1963). Neethling *et al.* (1996:156), refer to Section 29 of Act 91 of 1963 which excludes liability for defamatory allegations contained in any published document in terms of parliamentary decision. They also refer to the case of *Poorlingana v Rajbansi 1992 ISA 283 (A)* regarding the extent of such privilege.

In this case both the appellant and the respondent were Members of Parliament. A letter was delivered by hand and circulated to all Members of the House of Delegates. The appellant alleged that the letter defamed him and sued the respondent for damages. The respondent in turn, defended himself, pleading, *inter alia*, that in the circumstances and by reason of S. 8 of the Powers and Privileges of Parliament Act (Act 91 of 1963), he was not liable for any defamation in the said case.

It was, however, established that the letter did not relate to business transacted in the House that day. It was further held that this letter not only failed to follow Parliamentary procedures, but that it was part of a personal dispute between the appellant and the respondent. The court therefore found the special plea of the respondent regarding the defamatory nature of the letter unacceptable as this did not fall within the ambit of parliamentary proceedings.

Neethling *et al.* (1996:156-157) further assert that relative privilege is present "... where a person publishing a defamatory matter is under legal, moral or social duty to do so (discharge of duty) or has a legitimate interest in so doing and the person to whom it is published has a similar duty or interest to receive it."

It is important to note that in every instance the onus is on the defendant to prove that his conduct falls within the limits of the relevant provisions which could be subjected to appropriate interpretation to obviate the invasion of common law rights (Neethling *et al.* (1996:156).

From the above discussion, it is clear that some defences succeed and others do not. Prinsloo and Beckmann (1988:237) emphasize the importance of analyzing the gravity and the seriousness of an accusation. They argue that if an accusation is of a very serious nature, the interest of the speaker should prevail. If the accusations are trivial, the defamed should be protected. This principle is clearly illustrated in the case of *Holzgen v Woolwright* referred to above.

According to Prinsloo and Beckmann (1988:237), in this case Judge Tindall concluded that the principal's comments had not been made during a privileged occasion. They refer to Judge Tindall's words who observes as follows: "... in the present case the incident was of such small importance and the respondent's dereliction ... so inconsiderable that I fail to see what moral or social duty there was on the appellant to lodge a complaint with the sickfund ... A member of the public cannot be said to have interest in every conceivable dereliction of duty on the part of a medical practitioner towards the child or someone else which may come to his notice ... Each case has to be decided on its own facts and the court has to examine the circumstances in the present case ..." This suggests that senior education managers, in executing their duties, should be careful in handling issues involving public interest.

From the above cases it is evident that each case should be treated and a decision taken on its own merit. Extreme care seems to be required, however, in seeking grounds of justification regarding the passing of judgement.

In this paragraph (4.3.3 (i)) it has been established that there is liability for any defamatory act or words which have been verified and found to be based on the intention to do harm, to denigrate or to tarnish the good name of a person about whom such words are uttered or published.

The demand for redress (liability) for any defamatory act is based on the fact that “... everyone has inherent dignity and the right to have their dignity respected and protected” in terms of Section 10 of the Constitution (Act 108 of 1996). However, the grounds of justification for liability for defamation have to be established.

The discussion above clarifies that defamatory words or acts published or uttered under privileged circumstances may not be liable for any form of redress if it is proved beyond doubt that such words or acts have no tendency to undermine, subvert or impair a person’s good name, reputation, regard or esteem in which he is held in the community.

This point has been fully discussed above and reference has been made to the views of Neethling *et al.* (1996:156) regarding absolute and relative privileged circumstances. The issue of truth and public benefits will now be discussed.

ii. Truth and public benefit

Kahn and Forstyth (1982:55) argue that since salaries of officials are paid by the public, the public is entitled to know the truth about the activities of the officials, even if the defamatory remarks concern their private lives. The private lives of non-officials are protected from this disclosure. It is further argued that it is not in the public interest to rake up issues years after the event due to the fact that a certain person, now a respectable member of the community, was once convicted of some crimes in his youth.

Senior education managers may publicly refer, for instance, to drinking habits of an educator as a major cause of the in effectiveness in teaching learners at a school. The above argument refers to the protection of educators’ rights in this connection. This emphasizes that educators have rights to integrity.

Hosten *et al.* (1983:498) also contend that the truth of a published matter never constitutes a defence. It will only do so if its publication is for public benefit.

iii. Fair comment

Part of the right to free speech is that anyone who wishes may express his/her genuine opinion on any matter of public interest. Kahn and Forstyth (1982:55) emphasize however, that the expression of opinion should be based on fact in order to qualify as protected opinion. It is argued that the comment should be fair and honest and should reflect one's state of mind. It should not have the malicious intent to damage another person's reputation.

This is a full agreement with the view expressed by Hosten *et al.* (1983:499) who present the following requirements for a fair comment:

- The words or complaint should be in the nature of opinion;
- The comment must be reasonable; and
- The facts commented upon must be true, correctly stated and for the public benefit.

Senior education managers in management meetings in education, express opinions or make comments about individuals educators, other senior managers who are not part of the meeting, regarding their respective strengths or weaknesses. Such comments are strengths usually meant for the members of the respective committee/management with a view to seeking ways of improving a weakness which has been identified. Such words or comments/complaints should be truthful, correct, reasonable and for the benefit of the public as set out by Hosten *et al.* (1983:499) above. This is also true of educators when making comments/remarks of an adverse nature about senior education managers of their fellow educators.

If the words are on an adverse nature and expressed with the intent to harm another person's reputation, and as such do not comply with the requirements given above, they will be regarded as unfair comments. They will have a negative effect on the professional development, image and integrity of senior education managers.

iv. Mistake

It is said that a mistake excludes the possibility of intent but not wrongfulness. An error excludes the intent to harm, since the defendant is not aware of the wrongfulness of his act, i.e. he has not blameworthy state of mind. The view is sometimes held that a mistake must be reasonable, although in earlier cases, error was not acknowledged as a defence. Hosten *et al.* (1997:840) refer to the case of *Maisel v Van Naeren*, in which it was conclusively shown that an error, with regard to the existence of grounds of justification, excludes intent to harm. This is so since the defendant is not aware of the wrongfulness of his act.

Hosten *et al.* (1997:840) contend that the mistake must be reasonable which means that it is not due to the defendant's negligence. In this case negligence suggests consciousness of intent and may constitute possible liability.

Senior education managers are required to have full knowledge of the legislation in order to carry out their duties professionally in relation to the educators they supervise.

v. Insults

Every person has a right to his dignity or honour. Insult infringes upon a person's good name. The publication of injurious words or behaviour therefore is not a requirement. Insult is a criminal offence. It is said that the element of intent with regard to insult is not a good requirement.

Both Van Wyk (1987:95) and Prinsloo and Beckmann (1988:236-237) refer to instances that are said to exist where libelous statements are classified as having been made under privileged occasions. Under such conditions the words uttered may not be considered justifiable for a lawsuit.

According to Prinsloo and Beckmann (1988:236-236) the "... privilege on the grounds of which the teacher may be justified for his action/her action, is that the allegations were made in

the executions of a duty or to protect an interest. The teacher may allege that he is obliged to make an allegation against the child, the parents or other person to third parties ... which have a duty to hear such allegations.” Where the good name of an individual is adversely affected, his dignity, honour or integrity will consequently be negatively affected. This negative effect will have a bearing on the personal or occupational status of the respective teacher or individual.

The establishment of the South African Council for Educators (SACE) in terms of the resolution of the Education Labour Relations Act (Act 146 of 1993) will guarantee the protection of the occupation of the occupational/professional integrity of educators as a body of professionals. This includes protection against the discriminatory treatment of personnel.

If senior education managers as a body of professional demonstrate diligence, dedication, commitment and devotedness to their responsibility, their dignity and integrity will certainly be enhanced. This will constitute a stepping stone towards the full professional development of the senior education manager as an individual and education management as a whole.

This further suggests that senior education managers should practice their occupation with great care of and sensitivity for the needs of professional development and the integrity of their careers. The assumptions are that every person has a right to personal development. The senior education manager as an ordinary citizen has a right to personal integrity. As an employee he/she also has a right to professional development. This means that he deserves to be accorded respect as a person in judiciary position.

Defaming an educator/senior education manager by anybody for whatever malicious intention may have image damaging effect on an individual.

The important observation in this section is that the senior education manager is also subject to factors which may interfere with personal and professional integrity. Incompetence, negligence of duties, disobedience and any other form of misconduct are factors emanating from the senior education manager himself/herself, while defamation of character, libel and

slander from the external sources. Both internal and external factors may negatively violate the senior education manager's right to a good name, reputation and honour. The extent to which the senior education managers' rights are protected against the infringement emanating from these factors will be tested by means of questionnaires in this study.

4.4 CONCLUSION

In this chapter the status of the senior education manager, both as individual and also a member of an organization, has been discussed.

The International Labour Organisation and the United Nations Educational, Scientific and Cultural Organisation (ILO-UNESCO) joint committee of experts on the application of the recommendations on the status of teachers summed up their views as follows: "The status of education depends on the status of the teacher" (ILO-UNESCO, 1994:7). This suggests that the higher the status of the senior education manager, the better the quality of education is like to be. This implies that poor management produces poor education. It also suggests that education may produce good managers. The joint committee (ILO-UNESCO, 1994:8) therefore concludes that the status of the teacher and that of education are intertwined. For senior education managers to do well in a community, their roles, functions and responsibilities should be recognized and appreciated. If senior education managers do their work effectively and efficiently, they will project a good image in their occupation and their status will be held in high esteem. The converse is also true.

Senior education managers who constantly strive to do their work effectively and efficiently are likely to project a good professional image with high status. To maintain the latter, education managers require constant capacity building which will enable them to improve service delivery. The provision of development courses does not only aim at skills development, but also at the transformation of attitudes towards stewardship.

The last section of this chapter highlighted the notion that professional development and the status of the senior education manager are threatened and undermined by certain factors that are both of an internal and external nature.

Senior education managers are from time to time confronted by situations or circumstances that require to them to exercise their rights in promoting their professional image and enhancing their integrity and professional status. They should constantly ensure that neither external nor internal factors threaten their personal integrity and good name.

In chapter 5 a description of the research instruments and a discussion of the responses will be presented.