

Perspectives on education law and policy in South Africa

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This Special Edition of *Perspectives in Education (PIE)* is dedicated to education law and policy. It presents a first for South Africa and indeed the continent of Africa and joins the ranks of a mere handful of internationally recognised publications in this field, containing a collection of national and international contributions on contemporary education law and policy issues.

The guest editors wish to thank the editorial board of *PIE* for the opportunity to offer this volume to the community of education law and policy scholars and practitioners. We are pleased to announce that the Board has already agreed to publish a similar Edition in 2002 and would be willing to consider further volumes. We believe this will add further impetus to the development of this important field of inquiry. We acknowledge with appreciation the contributions and collaboration of the Inter-university Centre for Education Law and Education Policy (CELP), the South African Education Law and Policy Association (SAELPA) and the European Association for Educational Law and Policy (ELA) which have been indispensable to the preparation of this Edition.

This Edition is divided into four sections:

In the general section we present an excellent, thought-provoking article by Robert Sternberg from Yale University in the United States in which he deals with the concept 'wisdom' in education and its application for the common good. This idea is of particular importance in law and guides us on its application and implementation in

education policy. Wisdom and tolerance also underpin the values and norms enshrined in the supreme Constitution of South Africa.

Section two (*Landmarks*) presents various viewpoints and an exchange of ideas on landmark rulings in education law and policy. For this issue we chose the controversy surrounding the case *Minister of Education v Harris* which dealt with the age requirement for admission to schools. The judgment delivered by Judge Albie Sachs of the Constitutional Court (CC) is viewed from different angles by Judge Eberhard Bertelsmann of the High Court of the Transvaal Provincial Division (TPD), Brian Perkins, an education law expert from the Southern Connecticut State University in the United States and Willy Wielemans, an expert on comparative education and education policy from the Catholic University of Leuven in Belgium. In line with the flexible language policy of *PIE*, we publish Professor Wielemans' article in both his native tongue and in English.

Section three contains a number of contributions on current issues in education and law policy:

Jan de Groof and Gracienne Lauwers provide an insightful overview of multiculturalism and equality in education in the European Union, which reflect many points of convergence with South African issues and problems in this field.

Rassie Malherbe presents an incisive analysis of two of the most complex and important recent pieces of legislation (*The Promotion of Administrative Justice Act of 2000* and *The Promotion of Access to Information Act of 2000*). A thorough grasp of these two Acts and the ability to implement them correctly in the institutional environment is of vital importance to all school managers and governors. Malherbe's 'exercise' at the end of each discussion is invaluable for people without formal legal training who have to grapple with the implementation of these laws.

Mignonne Breier provides a novel approach to the recognition of prior learning in the teaching of labour law modules to students with workplace experience but lacking formal 'access' qualifications.

Elmene Bray and Johan Beckmann's discussion of the employment relationship of the public-school educator is the result of pioneering research into the complex employer-employee relationship in education and uncovers the many layers of this relationship in the broader context of co-operative government in South Africa.

JP Rossouw deals with one of the labour aspects uncovered by Bray and Beckmann by focusing on educator misconduct and the role of the principal in conducting the disciplinary investigation into certain forms of staff misconduct.

Joan Squelch provides a solid framework for inquiry into the problem of unsafe schools and also touches on the duties and liabilities of school governing bodies to create safe schools and give effect to the right to basic education. Squelch provides a valuable compendium of indicators of safe schools.

Elda de Waal, Tienie Theron and Robbie Robinson provide an insightful introductory treatise on the concept of the "learner's best interest" in the context of sections 28 and 29 of the Bill of Rights. Their discussion of the application of the "learner's best interest" in the school situation is of relevance to all stakeholders in education.

Annamagriet de Wet and Izak Oosthuizen argue the educator's duty to report learner abuse and neglect – a duty which should never be underestimated, particularly in the light of the current violent and unsafe school (and social) environment. In this article the authors shed further light on topics presented by Squelch and De Waal *et al.*

Renfrew Christie in a keynote address to a Postgraduate Research Indaba (2001) at the University of Pretoria, presents an innovative account of the impact of history and social theory on doctoral research in education. The piece is a timely reminder of the role of theory and values in education law and policy research.

Section four contains a research update in which Boyce Wanda provides a concise overview of current research in education law, focusing specifically on the work of the Inter-university Centre for Education Law and Policy (CELP).

The Editors wish to thank all the authors for their valuable contributions to this special edition of *PIE*. We have, however, noted that contributions could benefit from a more explicit treatment of methodological and theoretical considerations, for example, where and how data was collected, how data was analysed and what approaches were followed (e.g. argumentative, analytical, qualitative or quantitative) in exercising preferences regarding legal and educational interpretations. Although we appreciate that the practice of investigating and applying a particular research methodology and design may not be the traditional *modus operandi* in law writings and research, we believe that this exercise could constitute a valuable part in the training and development of young and emerging education law and policy scholars. To this effect, in our next Call for Papers, we intend to provide more guidance to authors contributing to the next education law and policy edition and would therefore urge all contributors to follow these guidelines closely.