

# **TEACHERS' KNOWLEDGE OF LEGISLATION AND EDUCATION LAW SPECIFICALLY AND ITS INFLUENCE ON THEIR PRACTICE**

**NEELAN PILLAY**

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**TEACHERS' KNOWLEDGE OF LEGISLATION AND EDUCATION LAW  
SPECIFICALLY AND ITS INFLUENCE ON THEIR PRACTICE**

by

Neelan Pillay

Submitted in partial fulfilment of the requirements for the degree

**MAGISTER EDUCATIONIS**  
(Education Management)

Department of Education Management and Policy Studies  
Faculty of Education  
University of Pretoria  
South Africa

SUPERVISOR  
Professor WJ van Vollenhoven

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## **Dedication**

I dedicate this thesis to my dear wife Maggie,  
who believed in me and supported me.  
Thank you for all the sacrifices you made  
so that I could accomplish this goal.

## Acknowledgements

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I would like to express my sincere thanks and appreciation to the following people:

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- ❖ To the participants, who were willing to complete questionnaires and to be interviewed.
- ❖ To my daughter Robyn and son Justin, who gave me their support, love and understanding.
- ❖ To everyone who contributed to my academic and personal growth in completing this thesis.

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## DECLARATION OF AUTHORSHIP

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I, Neelan Pillay, declare that the dissertation titled: *Teachers' knowledge of legislation and education law specifically and its influence on their practice* which I hereby submit is my own work and has not previously been submitted by me for a degree at this or any other tertiary institution and that all sources and citations from literature have been acknowledged in text and referenced in full.



Signed

18 February 2014

Date

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## ABBREVIATIONS AND ACRONYMS

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ACE	Advanced Certificate in Education
BEd(Hons)	Bachelor of Education (Honours)
BoR	Bill of Rights
CHE	Council on Higher Education
DoBE	Department of Basic Education
EEA	Employment of Educators Act, Act No. 76 of 1998
ELRC	Education Labour Relations Council
GEAR	Growth, Employment and Redistribution
NCS	National Curriculum Statement
NEPA	National Education Policy Act, Act No. 27 of 1996
NQF	National Qualifications Framework
OBE	Outcomes Based Education
PL	Post level
RDP	Reconstruction and Development Programme
SACE	South African Council for Educators
Schools Act	South African Schools Act, Act No. 84 of 1996
SGB	School Governing Body
SMT	School Management Team
TRA	Theory of Reasoned Action
UNESCO	United Nations Educational Scientific and Cultural Organisation
USDHHS	United States Department of Health and Human Sciences

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## ABSTRACT

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This study argues that education law is of paramount importance in order to be a successful teacher in our democracy where human rights of all stakeholders are protected and as such remains the responsibility of government to ensure that all new teachers are trained in the field of education law.

This dissertation reports to the significance the participants attach to **education law** and to their attitudes and their practice in schools. It continues to answer the question whether knowing the legal rules is in fact changing the game on ground level. There are differing perspectives on the exact essence of education law; however, there seems to be consensus in the literature that the fundamental function of **education law** is to regulate the rights and obligations of the interested parties in order to make the school conducive for teaching and learning. The **education law** functionally contributes to the creation of harmonizing relationships and ensuring co-operation amongst all stakeholders. Education law therefore creates a clear framework for the professional role of teachers. The law defines the border of the playfield and actions at stake in the education sector.

Education law as module in Higher Education programmes deals with issues that pertain directly to the teaching profession. These include inter alia governance, the Bill of Rights, instructions/regulations, limitations, application of legal principles and expectations regarding the teacher as an employee. It deals with legal applications and the legal balancing of human rights in educational practice. As a result, it is assumed that teachers may feel somewhat overwhelmed by the content of an education law module and its associated outcomes. This dissertation will therefore also deal with the ability of teachers to understand and apply the values that underpin the Constitution of the Republic of South Africa. Education should lead young citizens towards occupying their place in a democratic society based on human dignity, equality and freedom. The dissertation argues that insufficient knowledge of education law is impacting negatively on a culture of human rights application in our school system which results that the school system is unsuccessful and do not fulfil its obligations in a democracy. This may result in the DoBE being held

accountable for not empowering teachers to develop our young citizens to fulfil their place in our democracy.

In light of the impact of education law, this dissertation is essentially divided into three sections:

- The first section provides an overview of the issues and challenges of teachers who have had no formal exposure to education law;
- The second section focuses on the impact on teachers who have studied education law as part of their teaching qualification, and
- The third section seeks to offer policy recommendations as remedy, *inter alia* to include education law as part of all teachers' training curricula in South Africa.

The legal remedies that this dissertation advocates is that Government should take on their legal responsibilities towards its employees without turning a blind eye on the value crisis in our country. Government is accountable to ensure that each teacher is skilled and have the competencies to apply legal principles and human rights to instil a culture of human rights that is conducive for teaching in our school system.

#### KEYWORDS

Perspectives

Distance education

Education law

Equality

Freedom

Human dignity

Human rights

Learners' rights

Teacher education and training

Teachers rights

The Constitution

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## LIST OF ADDENDA

Addenda	
A	Permission from the District Office
B	Permission from UP to conduct my research
C	Permission to make class visit (email to group leader)
D	Consent form giving researcher permission to analyse exam scripts – UP Students
E	UP's permission to analyse examination scripts of their students
F	Email asking for experts input into questionnaires
G	Transcript of exam scripts
H	Ethical code and Guidelines of the Faculty of Education UP
I	Permission to undertake research in the identified institutions from their managers
J	Ethics Clearance Certificate
K	Excel sheet of data analysis of phase 1 and 2
L	Open-ended Questionnaire from phase 1
M	Open-ended Questionnaire from phase 2
N	Database of students for focus group sample
O	List of questions for the focus group interview
P	Audio Recording of the focus group interview
Q	Transcript of the recording of the focus interview
R	Phase 1 – no formal exposure to education law

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## CHAPTER 1

### Orientation and Background

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#### 1.1 INTRODUCTION

Since the introduction of our new democracy and the inclusion of the Bill of Rights (BoR), it became of vital importance that teachers should know how to protect and promote learners' human rights. As our country has changed and evolved into a democratic society, by ensuring the human rights of all people in the country, so too has our education system evolved. These changes create a challenge to all stakeholders within the education system. If one of the core functions of a teacher is to protect and promote the human rights of his/her learners, then in order to do this successfully, the teacher needs to know education law as the vehicle to apply human rights successfully in practice.

#### 1.2 DISCUSSION OF THE CONUNDRUM

In the case of *State v De Blom* (1977 (3) SA.513 (A)), the court held that there is a reasonable expectation that "a person who involves himself in a particular sphere ought to keep himself informed of the legal provisions applicable in that sphere." The court was of the view that "ignorance of the law is no excuse!" Simply being unaware or claiming ignorance of the legal provisions and legal expectations of the teaching profession will not excuse teachers when they fail to uphold the legal requirements of their practice. The findings of this case challenge all stakeholders within the education arena, particularly teachers. Teachers cannot plead ignorance of the legal requirements of their profession, because as trained professionals, it remains their responsibility to keep abreast of any legal change within their profession. Therefore, knowing and understanding education law would cultivate a sense of confidence within teachers, as they would become more aware of the expectations and limitations placed upon. This emancipation should enable the teacher to protect the rights of all stakeholders.

If the argument set out in the section on the background is indeed valid, then education law is of paramount importance to teachers. Successful teachers in our new democracy, where human rights of all stakeholders are to be protected, must be knowledgeable of the

education law framework within which they should perform. The focus of my inquiry was the education law modules (EDL 401 and OWR 721). For the purpose of my inquiry I investigated the Education Law modules in the ACE Education Management and the BEd(Hons) Education Management Law and Policy programmes offered by the University of Pretoria via Distance Education (DE). It is important to indicate that these two courses were used as a tool and that any other course on education law at other Higher Education Institutions could have been used. The focus of the inquiry was to investigate if teachers' awareness of legislation and education law specifically influences their practice. The intention was not to evaluate these modules as such, but rather to understand the change in practice of teachers as a result of exposure to education law content in these modules. As a result of South Africa becoming a democracy, education law has become prominent in South Africa. Thus, more and more teachers are being exposed to the theory of education law, which leads to my research question of "To what extent does awareness and knowledge of legislation and education law specifically influences teachers' practice?"

### **1.3 THE IMPORTANCE OF EDUCATION LAW**

If the argument set out in the conundrum is indeed valid, then education law is of paramount importance to teachers. Successful teachers in our new democracy, where human rights of all stakeholders are to be protected, must be knowledgeable of the education law framework within which they should perform. The focus of my inquiry was the education law modules (EDL 401 and OWR 721). For the purpose of my inquiry I investigated the Education Law modules in the ACE Education Management and the BEd(Hons) Education Management Law and Policy programmes offered by the University of Pretoria via Distance Education (DE). It is important to indicate that these two courses were used as a tool and that any other course on education law at other Higher Education Institutions could have been used. The focus of the inquiry was to investigate if teachers' awareness of legislation and education law specifically influences their practice. The intention was not to evaluate these modules as such, but rather to understand the change in practice of teachers as a result of exposure to education law content in these modules. As a result of South Africa becoming a democracy, education law has become prominent in South Africa. Thus, more and more teachers are being exposed to the theory of education

law, which leads to my research question of “To what extent does awareness and knowledge of legislation and education law specifically influence teachers’ practice?”

This inquiry is framed by the importance of education law and how awareness of legislation and education law specifically influence teachers’ practice.

Law by its very nature orders the world we live in, such as rules related to traffic, contracts, marriages etc. The teacher forms part of various relationships such as relationships with learners, colleagues, the principal, the Department of Basic Education (DoBE) and the School Governing Body (Xaba 2011:205). (Oosthuizen & Botha 2009:27) point out that education law creates order and harmony in these multiple relationships. It helps with the structures for education administration and management services, while it allocates functions, tasks, duties and responsibilities. It gives and limits authority while demarcating the various spheres of authority.

A simplistic yet effective way of understanding the need to know education law would be the analogy of playing a game. The question is: How does knowledge of rules change the way the game is played? Every game that children or adults play, be it hop-scotch, marbles, hockey or rugby, has a set of rules. These rules create harmony in the game as they guide players as to what they may or may not do. It regulates the relationship between the players themselves as well as between the players and the game. One can imagine what chaos it creates when a player enters the game and plays the game with no regard for the rules. Not playing by the rules creates tension and frustration.

The teaching profession is no different. There is a “*game*” that teachers are engaged in – their practice. There are rules that regulate the practice. When teachers are engaged in their practice, blissfully unaware of the rules of the “*game*” it creates tension and frustration! These tensions and frustrations play out in various forms, such as discipline issues with the learners or staff or conflict between the school and the DoBE, or school governing body (Joubert 2009:240). Our fundamental duty would be to protect the rights of learners. Our understanding of education law will compel us to create an environment that is safe for our learners and create a space that is conducive to learning. Therefore, knowing

the “*rules of our game*” would affect the way teachers plan and perform their duties or “*play the game*”.

Learners by virtue of their age have a unique status in respect to their ability to foresee danger or be fully responsible for their action. This unique status requires a different level of accountability from that of teachers, as stated by Van Vollenhoven:

The position of authority occupied by teachers has many legal implications pertaining to possible liability for neglect. Teachers work with young, immature individuals who, because of their lack of experience and judgment, are not always able to foresee the consequence of their actions. Potentially dangerous situations should therefore receive the teacher’s undivided consideration. It is clear then, that school rules, official safety measures and regulations form part of education law (Van Vollenhoven 2008:6).

There appears to be silence on how teachers felt about this topic, particularly how they felt about its effect on their practice. However, teachers do appear to have a voice in regards to their experience and attitudes in this matter. If they are key role players in our education system they are the custodians of the human rights of their learners. It is important to understand the teachers’ perception of how they see education law impacting on their practice. The intention of researching teachers’ practice in relationship to education law is as a result of this apparent gap not being addressed in the existing literature (insert a cross reference to the section where you have given evidence of this literature review).

The vehicle for my findings was the ACE and BEd(Hons) programmes of the University of Pretoria and specifically the education law modules (EDL 401 and OWR 721). My point of departure was the objectives that these modules aim to achieve. In their modules, the overarching objectives are stated thus:

The focus of this module is to develop your practical skills and competencies to manage your classroom or school without infringing upon the rights of any stakeholders at the school. This module will help you because at the end of it you will not only know what the law expects you to do but also what you can legally expect from all the other stakeholders at the school. The module will also train you to implement legal principles at school in order to balance human rights and create a harmonious school climate, conducive to implementing the requirements of education law! (Van Vollenhoven 2008:vii).

The inquiry guide for the honours module goes on to stipulate the outcomes that should be achieved:



- To sensitize the student to the fact that everything that happens in a school is subject to and governed by a law/regulation, and that this has legal implications for all parties involved.
- To inform the student of the rules of the game, i.e. have a basic knowledge of the laws and the legal principles that govern his/her profession.
- To equip students with the necessary skills to apply their knowledge in respect of legislation and the legal principles concerned in analysing situations, interpreting information and taking appropriate action (Joubert 2002:9).

In keeping with the above focus, it could be expected that the participant teachers who are exposed to one of these modules, should undergo change at some degree. This change should be evident in the teacher's practice.

The education law module (EDL 401) for the Advanced Certificate in Education (ACE), states its objectives as follows:

1. be able to identify, manage and respond appropriately to contextual challenges
2. understand and appropriately and successfully apply general law in educational situations
3. distinguish between rights and obligations
4. demonstrate an ability to apply legal principles in practical situations at your school
5. identify legal relationships that affect you and your teaching
6. understand the supremacy of the Constitution and the practical implications for classroom and school practice
7. understand and apply the reciprocity of rights and duties
8. understand the role that ongoing self-evaluation and research play in developing competence within the field of education management law and be able to carry out basic evaluation and research projects
9. be able to reflect critically on your own professional experience

(Van Vollenhoven 2008:vii).

It was interesting to note that both the BEd(Hons) module and the ACE module have very similar objectives. I need to point out at this stage that the purpose of my inquiry was not to determine if the selected sample of participants had achieved the above outcomes *per se*, or if these participants were indeed successful in passing these modules, but rather to create a reality from their experiences after they had been exposed to education law modules in terms of its influence on their practice.

## **1.4 RESEARCH QUESTION**

To which extent do awareness and knowledge of legislation and education law specifically influences teachers' practice?

Sub questions:

- To which extent do awareness and knowledge of legislation and education law specifically influence practice for teachers who have not been exposed to education law?
- To which extent do awareness and knowledge of legislation and education law specifically influence practice for teachers who have been exposed to education law?

The following subsection explains the methodology chosen for this inquiry. This orientates the reader in terms of the basic premises, epistemological position, research approach, data collection strategies and data collection instruments.

## **1.5 AIM AND OBJECTIVES**

The purpose and aim of this inquiry was to provide a qualitative perspective on how the awareness and knowledge of legislation and education law specifically influences teachers' practice.

This aim leads to two objectives:

- To investigate the extent that legislation and education law specifically influence practice for teachers who have not been exposed to education law.
- To investigate the extent that teachers perceive practice change due to exposure to legislation education law specifically.

## **1.6 RESEARCH APPROACH**

Though researchers seek truth, it is often not a matter of truth about the way things actually are, but instead the truth of how people see them. Quite often there is no 'right' answer and often we are simply interested in views and attitudes (Williams 2003:54).

Qualitative research provides rich narrative descriptions of the participants' perspective on the construction of the reality of their social world. The purpose of qualitative research is to understand social phenomena of multiple realities from the participants' perspective (see § 4.3.2).

### **1.6.1 RESEARCH DESIGN**

The research design demonstrates the expectations and methodology of my inquiry in an attempt to answer the research question (see § 4.3.3) (Marshall & Rossman 2011:21).

### **1.6.2 ASSUMPTIONS**

As both the Advanced Certificate in Education (ACE) and the BEd(Hons) programme were for practicing teachers who therefore have already obtained an initial teacher training qualification, and bearing in mind that previously the module, education law, was not part of the initial teacher training curriculum, one could assume that these teachers are experienced in their fields of expertise although never exposed to a module in education law. It is assumed that inquiring education law would indeed have an influence on their teaching practice.

Teaching in South Africa pre-1994 has had many challenges. The system was driven by the political logic of the apartheid system which engineered separate forms of education for different racial and ethnic groupings (Robinson 2003:19). The subsequent duplication and fragmentation of the teacher education institutions, Robinson argues, have led to the lack of a smooth seamless system and resulted in many curricula and qualifications. It was within this context that teachers practiced their craft. James, Ralfe, Van Lauren and Ngcobo 2006:679) agree that under the apartheid government, education was deliberately made

unequal and access limited. This purposeful inequality within the education system may be one of the key factors that have influenced teachers' attitudes towards education law. Their experience within the apartheid system may also colour the way they see their profession.

Education Law deals with issues that pertain directly to the teaching profession; these include, amongst others, the BoR, prescriptions, limitations, application of legal principles and expectations regarding the teacher as an employee. It deals with legal applications and the legal balancing of human rights in practice. As a result it can be assumed that teachers may feel somewhat overwhelmed by the content of education law modules and its associated expectations. It may also be possible that as a result of the above, teachers may not be able, or are not willing, to internalize the desired changes that education law seeks to achieve. It could be that the ideals that are presented in the education law modules are far removed from their own reality as teachers and therefore that the content of legislation and education law specifically have no influence on their practice.

## **1.7 THEORETICAL FRAMEWORK**

A useful theory is one that tells an enlightening story about some phenomenon. It is a story that gives one new insight and broadens one's understanding of the phenomenon (Anfara & Mertz 2006:101). McMillan and Schumacher (2001:135) suggest that there must be certain criteria present for a theory to be useful in developing scientific knowledge. They argue that a theory should provide a simple explanation, it should be consistent with an already established body of knowledge, it should be a tentative explanation that could be verified or reviewed and it should stimulate further research. Merriam (1998:15) adds that it is difficult to imagine an inquiry without a theoretical or conceptual framework. She suggests that, "we would not know what to do in conducting our research without some theoretical framework to guide us." Jansen (2004:1-2) puts forward that a conceptual framework is an explanatory device that enables a researcher to make sense of collected data. While it is relatively easy to collect data, it is a lot more difficult to explain and interpret it.

### **1.7.1 PERCEPTIONS OF TEACHERS**

This inquiry focused on the perceptions that teachers have about legislation and education law specifically and its influence on their teaching practice. Therefore my research was framed by the EDL 401 and OWR 721 modules themselves, the Constitution in particular Chapter 2, the BoR and the South African Schools Act, Act No. 84 of 1996 (Schools Act).

### **1.7.2 SUPREMACY OF THE CONSTITUTION**

In the years prior to 1994, the South African Government had apartheid policies and as a result the rights of the vast majority were not always recognised. This resulted in the violation of the learners' human rights which included the learners' rights to education. The education system was designed to perpetuate the inequalities of the government of the day. The types of political environment in which people find themselves tend to influence their way of understanding human rights. In this regard, the new South African Government has inculcated into its society the tendency of respect of diversity, basic freedoms, equality and human dignity (Netshitahame 2008:133).

Investigating any legal aspect in South Africa needs to take place within the framework of the Constitution. The Constitution is the supreme law in South Africa and all other law is subordinate to it. "This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligation imposed by it must be fulfilled" (Republic of South Africa, 1996, section 2).

This requires that all national legislation or provincial legislation in any field, which includes education, is subject to the Constitution and may not be in conflict with it. It must be noted that because different people use the law for different reasons or have different approaches to it, it is expected that there would be many and varied interpretations. It is crucial for teachers to know the law and it becomes equally crucial for teachers to know how to interpret the law when applying it in practice. To this end the Constitution even prescribes how the Constitution should be interpreted. It is within these prescriptive requirements that my conceptual framework was built.

### 1.7.3 INTERPRETATION OF THE BILL OF RIGHTS (BOR)

In regards to the Constitution:

- 39 (1) When interpreting the BoR, a court, tribunal or forum:
  - (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
  - (b) must consider international law; and
  - (c) may consider foreign law
- (2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the BoR.
  - (3) The BoR does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Constitution (Constitution of the Republic of South Africa, 1996, section 1).

Interpreting the BoR is crucial when protecting and promoting any of the human rights. Courts, tribunals or forums, or any place where human rights are promoted or protected, need to ensure that when they are promoting any of the human rights, they promote the values of an open and democratic society, ensuring human dignity, equality and freedom. The implication would be that teachers must be competent in interpreting the BoR when they protect or promote the rights of their learners.

### 1.7.4 THE FOUNDING PROVISIONS IN THE CONSTITUTION

Introduce quotation

- (1) The Republic of South Africa is one, sovereign, democratic state founded on the following values:
  - (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
  - (b) Non-racialism and non-sexism.
  - (c) Supremacy of the Constitution and the rule of law.
  - (d) Universal adult suffrage, a national common voter's roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness (Constitution of the Republic of South Africa, 1996, section 1).

Section 7 of the Constitution further states that:

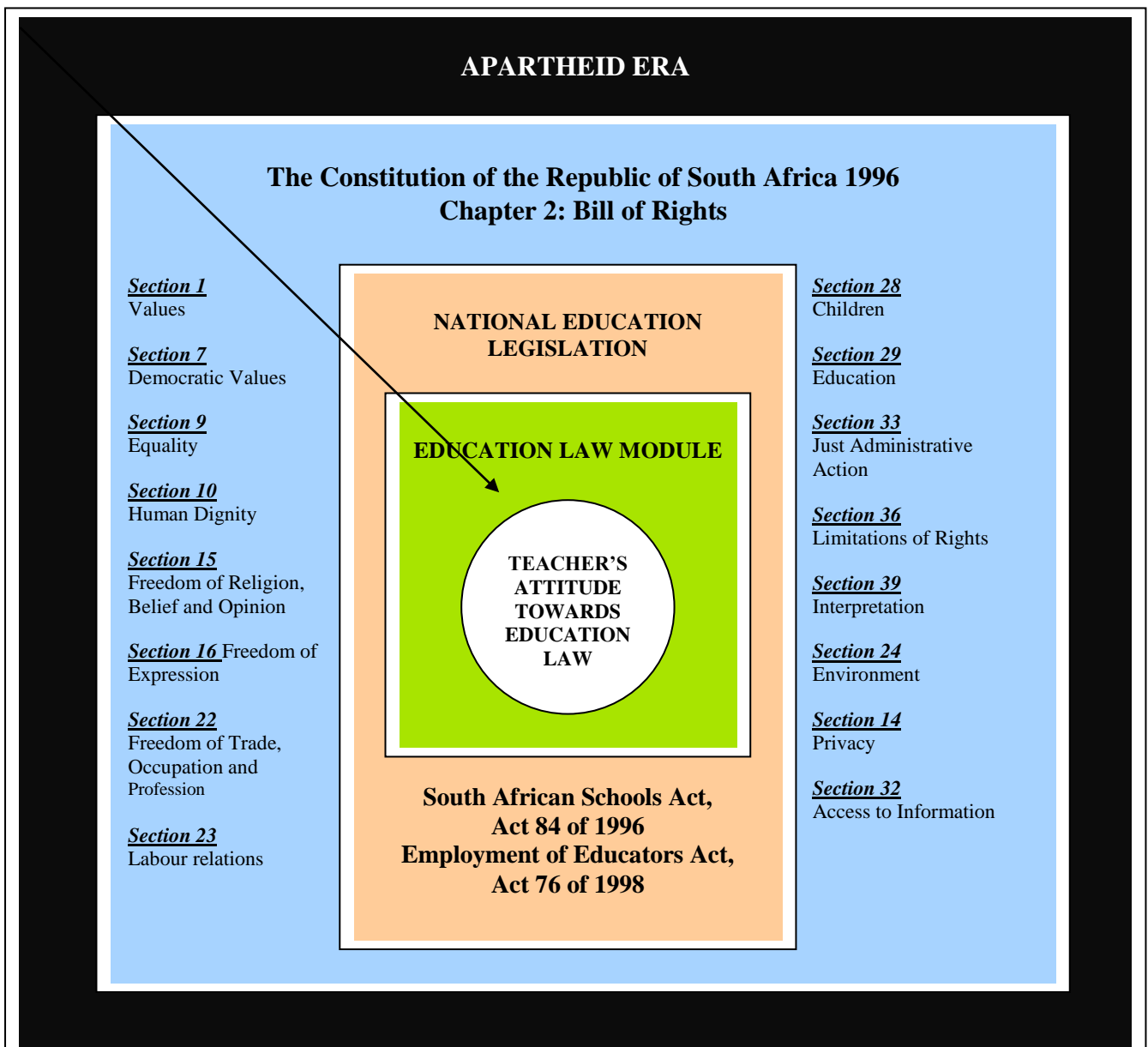
- (1) This BoR is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

Coetzee (2008a:190-191) asserts that the values of human dignity, equality and freedom (section 7) are values which underpin all democracies. Our education system has the responsibility of developing learners who will later mature into young adults and who understand and subscribe to the values that underpin our democracy. The Constitution (section 1) sets out the spirit and underlying values of the Constitutional system that should be incorporated in education law and policy (Potgieter, Visser, Van der Bank, Mothata & Squelch 1997:5-6). It requires that education be transformed and democratised in accordance with these values. The most important of these values for the classroom manager and stakeholders are: human dignity, the achievement of equality, the advancement of human rights and freedoms, non-racialism and non-sexism. These values establish the context within which fundamental rights function and also determine the nature of their limitation. This means that the court will take these values into consideration when it has to determine whether a limitation of a right was reasonable and justifiable in terms of section 36 of the Constitution. Some of these values (e.g. human dignity (section 10) and equality (section 9)) are also recognised as individual rights and are enshrined in the BoR (Bray 2004:40). The values that are enshrined in the Constitution become the yardstick for all stakeholders in education to use. There is now a legal responsibility by all who are involved in education to ensure that these values are not only upheld, but also advanced. With this legal responsibility, teachers can be held to account, to ensure these values are being upheld or promoted, as values and rights go hand in glove.

A visual representation of the conceptual framework follows, showing the relationship between human rights, national education legislation and a teacher's attitude towards education law and subsequently his/her attitude towards his/her teaching situation (adapted from Joubert & Prinsloo 2001:28).

Figure 1.1 depicts the journey a teacher would have taken in evolving to a teacher who teaches in a highly regulated field of education. In this diagrammatical representation, the

arrow indicates a path of a teacher from the apartheid era (depicted by the black) on a journey through his/her career and being influenced by the Constitution, national and provincial legislation and finally by the education law modules. The departure point is the apartheid era, as teachers, both in their teaching situation and life experiences were influenced by this setting. The teacher's journey takes a different route after the birth of democracy. This new democracy also influences both his/her teaching situation and his/her experiences. Upon coming across EDL 401 and/or OWR 721 the teacher examines his/her experience and teaching situation. This journey takes him/her to the point of assessing his/her practice – understanding how his/her knowledge of the law would affect his/her practice. The attitude of teachers towards education law was therefore measured against their understanding of the supremacy of the Constitution, their interpretation of the BoR and their understanding of the role and function of the founding provisions or values of the Constitution in schools.





**Figure 1.1: Relationship between teachers' attitude and their practice** (adapted from Joubert & Prinsloo 2001:28)

Figure 1.1 is a visual representation of the theoretical framework illustrating the relationship between teachers' attitude towards education law and other legislation from pre-1994 (apartheid era) to post-1994 (democracy) (adapted from Joubert & Prinsloo 2001:28).

## **1.8 METHODOLOGICAL ACCOUNT**

My inquiry was designed as a case study. A case study is a research strategy which focuses on understanding the dynamics present within a single settings (Huberman & Miles 2002:57). Merriam (1998:28) describes a case study as “an intensive, holistic description and analysis of a single entity, phenomenon or social unit.” Yin (1994:27) adds that a case study investigates a contemporary phenomenon within its real-life context, especially when the boundaries and contexts are not clearly defined (Simons 2009:83). This type of research allowed me to combine collection data methods, such as questionnaires and document analysis, which ultimately enabled me to provide a description in order to understand the dynamics at play with respect to the influence on practice by knowledge and awareness of legislation and education law specifically.

### **1.8.1 EPISTEMOLOGY**

I worked in the post-modern interpretivistic paradigm (see § 6.3) and therefore I do not claim to search for “the” truth. My truth would be my subjective interpretation of the way the participants interpret the phenomenon of my research (see § 4.3.1).

### 1.8.2 INQUIRY STRATEGY

My strategy was inductive. Data was collected using questionnaires with open-ended questions in phase 1 and phase 2. Phase 3a was the analysis of examination scripts, which was unsuccessful, leading to the group interview in phase 3b.

### 1.8.3 SAMPLING

Patton (1990:63) argues that it is important to select information-rich cases, so that one can learn a great deal about issues of central importance to the purpose of the research, thus the term purposeful sampling. Therefore a combination of purposeful and convenient sampling was used.. This type of sampling is perfect for this type of research because it allows the researcher to generate a rich and thick description, understanding the variations that existed as well as seeing the significant common patterns within the variations (Merriam 2002:183). Cohen, Manion and Morrison (2005:103) highlight that purposive sampling is where the researcher hand-picks the cases to be included in the sample on the basis of his/her judgment of their typicality. In that way the researcher builds a sample that is satisfactory to needs. The convenient sampling approach will be discussed in the paragraph below.

My sampling took place at various levels:

**(a) Phase 1: Determining the knowledge of teachers on legislation and education law specifically, who have not studied education law and its influence on their teaching practice**

Convenience sampling was used for this phase of data collection. Cohen, Manion and Morrison (2005:102) suggest that convenient sampling involves choosing the nearest individuals to serve as participants. The researcher simply chooses the sample from those to whom he/she has easy access. They go on to clarify that because the participants did not represent any group apart from itself, it did not seek to make generalizations from its findings.

The target population (table 1.1. below) was teachers of schools from the Lions River District in Pietermaritzburg. This sample included high school and primary school PL1, PL2, PL3 and PL4 teachers. The table below shows the distribution of the sample. There are two primary schools and two high schools in this district.

**Table 1.1: Sample from Lions River District**

Name of school	No. of teachers	PL1	PL2	PL3	PL4
S1: A Primary school	5	2	1	1	1
S2: A Primary school	5	2	1	1	1
S3: A High School	5	2	1	1	1
S4: A High School	5	2	1	1	1
<b>Total no. of teachers</b>	<b>20</b>	<b>8</b>	<b>4</b>	<b>4</b>	<b>4</b>

**(b) Phase 2: Determining the knowledge of teachers on legislation and education law specifically, who have studied education law and its influence on their teaching practice**

My sample included teachers who have enrolled for the ACE Education Management as well as the BEd(Hons) Education Management, Law and Policy as offered by the University of Pretoria. I included all teachers enrolled for education law at UP from the Durban area that attended the July contact session. I conducted a questionnaire with students who had completed these modules. Table 1.2 depicts the sample used for the data collection in phase 2.

**Table 1.2: Sample for phase 2 of data collection**

Enrolled students at the July contact session	No. of students	PL1	PL2	PL3	PL4
ACE – EDL 401	10	7	1	1	1
BEd(Hons) OWR 721	10	7	1	1	1
<b>TOTAL</b>	<b>20</b>	<b>14</b>	<b>2</b>	<b>2</b>	<b>2</b>

While table 1.3 illustrates the sample used for phase 3 of the data collection process.

**Table 1.3: Sample for phase 3 of data collection**

<b>Document analysis – same students as above</b>	20	14	2	2	2
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**(c) Phase 3: Document analysis**

I intended analysing the answers to one of the questions from the October examination of EDL 401 and OWR 721 students. However, the data collected was not sufficiently rich. These were the same 20 participants from the July contact session who completed the questionnaires in phase 2. This helped me determine if there was some relationship between their answers in the questionnaire and their practical implementation in a scenario in the examination.

**1.8.4 DATA COLLECTION INSTRUMENTS**

Data was collecting in three phases using questionnaires with open-ended questions and group interviews (see § 4.3.4).

**1.8.5 LIMITATIONS**

One of the characteristics of a qualitative interpretivist research design is that the researcher is the primary instrument for data collection and data analysis. The human instrument has shortcomings and biases or “subjectivities” (Merriam 2002:201). This limitation is acknowledged, and as a researcher, I approached my research with my own biases (see § 4.3.7). To reduce the impact of this shortcoming, the rationale and aim of the inquiry guided me and helped keep me on course. During the data collection process, problems were encountered. In phase 3a, the data collected was not sufficiently rich and I had to abandon the data collected via document analysis in search of new data. It was then that I decided to use a group interview as a data collection instrument, however, there

were challenges in finding a sample and I only has two teachers present at the interview. I decided to go ahead anyway.

### **1.8.6 Significance of inquiry**

The findings of this inquiry could affect the future of education law in the initial and further training of teachers in our country. The results suggest that the studying of education law made a significant difference in the way teachers perceived their roles within the education system. It also informs curriculum planners and developers of the importance of Education Law as a module in initial teacher training and further training programmes.

This inquiry improved my research skills and my understanding of the research process. *“How you study the world determines what you learn about the world”* (Patton 1990:67). Further, this inquiry developed a hypothesis for further exploration via quantitative study on the matter of the place of education law in initial teacher training.

### **1.8.7 TRUSTWORTHINESS**

Bickman and Rog (1997:369) raise the question of trustworthiness and that researchers must consider what the plausible alternative explanations are, as well as threats to the validity/trustworthiness of the potential conclusions of their inquiry, and how these would be dealt with. It had to do with proving to the reader the authenticity of my results. Bickman and Rog (1997:372) go on to say that triangulation enhances validity and compensates for the fallibility of any single method or measure in applied research. Triangulation was done between the different sets of data in the different phases. The analysis of the exam script would further add to the validity of my findings as one would be able to determine if the students’ way of answering scenarios correlated with their attitudes.

My position was one of an inductive approach, that knowledge is generated through the experiences of the participants. I anticipated that their realities and attitudes would be different, and I aimed to understand and interpret their realities.

## 1.9 REPORT OUTLINE

### **CHAPTER 1: Orientation and background**

Chapter one introduces the inquiry. It also provides background to the inquiry as well as a discussion on the research conundrum. From the indicated research problem followed the research question and sub-questions that guided this inquiry.

### **CHAPTER 2: The legal determinants for human rights implementation – a literature review**

This chapter looks at local and international literature on education law and the influence it has on the teaching profession. It aims to define key concepts and identify gaps in literature. It seeks to analyse what has already been covered as it provides a platform for the rest of my inquiry.

### **CHAPTER 3: The role of education law in teacher education and training – a literature review**

This chapter looks at teacher education and training in the apartheid era as well as post apartheid era and the effect of education law.

### **CHAPTER 4: Research design and methodology**

This chapter provides a description of the research process, design and methodology. I also justify my methodological choices. It explains the process chosen to collect, generate and analyse data in response to the research and guiding questions.

### **CHAPTER 5: Presentation and interpretation of data**

This chapter presents the research data gathered. It then proceeds by analysing the data, in order to crystallize my findings.

### **CHAPTER 6: Conclusion and Suggestions**

This chapter aims to discuss the findings in broad themes. It also draws conclusions and notes the significance and implications of the inquiry and makes theoretical recommendations as well as recommendations for practice.

## 1.10 SUMMARY

In this chapter I looked at the research conundrum, aim and assumptions that underpinned my inquiry. I closely examined the conceptual framework and formulated the research question and sub-questions which would guide my inquiry. The research approach and design was established along with the methodology (Leedy & Ormrod 2010: 54). I attended to the sampling as well as the data collection instruments.

In the next chapter I will discuss my literature review of the legal determinants for human rights implementation in school. I will provide clarification of the various concepts covered in the inquiry as well as to look at education law and its roots. These roots include Roman law, Roman-Dutch Law, English Law and Indigenous Law. The Constitution will be looked at closely, focusing on both the values which underpin it, as well as the BoR. The Schools Act will be examined as this legislation speaks directly to schools and all its stakeholders. Finally, I will explore the importance of education law. I make use of a mind map to help situate my research and provide boundaries to the field of study.

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## CHAPTER 2

### The legal determinants for Human Rights implementation in schools: Literature review

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#### 2.1 INTRODUCTION

In this chapter I will conduct a literature review of the legal determinants of human rights implementation at schools. The purpose of a literature review is to tell a story and help to advance our understanding of what is already known (Jesson & Lacey 2006:139). In so doing I hope to be able to identify the gaps in the literature reviewed, in order to frame my research.

It can be argued that the understanding of the legal frameworks that govern school practice begins with the teachers' understanding of the BoR and the Schools Act. Since 1994, the South African government made many changes in the form of education policies and legislation intended to democratize education and school practice. The most significant of these changes are catered for in the Constitution and in the Schools Act.

It must be noted that education and training received by teachers is largely focussed on teaching and learning. Little or no attention is given to legislation that affects their practice. Teachers are expected to have a working knowledge of relevant legislation so that they can understand the legal processes and principles and determine the legality of their decisions. The concept of education law is novel to many teachers and this lack of preparation makes the task of legal intervention foreign and uncomfortable to most educators (Duma 2009:135).

I have constructed a mind map in order to focus and limit the scope of my literature review (see Figure 2.1). Four broad themes have emerged and have been explored and begin with education law. Here the focus is on the supremacy of the Constitution as well as the interpretation of the BoR, as human rights implementation is one of the concerned areas where I anticipate attitude change through knowledge (see § 1.7.2).



The Constitution provides the cornerstone for legislation and education law specifically. The Constitution is seen as crucial for the understanding of the various aspects of legislation and education law specifically, as education law ultimately is derived from it. It will be of significance to determine the level of understanding of the Constitution, Schools Act, other legislation and education law in evaluating its influence on practice.

## **2.2 CLARIFICATION OF CONCEPTS**

In this section I will provide clarity to the various concepts that will be used in the context of this inquiry. Below is a diagrammatical representation of the scope of the literature review. I will examine the effect of knowledge and awareness of teachers on legislation and education law specifically, who have not studied education law as well as those who did not, and its influence on their teaching practice. This mind map helped me to situate my inquiry as well as provided the boundaries within which I explored.

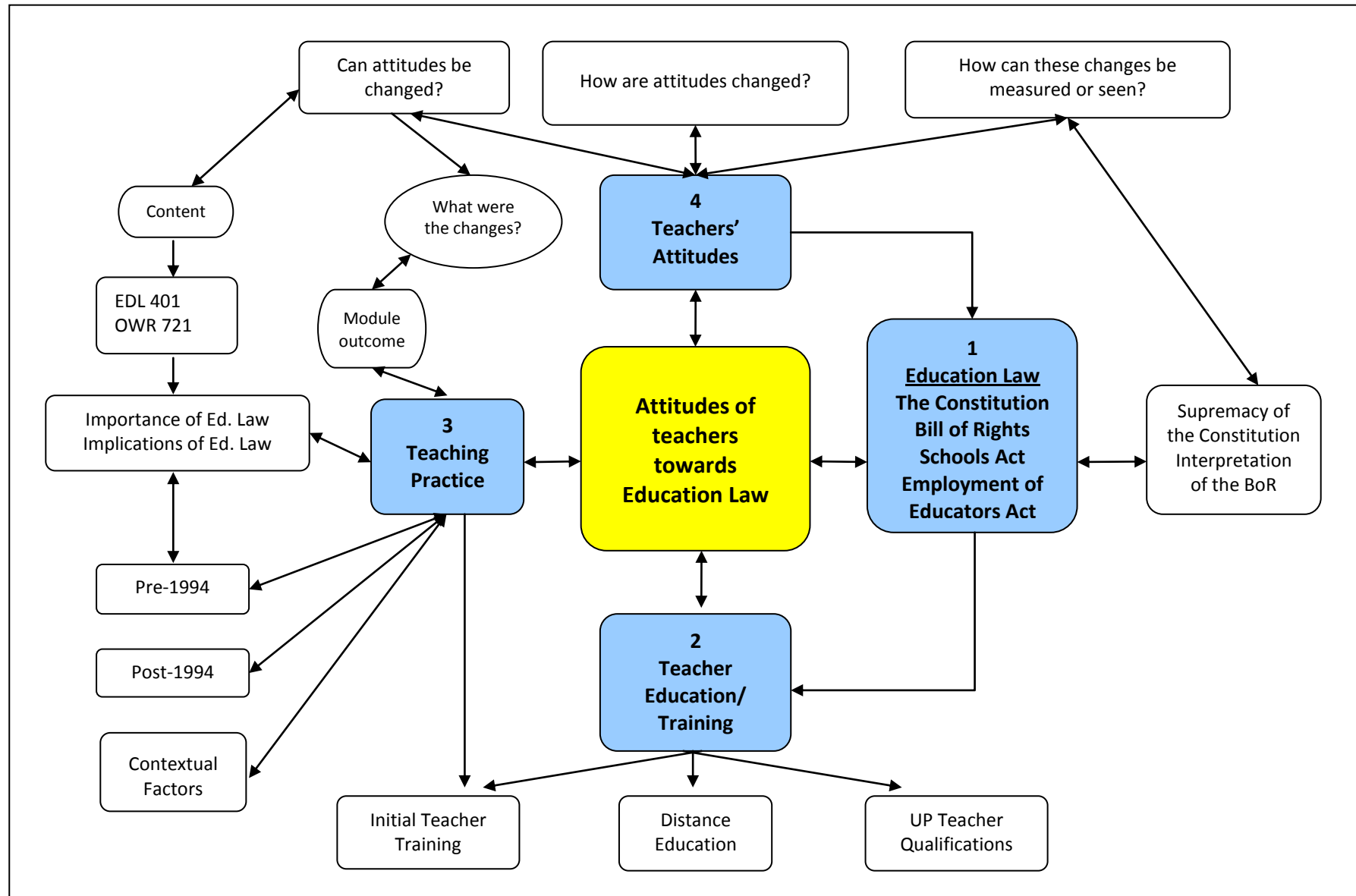


Figure 2.1: Scope of Literature Review

### **2.2.1 TEACHER EDUCATION**

Teacher education or teacher training refers to the policies and procedures designed to equip prospective teachers with the knowledge, attitudes, behaviour and skills they require to perform their tasks effectively in the classroom, school and wider community.

Although ideally it should be seen and organised as a seamless continuum, teacher education or training is often divided into these stages:

- *initial teacher training / education* (a pre-service course before entering the classroom as a fully responsible teacher);
- *induction* (the process of providing training and support during the first few years of teaching or the first year in a particular school);
- *teacher development or continuing professional development (CPD)* (an in-service process for practicing teachers).

For the purpose of this inquiry the focus will be on the teacher development aspect only.

### **2.2.2 EDUCATION LAW 401 (EDL 401)**

Education law is one of six modules that make up the ACE: Education Management Programme at the Faculty of Education of the University of Pretoria. The course code for education law is EDL 401.

### **2.2.3 EDUCATION LAW 721 (OWR 721)**

Education law 721 is one of twelve modules, which make up the BEd (Hons) qualification. The module code for education law 721 is OWR 721. Students are supplied with a study guide, a reader, tutorial booklet as well as an administration booklet.

### **2.2.4 TEACHERS WHO HAVE NOT STUDIED EDUCATION LAW**

This research will also look at teachers who have not been exposed to any education law modules. These teachers have been sampled from four schools from the Howick District in

KwaZulu Natal province, two of which are primary schools and two are high schools. Their biographical information indicates that they have been teaching for many years, and as such have never been exposed to any education law programme in their initial training addendum R).

#### **2.2.5 BELIEFS AND ATTITUDES**

According to Triandis (1971:2), attitude refers to “manners towards” or “consistency in response.” Hanks (1998:67) adds that it is “the way a person views something or tends to behave towards it, often in an evaluative way.” Du Toit (1993:9) refers to attitudes as an “evaluative statement about a person’s world.” It is clear that the definition of “attitudes” varies from research to research. However, Koekemoer and Olivier (2002:35) sum it up by acknowledging that although definitions vary, they all have the “readiness to respond” to a situation as a common element. The definition that Allport (1935:798) puts forward seems to be widely accepted “... a mental and neural state of readiness, organized through experience, exerting a directive or dynamic influence upon the individual’s response to objects and situations.” For the purpose of this research the definition of attitude shall be how teachers experience the education law modules and associated examination papers.

#### **2.2.6 TEACHER**

The word teacher has, over the years, been used synonymously with words such as educator and facilitator. For the purpose of this inquiry, the definition of a teacher is the same as defined in the National Education Policy Act 27 of 1996 – s1 define educator:

... any person who teaches, educates or trains other persons at an education institution or assists in rendering education services or education auxiliary or support services provided by or in an education department, but does not include any officer or employee as defined in section 1 of the Public Service Act, 1994.

#### **2.2.7 TEACHING PRACTICE**

Teaching practice, for the purpose of this inquiry, will refer to teachers who are employed by the provincial DoBEs as teachers within public schools. The focus is on the craft or practice of doing their job and not on the individual teachers *per se*.

### **2.2.8 POST LEVEL 1 (PL1)**

Post levels are a classification used by the DoBE to differentiate between teachers on different levels of management and salary ranges. A teacher who is classified as PL1 is someone who teaches full time in the class and is not part of the Schools Management Team (SMT). The teacher's salary level is naturally linked to the post level that he/she is on Insert text reference.

### **2.2.9 POST LEVEL 2 (PL2)**

A teacher who is classified as PL2 is someone who teaches full time in the class, is part of the SMT and is referred to as the Head of Department (HoD). Depending on the size of the school and the seniority of the HoD, he/she may be a lower level or middle level manager at his/her school. The vast majority of schools have HoD's, however, schools that have only one or two classes of learners do not qualify for HoD's (insert text reference). These types of schools are typically found in deep rural areas.

### **2.2.10 POST LEVEL 3 (PL3)**

A teacher who is classified as PL3 is someone who does not teach full time in the class and is part of the SMT. A PL3 teacher is considered to be the upper management of the school, if not the Head. Depending on the number of pupils at the school, a PL3 teacher will either be a Deputy Principal or, at a smaller school, the Principal. Naturally the salary level and level of responsibility within the SMT is linked (Insert text reference).

### **2.2.11 POST LEVEL 4 (PL4)**

A teacher who is classified as PL4 is someone who does not teach full time in the class and is the Head of the SMT (Insert text reference). This teacher is also referred to as the Principal.

### **2.2.12 THE SOUTH AFRICAN SCHOOLS ACT, ACT 84 OF 1996**

The Schools Act can be seen as the most important educational national law governing school education. It provides a comprehensive legal framework that sets uniform standards for the education of learners at schools and for the organisation, governance and funding of schools in South Africa (The South African Schools Act, Act 84 of 1996). This legal framework is of paramount importance to this inquiry. One of the most important purposes of the Schools Act is to bring about one unified National Department of Education. In so doing, it seeks to redress the imbalances and injustices of the past where education was segregated according to race. Schools Act undergirds this research as it focuses, directs and informs the scope of my inquiry.

The principle that the stakeholders in the education sphere are in a partnership and are co-responsible for advancing education was stressed in subsequent legislation and case law. (*Schoonbee and Another v MEC for Education, Mpumalanga, and Another* 2002 (4) SA 877 (T):883; Oosthuizen 2009:277; Joubert & Prinsloo 2008:74; Bray 2005:13). Other important values and principles pertaining to education policy were identified and included equity, transparency, non-discrimination, fairness, quality, participation, cooperation, access, restoration, accountability, development, freedom of choice, redress, school-based decision-making and financial sustainability.<sup>10</sup> Most of these principles presuppose cooperation among stakeholders.<sup>11</sup> In addition, these values and principles are applicable to school discipline and should be reflected in legislation and in the implementation of school disciplinary measures.

### **2.2.13 HUMAN RIGHTS**

The Constitution ensures the protection of human rights as entrenched in the BoR as stipulated in section 7. The concept or term “human rights” has over time conjured up different meanings for different people.

Human rights are those rights and freedoms which are inherent in all human beings by virtue of their humanity alone, and which are not bestowed on them by any ruler, nor earned or acquired by purchase (D’Engelbronner-Kolff 1993:65).

I agree with this definition and for the purpose of this inquiry, human rights will refer to the human rights included in the BoR found in the Constitution, in Chapter 2. In terms of section 7(1) of the Constitution:

This Bill of Rights is a cornerstone of the democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

Human rights are those rights that belong to every man, woman and child. Kleyn and Viljoen (1995:236), Maree (1995:1-2) as well as Bray (1996:151) are in agreement that human rights can be regarded as basic rights or fundamental rights. This inquiry agrees with the above researchers, that human rights belong to all people, which includes learners. Because learners are human beings, they are also entitled to legal, moral and human rights, including the right to education (Netshitahame 2008:28).

There are 32 sections in Chapter 2 of the Constitution that deal with human rights. Some of these sections will be pivotal to my research as the assumption is that knowledge and awareness of legislation - therefore also of human rights - will influence the way teachers apply human rights in practice.

## **2.3 EDUCATION LAW**

Kleyn and Viljoen (2002:1) suggest that there is no singular definition for law nor for education law. They put forward some of the characteristics that help give law more definition. Law consists of a body of rules that regulate human interaction, providing order to society and giving certainty (Kleyn and Viljoen 2002:2). These characteristics help us understand the fundamental nature of law and what it aims to achieve.

### **2.3.1 DEFINING EDUCATION LAW**

Education law deals with the law relating to education (Bray 2004:36). Bray goes on to suggest that education takes place within the legal system of South Africa and as a result does not exist in a vacuum or outside the ambit of the law. While this may be the case, it will be of significance to determine which aspects of the law relate to education, as this will provide clarity to the question “Can education law be distinguished from the law?” Bray

(2004:36) argues that this is in fact a difficult issue to separate. She therefore concludes that education law is not a specific area, discipline or branch of law but that it spans the entire field of law.

Having established the above, most of the education law sources originate from public law such as legislation. According to Van Vollenhoven and Fisher (2008:3)

Education law is, in effect, all legislation that is involved in any aspect of the functioning of schools – for example, financial management, learners’ safety. Everything that happens at school should happen according to the legal prescriptions. These relevant legal prescriptions form part of education law.

Education law is a growing field of study (Beckmann & Sehoole 2004:11). The increase in legislation and policy dealing directly with the education arena makes this field of study more and more complex. Defining education law is not straightforward. Despite this fact, Rautenbach and Malherbe (2004:18-20) defines education law as comprising the rules of law pertaining to education. This field can therefore be illustrated as in Figure 2.2. Bray (2000:36-37) interrogates the same issue as Rautenbach and Malherbe, and arrives at very much the same conclusion:

Education law is not a separate field of law and does not have its own unique norms and rules. It is a hybrid field which comprises of norms and standards from the entire field of law. Although education cannot be distinguished as a category or specific field of law or by specific underlying principles, it is certainly identifiable in the legal system by reason of its application in education. In short, education law is the law that concerns itself with education.

Coetzee (2008b:183) refers to this field of law as quasi-legal.

According to the Preamble to the Constitution, the goal is the realization of the full potential of every individual. In education that means the best possible education system, education facilities and education programmes – in short, the best possible education for all South Africans.

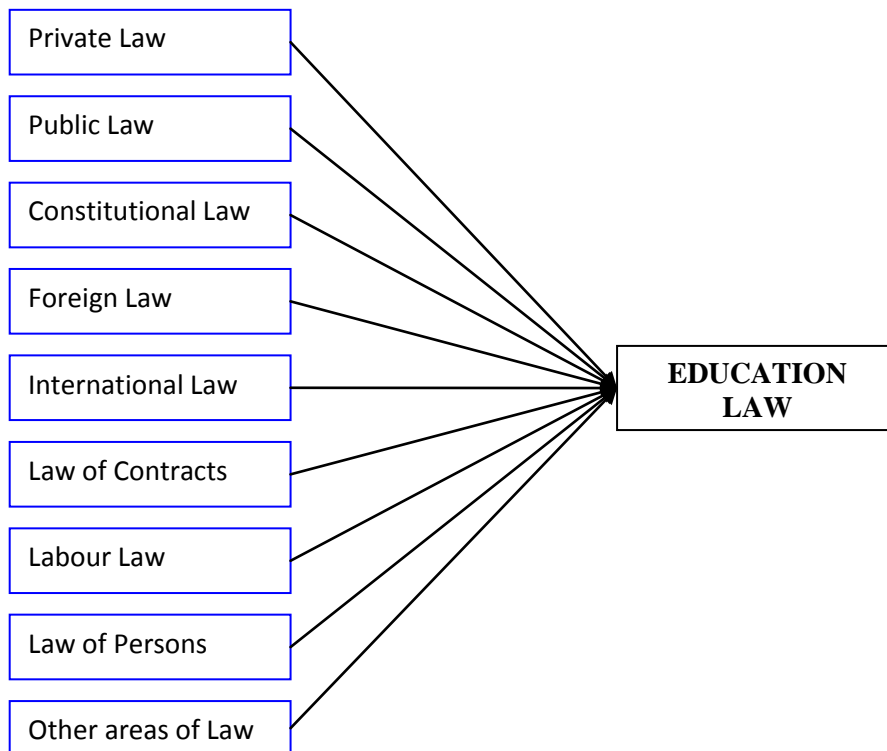
The main function of law is to create order and harmony; it regulates human interaction and gives assurance. The law controls most aspects of our lives. This is evident in the rules of the road, contracts when getting married, and rules of sport games.



The law can be thought of as a set of rules that we as a society accept to manage our lives. Therefore, law can be defined as a body of norms and rules that must be accepted by society as its legal system (Bray 2000:10).

The history of our country and the history of our law should be able to help us better determine the origins of education law.

Figure 2.2 shows how education law is actually a hybrid law, as it has its roots in many fields of law.



**Figure 2.2: Roots of education law** (Adapted from Beckmann & Sehoole 2004:18)

### 2.3.2 DEVELOPMENT OF SOUTH AFRICAN LAW

Although education law is an international phenomenon, every country is steered by its own set of legislation. Therefore we need to define the South African legal system. It is easy to identify the influence of the Dutch settlement, British rule, African indigenous customs, apartheid and constitutional transformation on the moulding and development of the South African legal system (Joubert 2002:16).

### 2.3.2.1 Roman Law

Roman law is the first ingredient of South African law which has evolved over a period of twelve centuries. It is a legal system that was developed by the Roman civilization for a period of approximately 1300 years, from 753BC to AD565 (Kleyn & Viljoen 2002:22). It rose to its peak as the law of a worldwide empire, at which stage it has been described as “a model for all times to come, such as has never been equaled since.”<sup>1</sup> The decline of Roman law coincided with the decline and ultimately the disappearance of the Roman Empire in the west (Edwards 1996:3-4). Roman law still forms part of the legal systems of many countries and forms the basis of our common law in South Africa (Kleyn & Viljoen 2002:22).

Roman law spanning over a period of time had to have been influenced by the various dispensations of their civilization. These influences have shaped Roman law into what it has become. It will be significant to look into the three major dispensations that have impacted Roman law.

#### A. The period of Kings

Most of what is known during this era is based on legend. According to tradition, the Romans founded the city of Rome in Italy in 753BC. During this dispensation seven kings reigned over the Romans (Kleyn & Viljoen 2002:23). The king was elected for life as ruler of Rome. He was the high priest (*pontifex maximus*). The king was considered the highest judge and had legislative power. The king’s subjects were primitive farmers who lived according to unwritten customs which were passed down from generation to generation. It would seem that religious rules also formed part of their law (Edwards 1996:5).

#### B. The Republic

According to legend, the last of the seven kings was expelled from Rome in 510BC and a new republican form of government was instituted (Du Plessis & Kok 1989:8). The republic consisted of three components.

- a) Two executive officials that replaced the king; they were also known as magistrates and were elected annually.
- b) The popular assembly or the assembly of the people as it was also known. This assembly was responsible for passing legislation.

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<sup>1</sup> Sohm A Textbook of the History and System of Roman Private Law 3<sup>rd</sup> ed (1907) 72.

- c) The senate which was an advisory body. This was made up of ex-magistrates. The resolutions of the senate were, in theory, only advisory, but were followed as if they had the force of law (Kleyn & Viljoen 2002:23).

It is important to note the shift from the monarchy to the republic. The most important purpose of these magistrates was the administration of justice. Even the magistrates did not have the power to pass legislation. This power lay with the popular assembly, made up of the people. This appears as a shadow of things to come in South African law.

During this republican era, the law had to develop and adapt in order to meet the challenges of its new society and its needs. Kleyn and Viljoen (2002:23) suggest that some of these rules regarding the contract of sale still apply in present day South African law.

### **C. Period of the Emperors**

Eventually the Republic made way for a new constitutional dispensation; Romans would be governed by emperors. Kleyn and Viljoen (2002:24-25) indicate that the popular assembly, the senate and the republican magistrates gradually lost their importance. All power seemed to be in the hands of the emperors, who took on the role of the popular assembly and personally began to promulgate imperial legislation.

At the end of the fourth century AD, the Roman Empire split into two: the Western Roman Empire with Rome as its capital and the Eastern Roman Empire with Byzantium, or Istanbul as it known today, as its capital. The Western empire was gradually taken over by Germanic rule. In AD476 a Germanic ruler ascended the throne in Rome. This significant moment in history meant that the Romans were now subject to Germanic rule and the Germanic people had their own law. The Roman-Germanic society took on a character of its own that was very different from the previous Roman society. The Roman law became watered down, simplified and diluted with Germanic law. Du Plessis and Kok (1989:16) ask the question: How did Roman law merge with Dutch law to give rise to Roman-Dutch law? Kleyn and Viljoen (2002:26) suggest that the answer to this question lies with what is called the 'reception' of Roman law.

## D. Reception

Edwards (1996:33) explains the reception phenomenon in three phases. The first phase involved choosing a few Roman laws which was haphazardly incorporated into the native customary law. Edwards goes on to describe the second phase as an early reception. This phase, he argues, could only take place once a more scientific approach was adopted. The third phase of reception was the reception of Roman law as a system of positive law. Du Plessis and Kok (1989:14) put forward that as Roman law waned in the Eastern Empire, in the west it was barely alive. In the twelfth century the reception of Roman law resulted in the resurgence of Roman law and it spread over other parts of the world.

### 2.3.2.2 Roman-Dutch Law

Kleyn and Viljoen (2002:33); Edwards (1996:63); Du Plessis and Kok (1989:16) and Bray (2004:4) all agree that after the fall of the Western Roman Empire, the Netherlands changed rulers somewhat erratically and eventually became part of the Holy Roman Empire. In 1648 the independent Republic of the United Netherlands was formed. The law of Holland, one of the provinces of the Netherlands, was blended with Roman law to form a single system. This gave rise to Roman-Dutch law (*Roomsch-Hollandsch Recht*). Roman-Dutch law later became the common law of South Africa.

Kleyn and Viljoen (2002:35) explain that in 1652 Jan van Riebeeck, an official of the *Vereenigde Geoctroyeerde Oost-Indische Compagnie* (VOC) or the Dutch East India Company came to the Cape in order to establish a refreshment station for the ships on their journey between the Netherlands and the East. The settlement at the Cape lived according to the Roman-Dutch law. Du Plessis and Kok (1989:18) add that Roman-Dutch law developed and evolved in the province of Holland and that such development and evolution was accepted at the Cape. It would seem plausible that the changes and advancements made in the field of Roman-Dutch law that naturally took place in Holland were readily accepted and implemented at the Cape. Netherlands and Holland exerted great influence over the Cape during the period of 1652 to 1795, this spanned 143 years.

In 1795 the Cape was being occupied by the British and by 1806 this occupation became permanent. This in effect saw the end of the Dutch rule at the Cape. Du Plessis and Kok

(1989:18) point out that at about the same time, France conquered the Netherlands. Napoleon Bonaparte then abolished the Roman-Dutch law in 1809 and replaced it with the *Code Napoleon*. This in effect meant that the Roman-Dutch law was in authority in the South Africa but no longer in the Netherlands. Kleyn and Viljoen (2002:35) argue that while this was the case, the British allowed the continued use and application of the Roman-Dutch law and did not abolish it. When the Great Trek started in 1836, the Voortrekkers from the Cape took the Roman-Dutch law with them to the interior of the country. These Voortrekker territories were later also taken over by the British.

### **2.3.2.3 English Law**

In the early 1800s, when the British took over the rule of the Cape from the Dutch, they brought English law with them. In 1910, the four colonies of South Africa joined together to become the Union of South Africa. This created one central government with the power to make all the laws of the country (Edwards 1996:79). Although the Roman-Dutch law was never abolished by the British authorities, it became inevitable that English law would influence the legal system. This is evident for example when the old courts of the *landdrost* and *heemraden* were replaced with the British system of resident magistrates. With the official language being English, judges and magistrates were also trained in England, and turned to English law authorities when deciding cases and resolving legal issues (Kleyn & Viljoen 2002:36).

### **2.3.2.4 Indigenous Law (Customary Law)**

Indigenous law refers to the laws and customs of the indigenous people. So while South Africa received the Roman-Dutch law and later English law, the people of South Africa had their own law (Bray 2004:5; Kleyn & Viljoen 2002:39). While indigenous laws existed, they were only recognised officially by the colonial authorities in the second half of the nineteenth century. Indigenous law displayed the following characteristics:

- It was made up of unwritten customs that were passed on orally from generation to generation.
- It may differ from tribe to tribe and territory to territory.

- It mainly regulated the relationship between individuals and not the relationship between the individual and the state.
- It is a communal or group-orientated focus. Indigenous law is also known as customary law (Kleyn & Viljoen 2002:39).

### **2.3.2.5 Apartheid: Law as an instrument of oppression**

To understand the notion of human rights application and its impact on attitudes towards practice, the history of the Republic of South Africa (RSA) should be kept in mind. In 1948 the National Party came into power. It was only at this time that the political policy of racial segregation and racial discrimination was enshrined in legislation. In this way the law was used to realise a specific political ideology. Kleyn and Viljoen (2002:37) point out that apartheid laws were not part of the common law (Roman-Dutch law) nor English law. They go on to explain that apartheid laws had far-reaching consequences, such as different racial groups having to live in different group areas. Millions of people were forcefully removed from the land they had lived on for generations. Public amenities were reserved for certain race groups only. Opposition to the apartheid system was controlled by means of legislation e.g. detention without trial. The seeds of Apartheid were sown as early as 1910. Apartheid officially became law after the Reunited National Party won the white minority elections on the 28th May 1948. This victory was hailed as a "Miracle" and clear proof that God was watching over his "Volk." Only the white citizens of South Africa were allowed to vote and participate in government, black South Africans were forbidden.

In order to understand our present day legislation, we need to have a closer look at the apartheid legislation. It is undeniable that our past has influenced and shaped our future. Every sphere of society has been impacted by the past and education is certainly not exempt. On the contrary it is more so in the terrain of education that we feel and see the effects of our past.

### **2.3.2.6 Parliamentary Supremacy: pre-1996**

Analysts comment that the "striking features of the new [1961] Constitution are its similarity with the old, as well the deficiency of fundamental changes" (Marais 1985:33). This

comment may be true to only a certain extent in that the 1961 Constitution embodies the 1909 Constitution entirely, except for one significant difference. The position of the Governor-General was replaced with that of the State President. The connotation of a “distant” ruler would now be a thing of the past. The changes introduced by the 1961 Constitution means that the head of state will be an indigenous, elected State President. Later this new Republic would vest the ultimate power to be able to pass legislation in Parliament (Marais 1985:36-37).

Article 24 of the Republic of South Africa Constitution Act, 1961, was amended in terms of Article 13 of the Fifth Amendment Act, 1980, to read as follows: “The legislative power of the Republic is vested in the Parliament of the Republic, which consists of the State President and the House of Assembly.”

This significant amendment has had major ramification for the history of South Africa. It implied that Parliament then had the power to pass law and as such became the Supreme Law of the country. The principle of “parliamentary sovereignty” applied (Marais 1989:267).

Section 34(3) of the 1983 Constitution states:

No court shall be competent to inquire into or to pronounce upon the validity of an Act of Parliament, except as provided for in section 34(2).

Section 34(2) of the Constitution provides that any division of the Supreme Court of South Africa shall be competent to express itself on the correctness of procedures that had been followed in the enactment of an Act by the State President, Parliament or a House.

This in essence means that parliament was the supreme law maker and that the courts, in theory, had no testing right or no right to judicial review with respect to legislation (Marais 1985:38). Kleyen and Viljoen (2002:47) agree that this translated to courts not having the power to test legislation against any norm or standard, such as the principle of justness, fairness or equality and strike down legislation which did not comply. This is particularly true with apartheid legislation. Parliament could, therefore, use the courts as an instrument to enforce its apartheid rule. The lack of representation of the broader population in the law making process further compounded the political turbulence. As violence increased, with the augmented pressure on the apartheid government by the majority of the population, the 1983 Constitution was adopted. The objective of this particular Constitution was to broaden

the democratic basis of government. Despite changes in structures of government, white minority remained secure while the black majority failed to get representation in the central structures of government.

## **2.4 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA OF 1996 (THE CONSTITUTION)**

Most organisations like clubs and societies have a constitution. This is simply a document which clearly sets out how the legal structure and functioning of the organisation are regulated. South Africa's Constitution is basically no different. In the Constitution, rules are set out according to which the country is governed (Kleyn & Viljoen 2002:226). Schools are responsible for the education of South Africa's children. Therefore, schools can be seen as the most important educational institutions through which South Africans exercise their constitutional right to education. It stands to reason that this statement has implications for government to implement its constitutional obligation in education (Barry 2006:1). In terms of its preamble, the Constitution (1996) seeks to transform education. Schools, education authorities and teachers must conduct themselves in a manner that is consistent with the Constitution and more specifically in terms of section 7, which deals with democratic values which are inherent to all human beings. Therefore teachers have an obligation to conduct their business in line with the Constitution if they are to be valid (Barry 2006:8). We thus need to look at the founding provisions of the Constitution.

### **2.4.1 FOUNDING PROVISIONS OF THE CONSTITUTION (SECTION 1)**

The Constitution is the supreme law of the country. Teachers must therefore be aware of the provisions of this act as well as the underlying values it contains. The Constitution is underpinned by the values in section 1. Therefore, everything in the Constitution should be measured not only in line with, but also against these values. If we state that the Constitution is supreme and all decisions should be in line with it, we are actually stating that everything in South Africa should be measured against this set of values. The founding provisions shown below encapsulate the values upon which our democratic state is founded.

Chapter 1

Founding Provision:

1. Republic of South Africa



The Republic of South Africa is one, sovereign, democratic state founded on the following values:

- a. Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- b. Non-racialism and non-sexism.
- c. Supremacy of the Constitution and the rule of law.
- d. Universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

Bray (2004:6) asserts that the Constitution has been adopted in the spirit of reconciliation and co-operation as it strives to heal the divisions of the past and create a society based on democratic values, social justice and fundamental human rights. Joubert (2002:49) goes on to add that a great deal of conflict and racial tension ultimately led to the unbanning of political parties and subsequently the return of many exiled leaders. The country's tumultuous past had brought it to a point of adopting the final Constitution (of 1996).

The clause in Chapter 1 of the Constitution is noticeably value-laden. The past has influenced the very founding principles. Some of the values that are highlighted are also listed under Chapter 2 in the BoR. This may appear to be a paradox; however, it is maybe worthwhile to remember the context within which the Constitution was drafted and adopted. These values are almost beacons that should steer and direct the fledgling democracy.

The Manifesto on Values, Education and Democracy sets out the values that teachers need to incorporate into their classrooms. These include:

- *Democracy*
- *Social justice and equity*
- *Equality*
- *Non-racism and non-sexism*
- *Ubuntu*
- *Open society*
- *Accountability*
- *Rule of law*
- *Respect*
- *Reconciliation*

Education is therefore subject to these values which characterize a democratic society.

## **2.4.2 DEMOCRATIC VALUES**

Section 7 speaks to the matter of rights. It begins by stating that the BoR is the cornerstone of democracy. It enshrines the rights of all people in the country and affirms the democratic values of human dignity, equality and freedom. These three values; human dignity, equality and freedom are crucial prerequisites for any open and democratic society.

## **2.4.3 SUPREMACY OF THE CONSTITUTION (SECTION 2)**

The Constitution is the supreme law of the land. It is the highest authority in our country. This means that no law or conduct can be in conflict with the Constitution. If any law or behaviour is inconsistent with the Constitution, it will be considered invalid and unconstitutional. As the Constitution is underpinned by the values in section 1 and our democracy by the values of a democracy (section 7), it is expected then that all decisions and conduct should be in line with and measured against these values. “Supremacy of the Constitution and rule of law are bedrock constitutional values” (Du Plessis & Pete 2004:53).

In 1990, State President F.W. de Klerk, released Nelson Mandela and negotiations for the inclusion of blacks in the constitutional process began. This significant step marked the beginning of the end for apartheid in South Africa. All political groupings within South Africa participated in the negotiation process where the Constitution of the Republic of South Africa, 102 of 1993 was adopted and came into effect on 27 April 1994 – after South Africa’s first democratic elections (Kleyn & Viljoen 2002:37-40). As a result, on 8 May 1996, our law changed drastically when the final Constitution was adopted. It was published on 18 December 1996 in Government Gazette No. 17678. The Constitution of the Republic of South Africa, of 1996, took effect on 4 February 1997 (Van Vollenhoven & Fisher 2008:25). Du Plessis and Corder (1994:20) add that the elevation of the Constitution to the status of ‘supreme law’ of South Africa is of great consequence in the nurturing of a new democratic order.

There is a clear shift of power from the legislator and the executive to the judiciary. Lewis (1994:A15) writes in the New York Times that the Constitution is commonly understood as a “commitment to limitations on ordinary political power.” He goes on to assert that the

courts are given the role of constitutional interpretation and review, which is the bedrock that Du Plessis and Pete (2004:53) speak of. This notion of the limitation of powers is further advanced by De Waal, Currie and Erasmus (2001:7), who propose that the essential problem that is taken in hand when writing a constitution, is to institute a government with enough power to govern, but at the same time making sure that power is structured and controlled in such a manner as to prevent it being used oppressively. They go on to argue that the Constitution limits the power of the government in two ways. Firstly, it sets structural and procedural limitations on power – only certain institutions may exercise these forms of power, and may only do so if specific procedures are followed. Secondly, the government may not use its power to violate fundamental rights. Rautenbach and Malherbe (1998:1-2) and Alence (2004:87) point out that it is this very important feature of our Constitution that sets standards that will be used to protect the individual against any abuse of power by the state. The built-in features, such as the supremacy of the Constitution with its entrenched human rights, mean that all government bodies are subordinate to the Constitution and their laws and actions must be in line with it.

Supremacy of Constitution: This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligation imposed by it must be fulfilled (The Constitution 1(2)).

These limitations that the Constitution puts in place are in essence what make the Constitution the supreme law of our democracy.

#### **2.4.4 THE BILL OF RIGHTS (CHAPTER 2 OF THE CONSTITUTION)**

Kleyn and Viljoen (2002:243) explain that the BoR or fundamental rights are rights that primarily protect individuals from state power. Bray (2000:11) agrees that each human being has certain “inalienable”, inborn or inherent human rights. These rights may not be encroached upon by the state or its institution. Botha (1997:4-6) and Kleyn and Viljoen (2002:252-255) agree that with the new Constitution, nobody can deny the nature of human rights. One may conclude that human rights are authorized by the law, and belong to individuals on account of him or her being human. This right is stronger than a privilege – they argue that it is an entitlement which is capable of being enforced. One can conclude that the BoR is a document that sets out the rights of the individual as well as the state. It provides for the enforcement of such rights by the courts. As the BoR forms part of the

Constitution, it is therefore entrenched (Rautenbach & Malherbe 1998:8-9) or guaranteed in the Constitution which is the supreme law.

#### **2.4.4.1 Application (section 8)**

Section 8 of the Constitution deals with how the BoR should be applied. The BoR applies to all law, and binds the legislature and all organs of the state. These organs of the state also include schools. This has huge implications for teachers in the classroom. As a teacher who is expected to be aware of the provisions in Chapter 2 of the Constitution, his/her actions and practice should now be governed by these rights. The teacher would then filter his/her behaviour, teaching practice and discipline methods through the rights that are enshrined in the Constitution.

#### **2.4.4.2 The Limitation of Rights (section 36)**

Bray (2000:11) points out that, rights are not absolute as they have to be weighed against the rights of others as well as the public interest. She adds that the state itself is subject to limitations should it encroach on these rights. If these limitations are exceeded then an individual is entitled to have the state brought to book.

Although human rights are entrenched in the Constitution – that is, they are 100% guaranteed and thus may not be violated – they are, however, not absolute and may in certain circumstances be limited. Rights may be limited by means of the self-limiting clauses found in the Constitution; these are also referred to as internal qualifiers. The BoR also makes provision for legally limiting the rights of individuals by means of section 36, the limitation clause. By using section 36 of the Constitution, human rights can be legally limited when different human rights are in conflict.

#### **2.4.4.3 The Interpretation of the Bill of Rights (section 39)**

With the Constitution as with any language, its meaning depends on its context. This implies that the context must be interpreted in order to give full understanding to its meaning or implication. Kleyn and Viljoen (2002:243) and Bray (2000:17) suggest that sovereign

constitutions must be interpreted differently from ordinary legislation. In section 39 one of the distinct differences between the old and the new constitutions are evident. The old constitution did not allow the court to interpret legislation or rule against it. It had to merely enforce the legislation that was passed by parliament, even if it was wrong (Marais 1985:36-37). Section 34(3) of the 1983 Constitution states that: “No court shall be competent to inquire into or to pronounce upon the validity of an Act of Parliament, except as provided for in section 34(2).” The new Constitution now makes explicit provisions for the court, tribunal or forum to interpret or test legislation in order to ensure that the legislation being tested promotes the spirit, purport and spirit of the BoR. The court can now rule against legislation that is inconsistent with the BoR.

Section 39 speaks expressly to the issue of interpreting the BoR.

Section 39:

- (1) When interpreting the Bill of Rights, a court, tribunal or forum –
  - (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
  - (b) must consider international law;
  - (c) may consider foreign law;
- (2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.
- (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

Kleyn and Viljoen (2002:243) and Bray (2000:17) argue that a literal approach should not be followed when interpreting the BoR, and that section 39 offers the guideline to be followed. Conversely, De Waal, Currie and Erasmus (2001:142-143) suggest a few more ways of interpreting the BoR. They start off by asserting that the literal approach should be the first form of interpretation. They concede, however, that “ordinary or dictionary meaning” alone will not resolve constitutional disputes. Having said that, they do caution that the Constitution does not mean whatever we might wish it to mean, and they reiterate that due respect should be given to the instrument of language. With most things, people have different views or points of departure, and as such will interpret things differently. The interpretation clause in section 39 seeks to remove this element of ambiguous interpretation when it comes to the application of the provisions in the Constitution. Bray

(2000:18) suggests that constitutional interpretation requires a value-oriented and purposive approach. The provisions of the Constitution should not be read in isolation.

The three guidelines, as set out in Section 39(1) (a-c) should be borne in mind when interpreting the BoR.

Section 39(1) demands or expects interpretation which promotes the values that underlie an open and democratic society based on human dignity, equality and freedom (De Waal, Currie & Erasmus 2001:140). The spirit of the Constitution is characterized by openness, democracy, dignity, equality and freedom. Kleyn and Viljoen (2002:254) describe the Constitution as a bridge between a previous dispensation of discrimination and a new dispensation of tolerance.

International law must be considered, while foreign law may be considered when upholding the spirit of the BoR. The human rights provisions of the UN Charter, the Universal Declaration of Human Rights, and the various conventions constitute the International Bill of Human Rights. Other UN human rights instruments supplement this bill. The most important ones are the Genocide Convention (1948); the Convention on the Political Rights of Women (1953); the International Convention on the Elimination of All Forms of Racial Discrimination (1965); and the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973). These conventions are legally binding on the parties that have ratified them. Most of the UN member states have ratified at least two: the Genocide Convention and the Racial Convention.<sup>2</sup>

De Waal, Currie and Erasmus (2001:143) put forward that section 39(2) has very little to do with the actual interpretation of the Constitution, but rather concerns the interpretation of statutes and the development of common law and customary law. However, they argue that while this clause is not concerned with interpretation, it is crucial to the application.

Section 39(3) basically confirms that the BoR cannot prevent a person from enjoying rights conferred on them by legislation, the common law or customary law. However, because the Bill of Right is inbeded in the Supreme law, those rights conferred may not be inconsistent

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<sup>2</sup> August, Ray. (1995) *Public International Law: Text, Cases, Readings*. Englewood Cliffs, N.J.: Prentice-Hall.  
Janis, Mark W. (1988) *An Introduction to International Law*. Boston: Little, Brown.

with the BoR. Oosthuizen (2003:58-59) cites the following examples to illustrate the interrelationship between the Constitution and educational law:

- The founding provision of the Constitution (section 1) confirms that South Africa is a democracy based on the rule of law;
- Several of the fundamental rights enshrined in the Constitution, including the rights to education (section 29); equality (section 9); human dignity (section 11); freedom of expression (section 16); freedom of association (section 18); freedom of religion, belief and opinion (section 15); the right to use language and culture of choice (section 30); and the right to belong to a cultural, religious and linguistic community have particular significance for education;
- The Schools Act gave formal effect to a participative form of democracy by redistributing power to local school governing bodies with the removal of centralised control over certain aspects of educational decision-making and the establishment of co-operative governance between education authorities and the school community (Squelch 1999:101; Oosthuizen 2003:195). In principle these provisions were intended to establish a democratic power sharing and co-operative partnership among the state, parents, and educators (Karlsson 1998:37);
- In terms of the Schools Act, members of school governing bodies are democratically elected to represent parents, educators, learners and personnel of a school. School governing bodies have the democratic and statutory authority to adopt a constitution (section 20); recommend appointment of staff (section 20), determine the language policy of a school (section 6), take measures to ensure learner discipline at schools (section 8, section 9), and control school property and financial resources (sections 20 and 21).

## **2.5 THE SOUTH AFRICAN SCHOOLS ACT OF 1996**

The purpose of the Schools Act (RSA 1995, 5) is “to provide for a uniform system for the organisation, governance and funding of schools; to amend and repeal certain laws relating to schools; and to provide for matters connected therewith.” The administration of the education system does not take place in a vacuum, and in order to grasp the nature of the administration of the education system in South Africa, it is important to be aware of the

provisions which relate to the way in which our country is politically structured, as well as of the main principles which underpin public administration in this country.

The Schools Act must always be interpreted in line with the Constitution of the Republic of South Africa. It provides more detail on how schools should adhere to certain provisions in order not to violate the fundamental rights of all stakeholders in education, as entrenched in the BoR. The Schools Act provides the framework for the interpretation of the BoR, with specific reference to the education environment. Things like admission to a public school (section 5), language policy of public school (section 6), freedom of conscience and religion at public schools (section 7), Code of Conduct (section 8) and prohibition of corporal punishment (section 10) need to be applied according to the Schools Act, but within the ambit of the Constitution and the application of the BoR. This means that the South African education system cannot be administered in isolation but instead in tandem with the Constitution of the land.

## **2.6 THE IMPORTANCE OF EDUCATION LAW**

The EDL 401 (Van Vollenhoven & Fisher 2008:6) module explores the idea of why teachers should know or be informed about education law. The module developers put forward the following three elements.

- (a) Professional services go hand in hand with considerable responsibility, and require a specialized approach. Professional conduct is therefore regulated by a code of conduct associated with a specific profession. This would imply that teachers should know about the legal provisions and principles applicable to their profession.
- (b) In the Employment of Educators Act, Act 76 of 1998, it is considered to be misconduct if teachers do not abide by education laws, rules and regulations. To avoid disciplinary measures being instituted, teachers should become thoroughly familiar with education law. Order is achieved when specific actions are carried out in a prescribed manner. This is why certain procedures should be followed.
- (c) Education that uphold the values that are underpinned in the Constitution, to a large extent depends on the way in which educational policy, rules and regulations are enforced by teachers. Only teachers familiar with education law will know how



to interpret school policy and implement procedures, rules and regulations correctly.

An example to illustrate this point would be: Dwight arrives at school with a firearm. Dwight has the right to privacy which means his school bag may not be searched. However, all the learners at school have the right to life (section 11), to a safe environment (section 24) and the right to privacy (section 14). The fact that Dwight has a gun at school violates these rights. Dwight's right to privacy is therefore in conflict with other learner's right to a safe environment. The teacher who is familiar with the Constitution will be able legally to limit Dwight's right to privacy while ensuring the right to a safe environment for the many other learners. This line of action by the teacher can only be executed correctly and confidently when he/she is able to apply the law to this situation. Therefore, knowledge of education law is crucial in the school.

The position of authority occupied by the teacher has many legal implications and expectations pertaining especially to possible liability for neglect. Teachers work with young, immature individuals, who, because of their lack of experience and judgment, cannot always foresee the consequences of their actions. Potentially dangerous situations should receive the teachers' full consideration.

Coetzee (2008b:184) suggests the following reasons why teachers, as classroom managers, should have knowledge of education law:

- Knowledge of education law can help educators make valid and lawful decisions, in other words, decisions that will not create legal problems for themselves.
- Educators who know education law will also know about their own rights and obligations, as well as those of other parties.
- Educators as classroom managers must be aware of the relevant legal principles and requirements.
- The particular position of authority which educators occupy has many legal implications, especially with regard to possible accountability for negligence.
- Education law describes the authority of the educator and especially of the educational manager.

- Educators who know the demands of the law will probably make better provision for the safety of children than those who are ignorant of the law.
- Education law provides a clear framework of the role of the educator as a professional person.
- Successful teaching depends on the manner in which legal prescriptions such as educational policy, rules and regulations are applied. Only educators who know education law will know how to interpret policy and correctly implement procedures, rules and regulations.

Joubert (2002:25) also agrees that all individuals involved in education should be knowledgeable of education law for the following reasons:

- Understanding processes and principles: this will help avoid becoming involved in lawsuits.
- Ensuring the legality of decisions: knowledge of education law will ensure that decisions are within the parameters of the law, therefore giving more impetus to decisions made.
- Creating a safe environment: legally safe decisions will not only ensure protection by the law but will ensure that learners in their care will be physically safe as well.
- Looking after interests: an individual who knows and understands his/her rights and duties will be able to look after his/her interests. This will enable him/her to carry out their duties.
- Legal requirements: A person who is active in a field is expected to be abreast of the legal provisions and principles that will regulate or govern his/her activities in the field.
- Decision-making framework: Better decisions are made when one knows what legal considerations need to be taken into account.

The core element of the above is that education law is a collection of legal rules that govern or regulate relationships and activities within the domain of education. Being aware of this collection of legal rules is paramount for any individual within education. Success in this domain of education will depend on the individuals' knowledge, understanding and ability to implement the collection of legal rules.

The concept of law may be defined as those rules of conduct that are accepted as binding in society and that ought to be obeyed by society at large, are enforced by the state and exist for the purpose of regulating the affairs of society justly and equitably. The law therefore has to maintain and restore legal balance in a society (Coetzee 2011:183).

Education law regulates education in the same way in which the law in general regulates the rest of society. Every action in the classroom has a legal basis. Educators in classrooms have to deal with learners, but also with the principal, colleagues, parents and education authorities. In order to create order and harmony in all these relationships, legal rules are essential.

Maree (1995:9) defines education law as:

...those components of the Constitution, other statute law, the common law and case law, that create an education system and regulate the multilateral interaction of individuals, groups, independent bodies and official authorities within that system.

Potgieter *et al.* 1997:385) provide a good summary of the important functions of the law in the education sphere. Education law:

- facilitates and regulates behaviour
- creates harmony and order
- determines powers and duties of functionaries
- defines the parameters within which education activities are performed
- protects the rights of individuals and groups involved in education
- prescribes requirements for the provision, governance and financing of education

Coetzee (2011:190), Maree (1995:86), and Joubert and Potgieter (2001:37) all agree that education law is actually a field of law and not a discipline. It is a branch of law that deals specifically with the field of education and contains all laws applicable to education.

## **2.7 CONCLUSION**

In this chapter, three elements namely education law (see § 2.3), the Constitution (see § 2.4) and the Schools Act (see § 2.5) were discussed. The importance, implications and effect of education law was explored.

Education law is a collection of legal rules that govern or regulate relationships and activities within the domain of education. Being aware of this collection of legal rules is of paramount importance for any individual within education. Success in this domain of education will depend on the individual's knowledge, understanding and ability to implement the collection of legal rules. It is clear that legislation pertaining specifically to human rights has changed. The purpose and aim of this inquiry was to provide a qualitative perspective on how the awareness of legislation and education law specifically influences teachers' practice.

In chapter 3, I will look at the modules from the Distance Education (DE) programme from the University of Pretoria (UP), namely EDL 401 and OWR 721, which were used as vehicles to empower and possibly change teachers' attitudes and knowledge towards teaching and human rights application in practice. A review will be done of the importance of education law and its implications. Teacher education and training will be scrutinized. Attention will also be given to initial teacher education and training.

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## CHAPTER 3

### Teacher Education and Training Generates Change

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#### 3.1 INTRODUCTION AND OVERVIEW

The previous chapter established the legal framework which governs school education in South Africa. After attempting to define education law and seeking to understand how South African law has developed, it has emerged that the Constitution, the Schools Act, as well as other legislation that is relevant to education, play a crucial role in regulating the teaching profession. The literature review in this chapter intends to discover the influence and consequence of the Education Law module within postgraduate teacher training programmes. The palpable dissimilarity between the pre- and post-apartheid context of teaching and teacher education and training comes to the fore.

This chapter will attempt to determine how exposure to the content of education law modules influences teachers' perceptions about their practice. The definition of beliefs and attitudes varies and for the scope of this research, it has been limited to how teachers experienced the education law modules and their responses in the examination paper, and if they were influenced by the content of the module, which would have changed their practice at school.

The following is of relevance and significance to this inquiry:

- Education law is a relatively new field within education and as such not all teachers have been exposed to the content of education law at a formal level, and many would only have gained their knowledge through experience.
- South African law has been greatly influenced by other countries and as such their influence is still felt today.
- The apartheid era has had an impact on teachers' teaching practice.
- The Constitution has changed the face of education and teachers' teaching practice.
- The importance of education law cannot be understated.

## **3.2 TEACHER EDUCATION AND TRAINING**

My review of the pertinent literature will by no means cover all the developments in the history of teacher education in our country because that falls outside the scope of my research.

The term teacher education refers to programmes in which prospective teachers receive training to become teachers and facilitators in both the formal and informal education sectors. These programmes can take the form of pre-service (PRESET) or in-service training (INSET). The aims of these programmes would be to train teachers to educate and teach effectively in order to facilitate learning (Richter, Van der Walt & Visser 2004:7). Effective teaching requires knowledge, skills, values and attitudes.

Graves (1990:12-13) alludes that over the last 150 years it has become widely accepted that those who are engaged in certain roles in society such as doctors, dentists, priests, lawyers, drivers or pilots should have some initial formal training in order to obtain a license or other form of certification, before they are allowed to perform their roles in society. He adds that the first government-sponsored teacher's certificate took place in England as early as 1848 and teaching as a result of this came to be seen as a job that required preliminary training and qualifications.

He who has a mastery of the subject matter can be a good teacher without any training (Rai 1995:1). The antagonists of the teachers' training programme argue that its main emphasis is how and not what to teach and that the teaching course maybe full of abstract concepts of teaching. Parker (2003:16-17) suggests that teacher education in South Africa has evolved through four distinct phases. (1) The apartheid education system (2) The introduction of various policies and structures (3) Redress of past inequalities (4) From policy to implementation.

### **3.2.1 FIRST PHASE: THE APARTHEID EDUCATION SYSTEM: 1990-1994**

This was a period of structural stasis and cultural malaise. The apartheid legislation and structures persisted with its hugely oppressive curricula and institutions, while the

legitimacy, efficiency and effectiveness of the apartheid system were in tatters from the political upheaval of the day. Parker (2003:16) adds that while the old state marked time, this phase was also characterized by prolific policy development. Even though the apartheid education system had centralized controls, it was not a unitary or integrated system. It was more a conglomerate of systems and sub-systems that were defined along racial, ethnic and regional lines. There were seventeen different departments, each with its own funding, syllabi and purpose. This conglomeration of systems in effect reinforced the social structure of the apartheid system (UNESCO 2005:22).

### **3.2.2 SECOND PHASE: THE INTRODUCTION OF VARIOUS POLICIES AND STRUCTURES: 1994-1996**

Parker (2003:17) adds that the second phase saw the manifestation of policy as new structures, new role-players and new authoritative bodies emerged. As such, in 1994 the newly elected government began the task of implementing the Interim Constitution by creating one national and nine provincial educational departments. It is also during this era that we see the rise of many statutory and non-statutory types of council such as the Education Labour Relations Council (ELRC), South African Qualifications Authority (SAQA) as well as the South African Council for Educators (SACE). SACE has been formed with the view to monitor and ensure that teachers who are registered with this council behave in a professional manner. It has now become mandatory for all teachers to be registered with SACE; a teacher may not be employed as a teacher without first being registered.

Participation in the first democratic elections does not translate simply to electing one's own representative but also translates to the right to influence decisions. The challenge of participatory and representative democracy has been taken up by the introduction of many Acts and policies in this phase. The Schools Act is one such Act that takes up the challenge. The Schools Act was designed to create a new governance landscape of participation and partnership between the state, learners, parents, school staff and communities. This Act in essence is fundamental to the transformational goals of the education sector. It attempts to address the issues of access, equity, redress, democratic governance and national development (UNESCO 2005:17).

Table 3.1 provides a representation of the various legislation and policy statements that have been implemented since our new democracy. The objectives of each are also stated. This table illustrates that there has been an immense amount of legislation and policy statements adopted since 1994. The main aims of those are to redress the inequalities of the past, to bring about one unified system for the organisation, governance and funding of schools. Some legislation also sought to amend and repeal certain laws which were not progressive and purported the will of the apartheid government.

**Table 3.1: Key education policy regulations and legislation<sup>3</sup>**

<b>Legislation/policy statements</b>	<b>Objective</b>	<b>Mechanisms</b>
The SA Constitution (1996)	Provide a framework for transformation and democratization Provide for a right to a basic education	Guarantee access to equal education for all
White Paper one and two (February 1995 and 1996)	Serve as reference for policy and legislative development	Education policy framework
The National Education Policy Act (1996)	Outline responsibilities of the Minister of Education Formalize relations between national and provincial authorities	Council of Education Ministers, Heads of Education Departments Committee (HEDCOM), inter-governmental forums
The South African Schools Act (1996)	Promote access, quality and democratic governance in the schooling system	Compulsory education for 7 – 14 year olds Only two types of school – independent and public school Funding norms – redress through target allocation of funds
Further Education and Training Act (1998) Education White Paper four (1998) Education and Training (2001)	Develop a nationally coordinated further education and training system	Dedicated Further Education and Training (FET) institutions National curriculum for teaching and learning
The Higher Education Act (1997) Education White Paper three on Higher Education	Establish a unified and nationally planned system of higher education	Council on Higher Education (CHE) Institutional planning and

<sup>3</sup> Adapted from UNESCO (2005:24)



Legislation/policy statements	Objective	Mechanisms
(1999) National Plan for Higher Education (2001)		budgeting framework
Employment of Educators Act (1998)	Regulate the responsibilities of the teacher	South African Council for Educators (SACE)
The Adult Basic Education and Training (ABET) Act (2000)	Support the development of the ABET sector	Establishment of public and private adult learning centres
The South African Qualifications Authority (SAQA) Act (1995)	Integrate education and training at all levels	National Qualification Framework (NQF) – scaffolding for national learning system
Curriculum 2005	Promote learner centred outcomes based learning Integration of knowledge and skills	OBE Curriculum framework

### 3.2.3 THIRD PHASE: REDRESS OF PAST INEQUALITIES: 1997-1999

It would seem that this period was characterized by a general overhaul of policy within the context of the Growth, Employment and Redistribution (GEAR) policy (UNESCO 2005:57). GEAR attempted to address the crucial tensions that were undermining the Reconstruction and Development Programme (RDP). There was a need to promote economic growth and development through tighter control over state expenditure. However, at the same time there was a dire need to redress the inequalities of the apartheid past and to ensure that basic public services such as water, sanitation, housing, education, health and security were delivered to the poor. This phase was characterized by the state's will to impact strongly the lives of the majority through better delivery of better basic services and in education, through greater access to educational opportunities of better quality.

### 3.2.4 FOURTH PHASE: FROM POLICY TO IMPLEMENTATION: 2000 AND BEYOND

Parker (2003: 24) purports that this phase is merely a culmination of the second and third phase. It was only in 2000 that the statutory and non-statutory councils became operational. The focus was strongly shifted from policy to implementation.

The first and second phases of our history have impacted on the type of education that teachers received in their training years. He goes on to substantiate that the education system, prior to 1994, was driven by the political will of the apartheid system, as it resulted in separate forms of education for different racial groupings. Robinson (2003:19) adds that as a result of these separate forms of education, the consequence was duplication and fragmentation.

James, *et al* (2006:679) concur that under the apartheid government, education was deliberately made unequal, and access was limited as the government sought to separate the different race groups while maintaining its apartheid grip. It was this phase, the implementation of policy, which brought my research into sharp focus. The various policies as laid out in Table 3.1, which are underpinned by the values of the Constitution, place an enormous responsibility on teachers to be able to implement successfully and effectively such policies and change in their practice. Being confronted by education law through the education law modules, will require a response from the teacher. It was this response that was central to my research. This inquiry argues that exposure to a module in education law would influence teachers' practice.

In order to have a better understanding of how learning takes place, I decided to look at the Dietz Model of Learning. This model argues that there are 4 levels that an individual would go through in order to arrive at an informed decision, based on the linear process that individuals have undergone.

### **3.3 THE DIETZ MODEL (1998)**

Kolb (1984), Boud (1993) and Dietz (1998) concur that learning is a cyclic model and that learning occurs through experience and through reflection. Arends (1997:ix) argues that there are three components of experiential learning, those being "learning as the nature of experiential learning, developing the receptive skills – listening and observing, critical review and reflection."

Dietz's four levels of learning provide a useful framework for analysis of how new knowledge can bring about a change in behaviour. He suggests that students' learning progress through levels. These levels are explained below.

### **3.3.1 LEVEL 1: EXPLORATION**

The early stages of the student's learning were focused on the level described by Dietz as the "exploration" level. The key characteristics were: learning the territory, inquiring about a specific focus in the student's teaching, assessing information, observing students and listening to others (Insert text reference).

### **3.3.2 LEVEL 2: ORGANISATION**

At this level the student starts to make sense of things in the workplace such as practicing routines, putting procedures in place, recognizing pedagogy and learning theories in his/her day-to-day practice of teaching. It is at this level that the student teacher begins to place things in sequence and starts to make sense of the teaching environment (Insert text reference).

### **3.3.3 LEVEL 3: CONNECTIONS**

In the third level, it is suggested that students begin to make the "connections" between one teaching situation and another. In this level the student begins to move out of the constraints of a plan and modifies and alters plans to accommodate student needs. Students in essence are able to understand the link between what and how they taught (Insert text reference). More importantly, they start to see their teaching impact their students' learning.

### **3.3.4 LEVEL 4: REFLECTION**

"Reflection" is the fourth level where the student is now able to make informed decisions based on his/her ability to reflect on his/her practice and respond to issues that emerge from this reflection Insert text reference.

### **3.4 SHULMAN'S MODEL OF PEDAGOGICAL REASONING AND ACTION**

Shulman's model of Pedagogical Reasoning and Action was also looked at because this model also suggests that reflection is crucial to the learning process. Shulman's model not only concurs with the argument that the learning process culminates in the practice of reflection, but goes on to add that the final stage in the cyclic process of learning is, in fact, new comprehension. New comprehension would refer to the new insight and understanding that the individual would have attained in the learning process.

Shulman (1987:6); Garritz (2010:2) concentrates on the types of knowledge that are required in teacher training and the "processes of pedagogical reasoning and action." This model of pedagogical reasoning and action advanced by Shulman has six stages. These six stages include: comprehension; transformation; instruction; evaluation; reflection and new comprehensions. Shulman puts forward that in order for a trainee to teach he/she needs to transform his/her understanding and comprehension of the subject matter.

Both Dietz and Shulman suggest that reflection is an important component of the learning process. I intend using reflection as a lens through which to analyse the attitudes of teachers towards education Law. Once teachers have been exposed to the content of education law, they would reflect on what they have learned and acquire a new understanding of how education law affects their teaching. It was for this purpose that reflection was closely examined.

### **3.5 REFLECTION**

Reflection is seen as pivotal to the learning process. Reflection was viewed as a strategy to assist student teachers in raising their awareness of their learning (Gholami & Husu 2010: 1524). They felt that by talking to their colleagues and working collaboratively with them, they would come to a fuller understanding of their learning, their students' learning and their teaching. By being able to identify and cater for individual student learning needs, the student teachers revealed that throughout their training they were continually reflecting on their teaching practice and modifying their practice to achieve improved learner outcomes.

...the way that teachers are trained, the way schools are organised, the way that the educational hierarchy operates, and the way that education is treated by political decision

makers result in a system that is more likely to retain the status quo than to change (Fullan 1993:3).

In South Africa we have seen that our education system has been hugely influenced by political decision makers. This inquiry argues that the landscape of the South African educational field has indeed changed.

Pedagogy can be viewed as a practice or a craft representing the teachers' accumulated wisdom with respect to their teaching practice acquired over time. Teachers' knowledge and beliefs provide a framework for pedagogy, knowledge of students, subject matter and the curriculum, and guides the teachers' action in practice (Carrington, Deppeler & Moss 2010:2).

Carrington, Deppeler & Moss (2010) use this lens to examine how teachers' engage in critical reflective practice and how they personalize and individualize their teaching practices so that pedagogy flows from their understanding and knowledge as they engage their students.

In looking at the extent to which teachers' conceptions and beliefs are congruent with their practice, Carrington, Deppeler & Moss (2010:3) argue that change depends to a large extent on how teachers are able to reflect critically on their actions and consider new approaches to teaching. They add that through this critical reflection process, teachers may well develop viable alternatives to their practice. A study by Carrington and Sagger (2008) involving an in-service programme of a large Australian university with a core unit of Bachelor of Education students was undertaken. One of the specific aims of the service-learning programme was to broaden and develop the students' ability to work within legal and ethical frameworks that promote diversity, equity and inclusive education. Their findings suggest that students reflect and critique their world. Further to this, students demonstrated an enhanced understanding of the ethical and legal framework.

Literature dealing with professional learning through reflection suggests that reflection could enhance professional development (Freidus 1998; Carter & Francis 2000; Yost, Sentner & Forlenza-Bailey 2000). Freidus (1998:56), in her research on reflection, states that "...students learn to look for patterns and connections within and among the educational experiences they have found meaningful for themselves and their students." Sinclair and Woodward (1997:53) conclude, from their study, that reflection promoted professional development of student teachers, and enabled them to make links between theory and practice and also encouraged them to evaluate their teaching practice.

Professional development is where the tension between institutional imperatives and individual prerogative exists, between the conditions necessary to attempt systematic change and the conditions that engage individual teachers in their work (Little 1993:141). Her assertion underscores the importance of professional development as a vehicle for educational reform (Gholami & Husu 2010: 1527).

Learning is a cyclic model where learning occurs through experience and through reflection. My understanding of professional learning is grounded in Dewey's philosophy (1938, 1966) that we learn from experience and reflection. Dewey (1966:50) describes the act of learning as "one of continual reorganizing, reconstructing [and] transforming experience."

### **3.6 TEACHING PRACTICE**

As mentioned in the previous chapter, teaching practice, for the purpose of this inquiry will refer to teachers who are employed by the DoBE as teachers within the public school, who perform their duties in regards to teaching. The focus is on the craft or practice of doing their job.

#### **3.6.1 PRE-1994**

Teaching in South Africa pre-1994 has had many challenges. The system was driven by the political logic of the apartheid system which engineered separate forms of education for different racial and ethnic groupings (Robinson 2003:19). The subsequent duplication and fragmentation of the teacher education institutions, she argues, have led to the lack of a smooth seamless system and resulted in many curricula and qualifications. It was within this context that teachers practiced their craft. James *et al* (2006:679) agree that under the apartheid government, education was deliberately made unequal and access limited. This purposeful inequality within the education system may be one of the key factors that have influenced teachers' attitudes towards education law. Their experience within the apartheid system may also colour the way they see their profession.

### 3.6.2 POST-1994

For many years South Africa was rejected by the rest of the world for its gross violations of human rights, its laws of inequality and discriminatory policies. One of the facets of society that was hardest hit by the apartheid system was education (Joubert 2002:49). The first democratic election signaled major changes in the South African education sector (James *et al.* 2006:680). Chisholm (1997:50) adds that official state education policy that was historically geared towards “affirming white and male superiority” was now being reoriented towards “redressing the inequalities between black and white” on principles of inclusion, social justice and equity. James *et al.* (2006:680) go on to argue that this shift in orientation had implications for the South African education sector. Respect for human dignity can be regarded as the cornerstone of the transformation of education for a new South Africa (Richter, Van der Walt & Visser 2004:12). They further assert that, only when respect for a human being has been restored can the other aspects of transformation be truly addressed.

Robinson (1999:192-193) suggests that the context of education has changed significantly and uses the example of a teacher called Miriam to illustrate the change of context.

Miriam is a dedicated teacher who has taught for ten years. In all that time her school has been racially exclusive, so that she has had pupils in her class who can speak the same languages and who come from similar backgrounds. She has been expected to be very formal in her teaching, and she has been able to use corporal punishment on those pupils who do not listen to her. Someone in the Department of Education has made sure that she has received the syllabus, textbooks, and the dates and formats for the tests and exams. Her greatest achievement was to further her qualifications, for which she received a salary increase. No other teacher has ever watched her teach, and no teacher, inspector or principal or subject adviser has ever asked her for her opinion about teaching or about the school in general. This example seeks to highlight a typically white teacher within the then House of Assembly. With the onset of democracy, Miriam has additional issues to contend with.

Suddenly life has changed. The people who visit her from the DoBE are different. Not only are they from one DoBE, but they have progressive ideas about education that she has not heard from her employer before. Her pupils are from different racial and economic backgrounds and speak different home languages. She doesn't know how to teach them. The curriculum demands that she teaches using learner-centered or cooperative teaching methods. No one has ever shown her how to do this. If the pupils are unruly, she cannot use the cane on them as she will be the one in trouble. She is told to do continuous

assessments. Her principal says that there will be an appraisal process at the school and she must give feedback to others about their teaching. She is required to go to meetings to discuss South African Schools Act where teachers will form part of the school governing body. There is tension at her school because of something called rationalization and redeployment. Some teachers are leaving the school and new ones are arriving. It all feels very uncertain. Miriam is not sure whether to inquiry further as it is not clear if this will be recognised for salary purposes.

The above example clearly illustrates the contextual factors that make teaching in a new democracy a reality. It is worthwhile to note the following when trying to understand how the teaching practice has changed post-1994:

1. Miriam's teaching practice was quite different prior to 1994. Then the education system was driven by the apartheid regime which perpetuated a system of inequalities, lack of democracy and lack of human dignity.
2. She taught in a school that was mono-cultural.
3. The pupils spoke the same home language, were from similar backgrounds.
4. Her style of teaching was prescriptive.
5. She was able to deal with discipline using corporal punishment.
6. The syllabus, textbooks and tests were all done for her and issued to her school.
7. She received salary progression when she upgraded her qualifications.
8. There appeared to be no teacher development.
9. Her opinion regarding her teaching practice did not matter.

When suddenly life changes, Miriam finds herself practicing her craft with completely new realities. Some of the contextual factors from the example demonstrate the stark differences between pre-1994 and post-1994.

1. Miriam is faced with drastic changes in her practice as a teacher.
2. She has a multi-cultural class.
3. She has learners from different backgrounds that speak different home languages.
4. She needs to use new teaching methods that are learner-centred.
5. She may not use corporal punishment when disciplining her learners.
6. While guidelines are offered by the DoBE regarding the curriculum, Miriam feels the pressure of needing to design a suitable learning programme for her learners. This she has to do with very little or no support from the DoBE.
7. She is now faced with being appraised as a teacher for the first time.



8. She is expected to be engaged in Continuous Professional Development, and is faced with the reality of not being financially rewarded for her efforts.
9. She is now a key role player in the education system, where her opinion is solicited.

In essence, Miriam's experience is typical of many different teachers and the reality they faced with the birth of a new democracy. Teachers had to deal with changes in the law which ultimately affected their teaching practice. Teachers experience problems with learners, who do not have respect for them, refuse to take responsibility, are disobedient, are aggressive, and challenge authority (Lessing & De Witt 2010:22).

This inquiry seeks to understand how teachers, confronted with changes to the rules that govern their practice and confronted with the content of education law, respond to the expectations placed on them. This inquiry will seek to argue that teachers who are confronted with changes to the rules that govern their profession and confronted with the content of education law may experience a positive influence on their attitude towards education law and their practice.

By contrast, in a study conducted in Alexandra, educators were of the opinion that learners in grade 8 and 9 were the most violent, and that only a few in grade 10, 11 and 12 were violent (Pahad & Graham 2012:6). However, educators in this study explicitly linked disciplinary problems with the age differentials among learners in the same class. One educator responded as follows:

You teach different levels in one class ... [and] sometimes I can't control [an] older one. ...So the younger ones will take ... advantage. I [then] won't have control of the class. (Pahad & Graham 2012:6).

### **3.7 TEACHERS' BELIEFS AND ATTITUDES**

There are two distinct elements of beliefs and attitudes that can be distinguished (Bem 1970:40; Middlebrook 1980:158; Ross 1995:12). The first element is the cognitive component or, as Koekemoer and Olivier (2002:35) explain, it is where the idea is formed by one's thinking. Another element to note is the affective component, which refers to the emotions that charge the idea. The latter would remain central to the purpose of my inquiry in order to determine how teachers who are being exposed to education law and as a result

their new knowledge will affect their practice. New knowledge should produce a change in practice.

As early as 1918, Jastrow (1918:vii) contends that beliefs and attitudes are “generated and directed by our thinking.” Our thinking gives rise to the conclusions that we come to, as well as the reservations and doubt that we hold to our beliefs and attitudes (Jastrow 1918:viii). Du Toit (1993:5) supports the idea that our thinking and thus our beliefs and attitudes are shaped by the reality that we find ourselves in, as a result of facts, events, our experiences, social learning, conditioning and our learning by example. Evans (1965:7) agrees by suggesting that although we all share a common reasoning human nature, we all have diverse beliefs and attitudes towards reality. Bem (1970:40) says that it is evident that a strong interaction exists between our cognitive processes (logical thinking) and our psychological nature.

### **3.7.1 CAN BELIEFS AND ATTITUDES BE CHANGED?**

Koekemoer and Olivier (2002:36) support the idea of Evans (1965:2) that education plays an important role in changing beliefs and attitudes. They also add that beliefs and attitudes are formed by what we learn. Beliefs and attitudes are not permanent (Huysamen 1993:128; Moreira & Noos 1995:125), because, they can be changed or modified (Brownlee & Dart 1998:110; Evans 1965:8; Mahan & Lacefield 1979:5; Sanchez 1997:69).

### **3.7.2 HOW ARE BELIEFS AND ATTITUDES CHANGED?**

Vandeyar (2008:125) seems to echo Evans’ (1965:2) sentiments: “Education can bring about change!” She looks at how to change student-teachers’ beliefs and attitudes towards differences in South African classrooms. Vandeyar uses three sets of arguments to show how change can be brought about to teachers’ beliefs and attitudes, namely (1) “personal change has a prime place in the analysis of change” (Goodson 2001:57); (2) the embrace of change only happens with an inner change in people’s beliefs (Sheehy 1981; Ball & Cohen 1999) the implementation of educational change involves “change in practice” (Fullan 2000).

Evans (1965:2) puts forward that beliefs and attitudes are formed by what we learn. Thompson (1999:167) proclaims that “students pass through a dynamic process of transformation” with regard to their beliefs and attitudes while being prepared for their teaching profession. Knowledge, therefore, forms the foundation upon which one’s beliefs and attitudes towards something is gradually formed (Brownlee & Dart 1998:108; Sanchez 1997:6; Thompson 1999:165). Literature therefore suggests that beliefs and attitudes can be changed, even though it is a process that is achieved through education. If beliefs and attitudes can be changed, then teachers who have been exposed to the modules of education law may indeed have their beliefs and attitude towards education law influenced or even changed, whether negatively or positively.

Having indicated that learning happens through reflection, it is now necessary to look at how this newly gained knowledge activates change. To this end I explored the behavioural change theories. After all, once teachers have been exposed to education law, there should in all probability be some behavioural change at some level, be it in attitude or practice or both.

### **3.8 THE BEHAVIOURAL CHANGE THEORIES**

The behavioural change theories and models attempt to explain how we think about, feel about and would like to behave towards something. Brownlee and Dart (1998:108) put forward that the behavioural component illustrates how beliefs and attitudes influence our behaviour. Each behavioural change theory or model focuses on different factors (Prochaska & DiClemente 1992:64). Of the many that exist, the most prevalent are the Learning Theories, Social Learning Theory, Theory of Reasoned Action and Planned Behaviour and Transtheoretical Model (Ajzen 1985:15).

#### **3.8.1 LEARNING THEORY**

This theory puts forward that complex behaviour is learned gradually through the modification of simpler behaviour. Imitation and reinforcement play important roles in this theory (Sharma & Romas 2012:13). Skinner (1953:36) states that individuals learn by duplicating behaviour that they observe in others. As simple behaviour is established through imitation and subsequent reinforcement, the complex behaviour develops. This

theory may help explore the notion of how the actual content of the education law modules have brought gradual behaviour modification.

### **3.8.2 SOCIAL COGNITIVE THEORY**

According to this theory, behavioural change is determined by environmental, personal, and behavioural elements. Simply put, an individual's thoughts affect his/her behaviour. Bandura (1989:46) agrees that an individual's environment affects the development of his or her personal characteristics as well as the person's behaviour and that an individual's behaviour may change his/her environment as well as the way the individual thinks or feels. This theory reinforces the understanding that individuals are a product of their environment and that while change is systematically taught; the individuals' environment may not allow the desired change to take place.

### **3.8.3 THEORY OF REASONED ACTION (TRA)**

This theory assumes that individuals consider behaviour's consequence before performing the particular behaviour (Ajzen 1985:18). Ajzen further asserts that intention is an important factor in determining behaviour and behavioural change. Thus personal attitude and social pressure shape intention, which results in a behavioural change. As I intended determining the change in attitudes of teachers after being exposed to the content of the education law modules, the TRA will be looked at more closely. The fact that teachers are exposed to the content of education law may indicate that these teachers understand the consequences of their actions or lack thereof and as such will modify their behaviour.

### **3.8.4 TRANSTHEORETICAL MODEL**

The Transtheoretical Model is also known as the Stages of Change Model. Behavioural change is a five-step process. An individual may vacillate between stages before achieving complete change (USDHHS 1996:213). The five processes start with the pre-contemplation stage where an individual may or may not be aware of a problem but has no thought of changing his/her behaviour. The next stage is contemplation, the individual desires to change behaviour. The individual now enters the preparation stage, here the individual intends to modify his/her behaviour within a specific time frame. The fourth stage is the

action stage, the individual displays new behaviour consistently. An individual finally enters into the maintenance stage, once he/she has exhibited the new behaviour for a prolonged period of time (USDHHS 1996:214).

### **3.9 CONCLUSION**

This chapter took a look at Teacher Education and Training and the phases that it has gone through. Teacher training was examined with a detailed look at reflection as an all-important level in teacher development. Teaching practice was also examined with focus on pre-1994 and post-1994. The matter of teachers' beliefs and attitudes was analysed and the Behavioural Change Theories were explored. These themes formed the framework within which I investigated the research question - To which extent do awareness and knowledge of legislation and education law specifically influences teachers' practice?

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## CHAPTER 4

### Research Design and Methodology

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#### 4.1 INTRODUCTION

In the previous chapter, I looked at teacher education and training and its propensity to generating change. The various historical stages of teacher education and training in South Africa were explored. In order to have a better understanding of how learning takes place, I then decided to look at the Dietz Model. This model argues that there are four levels that an individual would go through in order to finally make an informed decision. Shulman's model was also explored; this model also suggested, like the Dietz model, that reflection was crucial to the learning process. Shulman's model goes on to add that the final stage in the cyclic process of learning is in fact new comprehension. It is this new comprehension that I anticipate seeing in the participants' responses, which would have enabled me to answer my research question (see § 1.5). I then continued to investigate the science of how beliefs and attitudes could be changed. The behavioural change theories and models explain how we think about, feel about and would like to behave towards something. Therefore, this would assist me in understanding how the awareness of legislation and education law specifically influences teachers' practice.

This chapter will provide a description of the research process, design and methodology. I will also seek to justify my methodological choices (Leedy & Ormrod 2010: 54; Maree 2010: 18). It will also explain the process chosen to generate and analyse data in response to the research and guiding questions. The aim was to provide a qualitative perspective on how the awareness of legislation and education law specifically influences teachers' practice. These findings would then form a baseline for exploring of teachers who had studied education law. These finding would not only be benchmarked against the baseline findings, but would also be used to determine if studying education law had influenced the attitude of the participants towards education law application in practice.

## **4.2 RESEARCH QUESTION**

To which extent do awareness of legislation and education law specifically influences teachers' practice?

### **4.2.1 SUB-QUESTIONS**

- (i) To which extent do legislation and education law specifically influence practice for teachers who have not been exposed to education law?
- (ii) To which extent do teachers perceive practice change due to exposure to legislation and education law specifically?

## **4.3 THE RESEARCH DESIGN**

The following subsections explain the methodology chosen for this inquiry. This orientates the reader in terms of the basic premises, epistemological position, research approach and data collection strategies.

### **4.3.1 EPISTEMOLOGY**

Qualitative research focuses on the what, how, when and where of things, trying to determine the essence and ambience of the research object (Berg 2009:3). The qualitative research process is focused on determining the qualities, characteristics or properties of specific phenomena to improve understanding thereof (Henning, Van Rensburg & Smit 2004:5).

Qualitative research is individuals constructing a reality by interacting with their social world (Merriam 2002:2-3). Williams (2003:31) adds that this method seeks to interpret actions, conversations or contexts. The Oxford Paperback Dictionary and Thesaurus (2009:491) defines 'interpret' as to 'elucidate or bring out the meaning', or to 'explain or understand behaviour'. I intended interpreting the experiences of the participants so as to provide important insights and knowledge in order to answer my research question better. Crotty (1998:57) points out that from a research point of view, the emphasis is on putting oneself in

the place of the other and seeing things from the perspective of others. This interpretive inquiry was based on the assumption that the world is made up of multiple realities (Henning, Van Rensburg & Smit 2004:68). Bogdan and Biklen (1998:23) concur that knowledge is socially constructed and it is also constantly changing. Qualitative research seeks to provide rich, descriptive account of the findings (Merriam 2002:2-3). Such an account has been generated and discussed using literature that framed the inquiry in the first place.

My position mainly was one of an *interpretivist*. Emphasis was placed on the meaning that individuals assign to their experiences, accepting that subjective meanings are crucial to achieving and gaining meaning.

The key to understanding qualitative research lies with the idea that meaning is socially constructed by individuals in interaction with their world. The world or reality is not a fixed, single, agreed, or measurable phenomenon. There are multiple constructions and interpretations of reality that are in flux and that change over time (Merriam 2002:3).

Therefore, my aim was to *understand the meaning* that people have constructed about their world and experiences such as the way new knowledge has influence behaviour and practice in schools. I tried to make sense, understand and interpret the experience of the participants with regards to how their teaching practice had been influenced. This then implies that the meaning that each person attached to his/her experience was different and unique to him/her and this implies that the “absolute truth” does not exist. This research therefore was inductive by nature. Merriam (2002:5) adds that the interest of a basic interpretive inquiry would be to understand how people interpret their experiences, how they construct their worlds and what meaning they attribute to their experiences. I do not believe that knowledge is out there, as it is socially constructed and that my task as a researcher was to understand how people made sense of their lives and their experiences. Therefore, the primary objective of my research was to uncover and interpret these meanings.

In a qualitative study, one does not begin with a theory to test or verify. Instead, consistent with the inductive model of thinking, a theory may emerge during the data collection and analysis phase ... (Anfara & Mertz 2006:94-95).

The Inductive-Thinking Model (Taba 1960:47) is broken into three stages. The first stage is the formation of concepts. This stage deals with the collecting and categorising of data. I used codes, themes and families to categorise the data I collected. The second stage involves



the interpretation of the data, to identify critical relationships and make inferences based on the exploration of these relationships. The third stage deals with the application of principles. In this stage I predicted, explained and verified the position of the participants and then formed a hypothesis.

#### **4.3.2 RESEARCH APPROACH**

Denzin and Lincoln (2003:382) point out that qualitative research is endlessly creative and interpretive. They add that the researcher does not just leave the field with mountains of empirical material and then easily writes up his or her findings.

One of the reasons for conducting a qualitative study was to provide a description of a phenomenon and not an explanation. Bogdan and Biklen (2007:78) clarify that phenomena include anything that appears or presents itself, such as emotions, thoughts and physical objects. They state further that phenomenology means describing things as one experiences them and that this means a turning away from science and scientific knowledge and returning to the 'things themselves'.

According to Chamberlin (1974 as cited in O'Donoghue & Punch 2003:139) there is always more than what is given in the perception of a single perspective – this inquiry intended to uncover these attitudes i.e. the phenomenon of teachers being exposed to education law and their attitude to their teaching practice. This was a further reason that justified why my inquiry was qualitative as my primary objective was to understand the core meaning or essence of an individual's experience. Bogdan and Biklen (2007:90) add to this by saying that "meaning" is of essential concern to the qualitative approach. Researchers who use this approach are interested in how different people make sense of their lives or participant perspectives. In other words I saw how the participants created their own reality with the new content they had been exposed to in education law (Mathebula 2013:39).

### 4.3.3 TYPE OF INQUIRY

An interpretivist qualitative research design demonstrates the expectations and methodology of my inquiry. The aim was to explore a phenomenon, of how the awareness of legislation and education law specifically influences teachers' practice (Maree 2010:19).

I set out to do a case study. A case study is a research strategy which focuses on understanding the dynamics present within single settings (Huberman & Miles 2002:57). Merriam (1998:11) describes a case study as "an intensive, holistic description and analysis of a single entity, phenomenon or social unit." Yin (1994:27) adds that a case study investigates a contemporary phenomenon within its real-life context, especially when the boundaries and contexts are not clearly defined. This type of research allowed me to combine collection data methods such as questionnaires, document analysis and a group interview which ultimately enabled me to provide a description in order to understand the dynamics at play.

My case study included teachers from Kwa-Zulu Natal, Lions River District. Four schools were selected as part of my sample. These included two primary schools and two high schools. Five teachers from each of these schools were asked to complete a questionnaire. The questionnaire looked specifically at their attitudes towards and knowledge of legislation and education law specifically. I conducted a similar questionnaire with teachers who were enrolled as students with the University of Pretoria. These students were from the Advanced Certificate in Education (Education Management) and Bachelor of Education (Honours) Education Management programmes. These students are currently enrolled for the education law module, hence my decision to choose them as part of my sample. The aim then was to determine their change in attitude and knowledge of legislation and education law and its influence on their practice after completing the education law module. In order to add to the trustworthiness of my research, I also conducted a document analysis on the examination scripts, which explored answers to a question from an examination paper of the EDL 401 and OWR 721 modules. Once I established that the data from the analysis of the examination scripts were not sufficiently rich to be able to answer my research question, I then conducted a group interview. The participants were past or present students of the University of Pretoria, who have successfully completed an education law module.

#### **4.3.4 INQUIRY STRATEGY**

My strategy was an inductive one; the outcome is descriptive. I seek to understand the perceptions of the people involved. Data was collected through questionnaires, document analysis conducted on examination papers and a group interview. The data was inductively analysed to identify the recurring patterns or common themes that cut across the data (Merriam 2002:12). The document analysis of the examination scripts explored were answers to a question from an examination paper of the EDL 401 and OWR 721 modules.

#### **4.3.5 SAMPLING**

My data was collected from three different sources, the first being teachers who had never been enrolled for an education law module (see addendum R). The second source was teachers who have enrolled for an education law module in either an Advance Certificate in Education or a BEd Honours programme and the third source are the examination scripts of these same students.

Purposive sampling is an informant selection tool (Tongco 2007:147). The purposive sampling technique, also called judgment sampling, is the deliberate choice of an informant due to the qualities the informant possesses. It is a non-random technique that does not need underlying theories or a set number of informants. Simply put, the researcher decides what needs to be known and sets out to find people who can and are willing to provide the information by virtue of knowledge or experience (Bernard 2002:98; Lewis & Sheppard 2006:292).

Four schools were selected, two were primary schools and two were high schools. I specifically requested the head of each school, one other member of management, as well as three post level 1 teachers to complete the questionnaire. The head of the school could select who the other member of management and three post level 1 teachers would be.

This inquiry was divided into three phases which sought to answer the research question in paragraph 4.2. An explanation of the sample for each phase follows.

**(a) Phase 1: Determining the knowledge and awareness of teachers on legislation and education law specifically, who have not studied education law and its influence on their teaching practice**

The target population was teachers of schools from the Lions River District in Pietermaritzburg. This sample included high school and primary school PL1, PL2, PL3 and PL4 teachers. The table below shows the distribution of the sample. From the schools listed below, S1 and S2 are ex-model C schools while S3 and S4 are previous House of Delegates schools. There are two primary schools and two high schools chosen from this district.

**Table 4.1: Sample of schools from Lions River District**

Name of school	No. of teacher participants	PL1	PL2	PL3	PL4
S1: A Primary school	<b>NIL RETURN</b>				
S2: A Primary school	5	2	1	1	1
S3: A High School	5	2	1	1	1
S4: A High School	5	2	1	1	1
<b>Total no. of participants</b>	<b>15</b>	<b>6</b>	<b>3</b>	<b>3</b>	<b>3</b>

The above four schools were selected due to their proximity to the Lions River District. Permission was granted by the District Manager (see Addendum A). The principals of these schools were contacted and appointments were set up. At these subsequent appointments the purpose of the inquiry was discussed and explained. The expectation of having certain staff as selected by the principal was also discussed. There was a warm and positive reception from all four schools and it was heartening to note their keen interest. The questionnaires were left at the school to be completed and were collected four weeks later. All but one school returned their questionnaires completed. In selecting these schools I made the assumption that these teachers by virtue of the number of years that they had been teaching had not been exposed to a formal course of education law. This was also confirmed (see addendum R).

The second leg of my inquiry focused on the teachers from the Durban area, specifically those teachers who attended the education law module at the University of Pretoria's

contact sessions in Durban. I had no control over which students had registered to attend the contact session.

**(b) Phase 2: Determining the knowledge and awareness of teachers on legislation and education law specifically, who have studied education law and its influence on their teaching practice**

This sample included teachers who have enrolled for the ACE Education Management (EDL 401) as well as the BEd(Hons) Education Management, Law and Policy (OWR 721) as offered by the University of Pretoria. I included all teachers enrolled for education law at UP from the Durban area who attended the July contact session as the participants.

Permission from the relevant departments within UP as well as the Department of Education was sought and granted (see Addendum B) Table 4.2 demonstrates the intended number of participants that was expected from each of the courses.

**Table 4.2: Sample for phase 2 of data collection**

Enrolled students at the July contact session	No. of participants	PL1	PL2	PL3	PL4
ACE – EDL 401	10	6	2	1	1
BEd(Hons) OWR 721	7	5	1	1	0
TOTAL	17	11	3	2	1

Appointments were set up with the relevant lecturers and permission was granted to visit their classes and engage their students (see Addendum C). The purpose of the inquiry was explained and the expectation to complete a questionnaire was also discussed. Ethical issues such as confidentiality, access to examination scripts and accuracy with regards to data captured were given due consideration. All students present in these two classes were given a questionnaire to complete. In the ACE class there were 31 students present and 30 questionnaires were returned. The issue of deciding which 10 questionnaires to include in the analysis was settled by selecting the questionnaires completed by the only two participants who were PL3 and PL4, the rest of the questionnaires were chosen according to the least number of questions that were left unanswered by the participants. Thus

questionnaires that had the most number of answers were selected for analysis. Ultimately eight questionnaires in this category were selected, bringing the number of questionnaires for phase 2 to 10. In the BEd(Hons) class there were nine students. Seven returned their questionnaires; all of these were included for analysis. Where 20 questionnaires were anticipated from both the ACE and BEd(Hons), only 17 were realized. All these participants were also required to complete a consent form giving the researcher permission to analyse their October examination papers (see Addendum D).

**(c) Phase 3: Document analysis of examination scripts of students from phase 2**

The third phase was document analysis, an analysis of examination answer scripts. These were the scripts of the same students above. Their expressed permission, as well as permission from the University of Pretoria, granted me access to their exam scripts for analysis (see Addendum E).

Table 4.3 illustrates the intention of examining the examination papers of the same students who answered the questionnaires during the July contact session in Durban.

**Table 4.3: Sample for phase 3 of data collection**

Document analysis	No. of participants	PL1	PL2	PL3	PL4
ACE (EDL 401)	6	4	1	0	1
BEd(Hons)	4	3	1	0	0
TOTAL	10	7	2	0	1

This should have translated to ten students' examination papers from each course. In the ACE course only six of the ten students wrote the September examination, whereas in the BEd(Hons) only four of the seven students wrote the examination.

#### 4.3.6 DATA COLLECTION INSTRUMENTS

As I collected my data in three phases, I will continue to motivate my choice of data collection instruments per phase.

##### ❖ **Phase 1 (addendum L)**

A questionnaire with open ended questions was completed by teachers from the Lions River district who have not been exposed to any education law module. The data collected was rich and was able to answer my research question. The participants in this phase were teachers who by virtue of their years of service to the DoBE did not have any formal training with respect to education law (see addendum R). Their responses were interesting to note and to understand how they dealt with the management of their classroom as well as their school without formally being exposed to a module of education law.

##### ❖ **Phase 2**

The second phase were completed by students in Block 2 attending the Durban venue as they have just completed the OWR 721 module, as well as students in Block 3 for the EDL 401 module. These were participants who were exposed to the content of education law.

##### ❖ **Phase 3a**

Document analysis of examination answer papers of the EDL 401 and OWR 721 module was done to determine if the way students answer the questionnaires, correlates with their knowledge of legislation and education law specifically and its influence on their practice. This will also provide for a form of triangulation which adds to the trustworthiness of the findings.

I used two data collection instruments in the above three phases. These instruments were sent to experts in the field to test the questionnaires and get their input (see Addendum F).

##### ❖ **Phase 3b**

A group interview was conducted. Group interviews are a form of group interview that capitalises on communication between research participants in order to generate data. This method is particularly useful for exploring people's knowledge and experiences and can be

used to examine not only what people think but how they think and why they think that way (Kitzinger 1995:299).

#### ❖ **Instrument 1: Questionnaire**

Denscombe (2003:107) points out that the selection of data collection method is dependent on various considerations. One such consideration is whether the method selected serves the purpose of the research? Questionnaires have the potential to supply the researcher with exact detail. Check questions are questions that assess honesty. Thus questionnaires are seen as consistent as they are able to produce the same results from the same situation when used on different occasions or with different participants. Questionnaires may be better than alternative approaches not because of their inherent advantages but simply because the use of questionnaires is preferred due to time and cost constraints. Questionnaires also lend themselves to confidentiality as well as allowing the participants to feel no pressure to complete the questionnaire – they can be returned blank.

My questionnaire was one with open-ended questions so that I could extract as much data as possible from the participants. Simons (2009:168) concurs with Bickman and Rog (1997:78) who suggest that researchers typically ask open-ended questions at the discovery phase of their research, so as to allow the participants the opportunity to interpret the questions and to allow the researcher to extract the most out of the responses. These questions were aimed to probe the value that these teachers placed on their experience with education law as well as their attitudes towards their practice. In wanting to understand their experience with education law, it was equally important to understand them as teachers and each participant's own experiences.

#### ❖ **Instrument 2: Document analysis**

Coyle (1995:245) suggests that discourse can be regarded as sets of linguistic material that are coherent in organization and content and enable people to construct meaning in social contexts. Cohen, Manion and Morrison (2005:298) put forward that discourse researchers explore the organisation of ordinary talk and everyday explanations and the social actions performed by them. I studied the answer scripts of the examination paper of the six EDL 401 and four OWR 721 (see Addendum G) participants who had completed the questionnaires in phase 2, by selecting a question that relates to a case study and analysed the written



discourse of the teachers in their answers. The aim was to try to understand the attitudes of teachers towards education law and subsequently the effect thereof on their practice.

#### **4.3.7 LIMITATIONS**

One of the characteristics of an interpretivistic research design is that the researcher is the primary instrument for data collection and data analysis. The human instrument has shortcomings and biases or “subjectivities” (Merriam 2002:201). This limitation is acknowledged, and as a researcher, I approach my research with my own biases. I am a middle-aged Indian male from Pietermaritzburg. I am a primary school Head of Department. I have been in the employ of the DoBE since 05 May 1992. All my teacher qualifications have been obtained through the medium of Distance Education – and I have never been a full-time student. Being part of the education system as a scholar pre-1994 has naturally made me acutely aware of the Government’s apartheid policies which resulted in the rights of the vast majority not always being recognised, which led to the violation of learners’ human rights. As the researcher I accept that my experience, firstly as a scholar within the apartheid education system and secondly, as a teacher who must now function within a new system that recognizes the human rights of all stakeholders, will influence my perception and interpretation of this inquiry.

An interpretivist qualitative research design forces me to see the world of the participants through their eyes, however, the lens that “colours my world” impacts on the way I see theirs. Bickman and Rog (1997:132) point out that all aspects of research are interdependent and that any weakness in one area will affect the quality of the data collected.

The purpose and aim of this inquiry was to provide a qualitative perspective on how the awareness of legislation and education law specifically influences teachers’ practice. An inquiry of this nature could actually cover all educators in South Africa. However, such an undertaking would be over ambitious in many regards, especially in respect to time and money. I decided, in phase 2 (for the teachers who have been exposed to education law), to focus on those who attend the University of Pretoria Distance Education contact sessions for EDL 401 and OWR 721 in the Durban area; this in itself is a limitation. Teachers doing this module via Distance Education might have different outcomes than that of full-time

students. The questionnaires were not answered by the same students. This did not detract from the trustworthiness of my research, as the aim of my research was not to track the perspectives on the awareness of legislation and education law specifically of a specific cohort of students or the influence the module has on students' teaching practice. The fact that different students answered the questionnaire only added to the trustworthiness of my findings.

The seemingly obvious limitation will be that the findings cannot be generalized, since the participants all were from the Durban area. This may imply that the findings may not necessarily apply to all teachers in South Africa. Even though this limitation abounds, one is able to contextualize the findings within a bounded context (Merriam 2002:220) and the inquiry surely developed a hypothesis for further research.

#### **4.3.8 SIGNIFICANCE OF INQUIRY**

The findings of this inquiry has the potential to impact the future of education law in the initial and further training of teachers in our country. The results suggest that the studying of education law has made a significant difference in the way teachers perceive their roles and practice within the education system. It may therefore inform curriculum planners and developers of the importance of education law as a module in initial teacher training and further training programmes.

This inquiry also improved my research skills and my understanding of the research process. "How you study the world determines what you learn about the world" (Patton 1990:67). Further, this inquiry develops a hypothesis for further exploration via quantitative study on the matter of the place of education law in initial teacher training as tool to change attitudes and practice.

#### 4.3.9 TRUSTWORTHINESS

Bickman and Rog (1997:369) raise the question of trustworthiness and that researchers must consider what the plausible alternative explanations are, as well as threats to the validity/trustworthiness of the potential conclusions of their inquiry, and how these will be dealt with. It has to do with proving to the reader the authenticity of my results. Bickman and Rog (1997:372) go on to say that triangulation enhances validity and compensates for the fallibility of any single method or measure in applied research. The analysis of the exam script further added to the validity of my findings as I was able to determine if their way of answering case studies correlates with their attitudes as perceived from the questionnaires.

My position was one of induction, that knowledge was generated through the experience of those educators. Their realities and perceptions were different, and I attempted to understand and interpret their realities and perceptions, which was the core purpose of my inquiry.

#### 4.3.10 ETHICAL CONSIDERATIONS

This inquiry adheres to the Ethical Code and Guidelines of the Faculty of Education of the University of Pretoria (see Addendum H) and I sought permission to undertake research in the identified institutions from their management (see Addendum I). Permission was also sought from the Provincial DoBE (see Addendum A). The following ethical considerations were adhered to:

##### ❖ **Approval to conduct the research**

Clearance was granted by the Ethics committee with regards to my ethics application (see Addendum J). I needed, however, to ensure the following:

- Permission from the Registrar of the University of Pretoria was required in order to access students' examination scripts. This was obtained (see Addendum E).
- Provide detailed justification for analysing students' examination scripts and to include these reasons in each participant's letter of consent. This matter was attended to (see Addendum D).

- To outline the possible risks and benefits of my inquiry and also include this in the letter of consent. This matter was attended to (see Addendum D).

#### ❖ **Informed consent**

Participants were informed of the objective of the inquiry. They were further informed about their voluntary participation and right to withdraw from the activities of the inquiry, if and when they no longer wished to participate (see Addendum D).

#### ❖ **Confidentiality**

Institutions and individuals are confidential. Their confidentiality was guaranteed by not including the names of any of the participants in all phases of the data collection in my research. An agreement on anonymity was reached with individual teachers agreeing to participate, through the informed consent letter and verbal explanation.

## **4.4 CONCLUSION**

In this chapter I have explained what influenced my decision to adopt a qualitative approach for this inquiry. It was indicated that I chose to use open-ended questionnaires, document analysis and a group interview as data collection instruments to achieve verification and validation of the findings. I also purposively selected my samples from four institutions. The literature reviewed has influenced my decision to assess the data within the principles of the equivalency theory which puts much emphasis on equivalent value of the learning experiences and their outcome, with regard their attitudes towards education law and their practice.

The next chapter will attend to the matter of analysing the data from the three phases. The coding process will be discussed, demonstrating how I arrived at the diverse categories and ultimately synthesising the various families. Hypotheses were formulated and substantiated by the data. These processes were followed in order to be able to answer my research question of how education law influences the attitude of teachers.

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## CHAPTER 5

### Presentation and Interpretation of Data

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#### 5.1 INTRODUCTION

The previous chapter dealt with the research design and methodology. Specific attention was given to the research process. Due consideration was given to situating the inquiry, sampling, data collection instruments and ethical considerations. I provided motivation for the choices I made which would ensure the needed data to answer the research question. The sampling and data collection was done in three phases. Phase 1 was participants from the three schools in the Howick district, Kwa-Zulu Natal, who had not been exposed to the content of an education law module. Phase 2 was teachers who were enrolled at the University of Pretoria for a module in education law, phase 3a was document analysis of examination scripts and phase 3b was a group interview. These phases will continue to be discussed as independent entities. This chapter will capture my data analysis in an attempt to answer the research question: To which extent do awareness and knowledge of legislation and education law specifically influences teachers' practice?

#### 5.2 DATA ANALYSIS

Each of the three phases of data collection generated a large volume of data. In order to make sense, as well as make the presentation manageable, I decided to organize the data into codes, categories, families and then themes as per Patton (1990:271) and McMillan and Schumacher (2001:314). This process of reduction is an effective data management tool. Therefore, the data management strategy for this inquiry included transcribing the data from all three phases. For quick retrieval, this was done on an Excel spread sheet (see Addendum K).

#### 5.3 THE DATA ANALYSING PROCESS

The data were studied and codes were assigned, and then grouped into categories and clustered into families until themes evolved. It would appear that while literature on qualitative methodology widely argues the limitations as well as the procedural steps of

coding data (Anfara, Brown & Mangione 2002; Constat 1992; Marshall & Rossman 1999; Miles & Huberman 1994), there is scant mention of the practical work involved with analysing interviews scientifically (Olszewski, Macey & Lindstrom 2007:364).

The coding process involves the creating of a set of codes or a set of descriptive labels which are useful in answering the research question. These codes are then applied to sections of the data (Olszewski, Macey & Lindstrom 2007:365). The analysis involves continuously working with data, organizing and breaking them into manageable parts, synthesizing them, identifying patterns, finding out what is important and what is to be learned, and making decisions on what is significant to report (Bogdan & Biklen 1998 as cited in Amenkhienan 2000:38).

The data in phase 1, 2 and 3 were coded using an inductive approach, which means that the themes and patterns emerged from my data. I began with specific observations (data from the questionnaires) and then detected patterns and regularities and formulated some tentative hypotheses to explore, and finally ended up developing some general conclusions or theories as per Patton (2002 as cited in Ostrow 2003:45). Theme-coding as described by Ragin (1994:104) means that the researcher selects “text-bits” with a more or less relevance to the theme, which is indicative of qualitative analysis, as the researcher seeks a holistic understanding of the data.

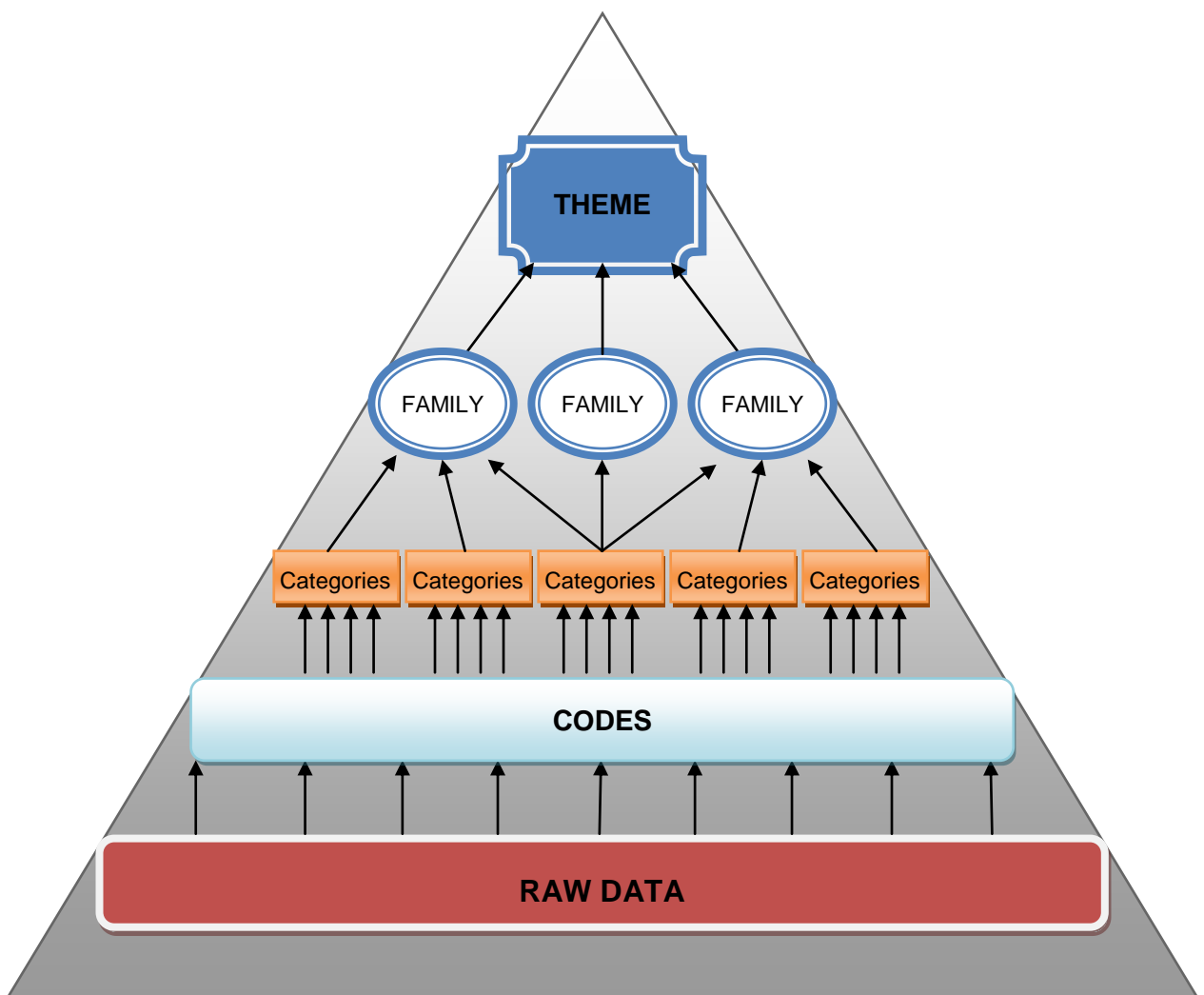
The transcripts were read several times initially. During the first reading, notes were made on the transcripts. The transcripts were then colour coded for the purposes of identifying key points and emerging patterns. Amenkhienan (2000:48) suggests that the following steps be used when coding:

1. Developing categories for the patterns that emerge.
2. Naming the categories that reflect the information they represent.
3. Changing the names whenever more appropriate ones emerge.
4. Clarifying the meaning of each concept and exploring their interrelationships.
5. Using those concepts to organize the data and to describe and explain the inquiry.

Sivesind (1999:369) argues that when the emphasis is on the content of the text that is being analysed, then the codes are merely tools for extracting certain themes. He adds that the network of themes is a way of keeping track of the codes.

The coupling of theoretical assumptions and data-material takes place in the head of the researcher. Coding is just a heuristic tool that makes the process of interpretation easier through keeping data and concepts in a system (Sivesind 1999:369).

Figure 5.1 shows the coding process that was followed in this inquiry. A vast amount of data was collected. Codes were assigned, categories allocated and families and themes emerged.



**Figure 5.1: Data Analysis and Interpretation Process** (Adapted from McMillan & Schumacher 2001)

The data analysis and interpretation process was applied to the data from phase one and two. In phase one data were collected using a questionnaire with open-ended questions. The participants were teachers from the Lions River ward in Pietermaritzburg. First there

was an analysis of the biographical information of the participants, then the coding process began which ultimately led to the emergence of themes.

## 5.4 PHASE 1

Data were collected using questionnaires with open-ended questions (see Addendum L). These questionnaires were completed by teachers from the Lions River District, KZN (see § 5.4.1). There were 15 questionnaires.

### 5.4.1 BIOGRAPHICAL DATA

The participants' biographical data were tabulated. The table included gender, qualifications, post level, age and years of teaching experience. Table 5.1 demonstrates the biographical information of the sample in phase 1.

**Table 5.1: Biographical data of participants in phase 1**

A	GENDER OF PARTICIPANTS						
	Males		Females		Unknown		
	6		8		1		
B	QUALIFICATIONS						
	MEd	BEd(Hons)	BEd	BA	BA(Hons)	HDE/FDE	
	1	1	7	1	1	4	
C	POST LEVEL						
	PL1	PL2	PL3	PL4			
	6	3	3	3			
D	RANGE OF AGE OF PARTICIPANTS IN PHASE 1						
	25-29	30-34	35-39	40-44	45-49	50+	Total
	1	0	1	2	6	5	15
E	RANGE OF YEARS OF TEACHING EXPERIENCE IN PHASE 1						
	0-3	4-8yrs	9-15yrs	15-19yrs	20-25yr	26+	Total
	1	0	0	2	4	8	15
F	GRADES TEACHING						
	Gr. 1-3	Gr. 4-6	Gr. 7-9	Gr. 10-12			
	2	2	5	10			



Table 5.1 reveals the biographical information of the participants in phase 1. There are 40% male and 60% female participants. Of the 15 participants, 40% are PL1 teachers, while 20% are PL2, PL3 and PL4 teachers respectively. The bulk of the participants are PL1 teachers. The average age of the 15 participants is 40-49 years old. Five were older than 50 years and only one was between the ages of 25-29 years. If the participants were 17 years old when they completed grade 12 and it took them four years to complete a teaching qualification, then they would have been 22 years old when they entered the teaching profession; this would then translate to approximately 13 years of teaching experience. This is confirmed by the data in row E of Table 5.1.

In light of the above it can be concluded, based on the ages of the participants, who are all except one, mature teachers that they were not necessarily exposed to a formal course of education law in their initial teacher training and their types of qualifications would also confirm this (see addendum R). It would seem that whatever knowledge that was evident in their responses regarding education law is as a result of their experience. The data suggest that while the participants have been teaching for an excess of 15 years, their perceptions of how education law has influence their practice and education in South Africa are clear.

(S3:Q11:e): *Yes, definitely. There is a new curriculum which has changed dramatically to OBE to NCS. The challenges are there for both educators and pupils e.g. training of educators, re-training and interpretation of the new curriculum.*

The data collected indicate that the participants believe that democracy has led to the promotion of learners' rights, while there are many policies and much legislation that regulate the field of education. The data confirm that the participants possess a good understanding of education law.

(S1:Q13:a): *Education law refers to the policies and laws that all people in the educational sphere need to follow to ensure successful teaching and learning practices.*

One of the biggest changes that the participants have experienced as a result of democracy is a dramatic change in curriculum – ultimately changing the way teaching takes place.

(S3:Q11:d): *Yes. The focus is on the learner and not the teacher. Emphasis is on learner's acquisition of skills and values. Learning is ongoing (CA). No regurgitation of knowledge or written tests/exams being the sole method of assessment.*

#### 5.4.2 THEME: DEMOCRACY HAS CHANGED THE WAY TEACHING TAKES PLACE

In analysing the data, I hoped to be able to answer my research question i.e. To what extent does awareness and knowledge of legislation and education law specifically influences teachers' practice?"

My analysis began with a vast amount of data collected from phase 1. Two-hundred-and-nineteen codes were assigned; these codes were reduced to 42 categories, which then gave rise to three families and one broad theme. Table 5.2 provides a snapshot of the analysis process of the first phase.

For the purpose of cross-referencing the responses of participants, in order to demonstrate the link between the code assigned and the category, I have developed the following reference system.

**S1:Q11:e** – this reference translates to:

S1 – school number 1 (there were three schools)

Q11 – question number 11 (there were 25 questions altogether)

e – refers to participant e

(There were five participants from each school, ranging from a to e)

**Table 5.2: Theme: Democracy has changed the way teaching takes place**

<b>THEME: DEMOCRACY HAS CHANGED THE WAY TEACHING TAKES PLACE</b>		
<b>FAMILY 1</b>	<b>CURRICULUM CHANGE</b>	
<b>CODES</b>	<b>Category 1: Learner Centred Teaching</b>	<b>Category 2: Outcomes Based Education</b>
	No longer prescriptive. More learner centred Learner centred teaching Learner centred. Move away from exams All treated equally. Assessments are varied	OBE has changed the face of teaching Policies, theory and processes have changed Big curriculum changes with retraining of teachers Syllabus more diverse caters for most learners
<b>CODES</b>	<b>Category 1: Learner Centred Teaching</b>	<b>Category 2: Outcomes Based Education</b>
	Respect the learner Individual counseling	Received training in the new curriculum Multiracial schools -curriculum changes Teaching has moved away from examinations
<b>CODES</b>	<b>Category 3: Change brings challenges</b>	
	Discipline problems increased Produced mediocrity, learners are passed anyway! Discipline and language an issue. Teaching style had to change to accommodate 2nd language speakers. Curriculum has changed, more time consuming Group work is new. Deadlines seem to be negotiated. Pupils are more challenging – lack of respect – hard to develop trust Multicultural classroom	
<b>FAMILY 2</b>	<b>EDUCATION IS A REGULATED FIELD</b>	
<b>CODES</b>	<b>Category 1: Good understanding of Education law</b>	<b>Category 2: Policies that regulate teaching</b>

<p>Policies and laws that govern education</p> <p>Law that regulates teaching</p> <p>Laws that govern education</p> <p>Guiding principles that promote teaching and learning</p> <p>Governs the conduct of teachers in our country</p> <p>Runs schools nationally – SASA</p> <p>Education that is regulated by legislation</p> <p>Guideline to teaching and learning</p> <p>Laws govern education</p> <p>Policies or laws or rules that govern education</p> <p>Education that is regulated by legislation</p> <p>Rules and regulations that can be upheld in a court of law</p>	<p>Schools Act; ELRC; department circulars</p> <p>ELRC Document; SACE; Human Rights Bill</p> <p>ELRC; SACE Code of conduct; Various HRM circulars from the department</p> <p>CRSA; Schools Act; NEPA; NCS;PAM</p> <p>EEA; SACE; ELRC; Policy handbook</p> <p>Schools Act; ELRC; department circulars; Constitution; SACE</p> <p>Abolishment of corporal punishment</p> <p>Schools Act 84 of 1996; Policy documents for each subject issued in 2008 by Dept. of Education (KZN)</p> <p>Policy hand book; NCS</p> <p>Schools Act; ELRC; department circulars; Constitution; SACE</p> <p>SACE; National Education Policy Education Act; IQMS; Health Promoting School; Safety and Security</p> <p>EEA; LRA etc</p> <p>Schools Act;NEPA; EEA; SACE; IQMS</p> <p>Schools Act; NCS; EEA</p>
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FAMILY 3	RIGHTS: LEARNERS VS TEACHERS	
<b>CODES</b>	<b>Category 1: Learners have too many rights</b>	<b>Category 2: Promoting the rights of learners</b>
	<p>Learners have more rights than teachers</p> <p>Learners don't understand that everyone has rights</p> <p>Learners don't understand the responsibilities that go with their rights.</p> <p>Have a problem when rights are used without the corresponding responsibility</p> <p>No need to overemphasise the rights of the learners</p> <p>While they have rights they must also behave responsibly as well</p>	<p>Continuously made aware that with rights come responsibilities</p> <p>Not administer corporal punishment</p> <p>By providing quality education</p> <p>Making sure that learners are taught. Pregnant learners as well</p> <p>Make pupils aware of their limitation. No corporal punishment, racial abuse, or verbal abuse</p> <p>Treat all learners equally</p> <p>Bullying and name calling not allowed</p> <p>Listen and pay attention to the needs of my learners</p> <p>Freedom of expression</p> <p>Careful not to discriminate – careful in what is said.</p> <p>Promote mutual respect</p> <p>Treated equally with respect and dignity</p> <p>Treat them with dignity and respect</p> <p>By providing quality education</p> <p>Treat learners with respect</p> <p>Promote awareness through assembly talks</p> <p>No need to fear if we respect each other</p> <p>Not enough is said about the learners' responsibilities</p> <p>Feel positive to teach learners their rights</p>

I intend to understand the phenomenon from the participants' perspective. This premise would enable me to reconstruct the reality based on the data collected.

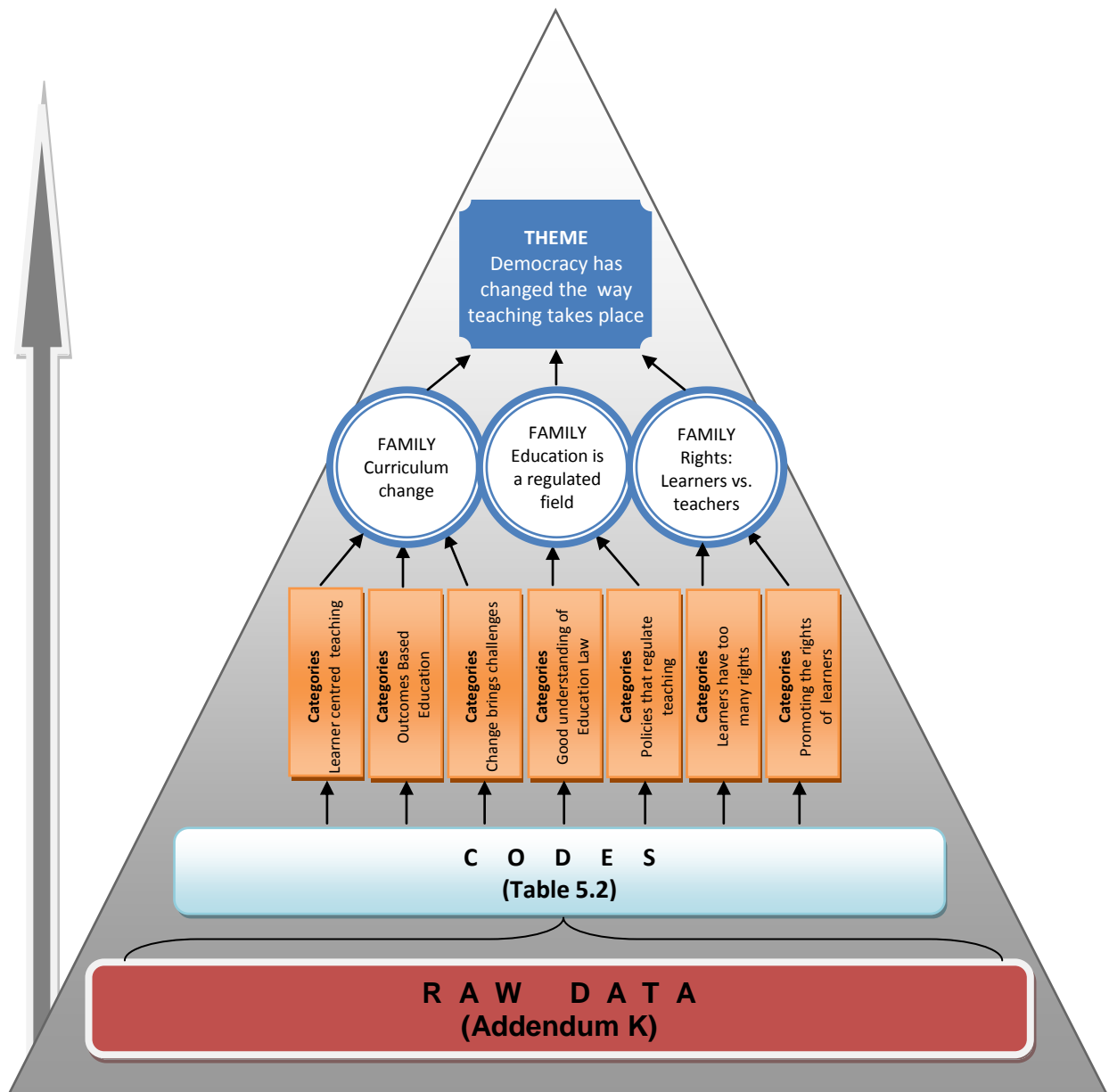


Figure 5.2: Diagrammatical representation of the interpretation of data of phase 1

#### 5.4.3 FAMILY 1: CURRICULUM CHANGE

The three categories; “learner centred teaching”, “Outcomes Based Education” and “change brings challenges” as depicted in Table 5.2 were clustered together to form a family of categories. “Curriculum change” would seem an apt description of this family because it incorporates the theme of major change that came into effect as a direct result of changes that were made to the curriculum. It has become apparent that the participants felt strongly that policy change around the curriculum influenced the way they taught their learners.

Teachers cited multicultural classrooms as one of the changes they had to manage in their practice:

(S1:Q11:d): *Yes. Schools now have learners and educators of all races integrated. The curriculum has also changed.*

(S2:Q11:d): *To a large extent: when I started teaching schools were not multiracial, they are now; now principles, policies and implementation underlying the curriculum have changed.*

The above quotes illustrate that the participants believe that while multicultural classes were symptoms of our new democracy, the real precursor was actually the changes made to the curriculum.

The change in the curriculum obviously created new challenges for teachers to deal with. These challenges according to the responses were the biggest change that influenced their teaching. Policy with regards to the curriculum has had a more far-reaching influence than I anticipated. Teachers were now expected to teach from a new and different paradigm; a paradigm that they were not trained for. These teachers, except for one, were trained in the old system of education in the apartheid era. One can only begin to imagine the challenge that these teachers face. Not only did they now have a multicultural classroom to cope with, they also have to teach a new curriculum and if that was not enough they also have to operate within the new Constitution and other laws:

(S2:Q16:c): *Obviously the advent of a multicultural learner body has changed things. The emergence of Life Orientation as a learning area which involves teaching about the Constitution and human rights, democratic process etc and is new to me - but enjoyable.*

The families that have emerged seem to point to the notion that democracy has indeed changed the way teaching takes place. The evidence gathered highlights the many changes that the teachers believe have taken place in their profession. These changes are seen as both positive and problematic by the teachers. This aspect will be discussed later (see § 5.4.3.3).

### 5.4.3.1 Category 1: Learner centred teaching

The question of whether they think teaching in South Africa has changed since the birth of our democracy provided an overwhelmingly positive response as could have been anticipated. From the 15 participants, 12 indicated that there has been a change. There was one blank response.

(S1:Q11:a): *Yes. Since democracy our syllabi have taken into consideration the diversity of our multicultural country. Furthermore, it has allowed for our future generation to take our past experiences and use them as bridging stones to build a prosperous future.*

(S2:Q11:c): *Yes. Discipline is more of a problem than it has ever been. Paper work and Admin takes more time. Dept of Ed. More prescriptive e.g. setting specific tasks to be completed (LO).*

(S3:Q11:e): *Yes, definitely. There is a new curriculum which has changed dramatically to OBE to NCS. The challenges are there for both educators and pupils e.g. training of educators, re-training and interpretation of the new curriculum.*

While two responded that no change had been experienced, it could be assumed that the one participant, who had only been teaching for the last three years, would not have experienced any significant change because the multicultural classroom would have been the norm rather than the exception.

(S1:12:a): *As I am only teaching for the past three years, I can say that my teaching practice had prepared me for teaching in a democracy. Therefore have been no extreme changes.*

When I take a closer look at the following response, this participant is a senior member of staff and has been teaching for many years. He suggested that it was not really the types of pupils in the classroom, but it was actually the principles that guide one's teaching that mattered. As such his principles have remained consistent and they applied to any learner from any culture.

(S1:Q11:b): *No. Principles are the same. Just more learners per class of different socio-economic backgrounds.*



The category of “Learner centred teaching” was scaffolded by various codes, and in turn informed the family “curriculum change.” The participants were of the view that teaching in the new democracy had changed. One of the changes that the participants referred to was the less prescriptive approach by the DoBE.

(S3:Q12:a): *The focus is on the learner. The emphasis on continuous assessment and not tests or exams being the method of assessment. The teacher is a facilitator in the classroom.*

(S3:Q11:a): *Yes. The implementation of the Outcomes Based Education and other changes has influenced teaching in South Africa since the birth of our new democracy.*

There is lots of room for teachers to decide on the content, especially due to different schools having different contexts. Schools are different contextually, by virtue of them being geographically different, serving different communities and having different levels of resources. All these factors make schools very different from each other. The curriculum seems to allow schools to decide on the content that would be used in order to achieve the assessment standards as set by the curriculum and for their context. The focus is more on the learners as the syllabus is more diverse, catering for the needs of most learners.

(S3:Q11:d): *Yes. The focus is on the learner and not the teacher. Emphasis is on learners' acquisition of skills and values. Learning is ongoing (CA). No regurgitation of knowledge or written tests/exams being the sole method of assessment.*

The old prescriptive methods of teaching have been replaced by new progressive approaches. One of these moves included the moving away from examinations to more continuous and multi-assessment tasks.

(S3:Q11:c): *There have been many changes in terms of education, of policies; the integration process, the theoretical and practical teaching strategies and methods that should be implemented.*

This implies that the learners now have more opportunity to succeed in a certain subject because they are afforded more than one opportunity to demonstrate their competence in a subject.

(S2:Q11:b): *Yes. It has changed, because the old teaching methods have been stopped. The new method of teaching makes the teaching so easy and understandable.*

All of them pointed out that there have been a shift in the way in which learners are treated; they now seem to be the centre of education. They are treated equally and with respect and are afforded the opportunity to be counseled when they require it. It would seem that the participants believed that the learners are afforded equal respect, equal opportunity, and a fair chance to succeed.

(S3:Q20:a): *All learners are treated equally and with respect and dignity. Social and healthy environment are created at school e.g. Food is provided for needy learners etc.*

With democracy came some fundamental changes to the way they taught. The most common change cited by teachers was curriculum change, which valued the learners' needs. This was a more learner centred approach to teaching as opposed to a teacher centred approach.

#### **5.4.3.2 Category 2: Outcomes Based Education (OBE)**

Even though this category seemed to overlap with the other categories, I decided to include it as a category on its own because this thread seemed to run through most of the responses and as such I needed to acknowledge it. OBE appears to be synonymous with change in education.

(S3:Q11:a): *Yes. The implementation of the Outcomes Based Education and other changes has influenced teaching in South Africa since the birth of our new democracy.*

The category of Outcomes Based Education (OBE) was built on codes that dealt with the obvious implications of the implementation of OBE. The participants felt strongly that OBE had changed the face of teaching.

(S2:Q11:b): *Yes. It has changed, because the old teaching methods have been stopped. The new methods of teaching make the teaching so easy and understandable.*

(S3:Q12:b): *Yes. It does not focus on examinations any more. It is learner centred.*

These responses overlapped with the concept of change in the previous category and with the overarching theme as a whole. The theory of how to teach and assess has changed drastically with policies to enforce it.

(S1:Q12:c): *Yes - courses have been developed to train teachers who specialized in the rated 550 curriculum so that they are able to effectively deliver lessons on the new curriculum.*

The re-training of teachers has been a response that has been quoted by many participants as a significant consequence of OBE. The diverse syllabus has also been mentioned, together with the issue of multicultural schools.

(S1:Q11:d): *Yes. Schools now have learners and educators of all races integrated. The curriculum has also changed.*

(S2:Q12:d): *I feel the style and approach to teaching has not changed significantly. The curriculum requirements are, however, different in that they are time-consuming, onerous and pedantic in terms of paper work...*

These responses and many more indicated that the participants believed that OBE had played a significant role since democracy. The data suggested that the style and approach to teaching had changed, with more emphasis being placed on the learner as opposed to the teacher. There is now a learner centred approach to assessment as opposed to purely writing examinations.

However, my data also pointed to the fact that with the positive strides in education, there have also been challenges that teachers had to face.

#### **5.4.3.3 Category 3: Change brings challenges**

The next category that emerged was the element of the challenges that come along with the change experienced.

The participants cited an increase in discipline problems; the multicultural classroom presents challenges that previously were not a reality. The participants suggest that learners being treated with respect, the nature of the learner and the makeup of the classroom may have contributed to a lack of discipline by learners.

(S2:Q11:c): *Yes. Discipline is more of a problem than it has ever been. Paper work and Admin takes more time. Dept of Ed. More prescriptive e.g. setting specific tasks to be completed (LO).*

(S2:Q12:e): *No - but pupils are sometimes more challenging as they no longer easily respect elders. It takes a longer time to build up trust with pupils.*

The challenges mentioned by the teachers are indicative of the nature of the change that has been experienced. Teachers experienced an increase in discipline problems. It can be argued that discipline is an issue, as teachers may have felt that they were not adequately prepared to deal with learners in a new democracy.

It would seem even more difficult to gain the trust of learners. The challenge of learners being “pushed” through the system – being allowed to progress to the next grade, has also compounded the discipline issue and created a sense of mediocrity as opposed to striving for excellence.

(S2:Q11:e): *Yes. Implementation of OBE, while having certain advantages, has developed more mediocrity and a sense in pupils that they don't have to work hard because they will pass reasonably well anyway.*

The teacher, when citing mediocrity as a challenge, could possibly be caught between two very different approaches. The first approach would be the old content based way of teaching. If learners were able to master the content they were considered proficient in that particular subject. The new approach is more learner centred, focusing on performance standards. While these performance standards were prescribed, the actual content was not. It may be argued that it is this incongruity that created a sense of frustration in regards to measuring the learners’ achievements. Deadlines for projects, assignments and work seem to be negotiated and there appears to be a lack of a good work ethic.

(S2:Q12:c): *Yes. Learners expect to negotiate tasks and deadlines etc. Group work is new to me, and I find that the more able learners don't like it – they prefer to do their own tasks whilst the less able love it – it is easier to do nothing.*

The fact that many of the participants suggested that language may be an impediment highlights the challenge of teaching learners in a language that is not their mother tongue, in fact may even be their third language.

(S1:Q12:d): *In some ways e.g. manner of disciplining learners, language usage in classes as we now have learners whose home language is not LOLT (English). Teaching style also changed.*

Language posed a challenge where previously it had been a non-issue. Classrooms became multicultural so now the teacher is confronted with a learner that no longer speaks the same mother tongue as the class teacher. The challenge for the teacher, one can imagine, is to cater for first, second and even possibly third language speakers, all in the same classroom. This can be quite a challenge especially if the teacher's training did not address these issues. The practical implications could be that both the learners and the teachers are now frustrated as a result of not speaking a common language. This could quite easily impact classroom discipline.

This scenario could contribute to the frustrations of both the learner and the teacher alike. Curriculum change, while it has been seen as positive, has also been frustrating at times.

#### **5.4.4 FAMILY 2: EDUCATION IS A REGULATED FIELD**

The conclusion that education is a regulated field has developed from two broader categories; “a good understanding of education law” and “policies that regulate teaching” (see Table 5.2). Many participants displayed a good understanding of education law as well as of the many policies that regulate teaching in South Africa. Given the number of years of teaching experience the participants have, it may be easy to conclude that their knowledge of education law could be as a result of their experience and not necessarily from being exposed to formal training in education law. It can also be argued that post level 2, 3 and 4 teachers may have more experience with education law by virtue of being in managerial

positions. However, responses of all the teachers indicated that even post level 1 teachers demonstrated a reasonably sound understanding of education law. Teachers' understanding of education law illustrates and confirms that democracy has indeed changed the way teaching takes place within our new democracy. They concentrated on the curriculum and not education law, perhaps because they do not know education law.

The following categories helped to construct the family of "education is a regulated field".

#### 5.4.4.1 Category 1: Good understanding of education law

In this category, participants' responses helped confirm the findings that they have a good understanding of education law. Many participants mentioned the role of education law specifically.

This demonstrates to me that the participants have developed a keen sense of education law, due to their years of experience as teachers or managers of schools.

(S2:Q13:a): *Govern the conduct of teachers in the country. E.g. Schools Act and other relation to conduct of (among others) education departments, educational institutions, educators, learners, parents.*

The participants demonstrated a reasonably sound understanding of education law and its practical application to their profession.

(S3:Q13:e): *It means the implementation of rules and regulations and policies need to be adhered to and could stand its ground in a court of law. The schools and school governing body are legal entities as well as the DoBE whereby one could be sued or charged etc.*

(S1:Q13:a): *Education law refers to the policies and laws that all people in the educational sphere need to follow to ensure successful teaching and learning practices*

Their responses illustrated that there was a reasonably good understanding of what education law was as well as what are some of the relevant policies and laws that govern education law. Participants agreed that while education has become a highly regulated field, there are also guiding principles that promote the culture of teaching and learning.

(S2:Q13:c): *South African Schools Act 84 of 1996 which amongst other things, lays down a code of conduct for learners. It also governs such things as Governing Bodies etc.*

There was evidence that the participants understood that education is regulated at national, provincial as well as district levels. Their understanding was further confirmed by their knowledge that rules and regulations that govern education can in fact be upheld in a court of law.

(S3:Q13:e): *It means the implementation of rules and regulations and policies need to be adhered to and could stand its ground in a court of law. The schools and school governing bodies are legal entities as well as the DoBE whereby one could be sued or charged etc.*

#### **5.4.4.2 Category 2: Policies that regulate teaching**

Participants were asked to demonstrate their knowledge of legislation, documents or policies that they thought regulate their teaching. The responses that were given were comprehensive. However, having said that, there were two responses that were contradictory to the overall response. These were:

(S2:Q14:e): *None regulates my teaching as I always work from the premise of respect for all, and present your subject with interest.*

(S2:Q14:b): *Not to do corporal punishment. The learners should respect and obey the school regulations and obligations.*

The above two responses indicated that the participants may not have fully understood the questions and as a result gave incongruent answers. Yet these answers do indicate an understanding of the values that underpin the Constitution.

In light of response S2:Q12:e, it is interesting to note that it is from the same participant who indicated that his/her teaching practice had not changed since the birth of our new democracy.

(S2:Q12:e): *No - but pupils are sometimes more challenging as they no longer easily respect elders. It takes a longer time to build up trust with pupils*

It would seem to me that this participant may be indicating that the reason his/her practice has not changed is because it has already been or has always been informed by the principles and values that are characteristic of the birth of our new democracy. In looking at the biographical detail on this participant, it becomes clear that he/she is a school principal. His/her outlook is contrary to other participants who are also principals.

Participants were able to identify the various legislation and policy documents by name. This confirmed my assumption that teachers are highly aware of the various legislation, policy documents and circulars that influence their teaching directly. Some of the legislation and policy documents that were quoted were the Schools Act; department circulars; ELRC documents; As such, it would be fair to conclude that the participants have a sound understanding of the various policies that regulate their teaching.

When the participants were asked about their knowledge of the BoR, some of the responses were anticipated, while some responses indicated that participants had little understanding of the BoR. Below are examples of some of the responses that illustrated that not all participants have a sound knowledge of the content of various legislation that governs their profession.

(S3:Q18:a): *Basic knowledge.*

(S2:Q18:b): *BoR gives us information about all what is required in Education.*

(S1:Q18:c): *The rights of the population of South Africa are entrenched in this document. BoR states that every being has the right to whatever they want, within reason and provided it is legal.*

The data above may be surprising because one could argue that the BoR is the most important part of legislation pertaining to human rights that ushered in our new democracy. Further to this, it may be argued that if the participants know very little of the BoR or its contents, then have the new legislation and policies really changed the way they teach?

The above responses indicate an overarching acknowledgement in the new democracy, about legislation, rights and their place in education. However, when confronted with the need for more details it appears that participants did not have an in-depth understanding or knowledge of the legislation.



(S1:Q18:d): ... *But don't have an in depth knowledge.*

(S2:Q18:e): *A little.*

It may be argued that these participants only have a superficial understanding as they do know the names of the various legislation or rights, but lack an in-depth understanding of their values and implications for their teaching practice.

#### **5.4.5 FAMILY 3: RIGHTS: LEARNERS VS TEACHERS**

The overarching principle that seemed to emerge was the notion of the conflict between learners' rights versus teachers' rights. The two broad categories namely, "learners have too many rights" and "promoting the rights of learners", seemed to have materialized from the data. The question that was asked was: "We are constantly reminded that learners have rights. Describe how that makes you feel."

This question seemed to have elicited deep concerns regarding the rights of both teachers and learners.

Overemphasis of children's rights and under-emphasis of teachers' rights - specific children's rights were introduced in the Constitution (Constitution 1996:s28.). The content and ambit of the rights are not always known to lay people and they therefore ascribe their own meaning to these rights. The inclusion of children's rights in the Constitution and the emphasis given to them have unfortunately resulted in them being overemphasised and misinterpreted, with devastating consequences for discipline in schools and the relationships between teachers and learners. In fact, children's rights are being blamed by some for the deterioration in school discipline. Remarks by educators interviewed by Maphosa and Shumba (2010:391---397) indicate the sentiments of teachers.

The child has more rights than a teacher. Imagine a teacher being hauled before the courts for being accused of threatening a learner, not even beating, threatening. It shows you the problems we face in these schools. Learners are not only aware of their rights but [are] very sensitive to them. You only need to teach and whether these learners listen or do assigned work is not our concern, for any attempt to deal with them is putting your future at risk.

(Maphosa & Shumba 2010:392)

Another teacher responded as follows when asked about children's rights.

I believe the issue of rights has been taken too far. Learners now feel completely liberated and as teachers we now feel powerless because the learners we teach have rights and they know [this]. It is humiliating when you want to discipline a learner and he or she tells you in the face that you are abusing him or her. In the eyes of our learners we are now weak as far as maintaining discipline is concerned (Maphosa & Shumba 2010:393).

The devastating effect of these misinterpretations of children's rights on school discipline is evident from the above-mentioned remarks of these teachers. It is clear that they do not really understand the content of rights. The reactions of the educators and learners suggest that there is a misconception that any form of discipline (without specifying the measure) constitutes an infringement of children's rights (Pahad & Graham 2012:11-12).

#### 5.4.5.1 Category 1: Learners have too many rights

This category was constructed from the various codes which indicated that the participants believed that learners indeed have too many rights.

(S1:Q19:d): *Seems that learners have more rights than they need. Schools/educators find it difficult to carry out many tasks as they have to constantly bear in mind the learners' rights.*

(S1:Q19:a): *This depends on the context of certain situations. For example, I sometimes feel that learners' rights are considered more important than my own and many times we as teachers are side-lined.*

Some participants cited that teachers were frustrated because they had fewer rights than learners, and that learners did not fully understand the responsibility that went with the rights they had. They also indicated that learners lacked an appreciation of their own rights.

(S1:Q19:c): *Frustrated, because it seems that the learners have more rights than the educators.*

(S2:Q19:a): *I have always believed this. However as they are still young, many of them have not realized that all individual (even educators) have rights and all learners have a right to be educated.*

(S1:Q19:e): *At times frustrated. This leads to discipline problems. Learners f[ail] (sic) to adhere to the rules and regulations. They do have rights but also a corresponding responsibility, which they fail to honour.*

Some participants felt that there was no need to overstate the rights of the learners due to their lack of responsible behaviour.

(S3:Q19:d): *It has its place rightfully but not enough is said about the responsibilities that go with it.*

(S2:Q19:d): *In total agreement, unfortunately many learners and parents don't really understand the concepts of rights - many learners don't respect the rights of others to learn or their teachers.*

These quotations demonstrated a sense that learners had enough rights and perhaps teachers placed too much emphasis on the rights.

(S3:Q19:a): *I believe that the awareness of the children's rights is necessary. However, I feel that it should not be over emphasized.*

The frustration that seems to be displayed maybe as a result of learners not fully appreciating or understanding their rights along with the corresponding obligations.

(S3:Q19:b): *Yes, that's fine but they have to behave responsibly as well.*

(S2:Q19:c): *Glad that they can no longer be abused or ill-treated but anxious that they should learn about responsibilities that go along with rights and know that they may not infringe on the rights of others.*

The overwhelming impression exists that the participants felt that learners had far too many rights and that not all learners understood the corresponding duty of their rights.

However, it must also be noted that some participants were quite comfortable with the notion that learners have rights and did not seem fazed by it.

(S1:Q19:b): *Good. I treat all learners as equal. With rights, responsibilities also have to be taught.*

(S3:Q19:b): *Yes, that's fine but they have to behave responsibly as well.*

(S3:Q19:c): *Learners are the future leaders and must be educated in terms of the relevance of the Constitution to their lives. There is nothing to fear if we respect each other and have the learners' interest at heart.*

(S3:Q19:e): *I feel that pupils react positively when they are taught their rights. I am in favour of this e.g. The right to education, to be in a safe and secure environment at school.*

These responses suggested that these participants were more than comfortable with the idea of learners having rights and corresponding obligations.

It could be argued that participants that had a superficial understanding of the various legislation and policy documents and in particular Chapter 2 of the Constitution, the BoR. They struggled with the unfounded notion that learners had more rights than teachers. It could be further argued that a deeper understanding of the BoR would allow for an acceptance of the rights of learners without measuring it up against the rights of teachers.

#### **5.4.5.2 Category 2: Promoting the rights of learners**

This category was built from responses to a few questions. These included the following:

- Q.20. Explain how you protect the rights of your learners. Use examples.
- Q.22. Explain what you think it means to be an “agent of change”?
- Q.23. Explain how you promote the values and principles of the Constitution of South Africa?

The responses by the various participants were interesting to note and gave a unique insight into the way teachers saw their roles as agents of change and promoters and protectors of human rights. The category of promoting the rights of the learners was constructed on many of the participants' responses to questions 20, 22 and 23 of the questionnaire.

There appears to be a sense that things should be done or are being done to promote the rights of their learners. Two things mentioned were that teachers should not administer corporal punishment nor commit racial or verbal abuse.

(S1:Q20:b): *Do not administer or support corporal punishment. Actively teach and promote equality across race and social class.*

(S2:Q20:a): *I treat them all the same regardless of class, race, religion or parents who are influential. I will not allow name-calling or bullying of any kind in my classroom.*

Another aspect which promote learners' rights was the fact that bullying and name calling was not allowed. This also means that all learners are taught including pregnant learners. There was a strong sense that all learners must be treated equally, they should be listened to and attention should be paid to their needs (Le Roux & Mokhele 2011:324)

Physical consequences due to bullying include headaches, bed-wetting, loss of appetite, poor posture, and stomach problems. Absenteeism rates are higher among bullied learners, and some even drop out of school (Maphosa & Mammen 2011:191)

(S2:Q23:c): *Treat learners with respect and equally. Creating opportunity to employ democratic processes (e.g. voting) to decide upon issues.*

Allowing learners to have freedom of expression in promoting learners' rights has come through clearly and was qualified by statements that teachers should be careful not to discriminate against what was being expressed. Promoting mutual respect and being treated with dignity was also cited. A general awareness could be raised; it was felt, by assembly talks and during Life Orientation lessons.

(S1:Q20:e): *By giving advice as to what they can and cannot do. Protection against any form of abuse e.g. Corporal punishment, racial abuse, verbal abuse.*

(S3:Q22:e): *It would mean that individuals are responsible for dynamic and positive changes in terms of creating new ideas, direction in which the school is led. We must all embrace the change that occurs in education.*

The data below confirmed the idea that the participants were aware that practical things needed to be done so that the rights of the learners were indeed promoted:

(S1:Q22:b): *As society changes from authoritarian and judgmental to a more inclusive world view, schools and teachers must be at the forefront of this change. Our world demands it. Old habits that are destructive are not changing fast enough. Children will live in a vastly different world than we grew up in.*

(S3:Q22:d): *Someone who initiates or carries out meaningful and constructive changes, to some existing way of doing things.*

“Learners’ rights versus teachers’ rights” suggests that these rights are in conflict with each other. The fact that some of the participants felt that learners had more rights than teachers, indicated that this remained an unresolved issue for them. Others, however, felt that the fact that both learners and teachers have rights maybe a natural course of events.

#### **5.4.6 SUMMARY OF PHASE 1**

The data analysed in phase 1 suggest that democracy has changed the way teaching has taken place in South Africa. The participants in phase 1, believe that curriculum change is the most fundamental change that democracy has ushered in education. The changes mostly felt were a shift from teacher centred learning to a learner centred approach; this was further facilitated by the introduction of OBE. OBE presented many challenges for the participants. These challenges ranged from learner discipline, teaching and learning methodology to a state of constant change.

The data suggest that the participants understand that education is indeed a highly regulated field. They seem to have a reasonable awareness and understanding of education law along with the ability to be able to quote the various legislation and policies that influence their teaching practice. I think that the actual understanding of some of the practical or finer aspects of legislation maybe lacking, however; that might be an area for further research. The participants also believe that with all of the changes experienced in education, learners may have too many rights, and that learners do not appreciate the corresponding responsibility that these rights may have. However, while this may be the case, the participants also believe in promoting and protecting the rights of learners. The research question that this phase of data collection seeks to answer is, “What are the attitudes of teachers who have not been exposed to education law about the influence of this subject on their teaching practice?”

None of the participants was exposed to a formal course on education law (see Addendum R). There seems to be a consensus that democracy has changed the face of education, huge curriculum changes have taken place and the education field has become highly regulated. It is agreed that there has been a significant shift away from the teacher towards the learners.

There is an acceptance that the changes that the Constitution has brought are good but for some it may be uncomfortable to handle. The general sense is that teaching has changed as a result of the various legislation and policies that have been implemented. The influence that legislation and education law specifically has had on the landscape of education is evident and accepted by these teachers.

## **5.5 PHASE 2**

Data was collected using questionnaires with open-ended questions (see Addendum M). These questionnaires were completed by students from the University of Pretoria. My sample was made up of both ACE students and BEd(Hons) students. These are actually full-time teachers in the employ of the KZN DoBE, who were studying through Distance Education at the University of Pretoria. For the sake of convenience, I used the Durban contact session venue during the July holiday contact block session (see § 4.3.5b). There were 17 participants in this phase. Ten participants were BEd(Hons) students and the rest were ACE students. Table 5.3 demonstrates the biographical information of my sample in phase 2 of my data collection.

### **5.5.1 BIOGRAPHICAL DATA**

The participants' biographical data were tabulated. The table included gender, qualifications, post level, age, years of teaching experience and the grade taught. Table 5.3 demonstrates the biographical information of the sample in phase 2.

**Table 5.3: Biographical data of participants in phase 2**

A	GENDER OF PARTICIPANTS						
	Males		Females			Total	
	7		10			17	
B	QUALIFICATIONS						
	M+3		HDE/FDE			TOTAL	
	10		7			17	
C	POST LEVEL						
	PL1	PL2		PL3		PL4	
	11	3		2		1	
D	RANGE OF AGE OF PARTICIPANTS IN PHASE 2						
	25- 29	30-34	35-39	40-44	45-49	50+	Total
	0	1	6	5	4	1	17
E	RANGE OF YEARS OF TEACHING EXPERIENCE IN PHASE 2						
	0-3	4-8yrs	9-15yrs	15-19yrs	20-25yr	26+	Total
	0	1	11	2	2	1	17
F	GRADES TEACHING						
	Gr. 1-3		Gr. 4-6		Gr. 7-9		Gr. 10-12
	1		6		6		4

Table 5.3 illustrates the biographical information of the participants in phase 2. There are 41% (7) male and 59% (10) female participants. Of the 17 participants, 65% (11) are PL1 teachers, while 18% (3) are PL2, there are 12% (2) PL3 and 5% (1) PL4 teacher. This indicates that the majority of the participants are PL1 teachers. The average age of the 17 participants is 40-44 years old. It can be concluded that based on the ages of the participants that all are mature teachers who have been part of the system for many years. The majority of the participants have been teaching for 9-15 years.

The data was analysed and the overarching theme that emerged in phase 2 was one of education law being seen as a guiding light that provides direction and offers clarity, when the waters become muddy.



### **5.5.2    THEME: THE LAW IS A “LAMP UNTO MY FEET AND A LIGHT UNTO MY PATH”**

The data analysing process seeks to answer the research question which aims to gain a better understanding into how teachers who are also students of education law perceive the influence of education law in their teaching practice. As such, I hope to be able to understand the participants’ attitudes and opinions towards education law. The fundamental difference between phase 1 and phase 2 is that in phase 1 the participants were teachers who have had no formal exposure to a course in education law (see Addendum R), while in phase 2 the participants were teachers who were enrolled for a formal course in education law with the University of Pretoria as part of an ACE or BEd(Hons) qualification. Naturally the location of my sample is also different (see Table 4.2). The questionnaire, that both phases one and two were given, only differed on some questions. The different questions pertained directly to the content of the course that was being studied. Table 5.4 provides a synopsis of my data analysis in determining the perceptions that these students have regarding education law.

Table 5.4: Theme: The law is a “lamp unto my feet and a light unto my path”

<b>THEME: THE LAW IS A “LAMP UNTO MY FEET AND A LIGHT UNTO MY PATH”</b>		
<b>FAMILY 1</b>	<b>MORE TRAINING MEANS BETTER DELIVERY</b>	
<b>CODES</b>	<b>Category 1: A minefield to navigate</b>	<b>Category 2: Reasonable understanding of a great Constitution</b>
	Learners have more rights More training better delivery Great constitution with reservations Difficult to apply Negotiate	Limited knowledge, therefore afraid New curriculum and teaching methods New teaching styles Legislation that governs education in South Africa Appropriate and relevant documents were quoted Have learned about the rights of learners Aware of rights and don't want to infringe on them BoR Guarantees rights To balance rights without violating them Glad that learners have rights Teach learners their rights Far too little rights for teachers One who brings about change By respecting the learner Follow the school's protocol
<b>CODES</b>	<b>Category 3: Knowledge is power</b>	
	Know more about the Constitution about the rights of learners Great Constitution Improved understanding of the law Create harmony Lack of knowledge Abiding by the BoR Teachers’ rights are set out in legislation Include it in the teaching Negotiate Detention and similar punishment	

FAMILY 2	A BALANCING ACT	
<b>CODES</b>	Category 1: Bitter-sweet relationship	Category 2: Security in the rights of learners
	To actually balance fairly Balance rights but still treat them equally Not to infringe the rights of the learners Is difficult to balance rights when their culture is not the same. The lack of knowledge regarding The responsibilities that go with their rights Difficult to balance fairly Rights and responsibility go hand in hand Difficult The abolishment of corporal punishment Actual implementation Making learners understand their corresponding responsibility	They must know that their rights can also be limited Feel good My job as a teacher to teach this to learners Feel disappointed as learners don't know that with rights come responsibilities Good Am aware of children's rights Should be taught even more Frustrated Surprised that learners do not know how to exercise their rights Unhappy learners abuse their rights Good to have the learners' right protected Glad that all children have the right to education Bad Relieved because learners don't have to experience the same discrimination that was experienced in the past No option but to acknowledge their rights

Table 5.4 provides an overview of the data analysis in phase 2. In analysing the data, I intended to answer my research question i.e. trying to understand how teachers' awareness and knowledge of legislation and education law specifically influence their teaching practice. All the participants in phase 2 were students who were studying education law at the time of data collection. I intended using this premise as a platform to explore how participants of phase 2 perceived the knowledge of legislation and education law specifically and its influence on their practice. My analysis began with a vast amount of data collected in phase 2. There were 182 codes assigned; these codes were then reduced to five categories, which then gave rise to two families and one broad theme.

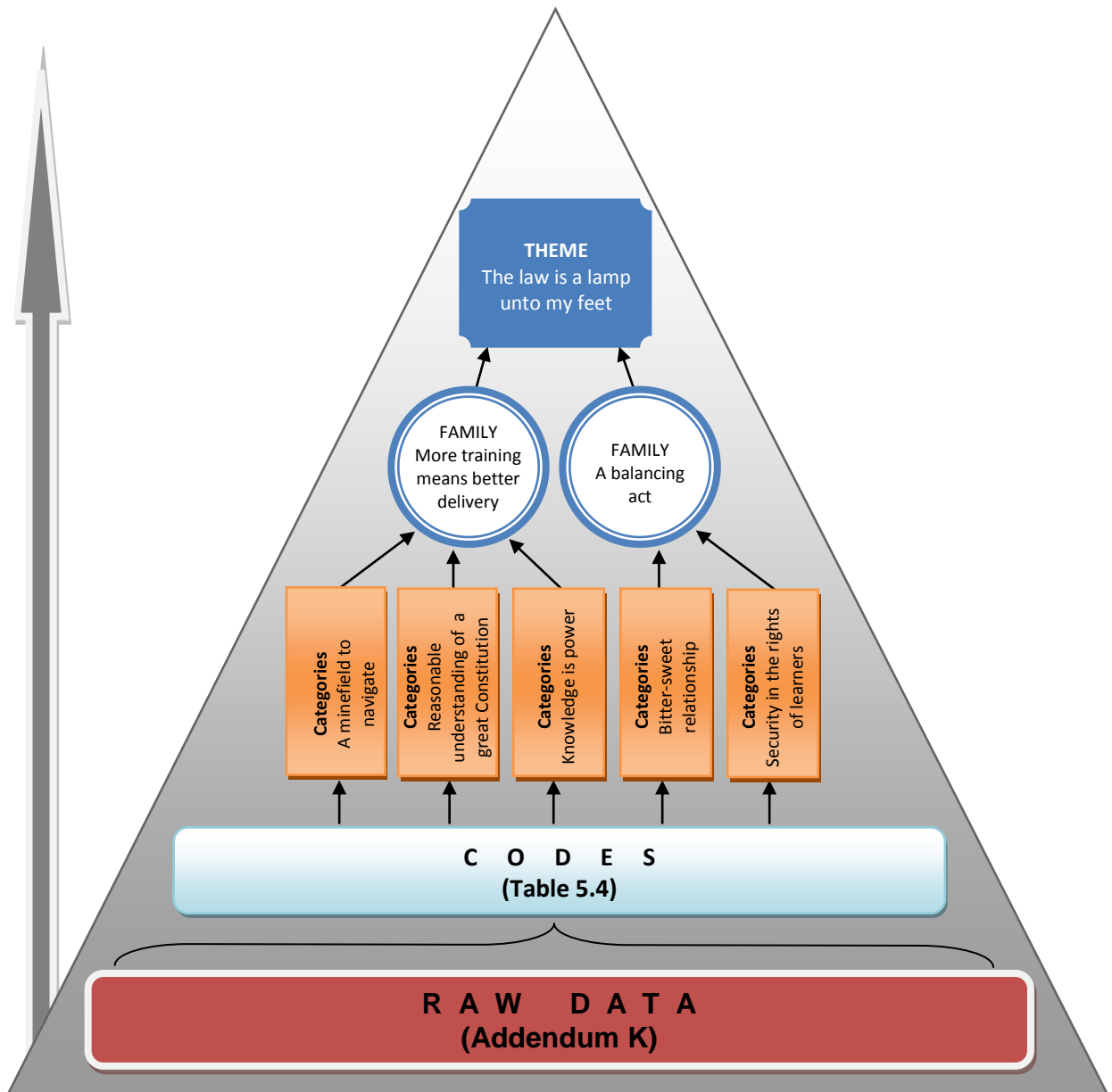


Figure 5.3: Diagrammatical representation of the interpretation of data of phase 2

For the purpose of cross-referencing the responses and in order to demonstrate the link between the code assigned and the category, I have developed the following reference system:

**A or B:Q11:e** – this reference translates to:

**A** = Students who were enrolled for the **ACE** Programme or  
**B** = Students who were enrolled for the **BEd(Hons)** programme  
**Q11** = Question number 11 (there were 28 question altogether)  
**e** = Refers to participant e – there were 10 participants ranging from a to j for the ACE programme and there were seven participants for the BEd(Hons) programme ranging from a to g.

The three categories namely “A minefield to navigate”, “Reasonable understanding of a great Constitution” and “Knowledge is power” were clustered together to create family 1 which is “More training means better delivery.”

Family 2 – “A balancing act” was scaffold by two categories namely, “Bitter-sweet relationship” and “Security in the rights of learners”. These two families combined give rise to the theme of “The law is a lamp unto my feet and a light unto my path.” My data suggest that the participants are on a journey of discovery and learning:

(A:Q15:g): *This is a way of correcting some of the mistakes that were done and still continuing maybe because of our culture we practice it wrongly in a school. Education law also is the rules that must [not] be violated because you can be sued that means the end of your career*

(B:Q15:b): *Education law is the one that guides or control[s] anyone who is working under the Department of Basic Education to obey it.*

The two quotes above indicate that there is a journey that the participants are on. It could be one of self-actualization for teachers who are faced with new content. I hope to use this platform to answer my research question of how teachers who are also students’ knowledge of legislation and education law specifically and its influence on their practice.

### **5.5.3 FAMILY 1: MORE TRAINING MEANS BETTER DELIVERY**

This family has been built on three categories. These are “A minefield to navigate”, “Reasonable understanding of a great Constitution” as well as “Knowledge is power.” The words “better delivery” in “more training means better delivery” refers to an improved state of teaching which promotes and fosters the legislation and policies that regulate education in South Africa. This family emerges from the categories which seem to suggest that the education landscape has developed into a minefield of rules, regulations and laws, and in order to succeed it requires some skilful navigation by the teacher. While this may be the case the participants demonstrated a reasonable understanding of the Constitution, which many of them rated highly in terms of the positive impact it has had on the country as well as education. They also have a sense that for both the learners and themselves, more knowledge about education law might empower them. These three categories are further unpacked in the next three sections.

### 5.5.3.1 Category 1: A minefield to navigate

Many of the participants agree that learners had more rights than teachers and that the learners' rights seemed to be of more importance than those of the teachers. On the other hand some of the participants felt that learners' newly acquired rights were a positive thing and that learners should now enjoy them. There seemed to be a sense that having been exposed to the content of the module of education law would place the participants in a position to ensure better delivery in the classroom and interaction with their learners. This essentially means that more training in the field of education law could translate to better delivery in the classroom. This deduction is substantiated by, amongst others, the following responses:

(A:Q17:g): *A well-structured Constitution. Misinterpreted by many for selfish gains.*

(B:Q22:h): *Relieved because learners don't have to experience the same discrimination that was experienced in the past.*

(A:Q22:b): *[I] feel good. My job as a teacher to teach this to learners.*

(A:Q22:f): *Good. Am aware of children rights.*

However, there also appeared to be reservations about the practical applications of education law in the classroom. There seemed to be a conflict between the values that the Constitution upholds and its influence on education. There seems to be more legal aspects to be considered, making teachers more vulnerable to legal action against them.

(A:Q17:c): *Happy with reservations.*

(A:Q18:c): *Good but difficult to follow and apply.*

(B:Q13:b): *No more corporal punishment.*

The participants seemed to believe that it was becoming increasingly difficult to apply the rights and values that the Constitution upholds in their classroom contexts, without compromising discipline, good work ethics and excellence. Along with this there was the aspect of negotiating with the learners in the area of discipline, and due dates and expectations. These challenges proved to be difficult for some of the participants. It may be

possible that this difficulty has arisen as a result of the transition into the new democratic dispensation.

(A:Q18:a): *Limited understanding of their limitation to their rights.*

(A:Q13:b): *Pupils can go to any school without being discriminated against race.*

(B:Q22:d): *Good to have the learners' right protected.*

(A:Q22:g): *Should be taught even more.*

The next category that emerged reflected that the participants demonstrated a reasonable understanding of the Constitution.

### **5.5.3.2 Category 2: Reasonable understanding of a supreme Constitution**

The category of teachers having a reasonable understanding of the Constitution was synthesized from 18 various codes. These codes speak to me in a way that suggests that the participants were aware of the great changes that the Constitution has brought about in South Africa. At the same time it also seems that the participants had a sense of uncertainty as to how they would effectively be custodians of the values that underpin the Constitution.

(A:Q17:f): *All inclusive Constitution*

(A:Q17:b): *I have learnt more about rights and limitations*

(B:Q15:b): *Maintains law and harmony*

(B:Q17:d): *It protects and redresses our past*

(A:Q17:a): *Supreme; guarantees one's rights*

A common thread appears to develop of a limited understanding of the Constitution. It is generally accepted amongst the participants that the values that underpin the Constitution are the same values and principles that inspired the change in the curriculum, in teaching methods, in the way discipline is meted out, and change in teaching styles and approaches.

(A:Q17:a): *Limited understanding of their limitation to their rights.*

There also appears to be consensus from both the ACE and BEd(Hons) samples that while the Constitution is central to the field of education many other relevant and applicable

legislation and policies also impact education. The participants were able to quote the various documents, which suggest to me a reasonable understanding of the place of education law within the field of education.

(A: Q13:b): *Education Law refers to the policies and laws that all people in the educational sphere need to follow to ensure successful teaching and learning practices.*

(A:Q15:d): *Gives a better understanding of the Constitution*

(B:Q17:a): *Brought change inclusive and diverse nation*

While a reasonable knowledge may exist, there is also a sense of fear or uncertainty that this limited knowledge presents to the participants. Some feel uncertain as to when they as teachers are actually overstepping the mark, particularly now that learners are more aware of their rights, possibly because they are afraid of infringing the rights of learners. The participants' responses suggest to me that they are sensitized to the BoR and the rights that are enshrined in it. It would appear that the conundrum they may face is the challenge of balancing rights and responsibility (see § 5.5.4). This notion of a reasonable understanding of the Constitution is further galvanized by some of the pertinent quotes of the participants.

I suspect that my findings in phases one and two overlap. The differences between the two phases are that the participants from phase 2 would appear more confident and self-assured with regards to dealing with and contextualizing the various legislation in their teaching practice, as opposed to the participants from phase 1. Although the participants from phase 2 are also tentative in regards to the application of education law, they seem to be able to identify the source of their insecurity and not produce a blanket reason, as is the case with the participants from the first phase. This leads me to deduce that participants, who have been exposed to education law, might not have developed the skill to apply legislation in practice, but are aware of legislation and the expectations with respect to implementation.



### 5.5.5.3 Category 3: Knowledge is power

This category was built on the codes that were similar. Many of the participants suggested that there have been far too many changes that have taken place within the education system.

(B:Q12:b): *Yes, sometimes I'm scared because there is so much of change in education e.g. corporal punishment.*

They agree that the Constitution and its values have influenced these changes. There appeared to be a quiet confidence in the participants that while these changes were many, they were necessary. Their knowledge of education law seemed to create a sense of confidence, self-assurance or power, if you will.

(B:Q17:b): *I feel comfortable about the Constitution because it learns (sic) me to know more about rights and limitations.*

(A:Q17:e): *I feel happy [about] the Constitution because it protects educators and learners.*

The participants were able to identify aspects of the content of the module education law and link them directly to their teaching. These included the changes in teaching methods, the creation of harmony amongst stakeholders, being able to identify the source of their frustrations. Their new knowledge of education law appeared to provide a lens for the participants to look through with regards to their roles and responsibilities. Their boundaries and limitations with regards to discipline had been a big factor.

(B:Q27:b): *Follow set out procedures.*

(A:Q27:f): *By motivating pupils.*

(B:Q20:c): *Prescribes behaviour.*

It is through this lens that they seemed to have a sense of empowerment. Empowerment is not just a case of enlightenment, as to what one is entitled to or allowed to do; it is also, I believe, an empowering experience when one knows one's limitations and boundaries within which one operates. This realization, it would seem, of the limitations and boundaries

within which participants operate, has also created a sense of confidence, self-assurance or power.

(B:Q17:f): *Knowledge is power.*

(B:Q18:f): *Improves understanding of the law.*

(B:Q20:d): *BoR is in the Constitution and has rights to protect people and balance the imbalances of the past.*

One element that does stand out is the aspect of how the participants dealt with discipline issues. All their responses concurred that corporal punishment had no place and that ensuring the dignity of the learner was important. One of the ways that the participants would ensure the dignity of learners was via negotiation. This response came up frequently from many of the participants. The whole notion of negotiating with learners was foreign to the old methods of teaching prior to 1994, and yet the participants seemed comfortable with the whole concept of negotiating with learners.

(B:Q27:a): *Negotiate then punish.*

(B:Q27:i): *By letting them know [that] their rights go with responsibility.*

(B:Q28:g): *By motivating pupils.*

One can argue this is where the difference between the participants from phase 1, and phase 2 lies. The participants from phase 1 also acknowledged that negotiating with learners was one of the new approaches to teaching in a democratic society. However, their challenge with this change was evident when they grappled with issues of teachers' rights and a lowering of standards and expectations when following this approach. The change in approach cannot only extend to the way discipline is meted out, it should extend further to the way teaching, learner feedback, assessments and reporting takes place.

Participants believe that knowledge is power. The more they knew and understood about education law, the more equipped, they believed, they were to face the challenges of their classrooms.

(A:Q14:b): *More knowledgeable about the Constitution as well as S.A.S.A*

(A:Q15:d): *Gives a better understanding of the Constitution*

(A:Q17:a): *Supreme; guarantees one's rights*

These three categories namely, “A minefield to negotiate”; “Reasonable understanding of a great Constitution” and “Knowledge is power” gave rise to the family of “More training means better delivery.” It would seem that while education law could be a minefield to negotiate, particularly within the context of a new democracy, there also would seem to be a reasonable understanding of the Constitution and its importance. This then presents the notion that the more knowledge the participants have with regards to education law and its application, the more empowered they might become.

#### **5.5.4 FAMILY 2: A BALANCING ACT**

The second family, “A balancing act”, was constructed from the following two categories, “A bitter-sweet relationship” and “Security in the rights of learners.” “A balancing act” suggests that there are various elements that need to be balanced. Working towards a balance suggests a give and take approach, a constant re-adjustment so that equilibrium is achieved.

##### **5.5.4.1 Category 1: Bitter-sweet relationship**

The participants seemed to reveal that they found themselves in a place of constantly performing a balancing act.

(B:Q12:e): *Yes, sometimes as a teacher I do things with negligence but at the end I realise it is wrong. But I think it is terrible [terrible] we need to be very careful whatever we do at our daily life.*

(B:Q15:c): *I think education law is [a] complex field with so many challenges.*

There is a need for them to balance the rights of learners with their responsibilities and equally to balance the rights of learners against the rights of other learners, while still maintaining fairness and without violating the rights of others. The participants suggested that this bitter-sweet relationship or balancing act is further compounded by the cultural diversity that exists within many of their classrooms.

(A:Q15:g): *This is a way of correcting some of the mistakes that were done still continuing maybe because of our culture we practice it wrongly in school. Education law also is the rules that must [not] be violated because you can be sued that means the end of your career.*

They cited also the actual implementation of the content of education law as necessary but difficult. The aspect of corporal punishment and alternatives to corporal punishment raised its head as well.

(A:Q18:d): *Because I'm not a lawyer, I find it difficult to handle some situations because I don't know whether I'm violating any human rights.*

These quotes above give body to the assertion that education law presents a bitter-sweet relationship for the participants. This also enhances my sense that education law provides knowledge but lacks ability to develop the skill of implementing legislation in practice.

#### **5.5.4.2 Category 2: Security in the rights of learners**

This category of security in the rights of learners has been interesting to note. The participants seemed to suggest that while education law was a minefield to navigate, and while a reasonable understanding of the Constitution existed, participants experienced a sense of empowerment through being exposed to the content of education law, and that while a bitter-sweet relationship may exist when it comes to balancing the rights of learners, there was also a sense of security in the notion of the rights of learners.

This aspect speaks of a coming-of-age of the participants. There is almost a maturing taking place because the participants, it would seem, are not insecure in the fact that learners do have rights and that their rights are of paramount importance. There is almost a sense that these rights need to be celebrated in the classroom and that becomes the responsibility of the teachers.

(B:Q18:f): *I have been made very much aware that every learner is capable of learning, as well as to take care of the individual differences. I have also learned that their rights should not be infringed as well as mine.*

- (B:Q22:a): *Yes they must have rights but they must know that their rights are limited.*
- (B:Q22:b): *I feel good but it is my responsibility as an educator to teach rights and responsibility to my learners.*
- (A:Q23:c): *All learners in my class are treated equally by drawing class rules that will be accommodating all learners in terms of sex, gender, age, etc.*
- (A:Q23:e): *By not embarrassing them, by obeying[respecting] his or her privacy.*
- (B:Q23:f): *I respect them and I usually communicate with them before I do anything that we want to do.*

### **5.5.5 SUMMARY OF PHASE 2**

The major theme that seems to have emerged in this phase is “The law is a lamp unto my feet and a light unto my path.” This encapsulates the essence of my findings for phase 2. The participants acknowledged the challenges that legislation and education law specifically presented to them while understanding that knowledge of the law is like a lamp that brightens one’s path in a dark night. However, there is the bitter-sweet relationship that exists. There is a tension that needs to be managed, one of education law being a positive change with respect to teaching practice and on the other hand the degree of accountability that the law places on participants.

This now leads me on to the 3<sup>rd</sup> phase of my analysis, which is discourse or text analysis. In this phase examination transcripts, of student teachers from the University of Pretoria were analysed in order to answer my research question (see § 1.5).

## **5.6 PHASE 3 (A AND B)**

Phase 3a involved the analysis of examination scripts of the participants from phase 2.

### **5.6.1 PHASE 3A – DOCUMENT ANALYSIS (DA)**

In this phase I conducted a document analysis of past examination answer papers. I first determined what document analysis entails. The study of discourse is the study of any

aspect of language use (Fasold 1990:65). Thus, the terms “text” and “discourse” are sometimes used to mean the same and therefore one might conclude that text analysis and document analysis are the same, too. Slembrouck points out the ambiguity of the term “document analysis” and provides another broad definition:

The term document analysis is very ambiguous. I will use it in this book to refer mainly to the linguistic analysis of naturally occurring connected speech or written discourse. Roughly speaking, it refers to attempts to study the organisation of language above the sentence or above the clause, and therefore to study larger linguistic units, such as conversational exchanges or written texts. It follows that document analysis is also concerned with language use in social contexts, and in particular with interaction or dialogue between speakers (Slembrouck 2005:1).

Broadly speaking, discourse analysts investigate the use of language in context; they are more interested in what speakers/writers do, and not so much in the formal relationships among sentences or propositions. Document analysis has a social dimension and for many analysts it is a method for inquiring how language “gets recruited ‘on site’ to enact specific social activities and social identities” (Gee 1999:1).

### **5.6.2 DATA COLLECTED NOT SUITABLE FOR ANALYSIS**

After consulting many sources on the topic of document analysis, I came to realise that using document analysis was not the ideal approach in respect of analysing the data that I had collected from the exam scripts from both BEd (Hons) students as well as the ACE students. I began to discover that my data was not sufficiently rich and it was limited in its context. The audience was obvious (the examiner), and as such the students would seek to tell the examiner what he wanted to hear because of the implications it had on them passing or failing. The data either reflected the students’ knowledge of the study guide or lack thereof. No understanding was evident, due to the nature of the questions that were selected for analysis. There appeared to be no social or cultural context as the participants sought to give the examiner the right answer from the study guide and not from their personal context. The data collected for document analysis could be considered to be contrived. This in itself was an indication that the participants were not empowered to apply the law in practice even after successfully completing the module on education law.

As a result of the above observations, it became clear that this type of data analysis would not assist me in answering my research question. I had to reassess my approach to analysing the data collected and decided to put it aside in pursuit of more data.<sup>4</sup>

### 5.6.3 PHASE 3B – THE GROUP INTERVIEW

Freitas, Oliveira, Jenkins and Popjoy (1998:22) suggest that the application of the group interview allows for the collection of an appropriate amount of data in a short period of time and that some of the information gathered during the session is potentially of great worth, because it was collected with great difficulty through the simple observation of reality. They go on to argue that this research method is appropriate for generating ideas for investigation or action in new fields, as well as for generating hypotheses based on the perceptions of the participants.

Understanding the advantages and disadvantages of a group interview aided my decision in selecting this method of data collection. Table 5.5 succinctly lists the advantages and disadvantages.

**Table 5.5: Advantages and disadvantages of the *Group interview*, based on Krueger (1994) and Morgan (1988)**

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• It is comparatively easier to drive or conduct</li> <li>• It allows to explore topics and to generate hypotheses</li> <li>• It generates opportunity to collect data from the group interaction, which concentrates on the topic of the researcher's interest</li> <li>• It has high "face validity" (data)</li> <li>• It has low cost in relation to other methods</li> <li>• It gives speed in the supply of the results (in terms of evidence of the meeting of the group)</li> </ul>	<ul style="list-style-type: none"> <li>• It is not based on a natural atmosphere</li> <li>• The researcher has less control over the data that are generated</li> <li>• It is not possible to know if the interaction in group he/she contemplates or not the individual behaviour</li> <li>• The data analysis is more difficult. The interaction of the group forms a social atmosphere and the comments should be interpreted inside of this context</li> <li>• It demands carefully trained interviewers</li> <li>• It takes effort to assemble the groups</li> <li>• The discussion should be conducted in an</li> </ul>

<sup>4</sup>It was at this stage that I decided to conduct a group interview and abandon the data from the document analysis. The planning and execution of the group interview thus began. Therefore it was not included in chapters 3 and 4.

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|--|--|
| <ul style="list-style-type: none"><li>• It allows the researcher to increase the size of the sample of the qualitative studies</li></ul> | <ul style="list-style-type: none"><li>• atmosphere that facilitates the dialogue</li></ul> |
|--|--|

Even though there are disadvantages, the use of this method allows for the collection of interesting and useful data, which will contribute to a stronger conviction on the part of the researcher as it is a good source of information for the formulation of hypotheses or for the construction of frameworks (Freitas, Oliveira, Jenkins, & Popjoy 1992:5).

Group interviews capitalises on communication between research participants in order to generate data. Although group interviews are often used simply as a quick and convenient tool to collect data from several people simultaneously, group interviews mainly use group interaction as part of the method. This means that instead of the researcher asking each person to respond to a question in turn, people are encouraged to talk to one another, asking questions, exchanging anecdotes and commenting on each others' experiences and points of view. The method is particularly useful for exploring people's knowledge and experiences and can be used to examine not only what people think but how they think and why they think that way (Kitzinger 1995:299).

I realized that a group interview would benefit my research because the interaction between the various participants could highlight the participants' attitudes, priorities, language, and framework of understanding, as well as encourage the participants to generate and explore their own questions and develop their own analysis of common experiences in their unique teaching experiences. At this point I had to arrange a group interview, which had three simple stages namely, planning, conducting the interview and analysis. These stages are mapped out below.

#### **5.6.3.1 Planning**

- My primary aim at this stage of my research was to attempt to answer my second research sub-question which is: To which extent do awareness and knowledge of legislation and education law specifically influence practice for teachers who have been exposed to education law?



My focus group would be made up of both present as well as past students who have successfully completed their ACE or BEd(Hons) qualification, so I obtained a data base of 3400 students from the University of Pretoria, Distance Education Programme (see Addendum N). I systematically worked through the list of names and narrowed the list down to 8 participants. The criterion I used was one of convenience as I wanted to invite only students who lived within the Pietermaritzburg area. Initially it seemed that this would be a simple task as I had a large sample group to draw from.

In inviting the participants, I contacted them telephonically and clearly indicated the purpose of my research and the details around the focus group. I decided on a date and time after talking to a few of the participants. I further communicated via sms and email. Eventually out of the 8 participants only 4 responded positively and indicated that they would be part of the group interview. The others whom I contacted declined for various reasons such as lack of interest, lack of time or no longer living in the Pietermaritzburg area.

Of the four expected participants, only two arrived to the group interview. I decided that the interview would still go ahead, in spite of the numbers.

### **5.6.3.2 The interview**

With all the participants informed of the date and venue of the interview, I made final preparations for the venue, to ensure the participants would be comfortable. This included attending to the seating, refreshments, audio recording equipment, pen and paper as well.

The questions were formulated in advance, and were extrapolated from my research question, trying to make sure that my research question would be able to be answered. There were 12 open-ended questions drawn up (see Addendum O). I facilitated the group interview going through the various questions. There are audio recordings of the interview (see Addendum P) as well as a transcript of the recording (see Addendum Q).

### 5.6.3.3 The data analysis

Production of the transcriptions and analysis of the data is a slow and time consuming process. I decided to follow Krueger's (1988:114) suggested method of analysis, that is, the focus group researcher should consider the following five factors:

1. **Consider the words:** The researcher should consider both the actual words used by participants and the meanings of those words.
2. **Consider the context:** The researcher should examine the context by identifying the "triggering stimulus" for a comment and then interpreting the comment in light of the context or stimulus.
3. **Consider the internal consistency:** Participants often change or reverse their positions. The researcher should note when there is a shift in opinion which is relevant to the purpose of inquiry.
4. **Consider the specificity of responses:** Researchers should give more weight to responses that are specific and concrete rather than those that are vague and ambiguous.
5. **Find the big ideas:** Big ideas emerge from "an accumulation of evidence – the words used, the body language, the intensity of comments, rather than from isolated comments" (Krueger 1988:116).

Byers and Wilcox (1991:75) suggest that the researcher should not get caught up in counting the number of times something is said; rather, look for patterns.

### 5.6.4 THEME: AN ONGOING JOURNEY

In analysing the data collected from the group interview, I hoped to be able to answer my research question i.e. trying to understand teachers' awareness and knowledge of legislation and education law specifically and its influence on their practice, bearing in mind that these participants have been exposed to a formal education law module. This, therefore, will set the platform to be able to explore how teachers' awareness and knowledge of legislation and education law specifically influence their practice. My analysis began with a vast amount of data collected from this new phase 3. Hundred-and-seven codes were assigned; these

codes were reduced to 30 categories, which then gave rise to one family and one broad theme. Table 5.6 provides a snapshot of the analysis process.

For the purpose of cross-referencing the responses, in order to demonstrate the link between the code assigned and the category, I will simply use the line numbers of the transcribed interview (see Addendum O).

**Table 5.6: Theme: An ongoing journey**

<b>THEME: AN ONGOING JOURNEY!</b>		
<b>FAMILY 1</b>	<b>THE EVOLVED TEACHER</b>	
<b>CODES</b>	<b>Category 1: Tentative change</b>	<b>Category 2: The “spine of education”</b>
	From teacher to facilitator Cascading of information to facilitating content “Jug mug” theory challenged Exam orientated to life application Thinking became unrestricted Agents of change Changed Constitution equals changed teachers equals changed country	Governs all aspects of our profession Provides a legal framework Creates harmony Synonymous with the Constitution
<b>CODES</b>	<b>Category 3: The challenge of discipline</b>	<b>Category 4: Core values, conflicting values</b>
	Your limits are set but sometimes the boundary lines are blurred It’s down to taking your chances! Old guard versus the new approach Learners help set their own rules Alternate means of punishment and their challenges Code of Conduct – The good and the bad! Deterrent and remedial practices Can the real parent stand up? To build or destroy	Human dignity Education despite being pregnant? Values are caught not taught? Inner conflict Anger management Temper does tempt!

The academic puzzle that steered my research was to determine to which extent does legislation and education law specifically influence practice for teachers who have not been exposed to education law? As well as to the extent which teachers perceive practice change due to exposure to education law?

Therefore I seek to explore the realities the participants construct in their perception of the influence of education law on their teaching practice.

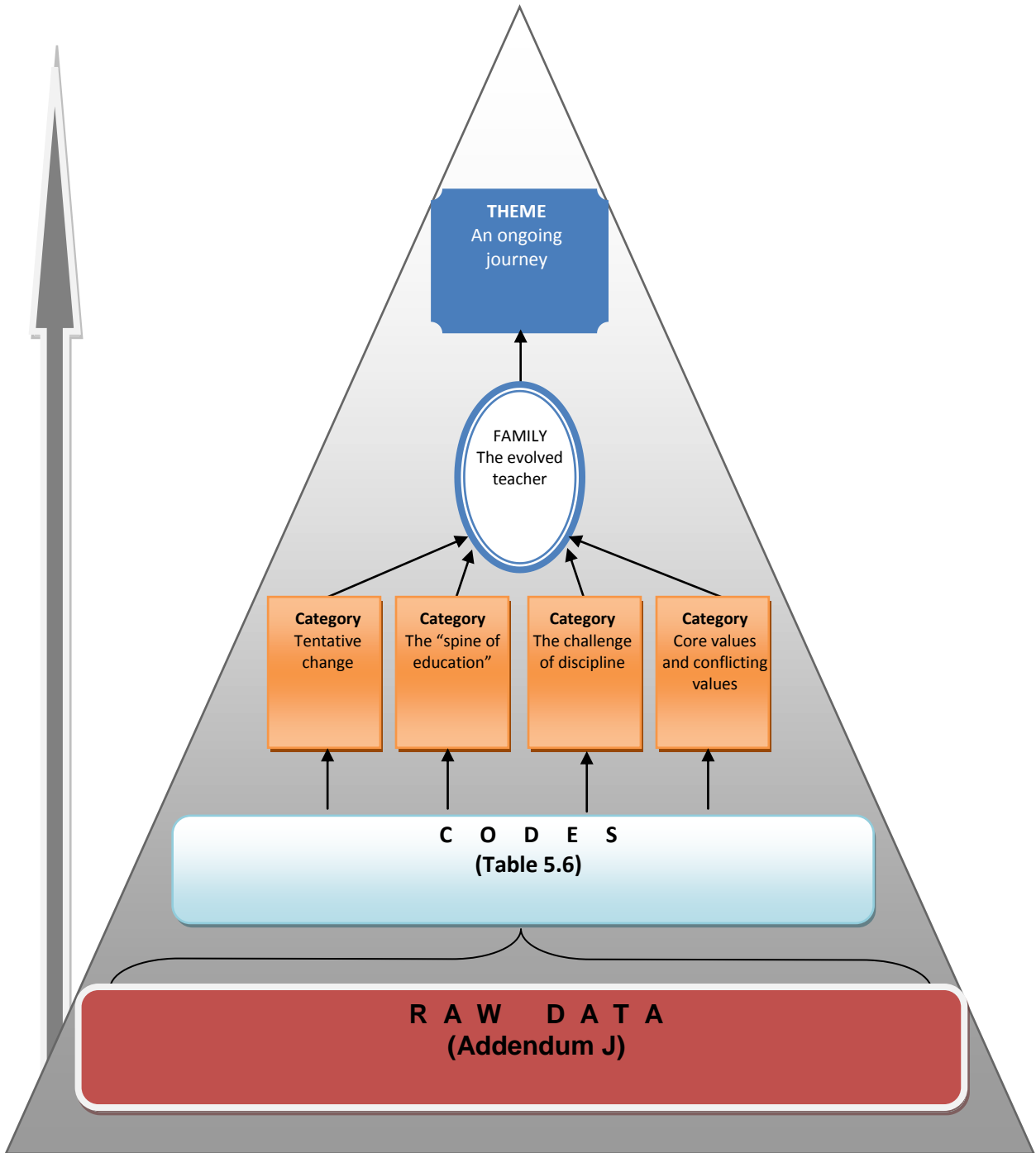


Figure 5.4: Diagrammatical representation of the interpretation of data of phase 3

#### 5.6.4.1 Family 1: The evolved teacher

The four categories; “Tentative change”, “The spine of education”, “The challenge of discipline” and “Core values and conflicting values” as depicted in Table 5.6 were clustered together to form a family of categories.

(Line 26): *Although it was a change of the curriculum, but it was of democracy there was a need to change the curriculum. So although it was the curriculum that was driving that process but behind that curriculum was democracy.*

“The evolved teacher” would seem an apt description of this family, because it incorporates the theme of major change that came into effect as a direct result of changes that were made to the curriculum as a result of democracy.

#### 5.6.4.2 Category 1: Tentative change

The data show that while education has experienced change since the inception of democracy, the change was not as well managed as it perhaps could have been. The participants felt strongly that policy change around the curriculum influenced the way they taught their learners directly. There had to be a moving away from the old approach to the new.

(Line 91): *You couldn't go on with your traditional style of teaching, like the jug-mug theory.*

So while their teaching methods and style have had to undergo a transformation, they also acknowledged that these transformations have led to a misunderstanding of their role as teachers.

(Line 31): *I think the role of the educator [teacher] created a kind of uncertainty because now you didn't know your role properly; you were a facilitator.*

(Line 42): *People misunderstood the facilitator as being a silent role player.*

The quotes above demonstrated that they understood that a change needed to occur, but they were uncertain as to how it may have translated practically to their classroom practice.

While they understood the importance of teaching, so that learners are prepared to fulfil their place in society, they also admitted that the crossing over from “assess for examinations” to teaching “skills and values” has been a treacherous road.

(Line 126): *Ja, and to add upon that, you know, even syllabus prior to 1994, there were syllabus that were leading the teacher what to do, when, how and so on and so on. But post 1994, syllabus were no longer there but you were using teaching, you know, and we told that we that we have to teach about the environment of the learners so that the learner can understand better and associate what you are teaching to what the learner sees in the environment. That brought that change to our teaching style.*

(Line 116): *How it applies in practical was not there.*

The major change, that is the shift from merely teaching content and ensuring that learners were able to reproduce the same during an examination to skills, knowledge, values and attitude, became the focal point. However, that in itself, presented challenges for teachers.

The absence of a syllabus was one of the reasons cited as a challenge. According to Outcomes Based Education (OBE), teachers were given milestones for learners to achieve, without the prescribed content. This in effect translated to the teacher being the resource person at the school. While this during its inception sounded great, the reality was, teachers were not adequately prepared to deal with such autonomy. Some teachers from well-resourced schools seemed to handle the autonomy better and it was even welcomed. However, for the vast majority of South Africa’s under-resourced schools this autonomy was a challenge.

(Line 58): *You see the Constitution and the democracy, the democratic principle was participation. So you were tempted to get the learner participation but unfortunately, if you look at the activities, even in the textbooks and so on, they were beyond the resourcefulness of our learners and therein came the difficulty in the teaching practice.*

(Line 170): *... you see it depends on where your school is. If you are out in the rural areas, you will become the resource person, you will have to provide the resources and inevitably, you suddenly found yourself at times, really doing the traditional teaching because of the basis that you want to provide them with content that they couldn't get anywhere else.*

The code of “Changed Constitution equals changed teachers equals changed country” demonstrates the value that underpinned the participants’ values. They understood the need for the country to transform and as such education must transform.

(Line 421): *So effectively, my understanding is if we are to achieve that transformation that we expect to achieve in this country then I think, as educators, we have a major role to play in that to bring about this change, because to equip our young ones would become the future leaders who would help to move this change as it enshrined in our Constitution.*

It is evident that the participants understood the link between the Constitution, transformation and education.

#### **5.6.4.3 Category 2: The “spine of education”**

A spine is seen as a component that plays a crucial role in keeping the body upright and houses the all-important spinal cord. A healthy body would have a strong spine. One participant used the spine as a metaphor to describe the significant role education law plays in education, calling it the spine of education.

(Line 201): *So to [in] my view, education law is very important. I can say its really a... I don't know how I can put it but the spine of education.*

For the education system to be effective or healthy, if we use the body analogy, then education law has to play an intricate role in it. The participants agreed that education law is legislation, policies and procedures that govern education and everything involved in that arena.

(Line 181): *To me it will be the law that governs all aspects of policies, practices and procedures related to education. That is it's very broad but obviously it's narrowed down to laws applicable in school situations, in the institutions of higher learning, right down to individuals, as learners, as educators, that would be education law, everything related to education in its various forms.*

They were careful to point out that without education law, harmony will not exist. Confusion will reign and teachers will not be confident in dealing with matters such as discipline. The security of boundaries, that aspects of education law provide, is needed in order to foster harmony.

(Line 204): *Law creates order and the order that is created in education is by education law.*

(Line 251): *I think the boundaries have been set in terms of our Constitution being the supreme law of the land and often, you know, you are caused to halt in the process of your action, you know, it just brings you back to order...*

It is evident that the participants understood the role of education law in their teaching practice. They talked about the Constitution and its values that underpin the other applicable policies of education.

(Line 215): *It helps educators to see that the law of education is embedded to the supreme law of the country, you know, ja. So it has become easier for the teacher to know the relationship between education and the law of the country. Because, basically people, when you are speaking about the laws people think of the Constitution.*

(Line 228): *I can't exactly quote. In the Constitution, if I remember very well, it is all the values of the Constitution.*

They talked about the implications of knowing the law and how that becomes your conscience when dealing with learners, how the law restricts their behaviour so that the rights of their learners are not violated.

(Line 279): *I have to be careful of how I express, lest I transgress and break the law, so that I am, very selective in how you deal with things, even in how you approach a lesson, as much as you may be tempted sometimes*



*to tell them in no uncertain terms where to jump off, but you got to say it in such a way that you don't get yourself into trouble.*

Their teaching practice has been influenced by their knowledge of education law, in how to respond in situations when dealing, for example, with disciplining a learner. The apparent challenges that were experienced while disciplining learners were also highlighted.

#### **5.6.4.4 Category 3: The challenge of discipline**

The category of “The challenge of discipline” has emerged. It was evident during the group interview that the issue of discipline struck a nerve with the participants. The context of the participants’ schools certainly has a bearing on their experience. Their schools, it would appear, are at two ends of the spectrum. One is a deep rural school with 12 staff members with about 480 learners ranging from grade R to grade 9. The other is an urban school, which ranges from grade R to grade 12 with almost 1500 pupils and a staff complement of almost 60. While there is an obvious difference between these schools, it was interesting to note how similar their concerns were around the challenges of disciplining learners.

(Line 829): *The challenge that we face is, you know the level of reprimand and as much as we know the areas we can't encroach and so on. Where do you stop with certain learners? Where do you stop? Because the level sometimes, you know as suggested by the Department of Basic Education doesn't work and then you want to introduce some of your own that is not indicated as a criminal offence or anything but you not quite sure whether, you know. As much as we've done this course on Educational Law, I don't think we have gone so in-depth to the law itself to know every word there, we could just be misunderstanding a word and we could get our self in trouble and I tell you, that has been a challenge because the children's rights has taken precedence and unfortunately their responsibility has not been emphasized like that, so when they don't carry out what I believe is their responsibility and it is said then, why should you have a right if you don't have the responsibility that goes with the right? And that sometimes, I find it difficult to work with.*

(Line 551): *...you don't send the child outside the classroom because you will defeat the very essence of education and you will be in violation.*

(Line 849): *It's a difficult task. As I said earlier. You know, to search someone, you must have reasonable suspicion but we also know that a person can carry a dangerous weapon to school and what the face looks like could be a great deal of innocence but what's hidden on them could not be innocent it could be a serious contravention. Whilst it's really difficult, basically, it's down to taking your chances.*

“Taking your chances” is indicative of the insecurity that the participants experienced when dealing with discipline issues and matters of searching, in particular. The issue of using alternative forms of punishment as opposed to corporal punishment was raised but along with that was the concern that these alternative forms of punishment do not always produce the desired results and this is where the tension arises. The need then is to do more in order to produce the desired outcome. This, more often than not, leads to issues of violating the rights of the learners. When conducting searches, for example, the question about what constitutes reasonable suspicion is asked.

The matter of balancing the rights of many against the rights of an individual is a cause for concern. The participants acknowledged that there are means to circumvent these challenges. One such means is the approach of allowing learners to be part of the process of drawing up the class rules or code of conduct.

(Line 758): *When we initially drew up the code of conduct a good number of years ago, we had a far more actively involved parent body; it was like a novelty for parents to get involved from the parent body or learners from the representative council of learners. It is a combined school grade R to grade 12 so there was learner participation. The nature of the school, the participation was only from grade 8 upwards and their representatives, and surprisingly the contribution [which] they made, were far more stringent on their code of behaviour than we thought.*

While the Schools Act makes provision for the procedure of drawing up the code of conduct for a school, the code of conduct itself does not enforce the desired behaviour. Parents, especially, need to support the teachers and school in ensuring that their child upholds the school's code of conduct for learners. The apparent lack of support compounds the discipline issue.

(Line 924): *The parent has missed their role function, right, the parent will only appear, as some of you guys may agree, if you administer some form of corporal punishment, that's the only time you will see the parent. Also some times the parent registered the child and the next five years you will call any amount of parent meetings and so on, you won't see that parent again so the parental role. I think that's the other thing...*

The challenge of the lack of parental support can be exacerbated by ineffectual discipline methods. In order to overcome this, teachers need to come up with creative alternate measures of discipline.

(Line 641): *For example, Neelan, a learner who has not completed his or her work, okay, I don't shout at the learner, because number 1, that is sort of verbal abuse, you know, I don't shout at but I simply talk or discipline the learner politely and when it comes to, for example, break time, I say to the learner, no ! you won't go break because you have to complete the work. Yes of course, there is no learner who likes to stay in the classroom when the others are playing outside. So I simply discipline a learner like that.*

These alternative measures may not always be successful due to various reasons. The success or failure of the discipline being meted out will certainly contribute to whether the teacher feels confident or not in dealing with discipline issues.

(Line 728): *We also use another form of deterrent more than discipline, where, you know we announce for the person and you don't want your name to be heard, you know, report to your teacher, you know, we are asking you to report to your teacher, we not violating your rights.*

It would appear that one of the coping mechanisms that teachers employ is putting deterrents in place, that hopefully discourage inappropriate behaviour. Naming and shaming is one such deterrent used by the school of one of the participants. It appears to be out of sheer frustration, that these types of deterrents are used. They are not seen by the participants as being in direct violation of the learners' rights. This, however, indicates a lack of application of legislation in practice, as this is tantamount to a violation of the right to human dignity.

#### 5.6.4.5 Category 4: Core values, conflicting values

This category highlights the inner struggle that teachers may experience, which is one of understanding the values that underpin the education system, but personal values and convictions sometimes come into conflict with them.

(Line 803): *Me, personally, Neelan, I have studied educational law as [my colleague] has said but that temper, still having difficulty in controlling temper. You know sometimes learners are challenging you in a way that you become so angry you know. The main problem I am still struggling at is just to control temper because I know that it can result me to some difficulty, you know that's the main.*

While this conflict may exist, the participants agreed that succumbing to such personal values and convictions actually means transgressing the law!

(Line 796): *... I must lay emphasis on this particular educational law course. I think, I always know that I am now within my grounds, I am not afraid but unfortunately, many others that have not done this transgress it because I would say lack of knowledge.*

(Line 816): *No Neelan! No, I know that when I am doing this I am breaking the law. As a person who has been studying education law as we have said. But the problem is the degree that you are controlling yourself. Because you might find yourself, what, slapping a learner, you know.*

#### 5.6.5 SUMMARY OF PHASE 3B

The data analysed in phase 3b suggest that the participants may have evolved after studying education law. There has been a process of systematic change.

(Line 962): *... it became clear to me that I have to act according to the rules and regulations...*

(Line 970): *Well you know amongst the various legal principles that I have been taught, but what this particular course did for me was to get me in my frame, I knew my boundaries. I knew exactly when I should stop and what I could do, not only with the learners, also amongst the educators because you know when you are infringing the rights of a colleague and you know how you should address him or her and how you should*

*deal with matters, particularly dealing with the various aspects related to education.*

There was a distinct confidence about the participants' responses. This confidence comes from their exposure to education law as a module during their studies as well as, I believe, from them "being in the field." The main theme that emerged is one of an ongoing journey, a state of continually changing and adapting to the landscape of education.

(Line 977): *...but one thing I must say, that factor of empathy has come out in the process of the educational law made us also aware that there is another side to the problem and it's important to listen to the other side, because, take for an example, a learner hasn't done a piece of work, you know, it's very easy to get very offended and lose your composure but here's a learner whose had difficulty there at home and had to take care of an ailing granny and didn't do it. I mean, no child is going to leave an ailing somebody and somebody close to them and sit down and do a piece of work that I have assigned, so that is the factor. I have learnt that there is far more than we just see, you got to be a listener, you got to be a very good listener. You listen and understand and when you listen and understand it helps to change your perspective and very quickly, the law will follow, but then you realize, if I listen, it allows me an opportunity to implement what is legal and not to go into what is illegal.*

This quote above demonstrates the change. It illustrates the application of their knowledge. Having studied education law is one matter, but being able to apply it to real life situations is another. This is certainly a case of an ongoing journey, learning, and development of skills and competencies.

Change for the participants was inevitable, difficult and in some instances costly.

(Line 241): *Neelan, if I may [say] something, from my mistake, you know because of neglecting the Constitution of South Africa. One day I used corporal punishment upon a learner and I was charged for that, Neelan, I was charged for that!*

It is evident that the participants were convinced that being exposed to the modules of education law had indeed aided their teaching practice. Knowing the laws that pertain to education has made a difference in their teaching practice.

(Line 962): *Ja Neelan. Number 1, it became clear to me that I have to act according to the rules and regulations, whatever I am doing. For example, we have been talking about disciplinary actions.*

(Line 1014): *I think confident and empowered, empowered in the sense that, you know, we are able to discern right from wrong. Infringement or non infringement. We can, it's not just a matter of standing your ground, you can substantiate from a resource and refer people to certain things which, I think without the course, otherwise, you know ordinarily one won't go and read the whole aspect but here, by doing this course, we are exposed to relevant legislation, and so on, case study, scenarios, circumstances, I think we have become better equipped for classroom practice, better equipped for advising and guiding, better equipped to deal with situations that may be beyond, you know, we would serve as the calming effect in the storm..*

If education law promotes peace and harmony in the education arena, then these teachers could certainly “serve as the calming effect in the storm” in their teaching practice.

## **5.7. CONCLUSION**

In this chapter, data from phases 1, 2 and 3 were analysed and discussed. Phase 3 had to be expanded to include a group interview (see § 5.6.3).

Evidence pointed to the participants having a convincingly good awareness and understanding of legislation and education law specifically. Participants have developed a keen sense of education law as a result of their years of experience as teachers or managers of schools and, as such, participants were able to name the corresponding legislation and policy documents.

Participants expressed the feeling that learners have far too many rights and that not all learners understand the corresponding duty of their rights. However, it must also be noted that some participants were quite comfortable with the notion that learners have rights and did not seem fazed by it.

The challenges that education law presented to the participants were keenly noted. However, they were also aware that education law is like a lamp that brightens one's path in a dark night. There is a bitter-sweet relationship that exists. There is a tension that needs to be managed, between education law being a positive change with respect to teaching practice and the degree of accountability that the law places on participants.

In the next chapter, my findings will be discussed through the lens of the literature review done in Chapters 2 and 3. I will also put forward various hypotheses and make suggestions for further research.

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#### 6.1 INTRODUCTION

This chapter gives an overview of the inquiry. The purpose of this inquiry was to provide a qualitative perspective on the research question which was “To which extent do awareness and knowledge of legislation and education law specifically influences teachers’ practice?” (see § 1.5).

My research approach was encapsulated by Williams:

Though researchers seek truth, it is often not a matter of truth about the way things actually is, but instead the truth of how people see them. Quite often there is no ‘right’ answer and often we are simply interested in views and attitudes (Williams 2003:54).

Therefore, my aim was to understand the meaning that people constructed about their world and experiences and thus to make sense of it. The meaning that each person attached to his/her experience, of how study or not studying education law has influenced their practice, was different and unique to him/her and meant that a single reality does not exist (see § 1.9.1). This research was inductive by nature.

#### 6.2 OVERVIEW

In order to answer my research question, I decided to use 3 data collection instruments, which was increased to 4 due to the challenges that were experienced (see § 5.6.3). In my journey in answering the research question, I looked at the supremacy of the Constitution and the BoR with regards to the implementation of human rights. I also anticipated a change in the attitudes of teachers through the acquisition of knowledge. I examined the importance of education law as a subject to be included in teacher training programmes. I embarked on a case study for which I would collect data in three phases in an attempt to understand the extent that awareness and knowledge of legislation and education law specifically influence teachers teaching practice (see § 1.9.1).



❖ **Phase 1**

Questionnaire – 20 teachers from the Lions River district who have not been exposed to any education law module (see Addendum R).

❖ **Phase 2**

Questionnaire – 10 distance education honours students attending the Durban venue as they have just completed the education law (OWR 721) module, as well as 10 distance education students in the Advanced Certificate in Education programme for their education law (EDL 401) module.

❖ **Phase 3a**

Document analysis of examination answer papers of the EDL 401 and OWR 721 modules to determine if the way students answer the case study correlates with their attitudes. This was abandoned due to the quality of data collected.

❖ **Phase 3b**

Group interview with graduated UP students who were successful in completing the education law module.

I used a process of reduction which is an effective tool to manage the data collected (see § 5.3). Therefore, the data management strategy for this inquiry included transcribing the data from all three phases. The data was coded, categorized, grouped into families so that distinct patterns would emerge.

In Chapter 1 the rationale for the inquiry was constructed (see § 1.3), which was, as a result of South Africa becoming a democracy, that education law has become prominent in South Africa. Thus more and more teachers are being exposed to the theory of education law. I focused on determining if studying education law influenced teachers practice.

In Chapter 2, I described the scope of the literature studied and set out the different phases of data collection (see Figure 2.1). In Chapter 3 the role of education law in Teacher Education and Training was explored. Dietz's four levels of learning provided a useful framework for analysis (see § 3.3). Reflection was seen as pivotal to the learning process,

and was viewed as a strategy to assist teachers in raising their awareness of their own learning (see § 3.5). In Chapter 4 the research design and methodology was set out, while in Chapter 5 the data and findings were discussed.

### **6.3 TRUSTWORTHINESS**

The questionnaires used in both phases 1 and 2 were sent out to various experts in the field for their input. This would have removed any bias in my questions. In phase 1, objectivity was ensured when the principals of the five sampled schools chose teachers on their staff to complete the questionnaires. In phase 2, I had no control over who would be present at the Durban contact session and this aided the objectivity of my research. In respect to the examination scripts in the third phase, I had no influence over who would register to write the EDL 401 and OWR 721 modules at the Durban venue. My research is underscored by a post-modern approach, as I do not believe in an objective world. People create meaning as they interpret real life, giving their own truth to their understanding of their world (Denzin & Lincoln 2002:178). In the group interview, I made a point of summarising what the participants discussed, then checked my interpretation with the participants and made adjustments. The transcript was verified by the participants as well. I gathered data from four sources during the three phases. I used crystallisation (Ellingson 2009:12), among the three phases of data and data collection instruments in order to validate the data and its findings. The reality of having similar themes and patterns emerge in the three phases is the chief aspect of crystallisation in my research (Richards 2009: 44).

My position was one of induction with knowledge being generated through the experience of those teachers. Their realities and attitudes were different, and I attempted to understand and interpret their realities and perceptions, which was the core purpose of my inquiry and to answer my research question which is: To which extent do awareness and knowledge of legislation and education law specifically influences teachers' practice?

### **6.4 MAIN FINDINGS**

In the sections below I will discuss the findings of my research. These will be discussed in their various phases, namely phase 1, 2, 3a and 3b.

## **6.4.1 PHASE 1 – MAIN FINDINGS**

In phase 1, a sample of teachers from schools within the Lions River District completed a questionnaire. At each phase of the data collection process, the data was transcribed, coded, categorised, put into families which then built into main themes. I will discuss the findings according to their phases and then take a holistic look at all three phases. I have categorised my findings according to the three families of categories for phase 1 (see Table 5.2).

### **6.4.1.1 Curriculum change**

The starting point to determine the influence of education law is at the transition of South Africa into a democratic country. Curriculum change is the most significant change participants have experienced. Teaching and learning have been transformed from the old approach, which paid little or no attention to the importance of human rights, to an approach that is wholly underpinned by human rights.

The change in the curriculum created new challenges and expectations for teachers to deal with. Policy with regards to the curriculum has had a more far-reaching influence, as teachers were now expected to teach from a new and different paradigm that they were not trained for, a paradigm of the learner being the centre of the teaching and learning continuum and no longer the teacher.

Multicultural classrooms have placed an even greater responsibility on the participants to ensure that the rights of their learners are not compromised. Being able to function within a multicultural classroom was a challenge as they had no training that had prepared them for this new setting. My findings are emphatic that democracy has indeed changed the way teaching takes place for the participants in this phase.

The change in the curriculum to one that values the rights of all stakeholders created a new working environment for both the learners and teachers. It was anticipated by the participants that with change comes challenges. These challenges from multicultural classrooms, to curriculum change, to discipline in the classroom were expected, however,

the frustration remained that the participants perceived that they were not adequately prepared or trained for these changes.

#### **6.4.1.2 Education is a regulated field**

The participants displayed a reasonable awareness and understanding of education law as well as of the many policies that regulate teaching in South Africa. Given the number of years of teaching experience they had, it may be concluded that their knowledge of education law was as a result of their experience and not necessarily from being exposed to formal training in education law. This shows that the knowledge gained by the participants was as a result of “on the job training.” Consequently, while reasonable understanding of education law was demonstrated, it was also superficial.

#### **6.4.1.3 Rights: Learners vs. Teachers**

The emergence of the perception that learners had too many rights as compared to teachers, in itself was indicative of the superficial understanding of what the rights in the BoR entail. While it was felt that learners’ rights were overemphasised, it was also found that the participants believed that learners did not fully appreciate the new found rights, and need to be educated in the corresponding responsibilities attached to their rights.

Data from phase 1 indicates that teacher participants who have not been exposed to education law indeed have an awareness of legislation but a superficial knowledge and understanding thereof.

### **6.4.2 PHASE 2 – MAIN FINDINGS**

The participants were teachers who were enrolled at the University of Pretoria for a formal module in education law. Effective teaching requires knowledge, skills, values and attitudes with the mediation of learning programmes; to be a leader, administrator and manage the classroom, to practice and promote a critical attitude, have a committed and ethical attitude towards developing a sense of responsibility towards others and an ability to integrate assessment in their teaching. Table 5.4 gave a snapshot of my findings in phase 2.

The two themes which emerged were; “More training means better delivery” and “A balancing act” (see § 5.5.3 and § 5.5.4 respectively). The major theme that emerged within this phase was “The law is a lamp unto my feet and a light unto my path.”

#### **6.4.2.1 More training means better delivery**

Kolb (1984), Boud (1993) and Dietz (1998) concur that learning is a cyclic model and that learning occurs through experience and through reflection. Dietz's model of learning provides for four levels of learning. This is a useful framework for understanding the science of learning. He suggests that students learn through different levels. These levels are exploration, organisation, connections and reflection. In the third level students begin to make the connections between different teaching situations. Students in essence are able to understand the link between what they teach and how it is taught. They begin to see their teaching impact their students' learning. The participants who have been exposed to a module of education law, have also been subjected to the four levels of Dietz' model of learning and are able to acknowledge the challenges that education law presents to them, while appreciating that knowledge of the law is like a lamp that brightens one's path in a dark night. While the arena of education is a highly regulated field, participants believed that education law illuminates their teaching practice, making them better equipped for the task at hand. My findings indicate that if there is to be an improved state of teaching, then teachers would need to be adequately trained. This training will not only produce teachers who have a better understanding of legislation and education law specifically, but will also enable them to navigate the minefield of education (see § 5.5.3.1).

It was generally accepted by the participants that the values that underpin the Constitution are the same values and principles that have inspired the change in the curriculum, in teaching methods, in the way discipline is meted out, and in teaching styles and approaches. Changed discipline methods engender a reasonable understanding of the Constitution. There is sense of confidence in the participants that while these changes are many, they are necessary. My participants' knowledge of legislation and education law specifically seem to create a sense of confidence, self-assurance and power.

#### **6.4.2.2 A balancing act**

My findings suggest that there are various elements within the practice of teaching that need to be balanced. Working towards a balance suggests a give and take approach, a constant re-adjustment so that equilibrium is achieved. The practice of teaching and learning on one end of the scale, with education law on the other end, remains a constant balancing act!

#### **6.4.3 PHASE 3A – MAIN FINDINGS**

I found that the data from the document analysis was not sufficiently rich and was limited in its context. The audience was obvious (the examiner). There appeared to be no social or cultural context as the participants sought to give the examiner the right answer from the study guide and not from their personal context. I concluded that the data collected for document analysis was contrived. The only meaningful deduction was that these participants only demonstrated a “textbook answer” to case studies and that deeper understanding was not evident. This in itself was an indication that the participants may have learned in parrot-like fashion in order to obtain good marks. As a result I abandoned this data in pursuit of more suitable information.

#### **6.4.4 PHASE 3B – GROUP INTERVIEW**

Various categories were lifted from codes assigned to the data and condensed to families from which distinct patterns were seen (see Figure 5.4). I have categorised my finding according to one family of categories for phase 3b (see Table 5.6). Table 5.6 shows the summary of the data collected for phase 3b. The main theme that emerged was that teaching was an ongoing journey referring to an evolving teacher.

The types of knowledge that are required in teacher training and the “processes of pedagogical reasoning and action” was examined (see § 3.4). Once teachers have been exposed to the content of education law, teachers would reflect on what they have learned and acquire a new understanding of how education law influence their teaching practice.

The data analysed suggested that participants have evolved after studying education law, that there has been a process of systematic change. A distinct confidence was evident in their responses. This confidence came from their exposure to education law as a module during their studies. The main theme that emerged was one of an ongoing journey, a state of continually changing and adapting to the landscape of education. Change was inevitable and difficult for the participants, but being exposed to the modules of education law has aided their teaching practice. Knowing the laws that pertain to education has made a difference in their teaching practice.

## **6.5 IMPLICATIONS OF FINDINGS**

I shall now discuss the implications of my findings using 3 different categories according to the phases of data collected.

### **6.5.1 TEACHERS WITH NO FORMAL EXPOSURE TO EDUCATION LAW (PHASE 1)**

Our education system has teachers who have not had any formal exposure to education law. The participants from phase 1 fit this profile. The only knowledge or exposure to education law has been through “on the job” training. This means that these teachers learn through experience. Knowledge of education law is gained each time they encounter a situation where the application of education law is required. This phenomenon has implications for the kind of environment teaching and learning take place in. Teachers’ lack of formal training puts learners’ rights, as well as their own rights at risk. Learning on the job does mean that mistakes are made and the level of risk is escalated. Often, only hindsight offers 20/20 vision, as well as learning from mistakes.

The Constitution (1996) as well as the Schools Act (1996) seek to transform South Africa (see § 2.2.12 and § 2.2.13). Subordinate to the Constitution are the various legislation and policies that deal directly with education, which make up education law and policies. Education law deals with the law relating to education (Bray 2004:36). Bray goes on to suggest that education takes place within the legal system of South Africa and as a result does not exist in a vacuum or outside of the ambit of the law. Bray argues that it is, in fact, a difficult issue to separate law and education law. She therefore concludes that education law

is not a specific area, discipline or branch of law but that it spans the entire field of law (Bray 2004:36) (see Figure 2.2).

Teachers without formal training in education law are more tentative with regards to the interpretation and especially the application of education law and the BoR. This insecurity is compounded by the misinterpretation of legislation and policies and as a result possible litigation against themselves and the DoBE. Ignorance of the application of education law and policies leads to inadequate protection or the over protection of learners' rights.

Knowledge of education law is crucial for any teacher teaching in South Africa. Coetzee (2011:184) suggest reasons why teachers, as a classroom manager, should have knowledge of education law (see § 2.6).

#### **6.5.1.1 Learner centred teaching**

There is an understanding and acceptance that there has been a shift in the way learners are treated; learners are now the centre of the whole business of education. A learner-centred approach to teaching has made many participants uncomfortable. I believe that the apprehension that exists is as a result of lack of exposure to education law as well as inadequate training by the DoBE for teachers who transitioned into the new education system (post-1994).

Knowledge of education law can help teachers make valid and lawful decisions, in other words, decisions that will not create legal problems for themselves. Unless this knowledge is part of teacher training in South Africa, the status quo will remain.

Pedagogy can be viewed as a practice or a craft representing the teachers' accumulated wisdom with respect to their teaching practice acquired over time. Teachers' knowledge and beliefs provide a framework for pedagogy, knowledge of students, subject matter and the curriculum, and guide the teachers' action in practice (Carrington, Deppeler & Moss 2010:2).

It must be highlighted that the knowledge with regards to education law that these teachers possess, is as a result of teaching experience and it can be argued that it is the same teaching



experience that has led to their apprehension, with learners being the centre and no longer the teacher.

### **6.5.1.2 Curriculum change**

Curriculum change since the inception of our new democracy has been cited by all participants. These changes are seen as positive by some teachers, and by some are considered a challenge. Outcomes Based Education was seen as the alternative to the teacher-centred approach of pre-1994. The whole philosophy of education has shifted, and has played a major role in transitioning the education system in the new democracy where all stakeholders have human rights. Parker (2003:16) suggests that teacher education in South Africa has evolved through distinct phases. He puts forward that the fourth phase is from policy to implementation. Parker purports that this phase is merely a culmination of the second and third phases. It was only in 2000 that the statutory and non-statutory councils became operational. The focus was strongly shifted from policy to implementation. The struggle with effectively handling the new curriculum was common to most participants. If curriculum change is driven by legislation and policy, then these teachers who have no training in education law cannot be expected to adequately interpret legislation and policy, and therefore cannot be expected to adequately implement the changes while promoting the rights of their learners.

They understood that the change in curriculum was necessary as the education system and the country as a whole underwent change, but feel inadequate in being the change agent that they as teachers are expected to be. This leads to the next implication of “Change brings challenges.”

### **6.5.1.3 Change brings challenges**

With change come challenges! Teachers were acutely aware of the many challenges they faced as a result of the changes that the education system had undergone. Teachers felt inadequately prepared to deal with multicultural classrooms, discipline issues, curriculum delivery. While change is inevitable, the way teachers are trained or skilled to be able to handle these changes is of consequence. Changes that are framed within education law are

of even more consequence than just teaching and learning *per se*. Delivery a new curriculum is fraught with challenges, but to deliver it within the prescripts of education law and policies which you were never trained for makes it challenging. Lack of training in education law and policy makes dealing with multicultural classrooms, discipline issues, promotion of diversity, equity, inclusive education and curriculum delivery exceptionally difficult.

#### **6.5.1.4 Education is a regulated field**

Participants displayed a reasonable awareness and understanding of education law as well as of the many policies that regulate teaching in South Africa. Given the number of years of teaching experience participants have, it may be easy to conclude that their awareness and knowledge of education law could be as a result of their experience and not necessarily from being exposed to formal training in education law. It can also be argued that post level 2, 3 and 4 teachers may have more experience with education law by virtue of being in managerial positions.

Many participants demonstrated a sound awareness of the names of various policies and legislation that regulate education. While it is an encouraging phenomenon to see, particularly because these participants have had no formal training in education law, they did not have an in-depth knowledge and understanding of the workings and application of the legislation.

It could be argued that if teachers know little of the BoR or its contents, then their teaching has not really changed. Participants demonstrated a superficial knowledge and understanding of legislation, rights and their place in education, because when confronted with the need for more details it appeared that these teachers did not have an in-depth understanding or knowledge of the legislation and policies.

(S2: Q18:d) *A little*

The position of authority occupied by the teacher has many legal implications and expectations pertaining especially to possible liability to neglect. Teachers work with young, immature individuals, who, because of their lack of experience and judgment, cannot always

foresee the consequences of their actions. Potentially dangerous situations should receive the teachers' full consideration.

The core element of the above is that education law is a collection of legal rules that govern or regulate relationships and activities within the domain of education. Being aware of this collection of legal rules is of paramount importance for any individual within education. Success in this domain of education will depend on the individuals' knowledge, understanding and ability to implement these rules.

My findings concur with literature, that the lack of knowledge regarding legislation and education law specifically brings legal challenges for the teacher.

(S2: Q11: b) *Yes. Discipline is more of a problem than it has ever been. Paper work and Admin takes more time. Dept of Ed. More prescriptive eg setting specific tasks to be completed. (LO)*

These challenges include a limited ability to protect and promote the rights of their learners. Teachers could experience unnecessary pressure due to the legal implications of possibly innocently violating the rights of their learners. If this is true, then teachers who have had no formal exposure to education law, may not be able to execute their duties fully because of the fear of violating their learners' rights as well as the fear of being held to account for their action or lack thereof in a court of law. Even though teachers may not have had formal exposure to education law, their experience provided them with some skill to be able to function within a highly regulated field of education.

I hypothesise thus from the data that teachers who receive formal training in education law, will be more confident in executing their duties, with less fear of legal consequences. I further put forward, should my hypothesis be correct, that it is within a culture of knowledge of, and confidence in, education law that the education system will transform into the vista that is envisioned in the Constitution and the Schools Act.

### **6.5.1.5 Learners' rights versus teachers' rights**

A prevailing thought which exists is that learners have more rights than teachers. Some participants cited that teachers were frustrated because they have fewer rights than learners, and that learners did not fully understand the responsibility that goes with the rights they have. They also lacked an appreciation of their rights. It could be argued that it is not really about how many rights learners have as opposed to teachers, it is about whose rights are seen as more important. This crucial question points to the heart of the frustration which teachers actually feel in the process of balancing rights in practice. Teachers, if adequately exposed to education law, would know that “the child’s best interests are of paramount importance in every matter concerning the child” (The Constitution 1996, section 28(2)) and would have developed the competencies to apply the law in practice.

### **6.5.2 THE LAW IS A “LAMP UNTO MY FEET AND A LIGHT UNTO MY PATH” (PHASE 2)**

The fundamental difference between phase 1 and phase 2 is that participants in phase 1 were teachers who had had no formal exposure to a course in education law, while in phase 2 the participants were teachers who were enrolled for a formal course in education law with the University of Pretoria as part of an ACE or BEd(Hons) qualification.

#### **6.5.2.1 More training means better delivery**

It is interesting to note that a similar theme emerged in phase 1, that of “knowledge is power.” The more knowledge the teachers have the more power they have to deliver in the classroom. Participants, who have had formal exposure to education law, believe that the South African education landscape is littered with legal mines. The unsuspecting teacher faces the hazards of walking through this dangerous minefield daily.

Literature suggests that beliefs and attitudes can be changed, even though it is a process that is achieved through education. Education here refers to being exposed formally to a module of education law as part of teacher training in South Africa.

There is a sense that having been exposed to the content of the module of education law it will place the participants in a position to ensure better delivery in the classroom and in interaction with their learners. This essentially means that more training in the field of education law could translate to better delivery in the classroom.

While many participants demonstrated a sound understanding of the Constitution, as a result of it being a core component of their education law modules, some felt somewhat insecure particularly now that learners are more aware of their rights, possibly because they were afraid of infringing the rights of their learners. The education law modules have certainly sensitized them to the BoR and the rights that are enshrined in it. It would appear that the conundrum they may face is the challenge of balancing rights and responsibility. Interesting is the awareness of this group of their inabilities to apply the law in practice. Exposure to education law thus sensitized them to the challenge of applying the law in practice.

Clearly participants' exposure to the education law modules has given them a new sense of confidence. Their new knowledge of education law appears to have provided a lens to look through with regards to their roles and responsibilities. It is through this lens that they seem to have a sense of empowerment. Empowerment is not just a case of enlightenment, as to what one is entitled to or allowed to do; it is also an empowering experience when one knows one's limitations and boundaries within which one operates. This realization, it would seem, of the limitations and boundaries within which participants operate, has also created a sense of confidence, self-assurance or power. Knowledge is power! The more they know and understand of education law, the more equipped, they believe, they are to face the challenges of their classrooms.

The fact that participants, who have been formally trained in education law, understand that a bitter-sweet relationship exists, implies that their new knowledge has indeed empowered them to identify the legal implications for themselves in their profession, and to be aware that they need to be vigilant so as not to violate the rights of any stakeholder in education. Having teachers in South Africa, formally trained in education law, will in actual fact have positive implications for our country. It is questionable to expect teachers to function

satisfactorily in a legal minefield without providing them the necessary skills to navigate the dangers.

The findings of phase 2 therefore generated the hypothesis that if teachers are not formally trained in education law, there will be an increase in litigation against teachers, schools and the DoBE, as a result of the violation of rights and legal prescripts. This will, firstly, have financial implications for the DoBE and secondly, legal implication for the teacher.

#### **6.5.2.2 A balancing act**

Participants find themselves in a place of constantly performing a balancing act. There is a need for them to balance the rights of their learners along with their responsibilities and equally to balance the rights of learners against the rights of other learners, while still maintaining fairness and without violating the rights of any learner. This bitter-sweet relationship or balancing act is further compounded by the cultural diversity that exists within many of their classrooms.

Participants also exude a sense of security regarding the rights of learners. While education law is a minefield to navigate, and while a reasonable understanding of the Constitution exists, participants experience a sense of empowerment through being exposed to the content of education law, and that while a bitter-sweet relationship may exist when it comes to balancing the rights of learners, there is also a sense of security in the notion of the rights of learners. This speaks of a coming-of-age of teachers through the study of education law.

#### **6.5.3 AN ONGOING JOURNEY (PHASE 3B)<sup>5</sup>**

“Tentative change”, “The spine of education”, “The challenge of discipline” and “Core values and conflicting values”, were patterns that emerged from the group interview. The behavioural change theories looked at in Chapter 3 (see § 3.8) suggest that one never arrives at a state of all knowing but that learning is constant and continual. Essentially the findings in this phase confirm the literature in this regards.

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<sup>5</sup> Phase 3a was not included for analysis due to the quality of the data collected (see § 5.6.2).

### **6.5.3.1 Tentative change**

While education has experienced change since the inception of democracy, participants believed, that the change was not as well managed as it perhaps could have been. Policy change around the curriculum directly influenced the way participants taught their learners. While their teaching methods and style have had to undergo a transformation, they also acknowledged that these transformations have led to a misunderstanding of their role as teachers. While they understood the importance of teaching, so that learners were prepared to fulfill their place in society, they also admitted that the crossing over from “assess for examinations” to teaching “skills and values” has been a treacherous road.

It is accepted that with change, comes a certain amount of fear. If this is the case, the DoBE has a moral and legal responsibility to ensure that their teachers are adequately skilled to ensure the transition it expects. INSET will need to be rolled out on a scale equal to the DoBE. Literature indicates that learning is a continual or cyclic process (see § 3.3). Therefore, the DoBE is responsible for ensuring that its teachers are constantly trained in the aspects of education law by way of INSET.

### **6.5.3.2 The challenge of discipline**

The issue of discipline struck a nerve with participants. “Taking your chances” is indicative of the insecurity that participants experience when dealing with discipline issues and matters of searching pupils and their property, in particular. The issue of using alternative forms of punishment raises the concern that those alternative measures do not always produce the desired results and that is where the challenge arises. The need then is to do more in order to produce the desired outcome. This, more often than not, leads to issues of violating the rights of the learners. There also seems to be a personal struggle with their understanding of the human rights of learners and their actual practice, making sure that both are actually congruent.

Data indicate that teachers’ frustration around the issue of learner discipline is causing them much concern. The use of alternative forms of discipline, but without violating the rights of learners is worrying. If these fears prevail amongst teachers, then it stands to reason that

teachers could be violating the rights of the learners when meting out discipline, or not adequately enforcing discipline because of fear of violating the rights of the learners.

Teachers, therefore, need training in regards to alternative forms of punishment, forms that do not violate the rights of learners. Teachers need tools to be able to face the challenge of disciplining their learners. Understanding the legal implications for violating the rights of learners is equally important.

### **6.5.3.3 Core and conflicting values**

A spine is seen as a component that plays a crucial role in keeping the body upright and houses the all important spinal cord. A healthy body would have a strong spine. This metaphor is used to describe the significant role education law plays in education, calling it the spine of education. It is clear that participants understood the role of education law in their teaching practice. They talked about the implications of knowing the law and how that became one's conscience when dealing with learners, how the law restricted their behaviour so that the rights of their learners were not violated. If the knowledge of education law is the conscience of the participants, then this finding has significant implications for both the teacher and the DoBE.

As education law is a relatively new field of law, not many teachers have been exposed to it formally. Teachers already in the employ of the DoBE need to gain a formal training in education law. Understanding their role as teachers and the nature of the child will create the framework for teachers to deal appropriately with the challenges their job presents. Their new knowledge would be their conscience that will guide them with the struggle with core values.

The DoBE should make courses available for teachers to be trained in education law.

## **6.6 SIGNIFICANCE OF THE INQUIRY**

The findings of this inquiry could impact the future of education law in the initial and further training of teachers in our country. These results may suggest that the studying of education



law has made a significant difference in the way teachers perceive their roles within the education system. This inquiry could inform curriculum planners and developers of the importance of education law as a module in initial teacher training and further training programmes.

Further, this inquiry develops several hypotheses for further exploration via quantitative inquiry (see § 6.8.3). This wider sample will greatly increase the trustworthiness and general applications of the findings of the research.

This inquiry also emphasises to lecturers in education law to take cognizance, that they are developing skills and competencies in their student teachers, to enable them to apply legislation in their teaching practice. Therefore the teaching methodology and didactics should address this imperative.

## **6.7 LIMITATIONS OF THE INQUIRY**

While careful planning and consideration went into the process of understanding, I did experience a few challenges. This forced me to deviate from my initial plan and improvise and formulate new strategies which are typical of qualitative research (see § 4.3.7).

The seemingly obvious limitation will be that the findings cannot be generalized, since the focus was the teachers from the Durban area and I conducted a qualitative inquiry. The exam scripts that were used for phase 3a, were also restricted to the Durban area, as these were the same students who completed the questionnaire in phase 2 and gave consent to include their examination scripts in my research. During phase 3b, my sample included teachers who lived in the Pietermaritzburg area only. Unfortunately, the number of participants was greatly reduced, from four positive participants, to only two actually turning up for the group interview.

## 6.8 RECOMMENDATIONS

In conducting this research, my aim was not to generalise or find solutions to global problems. My primary aim was to contextualise my findings and to generating hypotheses.

### 6.8.1 THEORETICAL RECOMMENDATIONS

The primary objective with the many changes that education has undergone is to ensure that the interest of the child is of paramount importance. This aim cannot be fully realised if teachers do not have an understanding of education law, which include legislation, legal principles deduced from common law and the interpretation of case law. Knowing the rules of the game will certainly produce players who are skilful, effective and passionate about their game; this analogy applies aptly to teachers.

Instilling legislation and human rights application is underpinned by values (see § 2.4.2). Understanding how human rights and legislation should be applied and implemented creates an attitude change and would instill a human rights culture in the education sector. Education law could be one of the vehicles to realize this culture of human rights application which will enhance social justice and transformation.

In order for teachers to protect the rights of learners, in fact, the rights of all stakeholders, teachers need to be trained in the field of education law. There needs to be a change in the way teachers see themselves in regards to education law; training and exposure to education law will bring about this change. This change will become evident when teachers have a better knowledge and understanding of the processes and principles which will help them avoid becoming involved in lawsuits. When teachers' decision making processes are within the parameters of the law, it gives more impetus to those decisions made. Better decisions are made when one knows the legal considerations that need to be taken into account. Teachers will be able to create a safe environment because legally safe decisions will not only ensure protection by the law but will ensure that learners in their care will be physically safe as well. As a legal requirement, a person who is active in the field of education is expected to be abreast of the legal provisions and principles that will regulate or govern his/her activities in the field.

Each school, each teacher and the school curriculum need to be held accountable for teaching and enhancing the values that underpin our democracy – teacher education and training needs can address this matter.

### **6.8.2 RECOMMENDATIONS FOR PRACTICE**

In trying to answer my research question, I have identified the following concerns, which unless addressed, could lead to serious complications.

- Teachers within the education system, who have had no exposure to any formal training with regards to education law, need to be retrained and up skilled. This will include the vast majority of teachers in South Africa. Not addressing this issue may perpetuate the violation of the human rights of learners. Retraining will also reduce the levels of stress under which teachers work, as they will now understand their limitations and expectation from the BoR. “More training means better delivery.”
- School principals and their management teams should be a priority in terms of retraining. If school managers do not understand the legal framework within which they operate, then the effective running of a school will become more and more difficult.
- Teacher training programmes need to include a module on education law as well. This will ensure that all new teachers who enter the teaching profession will be familiar with the legal aspects of their profession. Teacher training programmes place huge emphasis on the acquisition of educational theory and practice, and rightly so, however, no attention is paid to the legal requirements of their profession. Knowledge of education law is a prerequisite in developing and instilling a human rights culture at school.
- Other stakeholders in education, such as the School Governing Body and learners, should also be exposed to education law.
- In order to experience real transformation, the DoBE should include an independent education law module as part of the minimum qualification of teachers. This should be a full module and not half or part of another module.

### **6.8.3 SUGGESTIONS FOR FUTURE RESEARCH**

From this inquiry, future research can be conducted to generalise my findings. A quantitative inquiry, which would include students from different Higher Education Institutions who are currently studying education law for any part of their teaching qualifications could be conducted. The aim would be to determine the influence that studying education law has on the teaching and to test the hypotheses generated by this inquiry. A similar inquiry could be done to include only managers from a greater sample of schools.

Several hypotheses were generated by this inquiry. It is recommended that all of these generated hypotheses be studied quantitatively:

- Teachers have a fair awareness of education law even though they had no formal training (see § 5.4.4.1).
- Teachers have a reasonable awareness of which policies regulate their teaching (see § 5.4.4.2).
- Teachers have a superficial knowledge and understanding of the content of the legislation that regulates their teaching (see § 5.4.4.2).
- Teachers lack an in-depth knowledge and understanding of the values and implications the legislation has for their teaching practice (see § 5.4.4.2).
- Teachers believe that learners have more rights than teachers (see § 5.4.5.1).
- Tension exists between teachers implementing education law and the level of their accountability (see § 5.5.5).

### **6.9 EPILOGUE**

This chapter included my main findings, the implications of my inquiry as well as the limitations. Therefore, I have also made suggestions for future research in this field. The conclusion of my dissertation is that teachers' knowledge of legislation and education law specifically has an influence on their practice. The inquiry therefore generated one main hypothesis amongst others: Studying education law will change teachers' attitudes positively towards education law and their practice and enhance a culture of human rights' application in the classroom. As one of the participants so aptly stated; education law is the spine of education.

(Line 201): *So to [in] my view, education law is very important. I can say it's really a... I don't know how I can put it but the spine of education*

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