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## CHAPTER 1

### INTRODUCTION AND ORIENTATION

#### 1.1 Introduction

Our country, South Africa, is a very young democracy, as the democracy has been in existence only since 1994. Before that time, it was a divided country with different education systems for different population groups and for different areas or provinces called the Cape Province, Transvaal, Natal, Orange Free State and also the home lands such as Bophuthatswana, Venda, Transkei and Ciskei. Each separate area or province had its own education system, and the myriad forms of education were run under the auspices of a National Education System that had pronounced inequalities for different population groups. It even had policies based on the different cultural groups found in the country, with separate education systems for white people, black people, coloured people and even Indian people (DoE, 2002:44).

A number of dramatic changes took place in South Africa in 1994, characterised by the un-banning of certain political parties, the release of political prisoners, and democratic elections. The first black president was elected and eventually a whole new Constitution (RSA, 1996) for the country, and a new umbrella education Act was introduced, giving effect to the South African Schools Act (hereafter called the Schools Act) to see to the needs of all the people in the country. Although many schools had opened their doors to learners of all races prior to this, it was still a learning curve for many at schools as to how to bring in tune the various school cultures with multi-cultural schools (DoE, 1996).

In my teaching career covering this time of change and also for the past number of years as a principal, it has struck me how exposed schools and teachers are as regards their duty towards the learners in their schools and their duty in schools.

Reading about various issues involving schools and seeing learners in school clothes in the street at all hours of the morning, having been to school and then leaving the school premises again, when they are required to be in schools for at least 5½ hours per day, as per the regulations governing the hours that learners must be in schools, is indicative of a situation where teachers and principals are possibly not aware of the duty of care which exists toward the learners in their care. Govender (2012:5) highlights the fact that nearly 600 000 South African learners did not attend school in 2011. Of concern, is that this number is made up of about 110 000 learners who were aged from 7 to 15, part of the compulsory school-going age.

## 1.2 PROBLEM STATEMENT

Legislation introduced to deal with various aspects at schools and the Constitution of South Africa (RSA, 1996) guarantee a safe environment for our learners at school and in our country. Oosthuizen, Rossouw and de Wet (2005:10) state that education law provides this secure space in schools. Oosthuizen, *et al.* (2005:10) however cite studies that highlight that teachers in South Africa lack expertise concerning the supervision and care of learners at schools.

It is apparent when one looks at the articles and the court cases presented in the next chapter, that despite the laws and policies that have been put into place to safeguard learners, teachers at schools are not accepting this responsibility of care towards learners. The duty of care towards the learners at their schools regarding an issue such as truancy is not taking place. The legal instruments such as legislation are in place but it may not be enough to provide safety to the learners as the people attached to schools should ensure this safety.

After having observed the truant behaviour of learners mentioned in the introduction, principals, management and School Governing Bodies (hereafter Governing Body) appear to still not be mindful of the repercussions that the law of delict can impose on them, their schools or the Department of Basic Education in certain situations. (cf. 6)



These repercussions, including that of not addressing truancy can, according to Neethling, Potgieter and Visser (2006:4) indicate that any act or omission which unlawfully infringes a person's right to safety and causes harm to another person, be called a delict. A delict or action that may cause harm is different from a crime, and such action for a delict may be caused by the complainant to obtain compensation for the damage or injury suffered. These repercussions above could therefore fall on the principals and management, teachers and Governing Body of a school. Joubert (2008:147) discusses two types of delict, namely intentional acts which can be caused by for example, aggression, or strict liability due to negligence.

The truant behaviour above could indicate a lack of care towards learners at schools by teachers, principals and management or the Governing body when the truant behaviour is not addressed, especially if an injury to them occurs when they are not present at school for the required time daily, or when they are truant or not at school at all. This is a problem that needs to be researched.

### **1.3 RATIONALE**

I have read widely on theories of truancy and duty of care (cf. 43 – 137), and the news reports and court cases that follow are indicative of a situation in schools which has led to the reasons for the research questions for this study. (cf. 11)

This study will thus interrogate the legal interpretation of the duty of care of teachers regarding learner truancy.

#### **1.3.1 Media reports**

##### **1. "Teacher ties up learner like a dog".**

A woodwork teacher at a Krugersdorp school for learners with special needs tied a rope around a boy's neck, attached it to a pole and spoke to him as if he were a dog, calling him: "Doggy Doggy". The next day, the teacher repeated the punishment. Two cases of assault were laid against the teacher, but he was never taken to court, (Geldenhuys & Keeton, Sunday Times, 11 September 2005).



## 2. **“School sends boy to death”.**

A six year-old school boy, who went missing after teachers at a Pretoria school had sent learners home early because it was pay day, was murdered. Teachers sent learners home early as they rushed to banks to withdraw their salaries. The six year- old boy, who is normally fetched by his mother, tried to get home on his own, but went missing. He was found two days later – murdered (Molema, City Press, 30 January 2005).

## 3. **“SA teachers teach only half the time”**

Teachers spend less than half their time teaching learners and little formal instruction takes place at most schools on Fridays. Some learners at high schools have been going home at 11:00 on Fridays (Govender, Sunday Times, 23 October 2005).

## 4. **“School tells of kidnap day”**

Gauteng MEC set up a commission of enquiry into the circumstances that led to the kidnapping and death of a 10 year old at a school in Benoni.

A Grade 4 learner left with someone, supposedly sent by her parents, who had come to fetch her at school. The school did not follow its own rules of a) insisting on a parent’s letter; b) phoning the parents to confirm they had sent the person to collect her; and c) verifying the identity of the person sent to collect the child (Pather, Sunday Times, 16 October 2005).

## 5. **“Loitering children issue to be addressed”**

This was an article by the Ministry of Police which spoke about the need to strengthen its relationship with School Governing Bodies and communities to address the issue of learners found loitering during school hours. The article also indicated that learners could not simply be arrested as it was not a Schedule 1 offence and had to be dealt with in accordance with municipal by-laws. Learners needed to be acted against in terms of the Children’s Act by ensuring that the child was referred to social workers or probation officers, who should investigate why the child was not in school (Mthethwa, The Citizen, 2 March 2011).

## 6. “South Africa: Nation Boosts School Safety”

This article also added to the above article as it spoke about the Child Justice Act and the Children’s Act, and spoke about how these Acts “regulate the manner in which learners should be treated”. It also spoke about the fact that the police have “National instructions in place that explicitly give directions to police members on how to treat and deal with learners in accordance with the provisions of the mentioned legislation” (Mthethwa, BuaNews, 2 March 2011).

## 7. “Thousands of children not in school”

This article indicates that a total of 600 000 South African learners did not attend school in 2011. A total of 110 000 of these were learners aged between 7 and 15 years, the age of compulsory schooling. The spokesperson of the National Department of Education indicated that although this number was high, it was not considered high by international standards. The spokesperson said that they were hard at work trying to track down any learners who were not in school. The report also gives an example of a 14 year-old boy from the Northern Cape who had been absent from school for 123 days and was found at home cleaning his mother’s house (Govender, Sunday Times, 14 October 2012).

### 1.3.2 Court Cases

The following court cases are again indicative of the dilemma which schools, learners and teachers find themselves in as they try to ensure the safety of learners and teachers in schools, hence the reasons leading up to the research questions as indicated. (cf. 12)

1. ***Wynkwart NO v Minister of Education and Another***  
**2004 (3) SA 577**

This court case was instituted by the father of a child who had been injured when he fell off an unused school gate while attempting to climb over it. He had been told at orientation and during assemblies that he should not do so. The judge in this case felt that the teachers were trained in child development and should have foreseen that learners were impulsive and tend to forget all they had been told not to do at a given time, for example, not to climb over the gate. The judge felt

that the teachers could be judged according to the normal test of negligence. He also felt that the teachers cannot abdicate their responsibility by arguing that young learners acted in a manner in which they were encouraged not to act.

The judge also said that the attempt to jump over the gate was foreseeable although the extent of the harm might not have been. The finding in this case was for the plaintiff and the defendants in the case were liable for the damages.

2. ***TM Jacobs v The Chairman of the Governing Body of Rhodes High School & Others: Case no 7953/2004***

This is a case where a teacher (Jacobs) was attacked by one of her learners and beaten with a hammer on her head, arm and leg. The plaintiff had noticed that the attacker had a death certificate made out to her in his journal. She reported the matter to her HOD and the HOD took the boy to the office. The principal looked at the journal and asked the boy to wait on a chair outside his office while he asked his secretary to phone the police and the parents of the boy. The boy then left, went back to the class and attacked the teacher. This left the teacher permanently scarred emotionally and psychologically. The judge felt that the second and third defendants, the principal and the Member of the Executive Council for Education, Western Cape were negligent and thus had to pay a huge amount (R 1 114 685, 53) in damages, interest on that amount as well as the plaintiff's costs.

3. ***Head of Department: Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another CCT 40/09 [2009]***

The outcome of the Ermelo High School case was that the Department of Education could not force the school to change its medium of instruction. However, the court made it clear that although the ruling was in favour of the school, it was expected that the School Governing Body and the Department of Education would be obliged to take the views of the entire or broader community into consideration when making decisions concerning matters at a school such as the language policy and safety of learners. The Children's Act (RSA, 2005:18)

states that the duty of care for learners includes the guiding and directing of a child's education and that the best interests of the child are of paramount importance in every matter concerning the child.

The judge concluded, "The Governing Body of a public school must in addition recognise that it is entrusted with a public resource which must be managed not only in the interests of those who happen to be learners and parents at the time, but also in the interests of the broader community in which the school is located and in the light of the values of our Constitution." The broader community had an expectation that learners could be taught at the school in English whereas the Governing body were interested in retaining their Afrikaans identity and culture at the school. The Children's Act, however, indicates that learners are owed a duty of care regarding their language and cultural rights, their right to a basic education and possibly their right to protection from discrimination and emotional harm. It could also be seen as unfair discrimination against the learners as the best interests of those younger than 18 years needed to be seen as of paramount concern. Thus, having to take the broader community into account could change many aspects in schools including the expectation of how the duty of care and truancy are handled by the school.

The Governing Body of the school, made up of the parents of the learners, the principal and other stake holders in that school, is entrusted with, and responsible for, maintaining the school property, and this aspect becomes more difficult as the community is spread further from the school. The thoughts, ideas and ideological views of the broader community on the safety of learners as a result of truancy and the duty of care of teachers could thus have an effect here as well, and this could also affect the way in which people from different cultures view the duty of care of teachers and truancy of their learners.

#### 4. ***State v De Blom 1977 (3) SA 513 A***

This court case is of importance as it states that ignorance of the law is no excuse. It was noted that a person who involves himself in a particular sphere ought to keep himself informed of the legal provisions applicable in that sphere.

This is particularly important for teachers and members attached to schools as the case indicates that all involved in education should keep themselves up to date with all matters pertaining to their duty in the school and with the learners. It was noted during this case that “a person who involves himself in a particular sphere can be expected to keep himself informed of the legal provisions in that sphere.”

#### 5. ***Knouwds v Administrator Cape 1981 (1) SA 544 (C)***

This is the case where a young girl was badly injured after she fell onto a lawnmower operated by the caretaker of the school. In this case, the principal was found guilty of negligence as it was on his instruction that the caretaker cut the lawn while the learners were playing nearby. It was noted that a reasonable person would have taken safety measures as it was foreseeable that young learners could have fallen or stumbled onto the lawnmower. Proper supervision should have been in place to ensure the safety of the learners.

The case of *State v de Blom* above is particularly interesting in that it is applicable in education concerning the teachers' duty of care towards the learners who are in their care. With the rapid changes that are taking place in amendments to the South African Schools Act (DoE, 1996) and other legislation, the teachers and schools need to take special heed of any changes that may be introduced. No teachers should be able to say that they were unaware of the factors, legislation or regulations that pertain to the education of learners during the formal school day or the extra-mural activities after the formal school day as these are in the sphere of those teachers' natural duty as teachers.

These articles and cases indicate the seriousness of matters at schools in our country regarding truancy, teachers' duty of care and the safety of learners. Not only is it compulsory for parents to ensure that learners are in school from the age of seven until they are 15, but they also have to be in school for at least five to five and a half hours per day (DoE, 1999:32). Learners are guaranteed the right to education in our Constitution (Section 29) and the right to an environment that is not detrimental to his/her health and well-being (RSA, 1996).

The Amendment Regulations for Safety Measures at Public Schools (DoE: 2006), states in regulation 8(G) (4) that if a school is to close early or learners are to be released early, the school must inform the parent in writing. This regulation also stipulates that a school must have an early release procedure. This was obviously not the case in the second newspaper article in 1.3.1 above.

In these amended regulations a five page questionnaire called Schedule 1, needs to be completed for every trip undertaken by the school (DoE, 2006). Schools go on trips to various sports events, trips to the zoo or other places of interest, or just for a weekend camp or overnight trip with learners, and sometimes do so without filling in these forms.

Coupled with this disregard for policy by teachers and schools mentioned above, is the common law aspect of *in loco parentis*. This is the term for the teachers' duty of care in South Africa when they take over the duty of care from the parents when the learners come to school (Joubert, 2001:140). (cf. chapters 2 and chapter 3.) This Latin term *in loco parentis* indicates "in place of the parent", according to Oosthuizen and De Wet (2005:66). However, this duty of care is not always followed by teachers and schools.

The newspaper articles above and some of the literature (cf. Chapter 2 and Chapter 3) mentioned, as well as the court cases, indicates that a great deal of confusion appears to exist about the duty of care that teachers have toward learners in their care at schools. Oosthuizen and De Wet (2005:66) attribute phrases such as "to feel concern or interest for the learner" and "to pay serious attention to the learner" for the term duty of care.

The term duty of care means that the teacher should show a certain amount of watchfulness over the learner while in his/her care. Oosthuizen and de Wet argue that teachers must concern themselves with not only the learner's physical safety, but also their "intellectual and spiritual well-being" (Oosthuizen & De Wet, 2005:66). The concern for the physical safety and well-being of learners does not appear to be supported by the newspaper articles, court cases and the literature (cf. Chapter 2 and Chapter 3). The concern for the safety and well-being of

learners who are truant would thus be even more pronounced as the teacher cannot exercise any “watchfulness” over a learner who is not there in school.

How applicable is the traditional principle of teachers being *in loco parentis* or the parental duty for teachers? The parental duty for teachers could be debatable at present. There are now other rights embodied in the Constitution, and the Bill of rights to outlaw corporal punishment, the restrictions governing religions or the practice of religion at schools, and prohibiting the use of medicine at schools for learners, and also the ease with which parents can take schools and teachers to court. These changes have brought into question whether there has been a shift from the principle of *in loco parentis*, as found in common law, to a more general duty of care, as teachers are now less able to perform the full duty of parents, which the principle of *in loco parentis* seems to ascribe to teachers.

One such concern is that of classes of from 35 to 45 learners taught by a single teacher in South African public schools. (Own experience) The Amendment Regulations for Safety Measures at Public Schools (DoE, 2006) (hereafter Regulations) sets a much smaller ratio of teacher to learners of 1:20 in regulation 2(d) (1) when going on trips. The regulation mentioned is contrary to the situation in most public schools and leads to tremendous disciplinary problems, not only in classes but also on trips where classes are normally accompanied by their class teachers. A matter of concern is pointed out by Joubert (2008:161) about this issue of trips, and she asserts that under no circumstances must learners be allowed to go on buses unsupervised, and on their return they must not be left unattended until collected by parents. The collection of learners after trips is problematic for teachers as parents often collect learners late after outings, forcing the teacher to stand waiting with the child, often for a lengthy time. The Regulation further states in 2(e), that gender must be taken into account in this ratio when on trips (DoE, 2006).

Regulation 8 of the same Regulations also states that the parents of learners who fall ill must be contacted to give consent for medical treatment, and that teachers should only then decide whether to give medical treatment (DoE, 1996). Contacting parents is not always possible and teachers are faced with countless



challenges to reach the parent or family, or even to get the child to a doctor or hospital when the parent is unable to collect the child from school.

Some court cases indicate that parents, learners, principals and even others in the community have different views of how teachers have to act in many of the real-life situations which they find themselves in on a daily basis in schools, situations in which they should have acted in a particular way. Cases in point are those involving nose studs, girls wearing scarves and learners having dreadlocks due to religious beliefs. These dress code aspects are often against the school rules of particular schools. Where does this leave the teacher and the school should they not know the law or policies? It is with the above aspects involving learners, teachers and parents in schools in mind, that the rationale for the study on how the legal duty of care of teachers is interpreted regarding learner truancy.

#### **1.4 Research questions**

The problems that this study attempted to address were:

##### **1.4.1 Main question:**

What does a legal interpretation of teachers' duty of care regarding learner truancy comprise of?

##### **1.4.2 Secondary questions:**

- How is the duty of care viewed by the different strata, from school to lawyers and also to judges, and is there a difference in the way that it is viewed by the different strata?
- What would a legal framework for interpreting the duty of care consist of?
- What does an overview of learner truancy look like?
- How are learner truancy issues managed at schools?

## 1.5 AIM AND OBJECTIVES OF THE RESEARCH

### 1.5.1 Aim of the research

- The aim of this research is to consider a legal interpretation of the teachers' duty of care concerning learner truancy. The research would entail how people in different areas that might be affected by the duty of care view their duty of care at schools, and secondly, what their viewpoints are of what it constitutes being a teacher and having a duty of care towards learners, especially with regard to learner truancy.

### 1.5.2 Objectives of the research

- To determine whether a legal framework exists to interpret the duty of care of teachers regarding learner truancy and what it is comprised of.
- To determine the different ways in which this duty of care of teachers is viewed by the teachers, management of schools, principals, lawyers and judges. This would also point out whether they all have a common understanding as regards this very important aspect of a teachers' duty of care.
- To determine whether teachers, principals and management of schools have knowledge of school safety and education law, especially concerning truancy or learners not being in school grounds during school hours, and what role that knowledge plays in the safety of learners at schools. The possible social reasons for this truancy might also be important and will be brought out, but will not be a focus area for this study.
- To determine the legal aspects surrounding the dangers of learners not being in school and the implications for schools, management of schools and teachers as this will be important to education departments.
- To determine how truancy is managed in schools.

## 1.6 Legal framework and clarification of concepts

### 1.6.1 Constitutional aspects

The Constitution indicates as follows: *“This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled”* (RSA 1996) (section 2).

*“The Constitution of South Africa (RSA 1996a) is the most important statutory source of constitutional law.”* The Constitution contains the most important rules of law that deal with the governance system in a country, especially in South Africa. These rules and laws constitute the authority, and the exercise of authority within limits. *“The Constitution is therefore the key component of our legal system. It guarantees and regulates the rights and freedoms of each individual”* (Joubert, 2008:3).

Oosthuizen, Rossouw and de Wet (2005:10) mention that to have a secure space for educational teaching, the participants in education should change their thoughts and actions to points in the Constitution such as the following:

- *“the best interests of a child are of paramount importance in every matter concerning the child* (RSA 1996) (section 28(2))
- *the inherent dignity of each learner and his or her right to have their dignity respected and protected should be recognised and applied in educational teaching practices* (RSA 1996) (section 10)
- *all learners should be given equal opportunity regardless of race, gender, sex, ethnic or social origin, age, religion, conscience, belief, culture and language to be exposed to educational teaching* (RSA 1996) (section 9(3))”

The guiding principles of our education system and our schools are thus the rights which are set out by the Constitution and as our country is thus a constitutional democracy, all other policies, laws and by-laws may not be inconsistent with whatever rights are set out in the Constitution. (Joubert, 2008:2,14, 15 & RSA, 2006) (Preamble)



Insofar as it pertains to education, the Constitution states in section 29, (1) Everyone has the right -

(a) “to a basic education,” (RSA 1996) (section 29 (1a))

The various rules and laws introduced by the country produces a legal framework nationally and then moves down to the province until ultimately the legal framework works on the school level, thus constituting the legal framework which is used for the study. (Own emphasis) It can be visualised by the following:

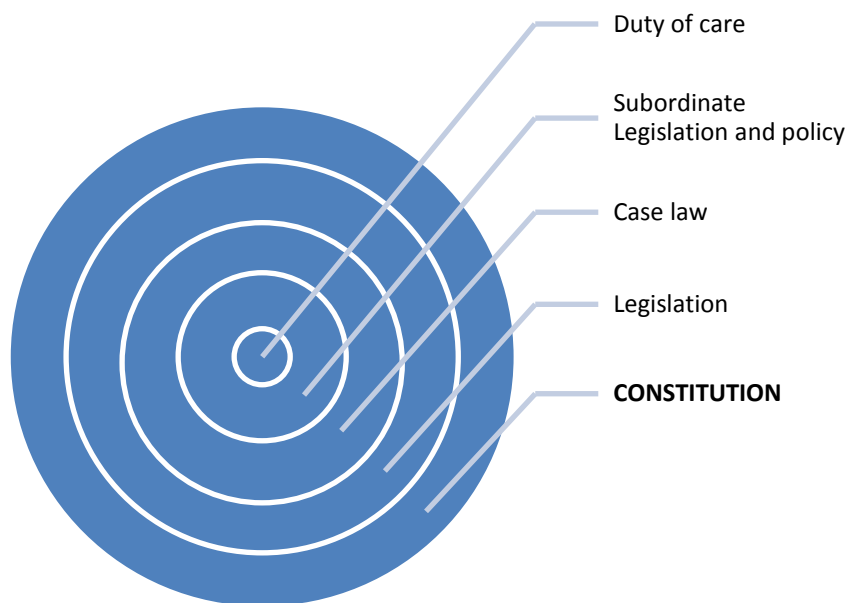


Figure 1: Basic representation of legal framework (Own visual image)

This study is guided by a legal framework instead of any other theoretical framework as the study lends itself to that. Oosthuizen (2009:10) mentions a number of methods that the researcher can use which can be viewed as tools by which research could be processed. One of these methods is that of the historical legal method and he says that this should be seen as “the primary legal method of research.” He mentions Russo (2006:6&7) who describes this historical legal method as a systematic investigation which involves the interpretation of the law. He suggests that this method is an inquiry in (general) law which follows the rulings of past court cases in order to deal with a present research issue (Oosthuizen, 2009:11).

Oosthuizen (2009:11) states that research in education law cannot be conducted, without applying the historical legal method. In his words it thus becomes “a vital form of enquiry” into how the courts will approach or deal with any specific theme of study. Oosthuizen (2009:11) adds that statutes need to be considered as the “*primary source of information in any legal study*”. He states that it is absolutely necessary to look at the policies and statutes that will influence a specific study as they obviously form the “*basic regulatory mandates for the theme or topic under analysis*.” Although this method focuses primarily on safety, the policies and statutes can also be used for learner safety as the safety of learners and the basic rights of learners are also important in a study on learner truancy. Oosthuizen also discusses the term “ontology” which he states implies that one of the primary objectives of researchers is normally to analyse and determine the essential nature of the phenomenon they are studying. The focus would be education law, as it focuses on the future, hence the legal framework for this study (Oosthuizen, 2009:15).

A study in Arizona schools (Bosworth, Ford, & Hernandez, 2011:195) points out the perceptions of safety among staff, faculty and learners as important measures of how safety is seen in schools, while discipline is again mentioned in many of the studies cited by them. Bosworth, *et al.* (2011:195) cites Godstein who mentions that learners’ academic performance is lower when they view the school environment as dangerous. It says that learners’ confidence, motivation, commitment, attendance and grades are also lower due to this (Bosworth *et al.* 2011:195). The study concluded that two factors, namely the organization and school discipline in schools as well as caring relationships in the school, stood out regarding the safety of learners in schools (Bosworth *et al.* 2011:200).

According to Krezmien, Leone, Zablocki and Wells (2010:274) the Gun Free Schools Act of 1994 was passed in North America to safeguard schools after some school shootings. Learners could be suspended for up to one year for bringing a weapon to school. The Act unfortunately led to an increased reliance on suspensions and expulsions for minor misdemeanours. The authors site research that indicates this Act may not have served as a deterrent but may have increased school disorder in New York, as schools employed police officers and

metal detectors and had more suspensions than schools that did not have them (Krezmien *et al.* 2010:274).

Krezmien *et al.* (2010:274) further cite research that found that some schools extended the zero tolerance rules regarding safeguarding of schools after the reauthorization of Title 1 of the Elementary and Secondary Education Act (ESEA; No Child Left Behind Act of 2001) as school authorities wanted to raise the levels of learner results and held the schools accountable if they did not do so. The zero tolerance rules resulted in and led to learners being suspended for school disruptions, truancy, and refusal to obey. This research also indicated that high rates of suspensions were found to be linked to an increase in disruptive behaviour, decreased academic performance, and higher rates of school dropout.

Joubert, De Waal and Rossouw (2004:79) contend that a legal framework exists for discipline in school. Joubert *et al.* (2004:78) state that the issue of discipline has two important goals, that of ensuring the safety of staff and learners in schools and at the same time creating an environment that is conducive to learning and teaching. The article cites Andrews and Taylor (1998:209) who point out, that learners who misbehave tend to perform poorly at school and tend to be absent frequently. Discipline therefore appears to be linked to truancy.

Constitutional law that governs education is made up of many directives relating to aspects of the “state”. The constitutional law consists of directives relating to the composition and functioning of all bodies that exercise government authority. The Constitutional law derives from legislation, common law and case law that are found in the country and is thus of importance to schools as it provides the ambit within which schools and teachers should function (Oosthuizen, Roos, Smit & Rossouw, 2009:25; Joubert, 2008:3).

A further aspect that sets out principles as to how learners should be cared for in schools is the Children’s Act.

### 1.6.1.1 Children's Act

The Children's Act, (RSA, 2005) Chapter 1, Section 1 (a) defines the duty of care in relation to learners among others as:

- (b) Safeguarding and promoting the well-being of the child
- (c) Protecting the child from maltreatment, abuse, degradation, discrimination, exploitation and any other physical, emotional or moral harm or hazards
- (d) Respecting, protecting, promoting and securing the fulfilment of, and guarding against any infringement of, the child's rights as set out in the Bill of Rights
- (e) Guiding, directing and securing the child's education and upbringing including religious and cultural education and upbringing, in a manner appropriate to the child's age, maturity and stage of development
- (g) Guiding behaviour of the child in a humane manner
- (i) Accommodating any special needs that the child may have; and
- (j) Generally, ensuring that the best interests of the child is the paramount concern in all matters affecting the child. (RSA, 2005:11)

### 1.6.1.2 Sources of education law

The main source of education law is the Constitution of the country as the supreme law of the country. The other sources are mainly legislation, common law and case

law.

LEGISLATION

COMMON LAW

CASE LAW

Figure 2. Adapted from Oosthuizen, Roos, Smit and Rossouw, (2009:25)

### 1.6.1.2.1 Legislation

Legislation is “*written law enacted by a body or person authorised to do so by the Constitution or other legislation.*” These acts are introduced by sections of the State that have the power to make law (Joubert, 2008:16).

Oosthuizen (2005:16), on the other hand, states that legislation is “*defined as any Act, proclamation or ordinance of Parliament or any other measure with legal power.*” A further feature of an Act is that it is given a number and a date which forms part of the name or title of that Act such as The Employment of Educators Act, 76 of 1998. This means that it is codified. The Acts which are specific to education or deal with education may be seen as education-specific Acts (Oosthuizen, 2005:15).

The following are examples of education legislation used in South Africa:

◆ National Education Policy Act 27 of 1996 – The main objectives are to determine national education policy, providing infrastructure for the implementation and ensuring publication of the policy while ensuring the monitoring and control thereof (RSA, 1996b).

The Act clearly stipulates the workload of teachers and other staff in the school. Some of these duties are that during the *formal school day*, teachers have to do relief duty, extra and co-curricular duties, pastoral duties and supervisory duties. This brings in the aspect of *in loco parentis* for teachers and schools, which is the care that is taken of the learners in place of the parent. (As determined in February 2000)

◆ Schools Act 84 – Its main aim is the “implementation of a uniform system for the organisation, management, financing of schools and matters connected to these” (RSA, 1996e). (cf.1)

The Schools Act is applicable in the sense that it makes provision for the compulsory attendance of learners in schools,(chapter 2, section 3) and gives guidance in respect of the ages when it is compulsory for learners to attend



school (Chapter 2, section 5). It also states that if a learner who is liable for compulsory attendance in terms of subsection (1) is not enrolled at or fails to attend a school (Chapter 2, section 3 [5]), the Head of Department may investigate the learner's absence from school, take appropriate steps to improve the situation and if this is unsuccessful, issue a written notice to the parents of the learner informing them that they need to comply (Chapter 2, section 3 (6)). The act allows for disciplinary steps to be taken against a learner (chapter 2, section 3 [5b]) while other sections deal with the ban on corporal punishment (Chapter 2, section 10) and initiation practices (Chapter 2, section 10A) thus keeping the learner safe while at school. The learner cannot be kept safe when truant or not at school and the act of truancy thus becomes a crucial issue at school in order to keep learners safe from harm.

The Schools Act, in section 60, states that the government is liable for any damage or loss caused in connection with any school activity engaged in by the school and for which the school would have been accountable. A Policy on Learner Attendance, (DBE, 2010) (hereafter Learner Attendance Policy) issued by the Department of Basic Education, is meant to promote the punctual and regular attendance of learners at public schools and provide public schools and provincial education departments with standard procedures for recording, managing and monitoring learner attendance. It applies to all public schools in South Africa (DBE, 2010).

Absenteeism has many reasons, according to the policy, from lack of transport, the inability of parents to pay school fees, serious illness of learners or parents, child labour, poor nutrition and hunger while gang violence in certain areas is also an increasing factor for absenteeism (DBE, 2010) (section C7). The general notice further states that it is important for regular and punctual school attendance as that and the enrolment of learners are fundamentals for an educated nation. This policy on learner attendance mentioned above is important as every school has a duty to protect every learner's right to education. Enrolment at a school obliges a learner to attend school punctually and regularly unless there is a valid reason for absence. Learner retention and performance will improve if the school can stop the absence without valid reasons while

regular attendance at school could reduce teenage pregnancies and HIV infection, according to the policy (DBE, 2010) (section D9).

The importance of recording the daily attendance is further highlighted as it enables a school to monitor absence and to take appropriate steps to follow up the action with both parents and learners. It is extremely important and necessary for legal purposes. Records need to be maintained accurately as the principal and staff act *in loco parentis* (in place of the parent) for a learner at a school. They therefore have a duty of care towards each learner who is recorded as present. If legal action were instituted against the school as a result of a mishap to a learner, the accuracy of the learner attendance record could be an important issue before the court (DBE, 2010) (section D10/11).

◆ Employment of Educators Act 76 of 1998 – The main functions of this Act are to determine the conditions of service, disciplining, retirement and discharge of teachers (RSA, 1998c).

◆ South African Council of Educators Act 31 of 2000 – The main functions of this Act are to provide for the registration of teachers, make stipulations for the professional development of teachers and to ensure that professional and ethical standards for teachers are maintained (RSA, 2000). Some Acts may be amended from time to time as and when required.

There are also general Acts that have an effect on education and this should be noted. They are, among others:

- Children's Act 38 of 2005 – This act replaced the Act of 1983 and it was introduced to protect the constitutional rights of learners, determine principles dealing with the care and protection of learners, set out principles that guide the parental responsibilities and rights, and create new offences in relation to learners (RSA, 2005).

- Occupational Health and Safety Act 85 of 1993 – This mainly deals with schools that have workshops or facilities that could be dangerous to the safety of others in the school, including learners (RSA, 1993).

### 1.6.1.2.2 Common law

Common law is not codified and is not promulgated by Parliament (Oosthuizen, 2005:16). According to Oosthuizen, the “*South African common law comprises the principles that are part of our Roman-Dutch legal heritage, which has been adapted (and developed) to suit our unique society.*” Joubert (2008:20) in turn describes it as a “hybrid” as it encompasses both the Roman-Dutch law, which was influenced by English, and indigenous law (African customary law). It arises through the custom and historical developments in South Africa, according to Joubert. Common law also forms the basis of our South African private law. One of the most well known of these principles is the *in loco parentis*-principle for teachers, the duty of caring supervision by the teacher, and the “reasonable person” test used in law and in our education system. (cf. 58)

### 1.6.1.2.3 Case law

“*Case law refers to court sentences,*” according to Oosthuizen (2005:16). The system of “*precedents*” that must be followed under certain circumstances, from decisions taken in previous rulings in other courts, determine case law, and this often creates new law. Joubert (2008:21) however, refers to case law as “*the rulings handed down previously by various courts in specific cases.*” Joubert further states that such rulings are directly applicable to education, as they “*help to form future case law in education-related matters.*” Various court cases can be mentioned as the court cases introduced and guided how any further cases were meant to be handled: *Wynkwart NO v Minister of Education and another 2004 (3) SA 577*; *T.M. Jacobs v The Chairperson of the Governing body of Rhodes High School and Others*: November 2010; and *Head of Department: Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another CCT 40/09 [2009]* and *S v De Blom 1977 (3) SA 513 A*.

As already discussed, in *Wynkwart NO v Minister of Education and Another 2004 (3) SA 577*, action had been brought against the Department of Education for an injury that a young boy had sustained while climbing over a locked gate. The decision in *Wynkwart* appears to imply that the duty of care owed by schools

goes further than merely warning learners of any potential dangers and expecting them to abide by those warnings. In fact, a teacher would furthermore have to ensure that no harm occurs (Joubert, 2008:146).

A further case involved a learner who attacked a teacher with a hammer and the teacher making a case against the school Governing Body, the principal and the education department. (*Jacobs v The Chairperson of the Governing Body of Rhodes High School & Others*, 2011 (1) SA 160) In this and other cases, the issue of the duty of care, investigating the social aspects that influence learners, school safety and negligence was raised by the court. Questions from the specific provincial education departments, lawyers, judges, and courts as well as from parents and schools, as to what constitutes the proper care of learners are raised through the various cases that come before the courts.

A court case *State v De Blom 1977* is interesting as it states that ignorance of the law is no excuse, as previously mentioned (cf. 8). It was noted that a person who involves himself in a particular sphere ought to keep himself/herself informed of the legal provisions applicable in that sphere. The case is particularly applicable to the teacher in a school as teachers are seen as particularly qualified and skilled to do the work, as mentioned by Rossouw (2004:33). Rossouw discusses a higher standard of care in sport and contends that coaches need to ensure that they are qualified and experienced to coach the sport. Rossouw states that the courts in South Africa expect a similar heightened standard of care from teachers. More would be expected from a teacher depending on the specific aspects in the case that need to be taken into consideration. Rossouw cites *Broom and another v The Administrator, Natal 1996 3 SA 505 (D)* and *Knouwds v Administrateur, Kaap 1981 (1) SA 544 (C) 553* as cases involving negligence in sport and at a school. In these cases, not knowing the rules or what the duty of care involves, could not be used as a defence according to *S v De Blom 1977 (3) SA 513 A*. Various aspects that are relevant and applicable in schools such as negligence by teachers, duty of care, safety, discipline, sport, transport and ultimately, truancy, could all be affected in the same way.

Neethling, Potgieter and Visser (1999:27) state that the school, a juristic person, has a duty to act through the teachers to prevent any form of imminent harm to learners. Should the duty of care not be done and it results in some harm, this will bring into play the law of delict. This law states that when damage or injury occurs, *“the wrongdoer is legally obliged to compensate the aggrieved party”* (Joubert, 2008:146 and Neethling *et al.* 2006:3).

For a person to be liable for delict the following should be proved in a court of law:

That the act was wrong in that it infringed the rights of another, that some act took place, that someone could be blamed for it, that the act caused harm or damage, and lastly, that damage occurred (Oosthuizen & de Wet, 2005:68). All the above concerning acts that could happen in a school or take place regarding teachers and learners in a school, including truancy and a failure to act on it could be applicable when the issue of delict is investigated in schools.

The teacher has a legal duty to act in certain situations and if not, the reasonable person test is performed by law when looking at any negligence or intention. Invariably, if any case is brought against any teacher or school, the employer, according to section 60 of the Schools Act, becomes liable if the teacher is employed at the school and this act occurred, while the employee was carrying out his/her normal duties. The act then becomes a case of vicarious liability. Joubert (2008:149) further points out that in cases where damage and a claim is successful and the employee is shown to be negligent, it can result in the employer claiming the money back from the guilty party (the teacher) and this is known accordingly as *“right of recourse”*.

Oosthuizen (2009:16) cites an article by Van der Westhuizen and Oosthuizen (1988:743) where the term *“geborgenheit”* is mentioned, and this German term they state is the *“essence of education law”* and education law is embedded in it. Oosthuizen mentions that this word, according to German authors, means:



- *The feeling of complacency, satisfaction, trust, rest and peace*
  - *Feelings engendered by the unconditional love and acceptance of others; nearness*
  - *More than mere security and a feeling of well-being and protection – it embraces a sheltered protection in which you cannot be abandoned.*
- (Oosthuizen, 2009:16)

Oosthuizen (2009:17-18) contends that learners younger than 18 years are to be guided by an adult who could be a parent or a teacher, until they reach maturity or are led to reality. He therefore feels that learners have an “intense need for security”, which is the *geborgenheit*. This “*geborgenheit*”, according to Oosthuizen, is thus necessary for the learner; hence education law is the vessel bringing about the feeling of security, by creating a safe environment for the child.

Oosthuizen, Mentz and van der Walt (2002:27-44) ascribe this same feeling of “*geborgenheit*” to the teacher, and states that teachers also need this security to be able to teach meaningfully in a safe and secure environment. In a further article, Oosthuizen (2001:213-232) emphasises that learner security is an imperative for education. Oosthuizen contends that education law brings about a balance between the rights and duties of the role players in the education process, so that it brings about a pleasant environment that leads to the best education possible. This type of environment would be the “*geborgenheit*” that is discussed (Oosthuizen, 2009:18).

All role players in education, from the learner, the parents or guardians of the child, to the teacher and the state, are all at liberty to participate in their respective roles in education, and this ultimately is regulated by education law. The legal principles that relate to this research are the *in loco parentis* principles, *diligens pater familias* and the rules of natural justice.

The legal framework, the case judgements and the relevant literature on the teacher’s duty of care and truancy were thus used for this research into what the legal interpretation of the teachers’ duty of care is as regards learner truancy in schools.

## 1.6.2 Clarification of concepts

A number of terms used in the research need mention and the following are noted:

### **Duty of care**

Duty of care is the obligation to exercise a level of care towards an individual, as is reasonable in all the circumstances, to avoid injury to that individual or his/her property (JISC Legal Information Service – [www.jisclegal.ac.uk](http://www.jisclegal.ac.uk)).

A duty imposed by the law to take care to minimise the risk of harm to another (Department of Education, *Duty of care for students*, 2007).

South African court (*Wynkwart*) held that “the duty of care owed to learners by school authorities has been said to be to take such care of them as a careful father would take of his children.” (*Wynkwart*, 2002).

The South African “courts have held that a duty of care requires a school to minimise the risk of harm to a learner and take active steps to ensure, so far as is reasonably possible, that harm to a learner is prevented” (RSA, 2009:14) (Section 22).

### **Standard of care**

The standard of care expected of teachers is that of a reasonable person in the circumstances of a class teacher.

It is clear from case law that the standard of care expected is the ordinary skills of a competent professional, the skill and care of a reasonable teacher (National Union of Teachers, 2003).

The duty of care that is owed to learners taking part in sport has a close link to delictual liability. When courts have to make decisions regarding holding an educator-coach liable for injuries, a higher standard of care is expected, as educator-coaches are better qualified and experienced and should know the inherent dangers in sport (Rossouw, 2004:39).

## **Pastoral duty**

Pastoral care is a holistic approach by which the school attempts to provide for the care and welfare of individual learners, addressing their personal, social, emotional, physical and intellectual needs in order that each might participate fully and gain maximum benefit from everything the school has to offer (Falkirk Council, 2003).

The Norms and Standards for Teachers (RSA, 2000) mentioned earlier are duplicated for this pastoral duty (cf.19).The list gives a description of what it means to be a competent teacher in the seven roles of a teacher which are:

- 1) *Learning mediator;*
- 2) *Interpreter and designer of learning programmes and materials;*
- 3) *Leader, administrator and manager;*
- 4) *Scholar, researcher and lifelong learner;*
- 5) *Community, citizenship and pastoral role;*
- 6) *Assessor; and*
- 7) *Learning area/subject/discipline/phase specialist*

(RSA, 2000:13)

## ***In loco parentis***

The term is used for the duty of care owed by teachers in South Africa when they take over the duty of care from the parents, when learners come to schools (Joubert & Prinsloo, 2001:140).

*In loco parentis* means acting in the place of a parent who has entrusted the custody and control of his/her child to a teacher or another person during normal intramural or extramural activities (DOE, 2002:6).

Literally translated *in loco parentis* means “in place of the parent” according to South African common law (Oosthuizen & De Wet, 2004: 66).

“Though the term *in loco parentis* translated to English means “*in place of the parent,*” the courts have never intended that school authorities or teachers stand fully in the place of parents in relationship to their children. Most importantly, *in loco parentis*, as a common-law concept, vests the teacher with the responsibility of protecting the interests of the child in the school environment.



The prerogatives of school officials and teachers are circumscribed by and limited to school functions and activities” in the USA context. (Alexander & Alexander, 2005:433).

### **Truancy**

Learners absent from school without permission from the principal or teachers. Other terms used for truancy are mitching, skiving and dodging (Reid, 1985:3). Truancy generally refers to unexcused, illegal absence of school linked to lack of parental knowledge about the behaviour (Steinhausen, Müller & Metzke, 2008).

### **Absenteeism**

The persistent, absent behaviour of a learner in a school without an adequate reason or away from school illegally, without permission and with or without parental consent (Reid, 1985:6).

A truant is a child who is absent on his own initiative without his parent’s permission (Tyerman, as quoted in Reid, 1985).

Absent – A learner is deemed to be absent from school when the learner is not marked present in class or not participating in a school activity when the register is marked (DoE, 1996).

School absenteeism is a broader term that includes both school refusal and truancy (Steinhausen, Müller & Metzke, 2008).

### **Unexcused absence/truancy**

Unexcused absence or truancy is the type of truancy that occurs when a learner is absent without an excuse by the parent/guardian, or if the learner leaves school or a class without permission of the teacher or administrator in charge. This truancy will be considered to be an unexcused absence and the student shall be considered truant (Seeley, 2006).

### **Truancy/Disallowed absence**

Truancy/Disallowed absence is the type of truancy that occurs when a learner goes absent during a lesson without a reason that is considered valid by the school.

## Allowed absence

Allowed absence is the type of truancy that occurs when the learner is absent during a lesson but with a reason that is regarded as valid by the school.

## Law of Delict

“The role of the law of delict is to indicate which interests are recognised by the law, under what circumstances they are protected against infringement (that is, when the impairment of a legally recognised interest constitutes a delict) and how such a disturbance in the harmonious balance of interests may be restored”. The fundamental premise in law is that damage (harm) rests where it falls, that is, each person must bear the damage he suffers (*res perit domino*). This continues, “where damage arises from a delict, the wrongdoer is legally obliged to compensate the aggrieved party” (Neethling, Potgieter & Visser, 2006:3).

A delict is the act of a person that in a wrongful and culpable way causes harm to another. Five requirements or elements are necessary and must be present to classify the act as a delict and they are an act must have taken place, wrongfulness, fault, harm and causation. There can be no delict and thus no liability, should any one of these elements be missing. A generalising approach is thus followed in South Africa where delictual liability is concerned, unlike the English and Roman law of delict which makes use of a group of separate delicts (torts) each with its own rules. A system which makes use of these general principles of delictual liability as in the South African context can accommodate changing circumstances and new situations more easily (Neethling, Potgieter & Visser, 2006:3). This aspect of changing circumstances would fit in well with how case law involving court cases can be adapted or applied in new ways in the South African law of delict. The South African system could thus recognise and protect individual interests as found in modern times (Neethling *et al.* 2006:5).

The generalising approach is made up of three pillars or actions and they are those that cause patrimonial damage (*damnum injuria datum*), those that cause injury to personality (*injuria*) and the action for pain and suffering which allows for compensation to be claimed for wrongful, negligent or intentional harm to be

claimed. Although assault, insult, defamation and others have emerged in a specific form it is still seen as a form of the broad delict (Neethling *et al.* 2006:5).

### **Negligent act**

Fault (intent and negligence) refers to the attitude or conduct of one who has acted wrongfully for the purpose of the law of delict. By being negligent, a person is blamed for conduct or an attitude of carelessness, thoughtlessness or impudence as he/she has failed to keep to/uphold the standard of care legally required of them. The measure used to establish whether a person has acted carelessly or negligently is the objective standard of the reasonable person. (*Bonus paterfamilias*) “The defendant is negligent if the reasonable person in his position would have acted differently; and according to the courts the reasonable person would have acted differently if the unlawful causing of damage was reasonably foreseeable and preventable” (Neethling *et al.* 2006:117).

Persons are negligent if their conduct does not hold to the standard of care that is legally required of them according to the position they find themselves (Botha, Smit & Oosthuizen, 2009:192).

A negligent act is an unintentional but careless act which results in loss (JISC Legal Information Service).

### **1.7 Research design**

According to McMillan and Schumacher (2001:30) “*a research design describes the procedures for conducting the study, including when, from whom, and under what conditions the data will be obtained.*” Cohen, Manion and Morrison (2000:75) state that “*the process of operationalisation is critical for effective research.*” The research wants a general research purpose that can be turned into something definite so that specific answers to the research can be given. Cohen *et al.* (2000:75) continue by saying that the person doing the research has as the main aim to break the general down into a course of action that will provide the specific answers that are needed.

Merriam (2009:66) indicates that each person has been raised in a specific way and has their specific language and theories. As such, this will provide the way in

which you will see the world around you. It will also provide you with the insight to want to study the things around you that you are curious about, and will thus ensure that you ask the necessary questions that will provide the answers for your study.

Oosthuizen (2009: 10) points out that the research design could be seen as the drawings and plans used in the erection of a building. He thus contends that the research design “*entails the blueprint of a particular research project.*”

Merriam (2009:67) postulates that the framework of the study “*will draw upon the concepts, terms, definitions, models, and theories of a particular literature base and disciplinary orientation.*” Merriam continues by suggesting that “*the framework will generate the problem of the study, specific research questions, data collection and analysis techniques, and how you will interpret your findings.*”

The purpose of my research would thus be:

1. To provide the *operation* (my emphasis) and hence the research process;
2. To introduce the research design and methodology;
3. To state the limitations of the study.

The main areas focused on in this chapter include:

- a) The research design;
- b) The population;
- c) The sample and the sampling procedure;
- d) The limitations of the study.

### **1.7.1 Epistemology**

Reasoning, according to Cohen, Manion and Morrison (2000:4), is one of the ways used by people to understand the world around them. It consists of a number of different kinds of reasoning but for the benefits of this research, use was made of inductive reasoning as postulated by Francis Bacon (Cohen *et al.* 2000:4). This entails the increased use of the observational basis of science. This

would enable the study of a number of individual participants, which in turn would lead to data and eventually to an overview which can be reached for the study.

Cohen *et al.* (2000:6) mention assumptions identified by Burrell and Morgan, which concern the very basis of knowledge – its nature and forms, how it can be acquired and how it can be communicated to others. Cohen *et al.* (2000:6) mention that to see knowledge as personal, subjective and unique creates an atmosphere where the researcher is steered into an involvement with the participants. That was the way in which this research would function through the interviews, and hence an anti-positivist or subjectivist approach for the study was used as the researcher sees knowledge as personal, subjective and unique and this would lead to an involvement with the participants during the interviews (Cohen *et al.* 2000:6). The study made use of an interpretive paradigm as it is characterised by a concern for the individual and to understand the subjective world of human experience. (Cohen *et al.* 2000:22) The use of this interpretive paradigm would thus be used to acquire, know and discover the knowledge of the duty of care of teachers and the truancy of learners in schools.

### **1.7.2 Research paradigm**

In view of the research focus it was decided to use a qualitative rather than a quantitative research paradigm as well as a legal framework. The researcher was chiefly the collector of the data through interviews, and used an inductive position of inferences while attempting to get meaning from the interviews. The inductive position allowed for the generalisation from the sample used to the target population (Creswell, 2002:213). You select people or sites based on them being able to help you understand the phenomenon as it will emerge through a detailed understanding of the people or the site (Creswell, 2002:213). Semi-structured interviews were used while discussing the research questions and the data comes mostly from the interviews. The initial high inference observations that were done prior to the interviews that were conducted as well as the literature studied on duty of care and truancy sparked the interest in the study.

## 1.8 Data collection and analysis

This section will discuss the data collection, the population, the sampling procedure, the mode of enquiry, the recording of data, the analysis of the data and its relevance. (cf. 141-147)

### 1.8.1 Data collection

The data collection was done through qualitative collection techniques using a number of methods. Firstly, to pique the interest of the researcher, numerous newspaper articles from various newspapers which specifically high light the possible challenges facing teachers and schools such as negligence, school safety, the duty of care and truancy had been collected and noted. Current court cases and settlements of cases in South Africa as well as countries such as England, North America and Australia and others were useful as they highlighted current trends at schools.

Secondly, I interviewed principals or management and one PL1 teacher of seven schools, in two broad categories of advantaged urban schools as opposed to disadvantaged township schools. A number of questions were set up by the researcher on aspects which could prove relevant to the study such as the duty of care of teachers, safety and truancy of learners and the “*in loco parentis*” principle, the teachers understanding of their roles and responsibilities and understanding of the law, school safety policies, school codes of conduct and truancy at schools, as well as discipline of both teachers and learners. Participants were also invited to share some of their experiences about incidents which had a bearing on the duty of care of teachers which could impact on school safety and truancy, and the roles of the participants in these activities at their schools. This in turn led into the next section, which was discussing the opinions of a lawyer at the Education Department dealing with legal matters at the North West Department of Education about their viewpoint on the duty of care of teachers.

Lastly, one judge at the Mmabatho High Court was approached to make an input into how he views the duty of care of teachers at schools and what constitutes the findings of judges on truancy and the duty of care of teachers in practice in court cases. The data was obtained through the interviews conducted in this way.

### **1.8.2 Population - sites**

My population consisted of principals or management and teachers from schools in the North West Province who are presently teaching at public schools as the participants would be able to provide their own lived experience within those schools. However, only seven schools were targeted as the researcher wanted to discover from the participants selected where the most data can be learned. The researcher had decided to make use of purposive sampling and convenience sampling due to insight that could be gained from those schools as well as using the schools that were closest to the workplace of the researcher. The focus on this population was to get the experiences of the staff at the identified schools and their role at the school as regards the duty of care and truancy. The interviews at the schools were conducted to obtain data concerning truancy and the duty of care due to the *in loco parentis* role of care of teachers in the schools. The data from the interviews with the teachers, the lawyer at the department of education and after that, from the judge in his court were to provide the relevant data for analysis.

### **1.8.3 Sampling procedure**

Merriam (2009:77) discusses two basic types of samples that could be collected, that of probability (simple random sampling) and non-probability (purposive) sampling. The first allows the researcher to generalise results from the selected sample to the whole population. This generalisation is not normally a goal of qualitative research. The study made use of non-probability sampling, called purposive sampling, and convenience sampling.

Non-probability sampling was used as the data obtained could be used to solve qualitative problems, such as discovering what occurs in schools. Using non-

probability sampling for the study thus allowed for discovering what happens in schools and also the implications thereof as experienced by teachers from what happens at schools. Purposive sampling involved the collection of data from participants that were satisfactory to my needs (Cohen *et al.* 2000:103).

Convenience sampling, another form of purposive sampling was also used as I was able to choose the nearest individuals to act as participants, and it gave me easy access to the participants. This involved the identification of specific schools in and around our immediate area as it fitted in with the two types of sampling.

Convenience sampling would facilitate easier collection of data as the area was known to the researcher, and the sites were available and accessible to the researcher (Merriam, 2009:79). It would also place the participants within reach to conduct the interviews after the school day ends. Purposive sampling was specifically used as the individuals were “purposely” selected as they would be in the best position to provide data that was rich with descriptions of the experience they had in their position. Convenience sampling was also used for the study as the sites were selected due the proximity to the researcher and was thus convenient. (cf.144)

The criteria used for this sampling at each school were that one teacher had to be from management and the other a PL1 teacher while a second criterion was that they should have been at the school for about three to five years. No criteria were used for the lawyer and the judge except that the two were selected due to the convenience of them being available for interviewing.

### **1.8.3.1 Conducting the interviews**

High Inference observations influenced the interviews.

**1.8.3.1.1 High inference observations** – These observations were conducted over time by the researcher in his movements around the area where he observed learners moving around the area during school time, but out of schools. This information was used to make judgements or inferences based on the



observed behaviour and then translated into questions that would drive the collection of data during the interviews (McMillan & Schumacher, 2001:273).

**1.8.3.1.2 Interviews** – Permission to conduct the interviews in schools around the area was obtained from the North West Department of Basic Education (cf. Annexure F). These interviews were conducted at seven schools ranging from advantaged to disadvantaged schools. The two members of staff at each school were selected after a meeting with the principal during which a number of staff that fit the criteria were discussed and ultimately the two selected. The criteria were that both staff members were to have been at the school for at least three to five years and the requirement that one had to be on the management team while the other had to be a post level one teacher. Two primary schools and five high schools were sampled and this decision was arrived at after the observation where most of the movement of learners out of the school yard during school time, was observed at high schools. However, primary schools could not be excluded and hence two were visited. These interviews were mostly conducted in the afternoon after school so that there was as little interference as possible in the normal running of the school.

Thereafter permission was also sought from the North West Department of Basic Education to interview one or two members of the legal section of the department and it was hoped that they would preferably be lawyers. (cf. Annexure G) A further interview was then conducted with a judge in the High Court of Mmabatho. The approach was qualitative and a combination of structured and semi-structured questions was used in the attempt to gather the data.

Cohen, Manion and Morrison (2000:270) cite Lincoln and Guba (1985:269) who suggest that the structured interview is of use when the researcher is aware of what he/she does not know and is therefore able to frame questions that will supply the knowledge required. On the other hand, the semi-structured or unstructured interview is of use when the researcher is not aware of what he/she does not know and therefore relies on the participants to fill in that information. The semi-structured interview enables the participants at the schools to project their own ways of defining the world at their schools. It permits flexibility and

allows the participants to pursue issues and matters that might not have been included in a structured interview. The questions and the responses were tape recorded during the interviews for ease and accuracy of the data.

#### **1.8.4 Ethical issues**

Some of the issues taken into consideration in this study were informing all concerned about the study, sharing information with the participants, being respectful of the learning site, using ethical interview practices, maintaining confidentiality, collaborating with participants, and refraining from deceptive practices (Creswell, 2002:238). Cohen, Manion and Morrison, (2000:292) mention Kvale who indicated that three main areas can be identified in ethical issues. They are informed consent, confidentiality and the consequences of the interviews. Issues such as who gives the consent, how the interview will help or harm the participants are just some questions that can be raised.

McMillan and Schumacher, (2001:421) on the other hand discuss confidentiality and anonymity as two issues that are important during research ethics. The participants in a study should not be identifiable in print and use should be made of locations and settings that are not easily identifiable. McMillan and Schumacher, (2001:421) indicate that researchers have a dual responsibility: to protect participants' confidences from other persons in the setting who might be able to identify them and the protection of the participants from the reading public. McMillan and Schumacher, (2001:422) also mention the importance of protecting field notes. The study did not involve any learners from the schools concerned so special ethical issues in that regard were not necessary.

All information obtained was treated as confidential and this must be ensured when obtaining permission prior to any visit to the schools. The interviews were conducted at the schools as it was seen as the most comfortable setting for the participant, despite the school being identified as a possible source of data. Firstly, permission for the study was obtained from the North West Department of Basic Education to conduct the study and the study did not commence until this permission was obtained. Secondly, permission was also obtained from the

department to interview staff members in the legal section of the department. Thirdly, permission was obtained from the principal of each school as well as from the participants involved in the study. At the initial introductory meeting, participants were informed about the fact that they were taking part in a study and also told what the study was about.

A participation letter was given to each participant before the interview commenced and they were informed that any information from the interview would be treated as confidential, that the names of participants and schools would be kept confidential, while they were free to withdraw at any time, should they wish to do so. (cf. Annexure E)

All the participants were adults, and the schools were not disrupted or learners left without their class teachers. Interviews took place at a time and place suiting the stakeholders in the school, and most were conducted after school hours. However, one or two had to be conducted during the periods that the teachers were free at school and permission had to be obtained from the principal of the school as well as the immediate superior of the researcher. Meetings were also set up at the convenience of the other participants who were not in the schools.

A separate set of questions around the viewpoints of what constitutes a duty of care of teachers and information about truancy was drawn up for the different role players. (cf. Annexure A-D) A number of different scenarios which involve action from the different role players were also mentioned and the participants were asked how they would most likely react to those situations. This included possible data on court cases that could be sensitive, especially pending cases, and this would be protected.

### **1.9 Mode of enquiry**

In the literature reviewed (cf. Chapter 2-4), no clear indication appears to emerge which stipulates what is meant about the duty of care regarding learner truancy. However, the literature does indicate that the pastoral care of teachers as well as the standard thereof can be linked to the duty of care. (cf. Chapter 3) An

exploratory study was needed through interviews conducted at the schools, as this was used to examine the legal interpretation of the duty of care regarding learner truancy from that perspective. The interviews with the lawyer and the judge were used to provide insight into the legal interpretation of the duty of care of teachers regarding learner truancy from both the lawyer and the judge's point of view. The social experiences of the participants in their school would help in interpreting and clarifying what the duty of care of teachers regarding learner truancy meant to them. Their answers from the questions put to them, their interpretation and experience of the duty of care of teachers regarding learner truancy in schools and the legal experiences of the lawyer and the judge would add to the legal interpretation of the duty of care of teachers and learner truancy. The interviews were thus used to glean the required data from the people who were at the schools with these issues regarding the duty of care and truancy such as teachers, principals, lawyers and judges. The resultant answers to the questions were recorded during the interviews.

According to Silverman (2006:118), *"interviewers and interviewees are always actively engaged in constructing meaning"*. Using constructivism, a researcher can *"take as their topic how meaning is mutually constructed"*. Silverman indicates that with constructivism, data would be mutually constructed, as any interview could be treated as a topic. It would allow us to see the work carried out by both interviewer and interviewee, without losing sight of the cultural resources which they draw upon (Silverman, 2006:148). The implications for this study is that it would allow for the mutually constructed data from both researcher and participant while allowing the participant to still construct meaning from his/her school and how it is influenced by the community, the parents and the teachers at that school. The main focus of this study however, although drawing from constructivism would be interpretive, using qualitative research and a legal framework. (cf. chapter 2)

Merriam, (2009:13) quotes Denzin and Lincoln (2005) who indicate that *"qualitative research is a situated activity that locates the observer in the world."* Denzin and Lincoln continue by saying that *"qualitative researcher's study things in their natural settings, attempting to make sense of, or interpret, phenomena in*

terms of the meanings people bring to them.” Merriam (2009:13) states on the other hand, that qualitative researchers are interested in understanding the meaning people have constructed, or rather, how people make sense of their world.

The main purpose of qualitative research according to Merriam, (2009:14) would be the understanding of the phenomenon of interest from the participants’ viewpoint and not the researcher’s. A second characteristic of qualitative research is that the researcher would be the main mechanism for data collection and analysis (Merriam, 2009:15). A third vital characteristic of qualitative research is that it would be inductive as the researcher would be gathering data to build theories or concepts through being in the field. The data would be in the form of quotes from documents, participant interviews and would be descriptive in nature. The sample selection would be purposeful and small while a large amount of time would be spent in the natural setting in the schools.

Cohen, *et al.* (2000:267) quote Kitwood who states that “*each participant in an interview will define the situation in a particular way*”. These conceptions are that it is a potential means of pure information transfer and collection. Secondly, that the interview is a transaction which will have bias that must be controlled and recognised. Thirdly, that the interview will have many of the everyday features seen in life (Cohen, *et al.* 2000:267).

Both Cohen *et al.* (2000:267) and Silverman (2006) cite the thoughts of Cicourel (1964) about interviews and the limits of interviews. Some of these thoughts include that all interviews differ from each other; interviewees may feel uncomfortable and use avoidance tactics if they feel uneasy about the questions while meaning could be interpreted in different ways between people as it could be clear to one and vague for the other. Lastly, that it is not always possible to control every aspect of an encounter (Cohen, *et al.* 2000:267).

While both Cohen *et al.* (2000:268) and Silverman (2006) mention that interviews have their own problems, Cohen *et al.* (2000:268) cite Barker and Johnson (1998:230) who “*argue that the interview is a particular medium for enacting or*

*displaying people's knowledge of cultural forms, as questions, far from being neutral, are couched in the cultural repertoires of all participants, indicating how people make sense of their social world and of each other" (Cohen et al. 2000: 268).*

I was thus trying to consider interviews without having any set or prior hypothesis and used the interviews to try and get data from the participants that would set out categories to illuminate the data about how truancy, the duty of care and learner truancy in schools are perceived by the different role players. Some of the purposes of my using interviews (Cohen *et al.* 2000) and observations were to collect data, and sample opinions from participants about the duty of care of teachers and truancy.

Without this data, with which to view a particular enquiry to emerge from the data through the interviews, it would appear that a qualitative method can be used to explore areas where little is known. Creswell (2002:46) mentions that qualitative research is a type of educational research because the researcher relies on the views of participants. General questions are normally asked and data is collected consisting mostly of words (or text) from participants. The researcher thus obtains the data which can be used to describe and analyse these words or themes; and conduct the enquiry in a subjective and biased manner.

The interviews would also help in getting details about feelings or thought processes from the participants about the duty of care and truancy that could not be obtained through other methods. The interviews would also allow for exploring the data generated by the participants and a detailed outline of the term duty of care of teachers and its use in schools. It was thus best to use qualitative research as it allowed for exploration of the variables mentioned in interviews by the role players. Creswell (2002: 61) mentions that a number of individuals could be examined to explore the central way in which individuals view something, and thus use that to develop the data.

The research method thus allowed the theory to develop from the data. This was then an inductive approach which would allow the data to go from the specific to

the more general. The process would involve collecting mainly interview data, developing categories (or themes) of information, and ending with a model that shows the general explanation of the duty of care of teachers and the use thereof in schools around truancy. Some types of questions mentioned by Merriam (2009:96) were those of Patton (2002) who discusses six types of questions, some of which I used in my interviews.

There were experience and behaviour questions, where you look at the person's activities, behaviour and so on, knowledge questions, where you try and get the participants actual knowledge about situations, and opinions and values questions, which would generate answers which will give you a person's beliefs and opinions. There was also background or demographic questions, which all interviews normally contain and deal with age, education, years in teaching and so on. The interviews would thus start with this interpretive paradigm.

### **1.10 Recording of data**

Initially, casual observations were done to give an overall impression of the safety or truancy aspect at schools in the neighbourhood after the truant behaviour of learners was noticed. Most of the data, however, was on tapes as all participants were asked to allow taping of the interviews, and these interviews were to be analysed and then coded at will later on. Follow-up questions were to be done to clarify issues that were unclear in the initial questions, if necessary.

### **1.11 Validity and reliability**

Validity is a vital component for effective research. Earlier forms of validity took the view that it was a demonstration that a particular instrument in fact measures what it says it measures (Cohen, *et al.* 2000:105). In qualitative research in recent time validity could be assured through the honesty, depth, richness and scope of the data obtained, the types of participants and the objectivity of the researcher (Cohen, *et al.* 2000:105). There are many types of validity such as internal and external validity, content validity and others (Cohen, *et al.* 2000:105). In research the researcher must attempt to minimise invalidity and maximise

validity. Cohen, *et al.* (2000:124) cite Kitwood, who states that the extent to which “reliability” is enhanced by rationalisation, would cause “validity” to decrease. This simply implies that increased control to enhance reliability would inevitably lead to validity decreasing.

The main purpose of using an interview in research is that it is believed that in an “*interpersonal encounter*” people are more likely to disclose aspects of themselves, their thoughts, their feelings and values, than they would in a less humane situation. At least for some purposes, it is necessary to generate a kind of conversation in which the participant feels at ease. In other words, the human element in the interview is necessary for its validity.

Merriam (2009:221) postulates that “traditionally reliability is the extent to which research findings can be replicated.” Cohen, *et al.* (2000:121) on the other hand, indicates that validity in interviews is often subjected to criticism as bias and leading questions could compromise the data. Convergent validity or validity that can be compared with another measure which has already been used is one way of validating interview measures to try to confirm the interview measures used. Should the two measures agree, it can be assumed that the validity of the interview is comparable with the proven validity of the other measure (Cohen, *et al.* 2000:121).

McMillan and Schumacher (2001:407) state that validity refers to the degree to which the explanations of phenomena match the realities of the world. The term posits that the validity of qualitative designs would be the degree to which the interpretations and concepts have mutual meanings between the participants and the researcher. This would thus be very beneficial as both researcher and most participants were from an education background at schools.

McMillan and Schumacher (2001:407) also maintain that validity includes both internal validity (causal inferences) and external validity (generalisability), and issues of objectivity and reliability. Qualitative research uses many different ways of developing knowledge and gathering of the data in order to enhance validity. Two methods used in this study included strategies such as participant verbatim



language, and mechanically recorded data through use of a tape recorder (McMillan & Schumacher, 2001:407).

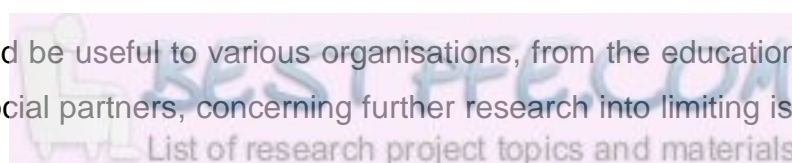
Replication of a qualitative study may not yield the same results as there could be many interpretations of the same data. The aim of the research would be whether the data collected is consistent with the results. It would be more valid if any follow-up research would be able to replicate the results obtained but it is not necessarily a problem as human behaviour is not always static (Merriam, 2009:221).

Triangulation is one of the strategies used by the researcher to try and increase the validity of the study. Merriam (2009:215) cites Denzin's discussion on triangulation where mention is made of four types of triangulation, namely the use of multiple methods, multiple sources of data, multiple investigators or multiple theories to confirm any emerging findings from the data. Multiple methods of data collection were employed for this study as what was said in the interviews could be checked against what was observed on the sites, what was read in the media, the court cases, the literature about the phenomena as well as the different accounts of the participants.

There have thus been a variety of methods used in this study. Firstly, use was made of observations in the vicinity of schools in the area which initially sparked the interest in the study and this was followed up by interviews with the role players, which were recorded. This was followed by an interpretation of the documents used in the interpretation of the legal framework, and a search of the literature used in the study. Triangulation would be possible when a variety of methods of data collection are used and in this case, with the observations, interviews, documents and law cases, this would ensure reliable data through detail, honesty and situation specific interviews.

## **1.12 Relevance**

The research could be useful to various organisations, from the education sector and schools, to social partners, concerning further research into limiting issues of



concern that might be prevalent in the causes of truancy. The legal interpretation of the duty of care of teachers could also be particularly relevant to ensure that teachers, management in schools as well as school governing bodies as well as education departments are on board with whatever is required from teachers in school concerning their duty of care toward learners regarding learner truancy. There may be other events and concerns at schools that might be applicable, due to the duty of care of teachers that could be addressed by the findings from this study. Misconceptions regarding a duty of care of teachers in schools and national and provincial education departments would however, be the main contribution, especially as it relates to truancy. It is hoped that with this study the findings would help identify and reduce the issue of learner truancy and ensure that the teacher's duty of care addresses this to a large extent.

### **1.13 Division of chapters**

The study was divided into seven chapters according to the following:

#### **Chapter 1: Introduction and Orientation**

This chapter consists of the introduction, the background, the problem statement, the aims of the study, legal interpretation, critical questions, a brief overview of the research methodology and specific ethical aspects.

#### **Chapter 2: Legal framework for interpreting the duty of care**

This chapter will give an interpretation of the legal framework by looking at the Constitution and other applicable legislative Acts and regulations.

#### **Chapter 3: The duty of care of teachers – an overview**

This chapter will review the literature relevant to the study of teachers' duty of care and pastoral care.

#### **Chapter 4: Learner truancy: an overview**

This chapter will contain the review of the literature on truancy in schools.

### **Chapter 5:** Empirical Research design

This chapter will outline and concentrate on the research design that formed the backbone to the study.

### **Chapter 6:** Discussion of research findings

This chapter will contain the findings of the research and the explanation of these findings.

### **Chapter 7:** Conclusions, contribution of this study and recommendations

This chapter will discuss the research findings, contributions of the study and make recommendations.

## **1.14 CONCLUSION**

Chapter 1 provides a brief overview of the matters that will be looked into for the research. It stresses the importance of the legal framework put in place through the Constitution and the other policies and Acts to be discussed. It also stresses the problems of teachers being faced with uncertainty in their duty of care. It mentions the problems still faced through not keeping to the legal frameworks that have been put into place according to the rights bestowed on learners by the Constitution and the South African Schools Act and other legislation, to ensure that learners get the education they deserve in schools.

An interpretation of the legal framework will follow in Chapter 2. The next chapters will include literature surveys dealing with the concept of learner safety, through an interrogation of the duty of care. Then the truancy of learners will be dealt with.

## Chapter 2

### Legal framework for interpreting the duty of care

#### 2.1 Introduction

*“Consistent with the internationally accepted norms in the various covenants, leaders must take steps to have education explicitly recognised and safeguarded as a fundamental human right for all learners. In other words, all nations must develop laws and policies designed to protect and enhance the rights of all students regardless of their ethnicity, gender, race, and/or religion. Insofar as this can be a major challenge in parts of the world that have been reluctant to extend full rights to historically underrepresented groups such as women, religious, and ethnic minorities, political and educational leaders in particular must show their mettle if they are to help their citizens to reach their full potential.”* Russo (2010:8) (Adapted)

The above quotation clearly stipulates the direction that the South African government should take or was required to follow since 1994 to ensure that the citizens of the country reach their “full potential” given the past history of the country. (cf.1)

Our country is a young democracy, having come into its own in 1994 at the advent of democracy. However, as part of this democracy the country had to set up and adopt a new Constitution, and then passing new legislation to run the country in all the spheres that make up the government. In so doing, the country followed in the footsteps of other countries that had gone the same way such as Namibia and Zimbabwe.

Numerous authors articulate the need for safety in our schools in order to educate the learners of this country (Joubert, 2009; Netshitahame & van Vollenhoven, 2002; Prinsloo, 2005). Kader Asmal in a letter that introduces the Signposts for Safe Schools (1999) states that *“we cannot educate, nor can we contribute to the*

*realisation of a prosperous future for our country, if we attempt to do so without ensuring a safe and nurturing environment for educators and learners.”* This safety of learners and teachers mentioned above encompasses the topics under discussion, of truancy in schools and the teachers’ duty of care and pastoral duty, as they have a direct link to the safety and discipline of learners in schools.

Prinsloo (2005:5) states that new legislation was passed to ensure that learners could attend schools in relative safety, such as the Children’s Act, 2005 (Act 38 of 2005); the Domestic Violence Act, 1998 (Act 116 of 1998); the South African Schools Act, 1996 (Act 84 of 1996) and the Occupational Health and Safety Act, 1993 (Act 85 of 1993). These Acts were set up to address the concerns around the safety and security of learners and teachers in South African schools.

South Africa, according to Prinsloo (2005:5), is a member of the United Nations Convention on the Rights of the Child, and of the African Charter on the Rights and Welfare of the Child. The measures adopted to safeguard learners ensure firstly, the passing of laws to protect the child, and secondly, that learners in schools are treated well and their rights respected.

Numerous newspaper articles mentioned in the previous chapter, however, indicate that this safety and these rights in schools are relative and often do not protect learners and teachers. Oosthuizen (2005:69) mentions litigations that have taken place since the 1920’s, and indicates that in the past ten years, litigations have increased, although many of them were settled out of court, thus not ending in the courts.

Rossouw (2004:28) discusses the aspect of education law versus sport law and states that there is a growing tendency in this phenomenon of legal actions world-wide but that in South Africa, due to the introduction of the Constitution of South African, Act 108 of 1996 (RSA,1996), there has been an enhanced awareness of the importance of the law.

Joubert (2007:108) states that other programmes were also introduced for education in schools. These are the Tirisano plan, which incorporated six programmes, one of

which was the Safe School Project (Asmal, 1999). The Regulations for Safety Measures at Public Schools was also introduced in 2001, and the Amendment of the Safety Regulations in 2006 (DoE, 2006). These all had, as their main focus, the development of policies for safety in schools.

## **2.2 Constitution of the Republic of South Africa, 1996 (hereafter Constitution)**

Shortly before the democratic government took over in 1994, the citizens of South Africa started the process of drawing up negotiations to change the country into a constitutional democracy. This led to an interim Constitution in 1993 and ultimately the final Constitution which came into being in 1997 (Joubert, 2008:14). This Constitution applies to all law and is unusual as it is the supreme law of the country, therefore no other law or Act may be inconsistent with it as quoted in the following, *“The Bill of rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.”* This means that the Constitutional Court or other courts may test the validity of any other South African law in terms of the Constitution (Oosthuizen, Roos, Smit & Rossouw, 2009:26).

The Constitution is thus the supreme law in South Africa and supersedes any other law or any behaviour that is not consistent with it. The courts have the right to test any government actions and laws made, to see whether they are consistent with the Constitution. Our country is a democracy and this democracy is guaranteed in the Constitution. A further point to mention is that the rule of law exists in our country, and this is made up of rules which set out the ways in which people in various communities must act. The rule of law is created by legislation, common law, indigenous law and the courts when court judgements are made. This rule of law is *“a founding principle of the constitution”* (Joubert, 2008:6). It means that no person is above the law and no person could be punished except for a clear breach of the law. The rule of law also rests on the principle of equality before the law, and every person is subject to the law and the authority of the courts (Joubert, 2008:6).

A legal framework for discipline in schools is set out by Joubert, de Waal and Rossouw (2004:79) while Prinsloo (2005:5) introduces a legal framework for safe schools which he adapted from a study by Joubert and Prinsloo (2001:96). This

framework can also be used as a legal framework for this study with the inclusion of the Policy on Learner Attendance (DBE, 2010) as an added policy and the duty of care (*in loco parentis*) and the pastoral duty of teachers in schools. (cf. Figure 3 below.) The legal rules of dealing with safety, truancy and the duty of care in schools are thus derived from Chapter 2 in various sections of the Constitution of the Republic of South Africa, 1996 (hereafter Constitution), as well as from national legislation, South African case law, and common law (Prinsloo, 2005:5).

Many sections of the Constitution and the Bill of Rights are applicable to this study, also the duty of care as it pertains to schools, especially with truancy.

This is seen as in the framework that follows in figure 3:

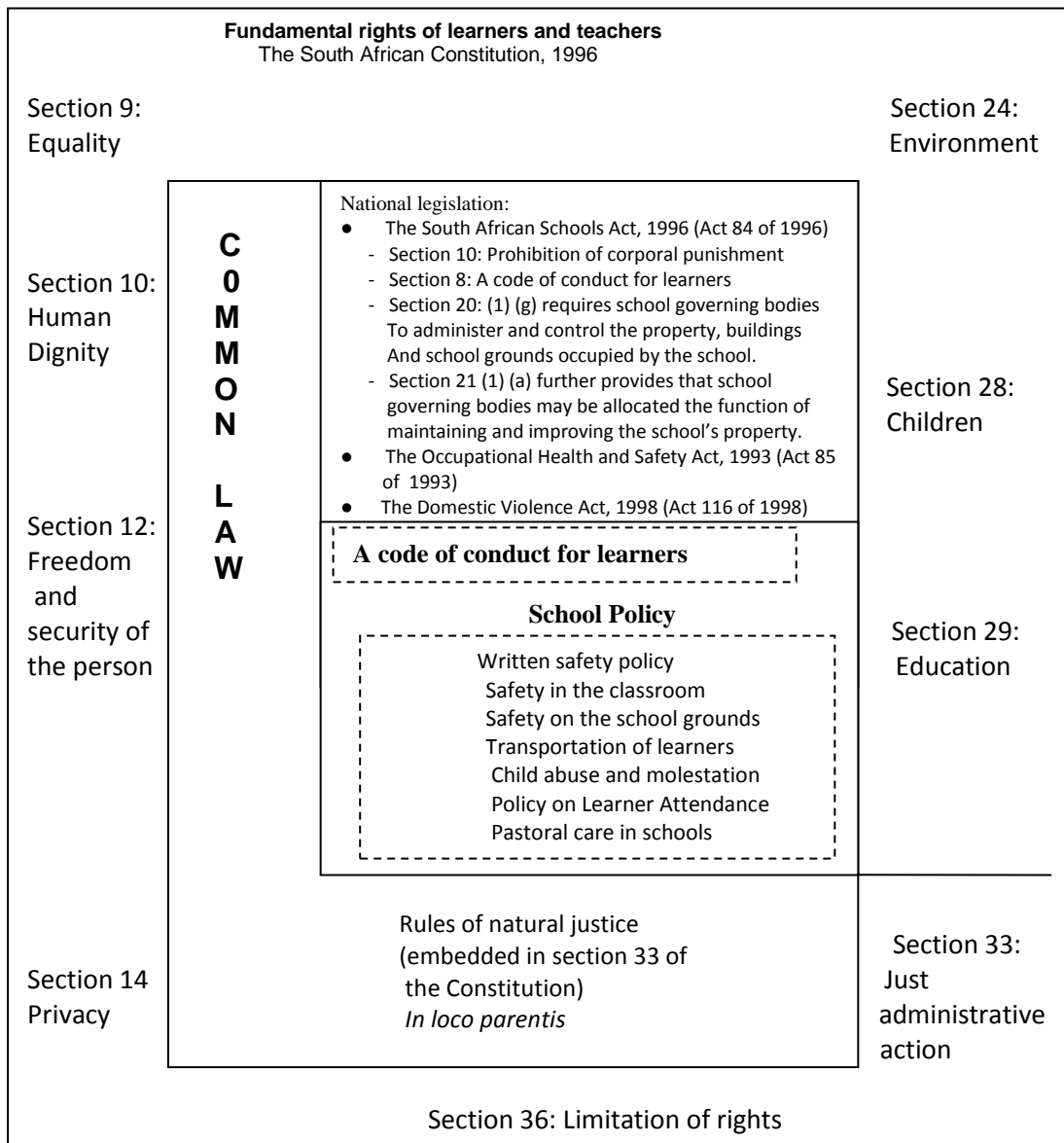


Figure 3. The legal framework for school safety, discipline, truancy and duty of care in South Africa (adapted from Joubert and Prinsloo, 2001:96); (adapted from Prinsloo, 2005:6) and (adapted from Joubert *et al.* 2004)

The Constitution contains many rights that apply to schools and to running them safely. Figure 3 has been adapted to ensure that it shows this framework as espoused by the Constitution, legislation, common law, subordinate legislation and school policy and regulations which apply to education, and to human rights in the country, to ensure that all are safe.

This framework, although applicable to all schools is especially evident in schools where discipline is prevalent and effective learning and teaching can take place in a safe environment. Learners who have their rights valued and are able to be free, free from worries of violence and matters associated with that, can concentrate on the main purpose, which is getting a good education.

Prinsloo (2005:5) contends that a safe school is a healthy school, in that it is physically and psychologically safe. The Bill of Rights, (Section [24]) stipulates that every person has the right to an environment that is not detrimental to health or well-being (RSA, 1996). This right also applies to learners, and in principle protects them from being exposed to harmful environments, including the school (Netshitahame & Van Vollenhoven, 2002:313).

Joubert (2008:6) contends that the legislation, common law and case law creates the rule of law which is one of the “*founding principles*” of the Constitution. This rule of law simply means that no person is above the law, so they can be brought to book if they transgress any of the rules of that country, and this is applicable to all who live in the country.

According to Joubert (2008:15) the basic features of the Constitution include a Bill of Rights in which rights are protected, and a democratic government system with the three spheres of government, and this Constitution brings them together in a bond of helpful governance and public administration. This bond ensures that provincial



education departments and schools are bound to govern according to democratic values and principles enshrined in the Constitution.

Some of the provisions of this Constitution according to Oosthuizen (2005:16) are that it is the supreme authority, 11 official languages found in the country, emphasises the democratic values of (human) dignity, freedom and equality (Section 7(1)). Principles such as privacy to all, freedom of religion and fair labour practices are also contained in other sections of the Bill of Rights from Section 9 to 39. The law points out two types of persons who are indicated by the law, namely the natural person, who is the human being, and the legal person like an organ or an institution. Lastly, the rights of the child are of paramount importance and this ultimately has a direct bearing on the teacher with the stipulation that all have the right to an education.

At the same time the Constitution states that the rights mentioned above are not absolute but could be limited in Section 36 (1) based on certain factors. A further point from the Constitution is that international law must be considered while foreign law could be considered in certain cases in Section 39 (1).

### **2.2.1 Applicability of the Constitution to education**

Some sections of the Constitution and the Bill of Rights are particularly applicable to this legal framework and the study. Section 29 (education) which deals with the right of all to education, grants them this right to an education while section 9 (equality) ensures that all in the country are equal before the law and has the right to equal protection and benefit of the law which includes the right to a basic education and also the right not to be discriminated against in any way (Section 9 [3]). This means that teachers in the country have an important duty to ensure that learners in their care are safe and protected. This is ensured not only by the Constitution but also through the *in loco parentis* principle ascribed to teachers through common law (RSA, 1996).

Various sections in the Constitution lead to safe, disciplined schools, with provisions for policies or the code of conduct or truancy to be drawn up by the Governing Body

which is governing each school. Section 12 deals with the freedom and security of the person, and section 10 with human dignity, while section 14 deals with privacy. This means that every learner in a school should have the right to this freedom, security, human dignity and privacy, learners must be free from violence and intimidation and their privacy should be respected. The following sections of the Constitution are applicable to education, and especially to the duty of care that is exercised in a school (RSA, 1996).

### **2.2.1.1 Section 9 - Equality**

This equality clause not only gives equal rights to all but also ensures that any laws or policies in schools which violate that equality, are against section 9 of the Constitution. The right to equality underlies many other rights ingrained in the Constitution. It protects the equal value of people in the school as well as any law or conduct that could endanger that equal worth. In the school this section relates directly to the equal access to education and the facilities in the school by learners that are present and those that are truant. The teacher in South Africa has an important duty towards the learners and their protection in terms of their *in loco parentis* status. The duty entails that the teacher in schools must foresee the potential dangers to which the learner may be exposed. They need to take the necessary steps to protect learners from any potential harm.

### **2.2.1.2 Section 10 - Human dignity**

This right gives each individual the necessary respect and dignity that is inherent in all other rights. This is especially applicable in education as many situations occur in schools, especially in disciplinary cases as well as the myriad of situations where learners and teachers find themselves on opposite sides, and this is an unequal situation of an adult versus a child. It is through this section that corporal punishment was abolished. The behaviour of truant learners could stem from one of these cases or incidents and hence it would have to fall under the ambit of the educator performing their pastoral role to investigate and where possible, find a remedy.

### **2.2.1.3 Section 12 – Freedom and security of the person**

Firstly, section 12 states that all have the right to freedom and security, and this includes the right not to have their freedom taken away without a good reason, to be

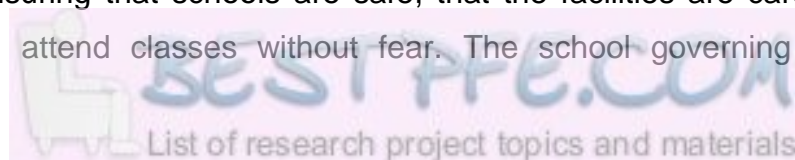
free from violence from different sources, and not to be treated or punished in a cruel way. This right thus gives each individual in a school the opportunity not to be detained without cause and not have them treated in a cruel or shameful way. This is again very applicable in education, especially in matters dealing with punishment in schools. Punishment in schools must come under close scrutiny to ensure that it does not infringe this right. Learners who are truant would have to face censure of some kind according to the code of conduct of the school and the teacher would have to ensure that this censure does not infringe that right of freedom and security of the person.

#### **2.2.1.4 Section 14 - Privacy**

This right of privacy prevents the search of a person's property, possessions or person but this right may be limited in a school situation when backed up by national legislation or in the case of a school code of conduct. However, the purpose of the search should be clear for example, a dangerous object or illegal drug should be searched for that could be putting other learners in danger. In this case, the rights of an individual would be limited as it puts many other learners' rights in danger, learners who want to be in a safe and disciplined school environment. It could be expected by parents that the school and the teachers in that school, would take care of their children in cases involving their education or when they are supposed to be under the care of the school and the school authorities. Truant learners would fall under this category and teachers may be required to search truant learners which could infringe on their rights to privacy.

#### **2.2.1.5 Section 24 - Environment**

This section states that everyone has the right to surroundings that are not harmful to their health and to have the surroundings protected for the benefit of all, both those in the present and those to come. This must take place through reasonable legislative and other measures. This right grants all learners the opportunity to receive education in a safe school environment that is not harmful to their health. School governing bodies have to ensure this through the stipulation that they are responsible for ensuring that schools are safe, that the facilities are cared for and that learners can attend classes without fear. The school governing body will



normally do this through the teachers and management of the school, hence that care of the environment in a school would be directly overseen by the school staff.

#### **2.2.1.6 Section 28 - Children**

This right ensures that each child (those under the age of 18) has a name and identity, and parental care from birth. This right also ensures that learners are protected from harm, and in the second part it states that the child's best interests are to be considered in every matter that concerns that child. Schools and the teachers in them therefore have to look after the interests of these learners in the school context and as such, will have to show that any decision involving such a child, was taken with the best interests of the child in mind. Members of the community, even if it is the school community, have to ensure that all matters where learners are being badly treated have to be reported. This is especially true in instances where learners are being abused and when teachers become aware of this, they are legally obliged to report this in terms of the Children's Act of 2005 and the Domestic Violence Act, 1998 (Act 116 of 1998).

#### **2.2.1.7 Section 29 - Education**

This section of the Constitution grants all individuals in the country, including learners, the right to a basic education, and admission to schools or institutions that can give them this education. Learners are thus guaranteed a basic education by this right, and therefore this implies that the safety and discipline in schools are not in doubt. Teachers in schools take on the role of the parent through their *in loco parentis* role in the school and thus have an obligation to ensure that the right of the learner to that basic education is not compromised. This again, would include learners who absent themselves from school.

#### **2.2.1.8 Section 33 - Just administrative action**

This right ensures that any individual, including learners in schools, is guaranteed fair and just administrative action. This indicates that any disciplinary actions against that person must comply with substantive and procedural fairness (Prinsloo, 2004:7). These rules of natural justice found in section 33 of the Constitution ensure that any action taken against a learner must be reasonable, lawful and fair. The learner is entitled to an education and this education may only be limited if the procedures are

free and fair. This limitation is also covered by section 36 of the Constitution, where a learner's rights can only be limited if they infringe on or endanger the rights of other learners, such as bringing dangerous weapons to school.

Joubert (2008:24) states that the principles of democracy and the inviolability of human rights had to be written into the laws mentioned as these laws are applicable to the everyday world we live in. The dealings between the different role players in schools demand order and harmony for effective education to take place. This allows the building up of administration and management, allocation of duties and giving people the authority to act, setting out structures of authority and setting up the basis of the repercussions, should this authority be usurped. Therefore the main duty of law in education is to ensure peace and co-operation in that place of education, the school.

## **2.3 Legislation applicable to education**

Russo (2010:36) states that it was found in studies, that school law presented school leaders with a way of being more proactive, especially in certain changing fields such as technology. Russo points out that school law is essential for education leaders and the teaching of school law must help accomplish two goals: first, teachers must rely on their knowledge of the law and increase their information on the subject: secondly, school law should provide teachers with enough awareness of the legal implications of situations so they can present a better picture when dealing with the legal structures. Russo (2010:37) contends that school law is a *“dynamic discipline that is constantly evolving, largely via judicial interpretation, to meet the needs of today's schools.”*

### **2.3.1 South African Constitution and policies**

Firstly, in the Constitution of the Republic of South Africa, Section 29 (1a) (RSA, 1996) it clearly states that everyone has the right to a basic education; and to further education, which the state, through reasonable measures, must make progressively available and accessible.

### 2.3.2 South African Schools Act

In Chapter 2 of the South African Schools Act 84 of 1996 (DoE, 1996) on compulsory attendance, it clearly spells out that attendance for learners is compulsory in South African schools. It states that *“every parent must cause every learner for whom he or she is responsible to attend school.* (DoE, 1996:3) This is normally from the age of seven to age fifteen. Section 3 (1) states that parents must ensure that every learner for whom they are responsible must attend. It also states in Section 3 (5) that if a learner who is of school age fails to attend or is not enrolled in a school, the Head of Department must investigate the circumstances of the learner’s absence from school, take appropriate measures to remedy the situation and if that does not work, issue a written notice to the parent of the learner requiring that they ensure that the child attends.

This section also states, that should this directive not be adhered to it must be investigated, remedial action taken and parents, where necessary, cautioned. Section 6 even states the extreme of fines or imprisonment should this attendance not be complied with for the child. This section thus makes it clear that parents and guardians have an obligation to ensure that learners attend school while teachers would have to monitor this attendance in schools.

In Section 3 (6) it spells out that a parent who does not follow the above policy on compulsory attendance is guilty of an offence and that any other persons who make themselves guilty of preventing a child from attending could also be found guilty. This could lead to fines or imprisonment in such situations. It also states in Section 4 that the Head of Department may exempt a learner, entirely, partially or conditionally from compulsory attendance if it is in the best interests of the learner.

Various sections of the South African Schools Act, 1996 (DoE, 1996) (hereafter Schools Act) are examples of how national Acts can ensure safe, disciplined schools. Examples are: corporal punishment was abolished, and Sections 8 (1), 8 (2), 8 (4) and 8 (5) place the obligation on school governing bodies to draw up codes of conduct in schools for learners, learners having to obey those codes of conduct, the codes of conduct having to ensure a safe and disciplined school environment,

while the school governing body must ensure that maintenance is done on school buildings. The code of conduct must also ensure due process for the learner in disciplinary issues and actions, during that process, that encompass the rules of natural justice (DoE, 1996).

The Schools Act makes provision in section 8 of Chapter 2 for a code of conduct which must be drawn up by school governing bodies (DoE, 1996:5). This code of conduct must be aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process (Section 8 (2)). In the section under the Guidelines for the Consideration of Governing bodies in adopting a code of conduct for learners (DoE, 1996:5) it speaks firstly to compulsory attendance in section 4.7.2, but then also in section 5.4 it mentions that the right of learners to basic education places the obligation on them to attend school regularly during school hours (DoE, 1996:3). In section 6.3 it states that parents have the right to take legal action against any teacher, learner or person who unlawfully violates the constitutional rights of their learners by, for example, corporal punishment, injury to a child and so on (DoE, 1996:6).

The learner's right to a safe school environment is again implied by the Occupational Health and Safety Act, 1993 (Act 85 of 1993) (RSA, 1993). This Act does not really apply to schools, but is relevant especially in schools where use is made of various types of tools that could endanger the safety of learners, such as in trade schools.

### **2.3.3 Children's Act**

The Children's Act, (RSA 2005) is an Act that is set up to take care of learners. Under the general principles it points out that the Act is there to ensure that the rights of the child are followed, as set out in the Bill of Rights of South Africa, and ensure that the best interests of the child are seen to, depending on any limitations. It ensures that a children's court can be set up to look into any matter related to the child and Chapter 9, deals with a child in need of care and protection. This is determined when the child is being neglected or degraded by a parent, a care-giver, a person who has "parental responsibilities and rights," or a person under whose

control the child is. These criteria could be used to describe the teacher who has pastoral care of the child or while a child is in the care of a teacher in his or her *in loco parentis* role in a school or on a trip.

Joubert (2008:144) mentions the Children's Act in section 18 (RSA, 2005:25) where various circumstances are given to describe what is meant by the duty of care. Among others are safeguarding the child, protecting the child, guiding and directing the child's education, guiding the child in decisions to be taken by the child, guiding the behaviour of the child in a humane manner, accommodating any special needs the child may have, and ensuring that the best interests of the child are the paramount concern in all matters pertaining to the child.

The Children's Act and the Domestic Violence Act, 1998 (Act 116 of 1998) ensure that learners are protected and that teachers have to report any situation where learners are injured or ill-treated. Teachers are to see that learners are transported safely in terms of the Road Safety Act, 1998 (Act 29 of 1989).

### **2.3.4 National Education Policy Act**

The National Education Policy Act (RSA, 1996), mentions in section 40, on admission policy for ordinary public schools, that parents have an obligation to support their children to attend school regularly. The National Education Policy Act 27 of 1996 further states that regarding instructional time for school subjects the scheduled teaching time for learners in the different grades from grade 1 to grade 7 for the formal school day, will range from 22 hours and 30 minutes in grade 1 to 26 hours and 30 minutes in grade 7. This also applies to high schools. This equates to about 5 hours to 5 hours and 30 minutes per day that learners are required to be in school. (RSA, 1996:32) Hence learners are not to be found wandering around in the streets during these school hours depending on the time the specific school starts and ends.

The duty of care of a teacher is regarded as being *in loco parentis* due to the fact that he/she is the teacher and has been professionally trained to do that specific function. This term of *in loco parentis* literally means in place of the parent



(Oosthuizen & De Wet, 2005:66). This duty of care brings into play two functions according to Oosthuizen and de Wet (2005:66), and that is to maintain authority over the learner and also that of caring supervision. They therefore have both delegated power, from the principal of the school and the employer as well as original powers derived from common law (Prinsloo, 2004:9).

### **2.3.5 Employment of Educators Act**

In Chapter A, Section 3 of the Employment of Educators Act (RSA, 1998) entitled the Personnel Administration Measures, (hereafter PAM) it states in section 3.1 (b) (i) (dd) that the work done by teachers during the formal school day includes pastoral duties (ground, detention, scholar patrol etc). This pastoral care bestowed on the teacher by the employer, thus helps and reinforces the obligation placed on the teacher through the common law aspect of *in loco parentis*. Section 3 (b) (ii) (bb) speaks about teachers having extra and co-curricular duties outside of the formal school day (DoE, 1999:5).

The Schools Act and the National Education Policy Act and others mentioned are some of the many policies which are there to guide education in the country, but it should not deviate from the provisions set out in the Constitution.

### **2.3.6 Policy on Learner safety**

In Signposts for Safe Schools, a policy on learner safety introduced by the late Kader Asmal, risk factors are mentioned and they are factors that make learners more liable to become part of crime and violence. The document also mentions resilience factors and these are factors which will make learners that might be at risk, better able to withstand falling into violent or criminal behaviour. These factors need to be understood and included in any interventions that might be worked out by schools. This document mentions certain key principles, from school safety interventions, one of which is, Principle 3: Developing policies, prevention and response plans to issues of safety and violence. This states that in a strategy or policy to deal with truancy, the influence of gangs in schools, and gang violence must be developed. (DoE, 2003:6)

The same document states in Principle 4, that in building a “safety net” for troubled learners such as knowing where to get help, it is crucial to have crime prevention programmes, and academic support mechanisms, and to deal with learning problems or barriers.

A further factor (Principle 7) mentions effective school management, and this is also in line with the literature by Sammons *et al.* (1995). Principle 7 states that research undertaken tends to indicate that the way in which a school is managed and run, in an effective manner as a place of learning, is linked to the amount of stability or chaos in the school. It also states in point 2.2 that if gangs are a problem in a school, it can often be noticed by irregular school attendance or by a drop in performance. The issue of truancy is addressed in point 2.5 and it gives the following indicators of truancy, or low attendance of learners at school: learners involved in drug use, criminal activity and youth violence, violence at home, low self-esteem and depression, hopelessness and no sense of future, fear of being bullied, learning difficulties and pregnancy. This document on safe schools (DoE, 2003:15) states that teachers should find out the causes behind the truancy, so that the learner can be assisted. This is also in line with a study in Chicago (Allensworth and Easton, 2007) which mentions that a relationship of trust needs to be developed between teachers and students, and that those learners need to be assisted with learning difficulties.

## **2.4 Substantive law**

Substantive law consists of the legal principles and rules that prescribe and regulate the legal rights and obligations of persons, according to Joubert (2008:6). This is further divided into public law and private law. The *in loco parentis* principle and the law against corporal punishment are examples.

## **2.5 Public law**

Public law is concerned with the association between the government and the people of the country. It is important as all education, including the organization of that education, is in the hands of the government. Public law can be further divided into the following three components, according to Joubert (2008:7). They are

administrative law, which involves education policy and legislation as well as subordinate legislation: secondly, criminal law, which deals with criminal acts and the code of professional ethics and misconduct in education: thirdly, labour law, which includes the employment contract of teachers with the education department and schools. Private law governs the rights and duties of private individuals and the way they act towards each other. It can be further broken up into, among others, the law of persons, family, property, contract and the law of delict.

## 2.6 Procedural law

Procedural law according to Joubert (2008:8) “*prescribes the procedures for enforcing legal rules*”. The education department and school principals need to ensure that they follow the correct procedure when the role players transgress rules or regulations. Examples of these procedures are the law of civil procedure which concerns the process that must be followed when one person wishes to enforce his rights against another person, the law of criminal procedure which concerns the process that must be followed when a person is accused of committing a crime, the law of evidence which entails how certain information must be proved in court, and the interpretation of statutes which lays down general principles of how laws passed by Parliament, are to be read or understood (Joubert, 2008:8).

## 2.7 Common law

The English Common law was the ancient law of England which was grounded on the customs in society and later recognised and enforced by courts through the judgements that had been handed down (The Free Dictionary). The Free Dictionary gives the meaning as follows, “*The principles and rules of action, embodied in case law rather than legislative enactments, applicable to the government and protection of persons and property that derive their authority from the community customs and traditions that evolved over centuries as interpreted by judicial tribunals.*”

This system of law was prevalent in England, the United States and other countries that had been formerly colonised by England, including South Africa. South African common law developed firstly from its Roman-Dutch legal heritage which was

changed and developed to suit our own unique society (Oosthuizen, 2005:16). This Roman-Dutch law according to Bray (2004:4) developed after early Roman law merged with that of the Dutch law and was brought to the country by early Dutch settlers.

However, when the Dutch rule came to an end with the British occupation of the Cape, this Roman-Dutch law was not abolished but the English law influenced the legal system and later spread throughout South Africa. Indigenous or customary law also influenced common law in South Africa as there were many indigenous peoples living in South Africa according to their own law and culture at the time (Bray, 2005:5). Common law in South Africa is thus different from the civil law which is found in many parts of Europe.

Legal issues that crop up in schools in the United States are present in most of the world and they are due to the British common law heritage that several nations share. Russo (2010:37) advocates that education leaders can gain insights into how common law legal systems have come to terms with issues. He also asserts that teachers from other nations can learn from the huge body of law that America has built up about dealing especially with issues such as drugs and violence, in formulating their own policies at their schools.

Over the years, court verdicts have been formed and based on the common laws found in the school, and it was this law which then governed the duties, tasks and obligations of both teachers and students. This common law has been built up through an expectation that society has of the school for the general good of the community in the United States (Alexander & Alexander, 2005:431). Teachers face a multitude of duties that need to be performed on a daily basis. To enable teaching and learning to take place in the class, order and discipline are necessary, and as such, society and the courts in general have allowed teachers to maintain certain conduct in order for this learning to take place.

This conduct is not necessarily imposed by a court as such, but it is implied that a teacher has an inborn duty to impose this order in the school while also promoting the interests of the learners (Alexander & Alexander, 2005:431). The inborn duty in a

school then is what constitutes what is commonly termed common law. Alexander and Alexander (2005:432) thus posit that the common law of the school, as prescribed by extensive judicial precedent, reflects a synthesis, characterised by the school, wherein the highest interest of the individual and the community coincides. The common law of the school as mentioned by Alexander and Alexander (2005:431) is the way in which American tort law functions and this aspect is not the way in which the South African law of delict functions.

Common law in courts has their decisions based on prior judicial pronouncements, as can be seen in the *Jacobs* case and others in South Africa. Just as in the United States, judges will therefore base many of their decisions on previous decisions of actual controversies in common law, rather than on abstract texts to guide them when applying the law.

South African common law, however, is made up of a mixture of both Roman-Dutch law which in turn was inclined towards English law, and indigenous or African customary law (Joubert, 2001:20). In much the same way as in the American common law, the South African common law comes about not through ratification by Parliament but guided by developments of custom and history, as mentioned by Oosthuizen (2005:16), it “is not codified” (written in an orderly manner).

According to Oosthuizen (2005:16) “*South African common law comprises the uncodified principles that are part of our Roman-Dutch legal heritage, which has been adapted (and developed) to suit our unique society.*” Oosthuizen also posits that some of these principles incorporate the “*in loco parentis position*” of the teacher, the “*caring supervision of the educator*” and the “*reasonable person*” test.

This issue of the *in loco parentis* principle is actually further discussed by Joubert (2008:140), where it is stated that the teacher takes over this role of duty from the parent. Joubert (2008:145) goes further and states that teachers act *in loco parentis* through original and delegated duty. In addition, Joubert (2001:21) states that this principle brings in the rules of natural justice and legal concepts that stem from common law, such as reasonableness, fairness, negligence, powers, legal status and legal person.

## 2.8 Case law

A court in Australia (ACT) in a case, *Introvigne v Commonwealth of Australia* (1980) 21 ALR 251, formulated the following definition of duty of care:

*The duty of care owed by the teacher required only that he should take such measures as in all the circumstances were reasonable to prevent physical injury to the learners. This duty not being one to ensure against injury, but to take reasonable care to prevent it, required no more than the taking of reasonable steps to protect the plaintiff against risks of injury, which ex-hypothesi the teacher should reasonably have foreseen.*

This places the duty of care, and the taking of positive steps to maintain safety, in the hands of the teacher.

In a Department of Education article from Tasmania, Australia, (Department of Education, Tasmania, 2008) it is suggested that in the case of health care being necessary at a school, a staff member should do “*what is reasonable in the circumstances*” keeping in mind their duty of care. It also states that, when in an emergency and something must be done instantly to save a child’s life, the teacher should be, “*acting reasonably, do what is possible, given the circumstances.*” This aspect places a terrible burden of care on teachers in that state, especially if they might be faced with instances of life or death. In South African schools, learners may not even be given a headache tablet, and permission must be obtained from a parent, before any medical care may be given to a learner, beyond the basics.

School safety and the duty of care from teachers is seen as a widespread problem and is found in many countries, as seen in an Appellate court case from Connecticut. (*Gary Purzycki et al. vs Town of Fairfield, 1998*) In this case a young boy sustained injuries after running in a school hallway, being tripped by another boy and suffering facial lacerations after falling through the glass wire mesh of the exit door. The initial court case found the defendants 60% negligent and the child, 40% negligent.

The defendants tried to have the verdict set aside as they felt that “*governmental immunity*” applied in this case. This appears to be much the same as in South Africa, where verdicts going against individuals and schools for negligence becomes

the problem of the Department of Basic Education, Section 60, Liability of State (RSA, 1996). This was a protracted case and many factors were brought into it, including that teachers have an *in loco parentis* duty towards the eight-year-old boy, and that an underage boy cannot bring an action against his “parent” and should be granted immunity. Be this as it may, it raises many questions and could potentially lead to huge payouts in damages.

In a further case mentioned and cited by Rossouw (2004:35) in the USA (*Navarra v Lynbrook Public Schools, 733 N.Y.S.2d 730 (App. Div. 2001)*) teachers were found not guilty as they were present at the accident while in a further case cited in Zimbabwe, (*Rusere v The Jesuit Fathers*) Rossouw again mentions the heightened duty of care for teachers. In this second case the judge, Judge Beck, ruled that the expectations for teachers should take reality into consideration at all times (Rossouw, 2004:35).

Rossouw (2004:32) posits that a higher standard of care can be expected from a teacher coach, especially those that are better qualified and more experienced in sport. Rossouw (2004:33) states that the courts expect an equally heightened standard of care from teachers in South Africa. In the field of sport, Rossouw (2004:55) further states that as far as the law of delict is concerned, a sport teacher can indeed be seen to have a “higher standard of care”. The standard of care expected, is the ordinary skills of a competent professional, the skill and care of a reasonable teacher according to the National Union of Teachers (2003:1).

Rossouw also mentioned the case of Wynkwart (*Peter Wynkwart v Minister of Education, Highlands Primary School 2002 (High Court of SA: Cape of Good Hope; case no. 4168/1999)*) as a non sport related injury where the school was held liable for damages due to negligence (Rossouw, 2004:57). This was the case of a young, eight-year-old boy who climbed over an unused, locked gate and fell, injuring himself severely, leaving him permanently disabled. This was despite learners being regularly told that they were not allowed to jump over the fence surrounding the school premises. The plaintiff urged the court to find the teacher to have been negligent in ensuring that all her pupils were present on the day when she accompanied them to the gate.

The judge used previous cases such as *Knouwds vs Administrateur, Kaap* 1981 (1) SA 544(C) and *Rusere v The Jesuit Fathers* 1970 (4) SA 537 (R) to base many of his decisions on when finding that the teacher had been negligent as she had not fulfilled her duty of care as a teacher and is specifically trained in psychology to deal with young children who could act impulsively. She was thus liable for damages as she had not taken reasonable steps to ensure that the boy did not jump over the gate.

Just as in America, where the case of *Brown v Board of Education* (1954) became the single most important case in the history of American schools (Russo, 2010) as it ushered in a time of equal educational opportunities for all children while it also led to the birth of school or education law in America, so too, we in South Africa have our own cases which are proving to be important in school or education law. These cases will probably grow yearly, much as they have increased year by year in the United States. Some cases from South Africa include cases like *Wynkward v Minister of Education, Highlands Primary School* 2002 (High Court of SA: Cape of Good Hope; case No. 4168/1999), *Jacobs v The Chairperson of the Governing Body of Rhodes High School and others*, 2010 (Western Cape High Court; case No. 7953/2004) as well as *S. v De Blom* 1977 (3) SA 513 (A). Each of these cases have added to how negligence in schools is viewed as well as stating that ignorance of the law is no excuse and will be referred to in future cases where negligence of teachers will be under scrutiny in the court.

## 2.9 Subordinate Legislation

These laws are normally subject to the original law that gave cause to the subordinate legislation. Subordinate legislation is usually introduced by a senior executive officer to enable him or her to add detail to the original legislation, which usually comes out as a broad guideline. The most important of these are regulations and proclamations (Roos, Oosthuizen & Smit, 2009:84).

Provincial legislatures are given powers or the authority to publish provincial legislation. This includes the authority to set up legislation on education matters in the specific province. The provincial legislation must be adhered to and is normally



more detailed than the national Schools Act. These include general Acts for the province such as the North West Provincial School Education Act 12 of 1997 (Roos, Oosthuizen & Smit, 2009:83).

### **2.9.1 Regulations**

Regulations are rules that are issued by a senior executive person to regulate administrative affairs within the scope of his/her authority. Regulations thus contain detailed stipulations on matters that have only been dealt with in passing in legislation (Roos, Oosthuizen & Smit, 2009:84). Examples of this include Regulations for Safety Measures at Public Schools (2001) as amended in 2006 and Regulations to prohibit Initiation practices in schools (DoE, 1996).

The first example of regulations was drafted in terms of section 61 of the Schools Act, and it had numerous aspects covered, such as violence and substance abuse in schools, access to schools and visitors to schools, the organization of school activities, including the transport of learners, physical activities, emergency and fire procedures and early release of learners from school (RSA, 1996). This last aspect is especially relevant to the collection of learners from school, and the procedures to be followed in schools, should learners have to be released early due to school closure. The second example is one that ensures that no initiation may take place in schools according to these regulations.

### **2.9.2 Policies and other subordinate legislation**

In certain instances the national government or the National Department of Basic Education may bring out certain policies to deal with specific issues. In January 2011, a Policy on Learner Attendance was introduced into all South African public schools (DBE, 2010). This policy clearly spells out how schools should handle all aspects regarding the truancy and absenteeism of learners. This policy appears to place most of the blame for truancy on poverty in the community as the main problem. The policy includes chronic illness, HIV/AIDS and tuberculosis, poor nutrition and hunger, child labour, unstable or dysfunctional family life, and gang violence as factors which influence the learner attendance in schools. It also

mentions that numerous programmes have been introduced into schools to alleviate the problems such as Safe schools, No-fee schools, and the National school nutrition programme (DBE, 2010:9).

It states as one of its rationales for the policy, under the importance of regular school attendance, that any school that can “successfully curb absence without valid reason will most likely improve learner retention and performance” (DBE, 2010:9). It is to be debated whether performance would be improved simply by improving retention, and without some form of intervention programme for the learners that need such a programme, to improve academically, according to the research of Conchas and Drake (2011).

According to the Policy on Learner Attendance (DBE, 2010) the responsibility for regular attendance is shared by the learner, the parent and, to a large part, the school. The principal of a public school appears to bear the brunt of this accountability although he or she may delegate this duty (DBE, 2010:13). This includes the duties that are to be carried out by the class or register teacher of the class, with class and period registers that need to be kept in the class and submitted to the principal, for further submission to the Provincial Department of Education (hereafter PED) at the end of every term. Absence then needs to be followed up by the school, and records, in writing, kept of this follow-up to the parents or the Head of Department (hereafter HOD) where necessary.

### **2.9.3 School code of conduct or rules**

These rules constitute a particular form of subordinate legislation. It is a code of conduct for learners in a school which has to be drafted in consultation with all role players within the school. School rules are the rules that are drawn up by the school governing body to control and order learners and assist with the governance within the ambit of the activities of a specific school (Roos, Oosthuizen & Smit, 2009:85).

Other school policies such as the policy on safety could also be drafted in a similar fashion.

To sum up the above, Joubert (2008:144) states that court cases, as well as the obligations placed on the teacher by common law and other legislation, must be observed to stay within the law.

## 2.10 Conclusion

From the above, it is clear that a very definite legal framework for the duty of care of teachers is created by the law, and that it has been put in place as indicated by Figure 3 (cf. 52). It starts with the Constitution and is followed up by legislation that provides a guide for how education should take place in the country. Much of the guidance stems from common law, and from policies which provide the legal framework for dealing with all aspects which might develop in schools from safety and discipline to any other aspects including that of truancy and teachers' duty of care and pastoral duty in the school. Teachers have a duty to protect learners in schools as well as to ensure that they enjoy the rights they are entitled to in the Bill of Rights of South Africa. Teachers in schools also have a legal duty in terms of the common law principle, *in loco parentis*, to ensure the safety of learners in their care (Prinsloo, 2005:10). There are two forms of duty of care for teachers, the duty of care as seen when looking after the physical and mental well-being of learners and the duty to maintain order in a school which would entail the discipline necessary in a school. These two forms of a teacher's duty of care would apply to truant learners as well. Russo (2010:38) posits that school law is probably of the "*utmost importance*" to any person dealing with learners. He states that it is a challenge for "*all educators to harness their knowledge of school law so that they can make schools better places for children*" (Russo, 2010:38).

The above points are all measures that have been put in place through legislation, and by the adoption of a code of conduct, safety policies and other policies by school governing bodies, to ensure that our learners can attend classes in safe and disciplined schools, and to ensure that they in fact do get the right to education that is entrenched in the Constitution.

The issue of truancy and the duty of care enforced on schools and teachers, and the pastoral duty, as set out in the policies and acts mentioned above, have put the

schools and teachers in the front line as regards the safety of learners, especially pertaining to truancy and the teacher's duty of care. Teachers also need to commit themselves to acting as the professionals that they are seen as through their ethical conduct, acceptance of the responsibility and roles that they should play in schools regarding the safety of learners and especially that regarding learner truancy. The legal framework thus puts into place the necessary legislation to ensure that the correct procedures are in place for dealing with any issues that need to be addressed in schools to ensure the safety and security of the learners in a school.

The next chapter will examine the literature pertaining to the teachers' duty of care from an *in loco parentis* perspective and the role of pastoral duty expected by the employer who in this case is the Department of Basic Education.

## CHAPTER 3

### THE DUTY OF CARE OF TEACHERS – an overview

#### 3.1 Introduction

Schools are to be found in all countries and seemingly, they are all plagued to some extent by the same type of issues in various forms, whether it is bullying, school safety, truancy, poor academic performance, teacher truancy, teacher morale, pastoral care, teachers' duty of care or low parental involvement. Bhana, Morrell, Epstein and Moletsane (2006:13), mention that problems vary dramatically from school to school, but they discuss specifically theft, alcohol, drug addiction and bullying as the main problems they found in their study. Issues such as the ones brought to the fore are becoming more relevant at present in varying degrees in the public eye, as especially duty of care and pastoral care have received their fair share of publicity due to the negligence of teachers involved with schools.

This *in loco parentis* aspect places a further legal requirement on teachers in schools to prevent and foresee likely dangers to those learners, by requiring safety measures or policies in schools to prevent injury to the learners (Prinsloo, 2004:6).

This duty of care is clearly spelt out in law in *Minister of Education and Another v Wynkwart* 2004(3) SA 577, when Mr Wynkwart sued the defendants on behalf of his son who had been injured when he fell and injured himself on an unused, locked gate at the school. Although the court initially found for Wynkwart, the case was successfully overturned on appeal when the judge in the High Court, Judge Desai, found that unreasonable demands cannot be placed on public authorities such as schools. The judge thus felt that the school had taken adequate measures to ensure the safety of the learners.

Prinsloo (2004:5) gives shocking examples of newspaper reports which add further problems to those mentioned in the study above. He gives examples of reports where learners bring weapons to school, the raping of a young learner by other

learners, sexual abuse and harassment of girls and cases involving corporal punishment in schools.

Bhana *et al.* (2006:12) declare that currently there is no provision made in the curriculum for counselling or ministering to the emotional needs of students. Previously, most white and Indian schools had school guidance teachers or counsellors (whereas under-resourced black schools did not). Under the new funding formula for schools, as set out in the National Norms and Standards for School Funding in South Africa (RSA, 1996), provision is made for all schools depending on their own particular circumstances, such as learner numbers, social or community area and so on. No provision is made for the employment of school counsellors over and above the normal staff complement for the school. The provision of such personnel has been severely lacking in historically disadvantaged and small schools. Serious problems are referred to provincial departments, where staff employed in Psychological Services, are on call, but as in most bureaucracies, they are difficult to access. School teachers in many cases are left to handle counselling and other pastoral issues the best way that they can due to the shortage of trained personnel. Bhana *et al.* find in their conclusion that schools in a less privileged position are faced with huge social concerns thus limiting the extent of the care that can be provided in the school (Bhana *et al.* 2006:19).

Netshitahame and Van Vollenhoven (2002:317) recommend a number of strategies that could lead to better safety in schools. Among others, providing training for teachers and principals, banning of all manners of intimidation, a zero-tolerance approach to school violence and crime, and insisting that the school management teams and governing bodies set in place procedures of how these matters should be handled in schools. The Government and the Department of Basic Education should ensure this by regular inspections in schools.

The legal obligation of the education department and its employees according to Joubert (2007:117) is thus providing a safe, physical and emotional environment for the learners in a school. However, the role players in schools and the Department of Basic Education may not know how to address these problems, and could try and

solve the problem in an unlawful manner, thus bringing in issues of the legal duty not being followed.

Bhana *et al.* (2006:20) further notes that the care that teachers can give is very basic, and includes limited care such as the provision of clothes, food and services to the learners in their care. They specifically state that few teachers get any recognition for this work that should normally be done by the family or the state's social welfare sections. They maintain that the state does not provide adequate staff to deal with the challenges of care, nor the training that is so necessary to support the teachers. It is their contention that more recognition needs to be given to teachers providing this care while also stating that professional counsellors need to be employed at schools.

### **3.1.1 *In loco parentis***

Generally parents are responsible for the well-being of their children and should ensure that they are not physically or psychologically harmed. According to Joubert (2001:14), teachers take over this obligation from the parents in schools. It is generally considered that teachers have been professionally trained to deal with learners and, as such, they are acting *in loco parentis* under South African common law. This term means that the teacher is "*in place of the parent*" (Oosthuizen & De Wet, 2005:66).

The *in loco parentis* term effectively means that in matters pertaining to the school, the teacher takes the place of the parent, especially as the parent is not present on a daily basis at the school while teaching or various school activities are being performed. This measure ensures that the teacher thus becomes responsible for the safety of the learner while at school. Teachers also need to take note of other legal measures that influence the safety of the learners (Joubert, 2004:145).

According to Oosthuizen and de Wet (2005:66), the *in loco parentis* duty will entail the right to maintain authority and the obligation to apply caring supervision over the learner. This *in loco parentis* idea does not mean that the parents can escape their role as the primary caregiver or teacher. They are dependent on the teacher for this

role due to their educational skills and training as teachers (Roos, Oosthuizen & Smit, 2009:126). The teacher therefore takes on this parental role while the child is in their care due to the position being delegated to them by the parent, and they must ensure a safe environment for the child. This role is shown diagrammatically as follows by Roos, Oosthuizen and Smit, (2009:126):

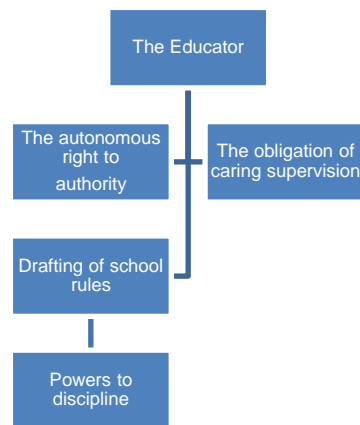


Figure 4: (Roos, Oosthuizen & Smit, 2009:126)

The above diagram from Roos, Oosthuizen and Smit (2009:126) clearly stipulates the duties of the teacher as being twofold, that according to them, firstly having the right to maintain authority through fairness and order, and in a peaceful setting, where learning can take place, and secondly, the sense of having to care for the physical and psychological well-being of the learners in his or her care as well as the physical safety of the learners.

Berryman (1998) indicates that in Ontario the law requires teachers to perform various duties from a parental perspective. Some of these include being a positive role model to their learners and having to act as firm and judicious parents. They further indicate that under common law, teachers have a duty of care to protect their learners from all foreseeable risks of injury or harm. The Tasmanian Catholic Education Employees Association (2005) states that the school has “a legal duty of care for its learners arising from the High Court of Australia’s determination that the statutory removal of children from the care and control of their parents for the purposes of educating them together with the need for protection results in a statutory obligation of duty of care *in loco parentis*.”



Joubert (2008:144-145) suggests that the primary duties of the teacher *in loco parentis* are to achieve teaching aims, to maintain order by means of the code of conduct and lastly, creating a safe environment for the learners. Joubert further argues that the duty of a teacher comes from many sources, such as the Bill of Rights which ensures that teachers have a duty towards the learners in their care while protecting the rights of people. Other sources that teachers must be aware of are the Constitution and the Children's Act (RSA, 2005).

The Children's Act (RSA, 2005) mentions the following duties for teachers:

- “(a) safeguarding and promoting the wellbeing of the child*
- (b) protecting the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation and any other physical, emotional and moral harm or hazards*
- (c) respecting, protecting, promoting and securing the fulfilment of, and guarding against any infringement of, the child's rights set out in the Bill of Rights and the principles set out in Chapter 2 of the Constitution*
- (d) guiding, directing and securing the child's education and upbringing, including religious and cultural education and upbringing, in a manner appropriate to the child's age, maturity and stage of development*
- (e) guiding, advising and assisting the child in decisions to be taken by the child in a manner appropriate to the child's age, maturity and stage of development*
- (f) guiding the behaviour of the child in a humane manner*
- (g) maintaining a sound relationship with the child*
- (h) accommodating any special needs that the child may have*
- (i) generally, ensuring that the best interests of the child are the paramount concern in all matters affecting the child.”*

The above provisions from the Children's Act sets out many facets to the duty of care of teachers, from protecting the child from emotional and moral harm, protecting the rights of the child, guiding and advising the child in educational matters and decisions that have to taken by the child as well as maintaining a sound relationship with the child so that the needs and best interests of the child is of primary concern.

These provisions therefore set a far-reaching level of care for teachers than those mentioned previously.

The rights and duties of the teacher, having started out as common law, is to a large extent now dependent on legislation in South Africa such as the South African Schools Act (DoE, 1996), the Employment of Educators Act 76 of 1998 and the South African Council of Educators Act 31 of 2000. (Roos, Oosthuizen & Smit, 2009:127)

There is no certain direction to indicate where this basis of the teacher's duty of care derives from excepting from common law. Botha, Smit and Oosthuizen (2009:186) point out that several researchers such as Spiro 1971:88 and Conradie (1948:397) differ on the legal basis of this duty of care. However, Botha, Smit and Oosthuizen (2009:186) state that firstly, it derives from the passing on of the duty and authority from the parent to the teacher when the child is at school. Secondly, the teacher has an original duty to the learner regarding the safety of the learner. The difference between the two is that the first indicates that the duty is no different from that of the parent; whereas the second indicates that the duty would be different from that of the parent. Botha *et al.* cites Conradie (1948:397) who indicates that the duty stems from the parents need to educate their child. This would thus indicate that the teacher has a two-fold duty of care towards the learner.

Joubert, (2008:144) posits that the duty of teachers to look at the safety of their learners has its starting point from many sources, but that the Bill of Rights clearly sets out that teachers must make sure that the rights and safety of the child in schools are protected, and also that teachers and schools must be aware of these rights and other Acts regulating the safety of learners.

Oosthuizen (2005:3), states that the teacher must fulfil his or her duty caringly and see to the physical and spiritual well-being of the learner, as the law expects a teacher who is professionally trained to do this with the necessary skills. He mentions a court case from 1925 where the judge, Judge de Villiers, states in an Appeal court case that the teacher must care for the learner in the same way as the caring head of the family (*diligens paterfamilias*) would have done in the

circumstances. There is a clear indication according to Oosthuizen (2005:3) that some teachers ignore their role of caring supervision in our present education system. He mentions numerous articles and incidents of injury, drug abuse, physical violence, sexual abuse and rape to emphasize this point, and this would indicate that some teachers are not taking their role seriously.

Schouwstra (2009:6) found that just more than 50% of South African teachers had adequate knowledge of aspects of education legislation, while fewer than 50% of them were able to apply this knowledge to practical scenarios. This is extremely worrying, if taking into consideration that teachers are professionally qualified and are expected to show heightened skill in dealing with the learners in their care.

Roos, Oosthuizen and Smit (2009:127) state that although parents are regarded as the primary teachers of learners, all persons acting *in loco parentis*, such as teachers, have got delegated and original rights and duties in respect of the child's education. This knowledge that the teacher has about common law principles allow them to create a safe and secure environment of order, routine and protection, which induces a pleasant education and training situation in schools.

Joubert (2008:145) discusses the part played by common law, and states that it places a "*legal duty*" on the teacher to protect the learner from any danger that might befall the child, as this duty has been handed over to the teacher through the transfer of the parental role by the parent when the child is sent to school. This results in the so-called *in loco parentis* principle.

Oosthuizen and de Wet (2005:68) mention that a teacher has been professionally schooled to work with learners, and therefore the teacher has the position *in loco parentis* under South African common law. They mention that the teacher under this principle has the right to maintain authority and the obligation to exercise caring supervision over the learner.

Botha, Smit and Oosthuizen, (2008:187) indicate that many different situations can arise in schools, during school activities, that could lead to legal implications against the school, teacher or school governing body. It is thus important for every teacher

and principal to be aware of the general principles relating to the civil legal liability which could arise in these situations.

### **3.1.2 Role of parents and family**

Parents and guardians have certain rights pertaining to their children under South African law. Bray (2005:70) and Botha, Smit and Oosthuizen (2009:186) posit that it is important to note that the parent (and guardian) basically has the duty to care for the child and see to the maintenance of the child. This includes the parental duty to protect his or her child against danger – and that he or she is to take precautionary steps in order to protect the child from danger and to prevent injury to the child.

A study undertaken to look into the performance of latchkey learners (Maphelo, 2006:21) noted that parents are part of the support network and share the responsibility for the instruction that their children receive at schools. Maphelo states that latchkey learners are children who are left at home alone for extended periods and often have to fend for themselves without parental guidance. She cited a study by Mangena (2005:8) who points out that according to him, parents are not involved in their children's education, and that a lack of discipline and attending to their children's education add to lax school attendance and poor education results. It is thus crucial that parents get involved in the education of their children and hold the schools and teachers accountable.

### **3.1.3 Role of teachers**

The *in loco parentis* duty of the teacher clearly sets an important duty on the teacher. When the parent as primary caregiver hands the child over to the school or teacher, the teachers have an essential duty of care towards the learners entrusted to them as they are the caretaker parents. This duty suggests that the teachers have an obligation to “*accept responsibility for the safety and wellbeing of the learners*” for as long as they are under their care (Joubert, 2008:145). Aspects of the common law and previous cases are therefore used in any court cases to determine to what extent this duty of care is relevant when the need arises.

Prinsloo (2006:312) mentions that the law expects teachers to act as '*diligens paterfamiliae at all times*' in education situations. The duty of care of a teacher is therefore compared to a diligent father of a family who would act with care towards his family. He also says that teachers have through their duty of care the legal responsibility to protect learners from situations that can crop up in schools.

The special relationship that a teacher has with the learners and the duty to act to ensure their safety are two instances where teachers have obligations towards learners in their care, according to Joubert (2008:145).

### **3.1.4 Special relationship**

Throughout the years, court decisions have established "a common law of the school", under which the teacher and learners have mutual obligations and responsibilities (Alexander & Alexander, 2005:431). The school is expected to advance the common good of the community. Teachers, therefore, to address the multitude and diversity of the expectations placed on them, must be given a certain leeway to deal with those situations. Teachers therefore have certain control over the learners, control that is not only expected of the teacher by law but also due to the special relationship and obligation that a teacher has of promoting the harmony in a school by ensuring discipline, while also protecting and advancing the interests of the learner. Alexander and Alexander (2005:432) therefore contends that the general law of the school as set up by previous legal decisions reflects a fusion, characterised by the school, where the highest interest of the individual and the interest of the community coincide.

The National Union of Teachers (2003) in the United Kingdom notes that the legal liabilities of teachers derive from three sources. They mention the common law duty of care, the statutory duty of care and the duty arising from the contract of employment as being the sources of the teachers' liabilities.

Joubert (2008:145) states that a special relationship will be present between groups such as between a teacher and a learner where there is a legal duty and this duty is not upheld. She mentions a court case of an eight-year-old boy who sustained an

eye injury, and the court held that the school teacher, like the parents, must exhibit the standard of care that “*a reasonably prudent man would observe in the particular circumstances.*”

This special relationship (Joubert, 2008:145) exists between parties such as a teacher and a child, as held by the Court in the case between *Rusere v the Jesuit Fathers* 1970 (4) SA 537 (R). It is mentioned that the school authorities had a duty of care owed to the learners, and were able to take care of them as a careful father would take of his child. Rossouw (2004:35) cites the same case and states that the judge indicated that a definite heightened standard of care is expected from teachers but that these expectations should take reality into account all the time. No superhuman form of supervision can be expected from teachers.

### **3.1.5 Duty to Act**

A further matter to bear in mind would be that of the “duty to act” as mentioned by Joubert (2008:146), where in the case of *Wynkwart NO v Minister of Education and Another* 2004 (3) SA 577, the court held that the degree of supervision required depended on the risks to which the students were exposed. According to Joubert (2008:146) this duty to act suggests that the duty of care owed to learners by the school goes further than simply saying that there is a duty to warn learners of potential dangers. Teachers would have to ensure that no harm takes place. The school (juristic person) thus has a duty to act through its organs (teachers) to prevent any form of foreseeable harm to learners, according to Joubert. It is therefore not enough to simply warn or teach the learners about the danger, but teachers must also take pains to ensure that no harm occurs while the learners are on the school grounds.

Oosthuizen and de Wet (2005:66), use the words, “caring” to explain a feeling of concern or interest in the learner and to pay serious attention, while “supervision” would mean overseeing or supervising the carrying out of the work of a person. Their intention with the explanation appears to indicate that the teacher is supposed to be worried about, or have a concern for the safety of the learner or learners in his or her care, and to ensure that they are correctly looked after. The teacher must be

concerned about not only their physical safety, but also their intellectual and spiritual well-being.

### 3.1.6 Liability

Learners are exposed to many incidents and types of accidents in schools on a daily basis during activities that take place on the school grounds or during activities the school is involved in.

Mawdsley (2006:55) states that educational institutions are not insurers of the safety of learners. He notes that people who want to institute claims must make a claim under one of three theories, strict liability, intentional torts or negligence. The petitioner must then also produce evidence to prove sufficient facts under that theory. Mawdsley (2006:56) states that the courts have refused to allow a strict liability theory on educational institutions. They are more likely to increase the standard of care for the schools so that recovery could take place under a negligence theory. Schools, however, can be held responsible for the intentional actions of employees or students, where injuries are sustained due to injuries from intentional torts such as assault and battery which is inflicted on learners.

Most of the cases brought against public schools, however, involve negligence. Negligence as cited by Mawdsley, can be seen as not exercising *“that degree of care which an ordinary prudent person would exercise under the same or similar circumstances to avoid injury to another”*. Each case is determined on the facts of that case, but each must satisfy the four elements of the negligence claim: legal duty, breach of the duty, proximate cause, and an injury that took place. This is the way in which the American tort law functions which, as mentioned (cf. 63) is not the way that the South African law of delict functions. The common law of the school as mentioned by Alexander and Alexander (2005:431) is the way in which American tort law functions and this aspect is not the way in which the South African law of delict functions.

The fundamental premise in law according to Neethling, Potgieter and Visser (2006:3) is that damage (harm) rests where it falls, and that, according to them, each person must bear the damage he suffers (*res perit domino*).

Botha, Smit and Oosthuizen (2009:187) also state that the legal liability of teachers or the school in the South African situation hinges on the simple premise that damage lies where it falls. There is one exception according to Botha *et al.* (2009:187) and that is that when damage is caused by the negligent, intentional or unlawful act of another, it transfers the legal liability to the person who caused the damage. The person who caused the damage can be required to pay compensation for the damage done through his/her actions. Legal liability could be in the form of damage to property (patrimonial loss) or infringement of personality rights (non-patrimonial loss) (Botha *et al.* 2009:188).

Neethling *et al.* (2006:3) states that the law of delict is that part of private law which is known as the *law of obligations*. This law is derived from the fact that the wrongdoer has an *obligation* to compensate the damage suffered because the person prejudiced has a corresponding right to claim compensation. Neethling *et al.* (2006:3) indicates that to found liability, further requirements must be met. The requirements according to Neethling *et al.* stem from the following definition: “A delict is the act of a person that in a wrongful and culpable way causes harm to another.” The five elements from the definition are thus an act, wrongfulness, fault, harm and causation and all must be present before the conduct may be seen as a *delict*. A generalising approach thus governs the question of delictual liability according to Neethling *et al.* This means that general principles or requirements regulate delictual liability and they apply irrespective of which individual interest is impaired or the way in which it was impaired. This is different to the English or Roman law of delict which uses a casuistic approach where the law of delict uses a group or set of separate delicts, each with its own rules (Neethling *et al.* 2006:4).

The five factors which must be proved to find a person liable, or to have an obligation to pay damages, are:

a) “An act” – A teacher or person should have performed an act;



- b) “Wrongfulness” – It must be wrongful in that it has violated the rights of the injured party;
- c) “Fault” – This refers to whether the act was done with the intention to harm or through negligence or carelessness;
- d) “Causation” – The act must have caused the damage;
- e) “Harm” - Damage must have occurred (Joubert, 2008:146).

The first three factors are normally not too difficult to determine. An act by itself cannot be cause for delictual liability. Liability can only be found if prejudice is caused in a wrongful or legally reprehensible or unreasonable manner (Neethling, Potgieter & Visser, 2006:31). To determine wrongfulness, two matters must be addressed. Firstly, one must determine whether a legally recognised individual interest has been infringed or whether an individual interest has been encroached upon. This indicates that the act should have caused a harmful result. Secondly, legal norms must be used to determine whether prejudice occurred in a legally reprehensible or unreasonable manner (Neethling, Potgieter & Visser, 2006:31). Fault on the other hand is a general requirement for delictual liability. Two main forms of fault are recognised: intention (*dolus*) and negligence (*culpa* in a narrow sense). Fault can only be present if a person has acted wrongfully (Neethling, Potgieter & Visser, 2006:109).

Teachers or people in a particular situation have a very specific responsibility to act in that situation. The Schools Act in Section 60 mentions that “the state is liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public school and for which such public school would have been liable but for the provisions of this section.” This section thus states that the Department of Basic Education will be liable for any claim brought against a school or person in the school.

However, fault could be either through intent or neglect. In the case of neglect, use is normally made of the reasonable man (person) test. This test is normally used by asking what the reasonable man (person) would have done. According to Oosthuizen, Rossouw and de Wet (2005: 69) the test for negligence has two parts, reasonable *foreseeability* and reasonable *prevention*. This differentiation of

negligence appears to imply that the teacher, due to professional training, is better equipped to deal with matters in schools than other people on the outside. Therefore a more marked level of care is expected from teachers.

### **3.2 Legal duty of care**

The legal duty of a teacher to protect a learner from danger comes mainly from common law, together with case law and is due to the handing over of this duty to the teacher by the parent. Parents have to send their children to school by law and the teacher, who has been professionally trained to work with learners, therefore takes over this duty from the parents while the child is at school. This principle thus ensures the teacher acts on the basis of the original authority that originated from common law and legal cases, as well as on delegated authority as handed over by the parent (Joubert, 2008:145). The teacher in his or her position at a school thus has a special obligation of authority over the learner according to Oosthuizen and de Wet (2005:66).

This legal duty of care that teachers are obligated with, forces them to act when learners are involved in activities where harm may come to them. This could include learners who are truant. Teachers could be guilty of negligence if learners are injured and there is evidence that teachers did not fulfil their role of care towards the learner, as expected by the parent in that situation.

### **3.3 Professional duty of care**

The teacher has a professional duty of care towards the learner due to the position that is held at the school by the teacher. The fundamental duties of the teacher *in loco parentis* according to Joubert (2008:145), is to achieve teaching aims, maintaining order by means of the code of conduct and creating a safe environment for the learners. The teacher is employed by the school and as such, has to supervise the learners at the school. To do so, the teacher would try and get to know the learners, guide them, and protect them by ensuring that their rights are not violated, while looking after any special needs the learner has.

In general, ensure the safety of the learners (Joubert, 2008:144-145). If a teacher does not ensure this professional duty of care they could be deemed to be negligent.

Any act which would cause harm to another is by itself, not enough to give rise to delictual liability. It has to have taken place in a wrongful or a legally reprehensible or unreasonable manner. A dual investigation should take place to determine whether a legally recognised individual interest has been infringed or that it caused a harmful result. Secondly, should this harmful result have occurred legal norms must be used to determine whether it happened in an unreasonable or legally reprehensible manner (Neethling *et al.* 2006:31). The manner in which this will be determined is through the legal convictions of the community: the *boni mores*. This aspect is based on the criterion of reasonableness. Various factors will be looked at to determine reasonableness such as the nature of the harm, the value to the defendant or to society of the harmful conduct, the motive of the defendant as well as the Constitution and the Bill of Rights among others. The reasonableness criterion thus indicates the convictions of the community regarding right and wrong and enables the court to adapt the law to reflect the changing needs of the community (Neethling *et al.* 2006:37).

### 3.4 Pastoral care

The Glasgow City Council highlights the importance of a strong support structure for learners, particularly in the area of guidance or pastoral care. They indicate that a strong support structure is core to supporting effective teaching and learning. They say this after the implementation of A Teaching Profession for the 21<sup>st</sup> Century (2001), which was a document that was meant to guide all teachers in Glasgow. They give a definition for pastoral care: “*Pastoral care is a [sic] holistic approach by which the school attempts to meet the personal, social, emotional and intellectual needs of every pupil, in order that each might participate fully and gain maximum benefit from everything the school has to offer*” (LNCT Circular 6).

The diagram from Roos, Oosthuizen and Smit (2009:126), mentioned above (cf. 77) clearly shows that, apart from having an *in loco parentis* or legal duty towards the learner by having to maintain authority through fairness, order and in a peaceful

setting where learning can take place, teachers also have to care for the physical and psychological well-being of the learners in their care and the physical safety of the learners. This is further clarified by the duties of the teacher as mentioned in the Children's Act (cf. 78) where a variety of duties are prescribed which are in line with that of the definition for pastoral care above. The teacher therefore has not only a legal duty towards the learner but also a pastoral duty to look after the interests, emotionally or morally, of the learner.

The issue of pastoral care in schools came to the fore in a study of school choice by Bisschoff and Koebe (2005:163). It was mentioned that schools need to ensure the safety of learners in the school and that it placed a huge burden on the school community to offer integrated and holistic pastoral care programmes within the educational environment. It emerged that township schools drew learners to school with food and that ultimately kept the learners safe on the school grounds, while learners at former advantaged schools spoke about the care they got from the school staff with regard to their feelings and often had sympathy expressed after the loss of loved ones.

The study brought out, that learners preferred schools which cared for them and where teachers were thoughtful about their feelings. It also emerged that for the pastoral care to be thriving, the school governing body and the school management could involve other members of the community such as health services, police and child protection that would be able to bring their own speciality to address the issues that the learners are faced with in schools. The contact details of these organizations should be available at the school when they needed to be contacted. The issue of good discipline in the school is discussed by Bisschoff and Koebe (2005:159) as one aspect that could ensure a safer place for learners during the school day.

### **3.4.1 Learner entitlement**

Lodge and Watkins (1997:1) state that pastoral care is part of every learner's entitlement in their school career in Britain, and they say that the 1988 Education Act (Section 1) states that the whole school curriculum ensures that every learner is entitled to a broad and balanced curriculum in schools. It promotes the physical,

moral, spiritual, cultural and mental development of learners while it also prepares the learners for adult life after school as regards the opportunities, responsibilities and experiences. They cite the Inspectors of Schools in their study who describe how this was achieved through quality of teaching and learning, the relationship between all in the school, through arrangements for monitoring overall academic, personal and social progress, and through the extra-mural activities and the school ethos (HMI, 1989). They state that this pastoral care should concern all schools, all learners and their achievement.

Best (2008:343), discusses the concerns of six educationists about the range and quality of support needed and given to learners and young people who experience difficulties in managing school or college. He indicates that in many respects the individual in school is seen merely as a learner whose learning is restricted to the cognitive domain. He maintains that the individual should be conceived as a whole where the parts are manifold and include the intellectual, social, emotional, moral, political, bodily and sexual selves.

Best (2008:345) also indicates that universities have rejected the idea of teacher training in favour of teacher education, thus insisting that there is more to being a good teacher than the simple acquisition of skills that are required to be passed on. He discusses a programme called “Every Child Matters” (ECD) where the ideas of “personalised learning” and the “extended school” concepts should be found in schools. These approaches introduce a personalised approach to supporting children which are tailoring learning to the needs, interests and aspirations of each individual and secondly, tackling barriers to learning and allowing each child to achieve their potential (Best, 2008:346).

Best suggests that the extended school should provide a varied range of activities including study support, sport and music clubs, combined with childcare in primary schools, parenting and family support, swift and easy access to targeted and specialist services and community access to facilities including adult and family learning, ICT and sports grounds. Best indicates that this will bring recognition to three key responsibilities in schools namely that of the responsibility for ensuring that the education of the child takes account of the abilities, aptitudes and developmental

needs of each individual seen as a person. Secondly, the responsibility for working together with other agencies in providing care and support for the learner and thirdly, the responsibility for greater integration with the community in expanding provision beyond the conventional curriculum and the traditional school day.

The Norms and Standards for Teachers (DoE, 2000) give seven roles or competences that a teacher should have. One of these is a community, citizenship and pastoral role. This role stresses that teachers should have the competence to guide learners, show an appreciation of the diversity of the learners in their care, be able to respond to social and other problems facing the learner, being caring, and being able to tutor or mentor learners and other teachers in need of assistance with social or learning problems. These roles appear to address what Best has in mind for schools and should be what each individual learner in South Africa should be entitled to through their rights in the Bill of Rights.

### **3.4.2 Addressing learner discipline**

The issue of pastoral care is seen in many schools as a way of sorting out discipline problems, according to Watkins and Wagner (1987:158). They agree that this is a twisted view of pastoral care and say that the most effective pastoral care is clearly related to the major goals of the school, which should be the intellectual and social development of all young people. They indicate that it should not be for a minority of learners at a school but should cater for all learners. They stress that the pastoral effort has a twofold role: that of encouraging, supporting and offering guidance for an extensive range of learner achievement in and out of the school, as well as the developing of a staff team that is receptive to this positive school system. Watkins and Wagner further point out that the main outcomes of the pastoral system are to provide a personal point of contact for each learner and his or her parents, to offer support and guidance for learner achievement and development, to monitor learner progress and performance across the whole school and to provide colleagues with information to adapt teaching. The pastoral system will thus have a concern about disruptive behaviour (on the part of the learner and on the part of the school), but it does not make sense that the pastoral system would necessarily have more of a

concern or responsibility for disruptive behaviour than any other aspect of the total school system.

The issue of teachers' duty of care and pastoral care in schools thus becomes crucial. In a report by Chisholm *et al.* (2005:181-187), the teacher workload in South African schools was investigated. It was found that many teachers spent considerable time in fundraising at schools and other administrative functions, but that schools did not spend the amount of time allocated by policy to the teaching that they should be doing. This is concerning as teaching time is already lost through classes changing, class sizes and the number of subjects that teachers have to teach. Teachers therefore do not have much time to spend with the learners in their care or to have the time to allocate to pastoral care in schools

The lack of contact time between the learners and the teacher also contributes to the feeling of disengagement experienced by truants from their teachers because they were not gaining much from school while also not getting the support from their class teachers that was needed to help them with their truancy (Allensworth & Easton, 2007:33).

The only pastoral duties in the schools reported on by Chisholm *et al.* (2005) were mainly related to the discipline of learners, ground duty at schools, detention, scholar patrol and feeding schemes. Pastoral care duty took up little time in most schools according to the report while in only one school was a deputy principal found who spent some time attending to sick learners, doing scholar patrol and ground duty and disciplining learners. This report mainly focused on the eroding of teaching time but pointed out that schools did not do much about pastoral duty or care at the schools that were visited.

The question thus arises, why are these accidents and events happening, and why and how should schools and education departments be dealing with them through the policies that are put in place, the duty of care imposed on them as teachers and the pastoral care programmes that they should have in place in their schools.

### 3.4.3 Training for teachers

Robinson and McMillan (2006:327-336) discusses the training of teachers from the viewpoint of the trainee teachers' lecturers, and mentions that there had been great changes in the needs and demands of education in South Africa in the last 10 years. They mention that teachers had to keep up to date not only with disciplinary issues, but also with a host of new curricula and policies. At the same time, they have to mentor new teachers for schools that are very unlike anything they were familiar with when the lecturers were at school.

Robinson and McMillan (2006:327-336) mention the Constitution, that has afforded all learners in the country equal rights, and that this is diametrically opposed to the previous regime where race had determined how learners would be educated and which school they would attend. Teachers now also had to be prepared to teach in schools where learners of all races, cultures and backgrounds were found. This included learners with different languages and socio-economic backgrounds.

Lecturers have to draw on their own resources and experiences as they lecture to new student teachers at institutions of learning. Robinson and McMillan (2006:327-336) also mention that as lecturers they are there as teachers and have to identify with the roles and responsibilities of a primary school teacher in their study. One of the lecturers also indicated that the primary school teacher works with a younger child and is quite significantly like the father and mother to that child. That was the reason why it was important to them that teachers know how to deal with that, as it is not just a question of passing on facts. Many of the lecturers in the study highlighted a pastoral relationship with their students and indicated that they cared about the students. A further belief by another lecturer was that his responsibility extended beyond teaching. The lecturers felt that you should include values, uplifting norms, ethics, morals and empathy as this idea of pastoral care was often shown not only for the academic side during lectures but also for the socio-emotional health of the students (Robinson & McMillan, 2006:327-336).

The lecturers further contended that a good teacher had to be available to his or her learners beyond classroom contact time, and that a good teacher should be in the



classroom with his or her students. In general this study seems to conclude that teachers who have a good knowledge of their students and the workplace will be able to contribute in a significant way to the students' knowledge of education in general but specifically to teaching and learning.

### 3.4.4 Schools and pastoral care

Catholic schools appear to place a great deal of emphasis on pastoral care, with their guidelines for this aspect in Catholic schools. They assert that pastoral care is the central theme to the ethos and identity of a Catholic school and that pastoral care for learners must be given a high priority in schools (Commonwealth of Australia, 2003:6). (See figure 5.)

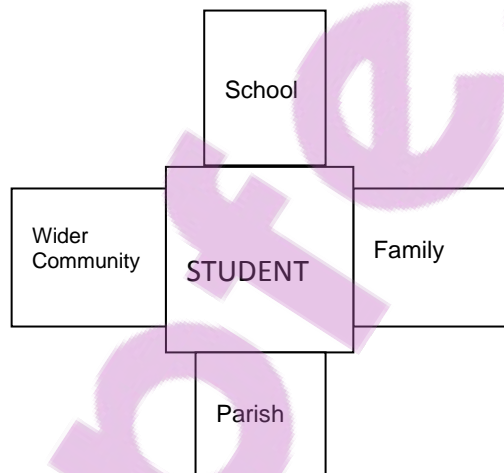


Figure 5. Dimensions of pastoral care. (Adapted from Guidelines for Pastoral Care in Catholic Schools, 2003:7)

The student is placed in the centre of an encompassing element of pastoral care whereby he/she is embraced by the school, the family, the church community and the wider community, thereby leading to the development of the whole person as indicated by Figure 5. These schools further suggest that a system of pastoral care in schools will be most effective when it is done as part of a broad approach to promoting the well-being and mental health of members of the school community.

Best (1990:15) posits that pastoral care in English Comprehensive schools is a visible and structural phenomena. Schools are divided to separate the curriculum or

academic structures and the pastoral structures. Although this differs from school to school, the foundation for this pastoral system is the form teacher, or the register teacher as it would be called in South Africa. Best (1990:16) states that the teacher may be seen as having a pastoral duty due to the moral duty of any responsible adult in the company of minors, and the professional duty of the teacher *in loco parentis*. He cites Watkins (1985) who says that the individualized care provided by the form tutor (register teacher) and pastoral middle manager in getting to know, guiding, supporting, comforting and counselling learners, is the pastoral casework. The same study found that pastoral topics were not taught or done during initial teacher training, and colleges and universities admitted that this was a weakness in their training (Best, 1990:19).

Over and above the duty of care or the *in loco parentis* duty expected of teachers, a pastoral duty of care or obligation to care for the learner is placed on teachers in South Africa, through the provisions set out by the employer in the Employment of Educators Act under the Personnel Administration Measures (hereafter PAM) Chapter A - Section 3 (3.1b) (i) (dd) (RSA, 1998). This section states that the teacher, apart from having the normal duties, also has pastoral duties.

In a Constitutional court case, *Hoërskool Ermelo v The Head of Department of Education: Mpumalanga* (219/08)[2009] ZASCA 22 a very interesting order was handed out by the judge, in that the school governing body were ordered to go back and revisit their language policy, keeping in mind that the numbers of learners in the school wanting to be taught in Afrikaans was dwindling, while there were many learners in the community who wanted to be taught in English and could conceivably fill the empty spaces.

This is profound in the sense that it forces schools, staff and School Governing Bodies to keep in mind that they serve a wide community, and also that they have a duty to uphold the values in the Constitution, which says that all have the right to an education. This idea is also mentioned in a newspaper report entitled, “Ermelo High School Court Ruling a Double-edged Sword” (Van der Rheede, 2011).

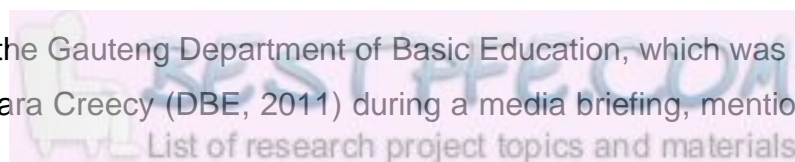
Van der Rheede contends that this ruling opens the door for civil society to take legal action against schools that are not effective or are dysfunctional. This action can even be taken against education departments for not acting against these schools. Schools found near slum areas or “squatter camps” have a host of social concerns that they might have to contend with because of the above court ruling which could increase the work load on educators trying to do their duty of care as well as pastoral care by trying to address the social challenges faced by the learners in the school. This is seemingly borne out by the research of Robinson and McMillan (2006:327-336) where they state that teachers have to contend with learners from a myriad of backgrounds and different social concerns.

Prinsloo (2006:316) postulates that the human rights contained in the Bill of Rights in the Constitution have, to a large degree, put South Africa on the road to providing legal foundations in the school to ensure that schools are free of sexual harassment, victimization, intimidation, hate speech against girls and women, and all forms of sexism.

However, the Constitution cannot ensure social responsibility, changed attitudes of individuals and groups, assumptions, stereotypes or prejudices. The values entrenched in the Bill of Rights must be lived out in the hearts of the people. Every individual must breathe it and live it, until it becomes the way of life in society and especially in our schools. This way of life should also bring in differing ideas from different cultures on how schools should be run, how learners should be treated by teachers and eventually, what the teacher’s duty of care is towards the learners in the school.

The subject of school safety also arises in studies on pastoral care. In the literature on truancy, many studies raise the issue of crime and drugs with truancy and these are the same issues that are investigated in many studies such as Prinsloo (2005), Joubert (2007) and Netshitahame and van Vollenhoven (2002), who all conducted studies on the issue of school safety.

A document from the Gauteng Department of Basic Education, which was introduced by the MEC, Barbara Creecy (DBE, 2011) during a media briefing, mentions truancy



and absenteeism as some of the safety issues that face the schooling system, together with others such as robbery, homicide, assault and rape. This document interrogates components of school life that can influence or change the safety of a school. These include the physical environment of the school, the area in which the school is located and the general way of life around the school in the upkeep of buildings, and the proximity to a police station.

The personal characteristics of learners, teachers and support staff must show their belief that safety is paramount despite the social conditions which might impact on the school. The school's social environment must be led by a strong leadership who can ensure that safety is actively promoted through committees that are set up for that purpose. The school's culture must ensure that all in the school are free from physical, emotional and other forms of attacks. There should be a sense of community ownership of the school. This would only be possible through the effective management of the school as this would be the means to school safety (DBE, 2011:4). One of the five pillars developed to help in this strategy is that of active law enforcement partnerships, which postulate that through this partnership, truant learners can be identified and returned to school (DBE, 2011:7). According to the report, laws in schools that define this culture, and the social environment that is to be found in schools, have developed over time.

#### **3.4.4.1 Special needs and pastoral care**

Galloway (1987:113) contends that learners that need special educational care can be very challenging or stressful for teachers. He maintains that these learners may be seen as having special needs if they make substantially less progress than their peers across the curriculum, or they experience substantial difficulty in one part of the curriculum, for example, reading or maths or their behaviour is seen as a problem by their teachers. The issue which classifies them as candidates for special needs could be the very aspect causing their truancy. Galloway therefore states that most persistent absentees would be seen as having special education needs. He maintains that a teacher responsible for talking to these learners on their return to the school would probably be a member of the school's pastoral network, either a deputy head or head of year. He further maintains that this teacher would most

probably also be responsible for informing agencies, such as the welfare service, that the learner is absent (Galloway, 1987:13).

Reid (1985:134) states that many principals must worry at night about the possible ramifications for action or inaction in the school due to unproductive pastoral work. They might in some cases not even know about this activity due to not working with the learners directly, especially given the *in loco parentis* aspect and the overwhelming evidence linking truancy and absenteeism with delinquent and maladjusted behaviour. These two aspects are strictly interpreted by the courts in cases involving learners. Reid states this due to the fact that intervention work with truants and absent learners was likely to continue to be makeshift, haphazard and not very good in schools.

Learners who are absent have the same pastoral needs as learners who attend regularly but they often have educational or social concerns which are taken for granted, especially concerns found in the family, which could lead to the poor attendance. Schools need to work on a growing relationship with the parents of these learners when there are problems in the home. This is to provide the parents with support and guidance while at the same time providing a form of parent-to-teacher communication to take place. It helps to let parents become aware of what the school can offer to the learner while at the same time it gives the parents a platform to air their views and concerns (Galloway, 1987:119).

This pastoral duty would in all likelihood include special programmes for learners with special needs. The Admission Policy for Ordinary Public Schools (hereafter Admission Policy) (DoE, 1998) clearly stipulates in section 22 that learners with special education needs must be taken into account when they are admitted. It further states that the Schools Act, (DoE, 1996) requires schools to admit learners with special education needs and that schools need to make the necessary arrangements to make their facilities accessible to these learners. This section appears to indicate that learners with special needs, physical or mental or just mild learning problems, need to be accommodated in ordinary public schools. Not caring for these learners in all aspects involved in the school could therefore have serious

implications for South African teachers, schools and especially the education department.

Schools in the mainstream (public schools that do not cater specifically for learners with disabilities) often lead to the needs of specific groups of young people, people with minor learning or physical disabilities being ignored, according to Pring, Hayward, Hodgson, Johnston, Keep, Oancea, Rees, Spours and Wilde (2009:113). Pring *et al.* quote the “MacBeath Report” as saying that as schools take in learners from a wider base, and getting more disturbed and damaged learners, the need for pastoral care increases a great deal. This is more pronounced in disadvantaged communities where domestic situations are not as they should be, with poverty or violence found in the community. This is indicative of many of the societies found with informal settlements that have sprung up near many of the major urban areas of South Africa, with all the related challenges.

The main duty of the pastoral care system, however, would be to try to provide the absent learner with the care needed to make him or her “a contributing member of the class.” Research on absentees could lead the school into a major review of its systems, teaching methods and welfare system, as well as the curriculum (Galloway, 1987:120). A major challenge facing the South African system is the myriad of changes that have taken place and are still taking place in the form of new curricula, with a total of five new ones that have been introduced in the last 10 to 12 years.

#### **3.4.4.2 Responsibility for pastoral care**

Galloway (1987:112) posits that nearly all secondary schools appoint staff in senior and middle management positions so that they can take care of a learner’s pastoral care. He mentions that the level and scope of this care might differ from school to school but it should be part of the issues in a secondary school that must be looked into. However, he maintains that pastoral care, in order to be effective, cannot be the duty only of the people whose major duty is pastoral care. It takes the whole-school approach to make pastoral care effective (Galloway, 1987:117). He contends however, that not all teachers have a pastoral responsibility to all their learners. He poses the question whether it would mean that all teachers would accept this task for

their learners' personal and educational welfare, and also what they would expect to add to the personal, social and educational guidance of learners in the classes they teach (Galloway, 1987:117).

Galloway, (1987:118) stresses that for a pastoral care system to be of use each learner should be known well by at least one teacher. Information that is relevant to the learner's growth and management must be harmonised, spread and used in planning future work, and each learner's progress must be monitored thoroughly across the curriculum. Galloway states that for this kind of system to be helpful, form tutors (class or register teachers in the South African context) in a school must be used. He further states that schools must accept accountability for the personal and social education and the educational and vocational guidance of all their learners.

#### **3.4.4.3 Effective pastoral care**

In a study concerning effective pastoral care, Reid (1987:134-136) came to a number of tentative conclusions after studying various research findings. He said the following:

- 1) *That the psychological environment of the classroom is very important in effective schools. He states that positive learning outcomes are to be seen with satisfaction, task difficulty, formality, goal direction and democracy.*
- 2) *that studies show that the atmosphere of the school is very important to effective pastoral care.*
- 3) *that effective pastoral care is probably linked to the form of institutional control which is practised within a school.*
- 4) *that the size of schools, classes and the teacher-pupil ratio may be important but possibly only under certain conditions.*
- 5) *that effective pastoral care is almost certainly related to the degree of pupil participation in school life. I.e. prefect system*
- 6) *that the views of teachers and teachers' positive expectations appear vital.*
- 7) *that effective pastoral care is probably related to the disciplinary orientation of the schools.*
- 8) *that the professional outlook of staff in a school is probably linked to effective pastoral care.*

- 9) *that the academic environment of the school is crucial in effective schools*”  
(Reid, 1987:134-136).

The above points by Reid appear to support those by Galloway, and point out that it must be a whole-school initiative, where the school structure, the curriculum, the staff attitude and class sizes, are especially geared towards a pastoral system to the benefit of the learners in the school.

#### **3.4.4.4 Effective school policies for pastoral care**

Reid (1987:137) suggests that pastoral care is effective with absent learners when the school has good policies on absenteeism, indiscipline, underachievement, and learners who have behaviour problems, learning difficulties or special educational needs.

A concern surrounding pastoral care, is that in a study on school safety conducted by Netshitahame and van Vollenhoven (2002:317), their concerns emanated from the fact that very few schools had safety policies or rules, these were not applied when they had them, while at 70% of the schools, there were no safety policies or rules. Not much was done to ensure the safety of the learners while at school or on school property. Policies on pastoral care could follow the same pattern.

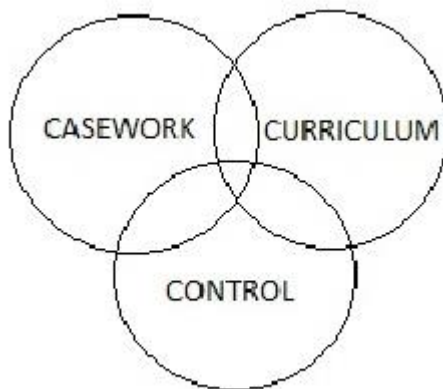
### **3.5 How pastoral care functions in schools**

An interesting study was conducted by Best (1990:14-23) to determine the teacher’s role in pastoral care in schools. It was conducted in English state secondary schools and introduced a needs-focused model of pastoral care for looking at the roles of teachers in pastoral care, and also looked at the implications of this model for teacher training. Best states that the role of the form tutor is especially important in pastoral care, and these tutors in turn, to report to pastoral middle-managers. Some schools may also have a deputy in a full time position and trained counsellors, although they are rare. Best mentions research that states that pastoral care often takes on the role of “too little, too late” in responding to crises situations, especially in situations that could have been anticipated or avoided.



He mentions that learners basically have three needs (Best, 1990:16 -17) which are, first, the need for security, guidance, moral support, love and so on, second, the needs that entail opportunities to learn facts, acquire concepts, explore feelings and examine values, and third, the need to develop as an individual, especially in personal and social relationships. Best (1990:17), states that for a child to become a citizen with opportunities, rules and sanctions are needed. He advocates his model as a system of activities that are interrelated and sometimes overlap. This model is different in that it attempts to meet the needs of teachers so that they can do their pastoral work better.

Figure 6: Model according to Best, (1990:18)



Best, (1990:18) maintains that this model should accommodate all the needs of the staff in schools. These include curriculum leadership and staff development, among others.

In aspects regarding truancy, Collins (1998:95) discusses schools where they have done research and mentions the varying degrees of follow-up from schools about truancy. He indicated that some schools used informal processes of exchange such as word of mouth, and this usually entailed learners with a history of truancy. Some schools followed up on the day of the truancy while others would only follow up after three days of absence, and this follow-up was usually done by letter. A further case at a school was used where the truancy was only followed up after two weeks. This disparity between schools is very often a concern.

It is suggested by Galloway (1987:117) that a “*whole school*” approach is required for pastoral care to succeed. This appears to be echoed by Reid (1987) as already mentioned. Galloway states that this means that teachers must accept responsibility for the learners’ welfare both from a personal and an educational nature. They must also contribute to the guidance of the learners who are in their classes. Schools made use of form tutors who had varying degrees of involvement in the cases of truancy. Some of the schools would stop tutors from having contact with the parents of truants about the absences while in others it was seen as the primary duty of the form tutor or further still, a collaborative duty together with a senior or another senior member of staff. It was also common practice according to Collins (1998:95) that as the number of unexplained absences increased, or as it became obvious that some absence might be unauthorized, or condoned by parents, so senior pastoral staff became more involved.

Galloway (1987:118&9) indicates that absentees do not have different pastoral needs from that of regular school-going learners, but educationally and socially their problems can easily be overlooked. Establishing a working relationship with parents of absentee learners is absolutely necessary, especially if there are challenges in the home situation. On the return to school, absentee learners need to be incorporated into the school as a valuable member of the school. It will be the duty of form tutors and heads to ensure that this happens, especially if family pressures contribute to the truancy.

The debate on what constitutes a form tutor and whether they are to be experienced or not, is the subject of research by Griffiths and Sherman (1991:30-41). What appears to be clear from their research on schools where they did research was that there was a clear division between the pastoral section of the school and the curriculum section, while the pastoral tutor was often seen as inexperienced and not as important as the pastoral head, and tutoring was often seen as a low-status job. This was not always the case, and in some schools more skilled, experienced and high-status staff was involved.

The academic section of the school is also seen as more important than the pastoral section, especially as most teachers at schools are appointed in an academic role as

a head of department or some such position. According to the research by Griffiths and Sherman, tutors are paid allowances, but how and to whom they are paid, will depend on the individual school, and could depend on the policies within the school. A clear factor to emerge from the research is that a great deal of emphasis is placed on tutoring in the upper years, and more is paid in allowances to these form tutors for these upper classes. This is totally different to the situation in South Africa where schools do not have pastoral staff and often do not even have guidance teachers to deal with the issues raised by “children at risk”. This duty most often falls on the shoulders of the class teacher and management in schools.

Griffiths and Sherman (1991:38) point out that from their investigations, it is clear that “*real form tutors*” are reasonably well experienced, that the majority have management responsibilities of their own in other areas of school work, and that they are almost as likely to have a salary and status at least equal to that of the pastoral head, and they are not mere class teachers or tutors at the bottom of a school hierarchy.

A serious flaw at many schools, according to Collins (1998:103), was that the information from schools in the prospectus of the schools they researched was, in many cases, silent about truancy and the procedure around absence from school, both condoned and unexplained absence. It was also found that documents and information from the various schools, such as the prospectus, staff handbooks and policy documents collected, had very little information provided about the operation of pastoral care and, even worse, that schools did not often have these documents.

A recent High Court case mentioned in Chapter 1, *TM Jacobs v The Chairman of the Governing Body of Rhodes High School & Others*, Case no. 7953/2004, can be seen as ground-breaking in how schools, teachers, staff and departments of education deal with issues of learners and learner concerns in schools. It also raises the issue of pastoral care of teachers and how far teachers are supposed to go in order to address not only educational school issues but also social issues in the home and home environment of learners under their care.

The case stems from an incident whereby a teacher (Jacobs) was attacked and assaulted with a hammer by a Grade 8 school learner in her class. The background of the case is that a troubled young boy, who had countless infractions in the school and out of the school, had social problems at home and associated with wrong friends, had drawn a death certificate for the teacher, and upon being confronted by it, he tried to refuse that the book in which it was drawn, be taken from him when reported to the HOD. He was subsequently sent out of the class and sent to the principal's office. He was forced to hand over the book (it was forcibly wrested from him) and after the principal had seen the ("serious things") contents, he had placed the boy on a chair outside his office while he tried to make contact with the police and the mother of the boy.

The boy then left the chair where he had been placed outside the office and went to the class, where he attacked the teacher with the hammer, hitting her over the head and on the arm and leg. He was eventually restrained and the teacher taken to hospital. The teacher then brought the case for damages against the defendants after the boy was found guilty of a series of incidents and expelled from the school.

It was found by the judge *that "the State (department of education) is liable for any damage or loss caused as a result of any act or omission in connection with any school activity conducted by a public school and for which such school would otherwise have been liable."* Citing Section 60 (1 & 3) the judge indicated that the claim had to be instituted against the second and third defendant with the one paying the other to be absolved for the amount to be paid. (The Principal and the Member of the Executive Council for Education, Western Cape)

The judge divided the negligence into two sections, one that related to the "acts and/or omissions" of the school staff in their dealings with the school boy prior to the incident and secondly, to the same actions on the day of the incident regarding the conduct of the boy.

The judge pointed out that the teenager had disciplinary, behavioural, social and personal problems. One of the teachers mentioned that she had been involved with the teenager in the role of pastoral care and that the boy had poured out his heart to

her, telling her that he was not happy at home; his father was in jail, he was the breadwinner in the family and so on. According to another former teacher, this would have caused her to refer him immediately for counselling. The fact of the matter was that the school should have sent the teenager for intervention or for professional help, which was not done. The finding of the judge was that the actions of the school staff, the lack of proper instructions and communication fell short of that of a reasonable person and therefore had serious implications.

However, he also found the principal negligent in that he had a duty of care to the plaintiff and was primarily responsible for the safekeeping of the members of the school community. The judge found that in view of the behaviour of the teenager, his conduct and his threats, the principal should have taken reasonable steps to ensure that he was not left unsupervised, and should have foreseen that he could have slipped away to carry out his threats towards the teacher. He thus found that due to his failure to take measures to prevent the boy leaving, and the boy subsequently attacking the teacher, constituted negligence on the part of the principal.

This court case clearly illustrates the pitfalls that schools can find themselves in by not following up on cases of pastoral care of learners and could lead to millions of rand in damages that must be paid out due to the negligence brought out by a lack of pastoral care. It is not good enough on the surface to pass over the pastoral care that must be followed in schools by all the relevant staff, but also clearly that learners in schools must be assisted with not only the disciplinary and behavioural issues but also with the social and psychological matters that afflict them in their day to day lives, including truancy.

An article by Schouwstra (2009:1&5) discusses the matter of teachers' apparent lack of understanding of the law and the legal obligations of the teachers' duty of care. The article indicates that only one third of the participants from the empirical research admitted to having a reasonable knowledge of the laws and other legal regulations that they were expected to have in schools. "In the best interest of the child" (Section 28 (2) of the SA Constitution, 1996 (a)) is one of the primary principles of the South African education system. Teachers, as professionally trained

individuals who are working with learners, have to demonstrate a higher standard of care than anyone else as they have been specifically trained to do so in schools.

Rossouw (2004:28) states that the new Constitution has caused an increased awareness of the importance of human rights. This has had a notable effect on education in the country that forces teachers, school management teams and governing bodies to adapt their approaches by using innovative strategies to protect the learner's rights to an environment that is not harmful to their health and well-being, is one of the chief points. It thus appears necessary for teachers to continue studying recent legislation to ensure that they are fully apprised of what is expected of them in fulfilling the duty of care towards learners in schools.

In support of this lack of knowledge of the law among teachers, are the findings by Netshitahame and van Vollenhoven (2002) concerning the apparent lack of policies in schools to govern matters within the school and these two factors bring out a very worrying situation currently prevalent in schools.

The study by Schouwstra indicated that only participants who had recently been involved in postgraduate studies showed a heightened level of knowledge, and demonstrated this heightened standard in their duty of care at the school. One of the recommendations from this study was to ensure that aspects of education legislation be incorporated in distance education programmes, a step in equipping our teachers with the necessary practical conduct regarding their duty of care. This could also apply to the pastoral care which would simply be an extension of the duty of care.

### **3.6 Pastoral care policies and their importance**

In many schools and areas internationally, there are individual policies that have been drawn up to guide the schools in that area or city as regards pastoral care. One such policy is that drawn up by the Local Negotiating Committee for Teachers (LNCT) found in Glasgow in Scotland (Glasgow LNCT, 2003:1). This document was drawn up in light of a review into guidance by the Glasgow City Council and it was intended to promote a strong support structure for learners, especially in the area of

guidance/pastoral care. According to them, a strong support structure is seen as vital to support effective teaching and learning in a school.

Some of the responsibilities from the policy include promoting and safeguarding the health, welfare and safety of learners, working in partnership with parents, support staff and other professionals, providing advice and guidance to learners on issues related to their education and contributing towards good order and the wider needs of the school (LNCT, Circular 6).

The policy states that pastoral duties of all teachers become mandatory, and that pastoral care was a process that all teachers should be involved in as it has responsibilities, while it reiterated that the duties were for teachers. Pastoral care is defined by this policy as *“a holistic approach by which the school attempts to meet the personal, social, emotional and intellectual needs of every pupil, in order that each might participate fully and gain maximum benefit from everything the school has to offer.”* The five key areas they want to address in the policy are personal guidance, curricular guidance, vocational guidance, and a programme of personal and social education, as well as the development of a positive school ethos. The policy outlines basic elements that were identified by the Glasgow City Council approach to developing policies and structures for the future of guidance. Some of these are the creation of a pupil support team, the implementation of responsibilities of all staff in relation to pastoral care, and a role for teachers who have, or wish to develop, skills and expertise in guidance/pastoral care.

The above policy was drawn up through the implementation of an agreement that was reached following certain recommendations that were made after the McCrone Report in Scotland (Swift, 2001). This agreement was drawn up to outline the conditions of service of teachers in Scotland such as duties and working hours, much as our Personnel Administration Measures or PAM does in South Africa (RSA, 1999).

A further policy on guidelines for Pastoral Care in Catholic Schools discussed above was also looked at. This policy also advocates a whole-school approach. These Catholic schools maintain that pastoral care is more than just giving good lessons. It

includes a concern for the well-being of students, and an all inclusive development of the learner.

It further has a framework much like that advocated by Best (1990) but geared towards the needs of the child, with three circles: first, Curriculum Teaching and Learning, second, School Organization, Ethos and Environment, and the third being Partnerships and Services. The extent of the policy covered within these three circles would be health services, building healthy public policy, developing personal skills, strengthening community action, and creating supporting environments.

The Government of Western Australia through their Department of Education and Training issued a document for teachers, (DoE, 2007:3) that attempts to set out definitions of duty of care, caring and reasonable care, while providing scenarios and examples which can be used by teachers and others in their dealings with students in schools. They state that the reasonableness of care that might be required for students differs depending on, among other factors, the student's age, experience and capabilities, physical and intellectual impairment, medical condition and the nature of the school activity. The document discussed above, gives guidelines for when a duty of care is owed by a staff member due to the fact that it automatically arises when there is any interaction between teacher and student. This interaction will come to the fore whenever a student takes part in any school activity.

The document above entitled Duty of Care for students, also mentions a "Working with Children" check that must be performed by the police for all people who do child related work, which is a good thing that could be followed in South Africa. The policy gives scenarios of learners on school grounds before school, after school is out, going home and then returning to the school grounds, and many others, while giving solutions or possible ways of dealing with the situation, or what needs to be done in these situations. The Children's Act in Chapter 7 (RSA, 2005:54) concerning the protection of learners, discusses the keeping of a part B of a national child protection register that states that this section of the register would be to record the details of all people who could be deemed unfit to work with learners, much the same as the working with learners register in Australia. It is applicable to all people who apply to



work in places where learners can be found. How functional this register is in South Africa remains to be seen.

A study on HIV/AIDS by Hoadley (2006:141) looks at *schools “as sites of care and support”*. This study looks at schools from the basis of learners who are at risk, much like Southwell (2006:91) in the literature discussed. She mentions the Norms and Standards for Teachers as one policy that gives the “*roles and competencies*” of teachers, which, she says, includes the “*community, citizenship and pastoral role*” (Hoadley, 2006:140). This role is one of seven mentioned previously which are meant to serve as a description of what it means to be a competent teacher with many practical competencies.

### **3.7 Role of the school in the care of the learner**

Jones (1980:171-188) suggests that schools need to relook their belief in their value and purpose, and come to terms with their own identity problem. According to her, schools have their main duty and they need to know what that is and for what they stand, and then to do it to the best of their ability. It is her contention that schools need to learn to refuse when asked to take responsibility for issues that they are not trained to do or do not have the time to do. Jones feels that learners will be helped with any socio-economic issues they are faced with when they are well taught. A school should have an identity and a sense of purpose so that they will not be scared to make demands on their learners. The demands should get the best possible result from the learners as it is only in this way that the learners will realise that they are getting something worthwhile from the school. Learners will not want to be truant if they realize that schools offer a valuable experience to the learners.

Griffiths and Sherman (1991:161-178) give examples of documents which discuss the role of the Form Tutor and the role of the pastoral advisor from different schools, but the South African system is totally different from the system in Britain. In the South African schools the presence of a “*guidance teacher*” (South African equivalent) is not guaranteed as very few schools have the luxury of having someone appointed exclusively to deal with guidance issues at schools. The pastoral role is thus typically and unofficially taken on by the class teacher on top of their

many other functions, as the duties of the South African class teacher are very much like those mentioned by Griffiths and Sherman (1991:161-178). Constant monitoring within the school will ensure that the school delivers what it says it stands for in its constant quest to deliver something of value to the learners.

Jones (1980) states that in her experience at her school, a number of approaches of a pastoral nature have been introduced to help learners to adapt to the school and attend regularly. Some of these approaches are introducing learners to the school, fostering identification with the school, contact with families, and school results.

### 3.8 Conclusion

The above ideas and competencies appear to link up to the findings of the Ermelo court case, where it was found that schools need to take into consideration the needs of the community around the school, the needs of the child and the needs of the community that need schooling in a particular language.

Education White Paper 6 directs that schools create “*site-based support teams*” in schools so that any deficiencies in the learners can be addressed. The main task of the support teams would be for teacher and learner support after the identification of needs within the school.

A structure to address at risk learners thus appears to be called for by policy but as already mentioned in the literature by Netshitahame and van Vollenhoven (2002), policies are not always followed or implemented in schools.

The findings of the judge in the court case *Jacobs v The Chairperson of Rhodes High School and others* also points to the fact that the teachers’ duty of care does not merely end with the *in loco parentis* role of the teachers but also extends into an in-depth analysis of the social and other challenges faced by learners outside school situations while they are still in schools, which again points to the pastoral role of the teacher: this is alluded to in the “caring supervision” duty as discussed under *in loco parentis* (Roos, Oosthuizen & Smit, 2009). It thus seems as if the law and findings of

the courts point to the teachers' duty of care as taking on a pastoral role of seeming "Total care" at schools.

The National Curriculum Statement (2002) which was introduced by Professor Kader Asmal mentions that teachers have a very vital task to perform with the new curriculum, and it also discusses the kind of teacher that is envisaged in the new curriculum as someone who is "*qualified, competent, dedicated and caring*", and who will be able to execute the various roles outlined in the Norms and Standards for Educators (DoE, 2000).

In Signposts for Safe Schools (DoE, 1999) a number of key principles are mentioned that provide for the safety and security of both learners and teachers at schools. A number of these principles are key aspects such as knowing what a safe school is, looking for indicators of violence and addressing them, and developing policies, prevention and response plans to issues of safety and violence. It includes a strategy to deal with truancy, also having safety nets for troubled learners and effective school management. Once again, effective school management crops up in the literature in dealing with issues at schools that could potentially create problems in the school, such as discipline, truancy and violence. Under safe schools it mentions that "*Research suggests that the way in which the school is managed and the extent to which it runs effectively as a place of learning and nurturing is directly linked to the level of stability or chaos in the school.*" Having effective policies in the school is thus vitally important in addressing incidents that crop up in a school, such as safety of staff and learners, discipline, truancy, drugs and violence.

The South African schools cannot remunerate the teachers or appoint specific staff to perform this pastoral duty, or to take on the duty of pastoral care as is done in Britain. It is also debatable whether specific and effective pastoral systems that address learner concerns and especially truancy exist and are to be found in the South African public schools. That it can benefit the learners in South African schools and especially those that are prone to acts of truancy, is without a doubt.

In conclusion, creating a pastoral system to address the issues identified through the duty of care would appear to be what is envisaged in the courts especially in light of

the *Jacobs vs Chairperson of Rhodes High School and Others* finding. The judge found that the school was negligent as it did not cater for the learner in dealing with the social aspects and other concerns mainly out of school that were influencing his behaviour at school. These social aspects and other concerns thus need to be addressed in schools.

The next chapter will examine the literature regarding truancy, the various aspects that influence it, the effect of truancy in the school, and the effect on academic performance and the school culture.

## CHAPTER 4

### Learner Truancy – an overview

#### 4.1. Introduction

In Chapter 1 a large part is spent on the myriad of policies and laws introduced by the South African Government and the National Department of Basic Education to ensure that learners attend schools, and also that teachers in schools teach during the school day. A brief layout of the research methodology and a description of the whole research project are also discussed. Chapter 2 is an interpretation of the outline of the legal framework that was used for this study.

In chapters 3 and 4 the literature survey identifies some of the factors that affect the duty of care and what is meant by the terms pastoral care and truancy. Numerous newspaper articles on many topics such as learner absenteeism, pastoral duty and other school related topics sparked the interest in the study, but different sources of research were looked at to get information on the topic, such as books on truancy and discipline, the South African Constitution and legislation, the South African Schools Act and other applicable law, books, research articles and court cases on the subject.

A newspaper report from Australia (Karvelas 2007) mentions that the Federal government was trying to get the different states in Australia to hand over truancy data, but that they had refused because, as mentioned by one state, this involved a great deal of information. They felt that it would cause school principals to be bogged down with administrative work or red tape. Another state (ACT-Australian Capital Territory) did not have data based on the number of days of unexplained student absence. Only one state, Western Australia, had committed to supply the information about truancy. This lack of information on truancy caused the failure of a massive drive by the Federal government to *“quarantine welfare cheques of parents whose children skip school”*. Some of the reasons mentioned for this failure were that the states dealt with a large amount of information, others wanted a formal approach

from the Federal government while a third objection was that issues of truancy were handled at school level or at the ground level. Collins (1998:22) echoes this inability to get any information, let alone accurate information, in Wales and England as well.

A second newspaper article from the United Kingdom (Lipsett 2009) makes the statement that according to the Government's chief adviser on London schools, it was estimated that up to 10 000 teenagers across the country were leaving school because they believed that school could not offer them anything. This issue of not "*offering them anything*" is also mentioned by Carlen, Gleeson and Wardhaugh (1992:142), when they argue that identified truants who were constantly absent do not see the "*schooling deal*" as being relevant to their own lives.

A further newspaper report (Gordon 2010) mentions that in Queensland in Australia parents in the poorer working class suburbs were having their welfare payments stripped if their children did not attend school. They have also started a crackdown on truancy by prosecuting parents, while at the same time, sending mounted police to round up learners that have not reported to schools. Much of the problem in this state can be attributed to "*socio-economically disadvantaged areas*" in Queensland, according to the report.

Furthermore, a newspaper article from England (Shepherd 2010) made the claim that 10 million school days were missed without permission by 6 million learners. They assert that this was despite the ministers taking a tough stance on absenteeism, prosecuting 9 500 parents and fining thousands as their children skipped school.

In South Africa a report by Govender (2012:5) from the Sunday Times states that a total of 600 000 South African learners did not attend school in 2011. A total of 110 000 of these were learners aged between seven and 15 years of age, the age of compulsory schooling. The spokesperson from the Department of Basic Education indicated that although this number was high, it was not considered high by international standards. The spokesperson indicated that they were hard at work trying to track down any learners who were not in school. The report also gives an example of a 14-year-old boy from the Northern Cape who had been absent from

school for 123 days and was found at home cleaning his mother's house (Govender, 2012:5).

## 4.2 Brief history of truancy

Truancy in schools is not a new concept and it has been recorded for hundreds of years in many countries. (Reid, 1985:3; Collins, 1998:5) For instance, it has been called different names by different people, from “wagging” (Carlen, Gleeson & Wardhaugh, 1992:16) to mitching, skiving, dodging (Reid, 1985:3), or absenteeism for other reasons such as school phobia, parental-condoned absence or illness (Reid, 1985:6).

Similarly, truancy or absenteeism is viewed in many respects as the behaviour by learners of not attending school for some reason, even though they are expected to do so by teachers, schools, their parents, society and the government. The State Board of South Carolina sees truancy as chiefly an issue that education faces. It is accepted that it is constant absence without a satisfactory reason or being away from school with or without parental consent (Reid, 1985:6).

Likewise, Reid (1985:6) mentions the Pack Committee of the Scottish Education Department, giving a definition for truancy which said, “*Truancy is unauthorized absence from school, for any period, as a result of premeditated or spontaneous action on the part of the pupil, parent or both.*”

Education, for many of the early years before the 1900's, had been left in the charge or control of churches and other religious groups who had made it their business to educate the young. Many of these schools were harsh and used harsh forms of punishment, while the conditions under which they taught were not favourable to the individual. Carlen *et al.* (1992:15) mention that schools had large classes with schooling taking place in one big room where use was made of such practices as rote learning, poetry and religious instruction which did not suit the learners at that time.



A further complication mentioned by Carlen *et al.* (1992:15) was that schools and teacher pay were often financed together, and pay was dependant on their results and the numbers of learners who attended the school. It was thus crucial that schools and teachers ensure that as many learners attend schools as possible. Various governments, such as in England, have tried to regulate school attendance by introducing laws making it compulsory for parents to ensure that their child attends school. Carlen *et al.* (1992:15), mentions that schooling has been compulsory for a long time in England, since the Forster Education Act of 1870.

In addition, the average attendance rate in London, although being higher than the national average, was 80% for high school learners, and as stated by Reid, this was not much more than it had been about 70 years before (Reid, 1985:13) as indicated from local and regional studies mentioned by Reid that were conducted and cited by him (Rutter *et al.* 1979; Davie *et al.* 1972). Reid thus makes the point that compulsory schooling had not had much of an effect on the pace of truancy between earlier and modern times. Many other countries also have similar concerns with truancy, while in the United States there appears to have been an increase in truancy. Reid (1985:13) mentions figures rising from 9799 truants in 1899 to 1890 and 62 855 in 1911 to 1912.

Although schooling was obligatory or mandatory (Reid, 1985:25) at the time and the authorities could force parents to accept responsibility for the non-attendance of their child by allowing for prosecution of parents, very little was said about how education officials had to handle the matter or even what could be done. Parents could even be found guilty of allowing the truancy and sent to goal. This did not, however, solve the issue of truancy.

School authorities on the other hand were able to enforce attendance in any way they chose at the time but this did not necessarily mean that attendance at schools improved. Compulsory education had many benefits but as Carlen *et al.* (1992:21) points out, it was not a case of trying to force parents to have their children attend school but the separation of the child from his home and the school from work. The teacher and school had to simply prepare the child for work and becoming a good



citizen. This would then effectively guide parents to be accountable by law for ensuring that their child attends school.

At the time compulsory education was also thought to be the answer to the increasing industrialisation in countries, especially in England, to overcome the opposition by the working class people at the time (Carlen *et al.* 1992:17). Forcing truant learners to return to school without looking at the reasons why they left in the first place only led to further frustrations for the schools, the authorities, the family and the truant as it did not take into consideration the reasons why the truant left, the situation they were being sent back to in school, or why they went truant or continued to go truant in the first place (Carlen *et al.* 1992:26).

Carlen *et al.* (1992: 4) discusses the terms “*social control*” and “*social regulation*” which they mention would firstly limit an individual’s freedom due to scarce resources and other limitations in the school. Secondly, social regulation was used for social control which would achieve certain “ends” or controls by a dominant class at the expense of someone else. This could be the situation that learners find themselves in and naturally lead to the truancy. They further state that the curriculum which was introduced in Britain at the time excluded the private education sector from the demands of this curriculum, and this in turn led to the privatization of schools and to elitist schools developing.

#### **4.2.1 Actions to address truancy**

In North America, a study by Smink and Heilbrunn (2005:4) discusses truancy and the legal and economic issues related to truancy, and indicate that they depend on each other. In this study Smink and Heilbrunn (2005:12) maintain that the No Child Left Behind Act (P.L.107-110,H.R.1) of 2001 requires schools and districts to report attendance rates and truancy rates in the hope that this would help with record keeping regarding truancy in schools. They reiterate that it is State and federal regulations that indicate that it is the school’s responsibility to pursue truants. (Smink & Heilbrunn (2005:17).

This is an Act of Congress that was signed into law on January 8, 2002 and has as its purpose to promote standards-based education in each state in America. (Kelly, 2004:1) It was introduced to ensure the accountability of schools for learner progress. The main purpose of the Act was to enable annual testing and good academic progress, to have highly qualified teachers, setting up reading programmes to help learners with reading, and looking into the funding of schools.

This improvement in standards was envisaged by ensuring that states start testing students annually in reading and mathematics, bringing all students up to the “proficient” level by the 2014 school year, furnishing annual report cards showing a range of information, putting in place good reading programmes, ensuring that teachers would be well qualified and schools well funded. This was however mainly a program funded extensively to help states and districts set up reading programs for learners (Education Trust, 2004). The Act also requires that schools set improvement plans linked to their scores and graduation rates, to ultimately get 100% test proficiency and 100% high school graduation by the year 2014.

Smink and Heilbrunn (2005: 3 &13) maintain that even though education is compulsory, complications arise as there is a vast difference from state to state in how they approach school attendance and there are various examples such as the fact that only 16 states require attendance until the age typically of high school graduation, or that some states require a child to attend nine years of schooling while others require 13 years. The authors mention that although young people could be entitled to receive a public education until the age of 21 in most states, in some schools, learners that could lower the academic standard of the school in tests, are encouraged to withdraw from the school (Smink & Heilbrunn, 2005:11). The definition of truancy differs from state to state which makes the issue of truancy and its effects and data even more difficult according to Smink and Heilbrunn. They give two examples from different states, the first where truancy is described as “*when a child has three consecutive unlawful absences or a total of five unlawful absences*”, and the second states that “*a truant is defined as a child subject to compulsory school attendance and who is absent without valid cause from such attendance for a school day or portion thereof.*”

In a third case, the definition of truancy is more specific: *“missing up to three days of classes is considered simple truancy, while missing between three and 10 days is considered habitual truancy”* (Smink & Heilbrunn, 2005:12). This highlights the concerns around truancy. No accurate information will be given about truancy in schools without the states being able to agree on a common definition for truancy. The above examples highlight the disparity that seems to exist between the different states regarding truancy. Smink and Heilbrunn discuss the huge costs of a dropout over the truant’s lifetime, and also the implications that this cost could have on schools and community. Truants could be absent during the week in which school numbers are calculated, thus being a loss in revenue to the school. The truant is a huge drain on the school as they need more time for disciplinary hearings and for “counsellor time”, while also needing more instruction time from support staff (Smink & Heilbrunn, 2005:30).

Truancy and reporting it leads to parents having to take off work to discuss their child’s attendance at school, or they may have to attend court proceedings. The greater cost that is incurred, however, is that of the loss of earnings as high school graduates normally earn more than dropouts do, due to having furthered their education.

The study by Smink and Heilbrunn list some of the costs of truancy, that high school dropouts earn less and have higher unemployment rates, they pay less in income taxes to government, they cost government more in social grants, they have high court costs as juveniles and adults, the victims of crime bear a cost and the learners of high school dropouts sustain costs (Smink & Heilbrunn, 2005:27).

Smink and Heilbrunn (2005:44) thus advocated the initiation of school attendance and truancy reduction programs (TRP’s). These are programs run by schools, courts, or a community, while monitoring progress and outcomes is essential to ensure the necessary funds and support for the program. They maintain a uniform system for truancy, school attendance needs to be sought, and the data generated must become useable in order to put a stop to truancy. Smink and Heilbrunn state that there are benefits to the use of such programs as they promote educational success, reduce juvenile crime, provide financial benefits to society, reduce adult

criminality, generate family benefits, lead to benefits for all in the family and achieve a successful attitude.

The Juvenile Justice Bulletin of the Office of Juvenile and Delinquency Prevention (OJJDP) examined the issue of truancy and reducing it. The available statistics of truancy cases in juvenile courts showed that the record of truants is evenly divided between boys and girls, and also that truancy involves learners from age ten to fifteen (Baker, Sigmon & Nugent, 2001:1). The Abolish Chronic Truancy (ACT) evaluation programme of the OJJDP, confirms previous findings that there were at least four broad categories of truancy, namely family factors, school factors, economic influences and student variables (Baker, Sigmon & Nugent, 2001:1). The study pointed out that truancy had been clearly found to be one of the early warning signs that young people are getting involved in possibly ruinous activity, were failing educationally and were becoming social outcasts (Baker, Sigmon & Nugent, 2001:2).

The ACT programme was formed keeping three main ideas in mind. They are the policing of compulsory attendance, offering programs that look at the main causes of truancy and punishment for parents when learners continue being truant or do not complete the programs for truancy reduction. It was found that a key factor for the success of the program was the active participation of school districts, local schools, law enforcement offices and community agencies, all of which had some role to play in the education of the youth. The comprehensive model that was drawn up from all models suggested from the Truancy Reduction Demonstration program (TRDP), by the Youth out of Education Mainstream Initiative has a number of key elements, some of which are parental involvement, sanctions or consequences for truancy, incentives for school attendance and school-based truancy reduction programs (Baker, Sigmon & Nugent, 2001:1).

The conclusion reached from the above is that identifying and solving the underlying reasons for the truancy is necessary to address truancy and bring about a long term change in the behaviour. To do so however, requires a discussion of the types of truancy and reasons and causes for truancy in the literature.

### 4.3 Types of truancy

Reid (2006:1) posits that there are different types of school absenteeism in Britain. Reid sees them as specific lesson absence, post-registration absence, parentally condoned absence, psychological absence, school refusal and school phobia, and in describing the above, he states that they cause a dilemma by themselves. The first three, are not always regarded as truancy, but are seen by others as truancy. The confusion continues as some people would think of absence without a good reason as being truancy while parentally condoned absence cannot be seen as truancy by some.

Furthermore, Carlen, Gleeson and Wardhaugh (1992:62) also discuss many different types of truancy. They mention officially induced absence which is caused by strikes or shortages of teachers, officially approved absence which they link to personal or family reasons, officially illicit but unofficially condoned absence which they say could be a learner who is disruptive at school, officially illicit but parentally condoned absence which is where parents do not enforce school attendance, officially illicit and parentally disapproved absence where parents do not condone the absence, and lastly, internal and illicit absence which is where a learner has been recorded as present at the school but is not at the lesson.

Furthermore Reid (2006:6) states that truancy has not improved in British schools despite all the interventions and the better practice that has been introduced. What is clear according to him is that there is still a lack of *“successful early intervention techniques applied and the evidence is that more support needs to be given at the primary and initial stages before it is too late and learners’ attitudes have hardened.”*

### 4.4 Reasons for truancy

There are many reasons for truancy and the following is a brief synopsis of some of the reasons given by researchers.

#### 4.4.1 The parents and family

Miller and Plant (1999:886) emphasises the importance of the family in their study researching truancy and school performance. Some of their predictor variables included the family structure (Intact family versus single-parent family) the level of parental education, parental caring and control, the presence of a social or delinquent lifestyle, and a lifelong use of drugs. Their study found that the best forecaster of truancy and lower academic performance was that of a sociable or delinquent lifestyle, while family structure predicted both truancy and poor school performance, especially absence of one or both parents (Miller & Plant: 1999:890). Caring and control seemed to have an important direct influence on school performance according to the students' perceptions (Miller & Plant: 1999:891).

In addition, Walls (2005:2) gives four categories of reasons for truancy, one of which is the family. According to him it is due to a lack of guidance or parental supervision, a lack of awareness of attendance laws, and differing views of education. However, drug and alcohol use also played a role.

Mitchell and Shepherd (1980:7) suggest that the truant's reference group outside school would be important. In this instance the family is that reference and is probably the most important, especially in the early years when a child enters school. They cite studies which mention that the socio-economic status of the family and the level of the father's occupational position appears to have a negative effect on the learners, and hence a reluctance to go to school.

A further point made by Farrington, (1980: 55) indicates that the truants from this study tended to come from families which had criminal parents or delinquent siblings, or where parents showed bad child-rearing behaviour. Other studies cited indicated that truants came from poor lower class families, while further studies found no link to social class.

Many researchers tend to look at the family and try to find the reasons for the truancy they see in the family and the family background (Reid, 1985:48; Jones, 1980:173 and Reynolds, Jones, St. Leger & Murgatroyd, 1980:85).

Reynolds *et al.* (1980:85) contend that with a great deal of the early research on truancy, much of the truancy can be directly linked to factors or relationships within the family such as the truant's relationship with the mother, and not to factors concerned with the school.

Carlen *et al.* (1992:66) mentions research about the "*deprived-neglected family*" scenario as indicators of truancy, and these are poverty, unskilled or semi-skilled employment, unemployment or underemployment, council housing, overcrowding, disrupted home lives and criminal parents or delinquent siblings. Early American research, and others already mentioned, thus looked at the family situation as causing or contributing towards the truancy experienced in schools.

Marsh (2000:4), in a study from Queensland, mentions that when schools were questioned about the reasons for absenteeism, the causes were given as family problems, socio-economic issues, individual problems or curriculum/school issues. The frequency of absenteeism that was allowed by the parent was also worrying. The study also revealed that the participants felt that programs for absenteeism should be a part of the governance of the school and that it should focus on the education of parents about the problem through better relations between the school and the family.

Eastman, Cooney, O'Connor and Small (2007: 10 & 11) give a number of principles for families which could have a more effective system against truancy. Some of these are that the expectation of school attendance should be communicated to both learners and their parents, that it is best to tell parents about these attendance policies when learners transfer to the new school, that acceptable and unacceptable reasons for non-attendance must be explained to parents, and that any punishment of truants should be done in such a way that they matter to parents, and include making up any lost work or work not understood by the truants.

The last principle, that of mattering to the parents, is probably the most important as it is relevant to much of the literature that indicates that truant learners are often underperforming.

At present, the thoughts and opinions of parents about their truant children is not generally known, according to Reid (1985:54). Reid stresses that parents probably recognise the importance of education as providing a future for their child, but often they are not in line with what occurs in schools and equate it to their own experiences at schools.

Brown (1987:34) posits that the attitude of some parents of truants to the school their child attended was such that they mainly showed a lack of interest in the education of their child. It was not so much that their opinions of the school that their child attended was negative, as that their child's poor attendance was due to their own use of the child being more important than the emphasis that they would place on school attendance. The main feeling according to Brown (1987: 35) was that parents were generally of the opinion that the school had little to offer their child to become successful in later life. They did not attend parent meetings or other events organised by the school.

There is a commonly held belief according to Brown (1987:32) that parents and their attitudes are to blame for the school attendance of their children, and he suggests that there would be many teachers who would agree with that sentiment. However, his research indicates that this is not entirely true as Brown suggests that there would be parents who have little or no regard for schools but also teachers, who have suspicions that the parents of truant or difficult learners are indifferent as they do not show the same interest as the teachers due to not coming to parent evenings and so on. Brown suggests that a number of actions could be done to try and improve this situation in schools. Brown (1987:43) mentions that the initial training of teachers could be a starting point including that aspiring teachers should be taught how to deal with parental attitudes and that schools need to find ways of getting parents into schools. Further suggestions by Brown are that schools should try to place an emphasis on positive, informal access for parents at any time, instead of calling on them only when the learner is in trouble. Brown adds a further suggestion that research has emphasised that what goes on in schools as well as the relationships that truants have with their teachers, is partly to blame for truancy.



Fogelman, Tibbenham and Lambert (1980:31) suggest that truancy should be seen as absence of a learner from school without parent consent. This distinction is necessary according to them as any action that might be taken might be a stab in the dark if it is not known whether parents sanctioned the absenteeism or not. Parents could be deceived by the child but, on the other hand, parents might give false information due to the reprisals that could follow the sanctioning of the absenteeism (Fogelman *et al.* 1980:32).

Jones (1980:176) indicates that learners often act out certain situations due to having been given that perspective by their parents, and that often they may even act out the perspective as seen from the dramas, conflicts and tensions seen among the staff of the school and not only those of the home. In addition, Jones (1980:182) makes the point that in the lower classes when a learner is still young, parents often have almost free access to the teacher while in higher classes this is not so. The point is made that schools need to make parents feel welcome and not call them only when the school is having problems with the child. It should be noted, according to her, that in dealing with the family it is better to have a genuine, two-way communication relationship that is preventative instead of remedial.

Reid (1985:48) on the other hand, states that there is very little evidence of parents actually condoning truancy or actually working with the learners to condone absenteeism. Learners in the study indicated that parental disapproval had been registered because of the absenteeism in the family, especially when it was accompanied by threats of being prosecuted. However, many parents, according to the absentees in this study, took the route of least resistance and simply told the learners to return to school and then did nothing more about it. Clearly, most studies on truants and the family, some mentioned above, indicate the presence of challenges facing the truant learner when dealing with the family.

#### **4.4.2 Gender**

The findings of a study where school fear and truancy was researched and conducted in Switzerland (Steinhausen, Müller & Metzke, 2008:6) found that there was a difference between males and females regarding truancy and school refusal,

as females were more prone to school absenteeism whereas males were more prone to truancy. They found that female behaviour was similar and, in some ways, exceeded that of males in behaviour such as smoking, self-mutilation and conduct problems including truancy. The findings reiterated that school refusal was associated with internalising problems, and truancy with externalising problems and delinquent behaviour. Furthermore, the findings indicated that the subjects with school fear decreased with time, while there was an increase of the numbers of subjects with truancy over time (Steinhausen *et al.* 2008:8).

A recent study in the Kingdom of Swaziland (Siziya, Muula & Rudatsikira, 2007:1) used a total of 7 341 students in a survey where most were females (63.8%). They were asked whether they had been absent in the last 30 days before the survey as this was how they classed truancy, that is, “missing classes without permission within the last 30 days preceding the survey” (Siziya, *et al.* 2007:2). They found that truancy was about 21,6% among both boys and girls in Swaziland with 605 males seen as truant as opposed to 723 girls. These students reported that they had been bullied and that many of the adolescents drank alcohol. The researchers also indicate that young people, who go truant, have been reported to engage in risky sexual practices, unlawful drug use, drinking and smoking of cigarettes (Siziya, *et al.* 2007:1).

Gender differences, in especially the working class were also investigated by Carlen *et al.* (1992:102) and gender assumptions in truants appear to be rampant. Young males who were effeminate were often characterised as having homosexual tendencies whereas young females and their actual or suspected sexual behaviour often received attention in schools and during investigations. Girls were often shamed, called names and not taken seriously or trivialised.

In addition, Siziya *et al.* (2007:2) state that studies have indicated that adults who had been truant experienced marital problems, had unstable work conditions and also had “*psychosocial maladjustment*” when compared to others who were not truant as young people. Other factors which affect truancy are the level of parental education, unsupervised adolescent time, poor school grades and unlawful use of drugs (Siziya, *et al.* 2007:2). Among the factors mentioned that are associated with

truancy was being 14 years old, being in the 6<sup>th</sup> to 8<sup>th</sup> year of schooling, not always having something to eat, drinking alcohol, thinking that students were seldom helpful, having parents who did not often check homework, or who seldom understood problems and worries, or rarely supervised their teenagers (Siziya, *et al.* 2007:3). Other factors that were found in the study, acted as “*protective factors*” for truancy. They were being well-fed, not being bullied, students being kind and helpful to their school peers, and parents mostly understanding young people’s concerns. What was interesting in this study, however, was that males were truant more often than females, and the researchers explained this by saying that it was an expression of cultural expectations as males being truant was more tolerated than truancy among girls (Siziya, *et al.* 2007:3).

#### **4.4.3 The school community**

This section has been subdivided into a number of variables within the school setting that, according to the literature, have an influence on the truancy of learners.

##### **4.4.3.1 School**

Reynolds (1987:4) maintains that the school can be seen as a factor which causes truancy. He further states that due to the failure of many of the educational experiments that had been conducted he concluded that education had no power and that the system was impotent. He further states that the evidence from these studies suggest that schools made no difference to their learners and that there was a great deal of bias in the research due to the belief that the family was all important as a determinant of behaviour. He therefore states that there was a great emphasis on the family while the school as a possible cause of the truancy, was ignored (Reynolds, 1987:5).

In contrast, Southwell (2006:91) reports on research conducted from a “*truantist perspective*”. The research was conducted by an ex-truant who himself was a persistent truant. In the study he mentions that there are many complex aspects relating to truancy but that prior research tended to focus on the family. He asserts that truancy can be argued from the point of “*unmet educational needs*” (Southwell,

2006:96). He noted that researchers did not really want to consider school factors as the cause of truancy and posits that even those researchers who have looked into the school try to dismiss the idea that criticisms of teachers were responsible. He mentions that from his truantist perception, school is seen as having “*failed to meet educational needs*” (Southwell, 2006:93). He further mentions that the largest problem for a truant was “*the lack of power over one’s own education*” (Southwell, 2006:94).

Southwell believes that it is factors in the school such as not getting help when needed, not having someone to talk to, a poor teacher/student relationship or a lack of interest in the learner that leads to the truancy. He believes that the school should work out ways in which they are not helping students to meet their needs as students. He therefore blames the schools and not the truants themselves or their family. He believes that truants are individuals and as such, need to be helped to meet their individual educational needs and that this in the end will lead to a reduction in truancy. He sees it thus as an educational occurrence which is brought about by various factors, helped on by the individuals needs not being met. He therefore asserts that truancy is not bad by itself but must be seen as a tool that can assist schools in determining and meeting the special educational needs that might go unnoticed, if the truancy is stamped out (Southwell, 2006:92).

Eastman, Cooney, O’Connor and Small (2007:11) also give principles which need to be followed in schools, such as consistency in setting and enforcing of rules within schools, that teachers should follow up any missed classes before too much time passes, that solutions to stop disruptive learners from stopping the learning of other learners should be set up while also ensuring that the disruptive learners are kept busy in a meaningful way.

#### **4.4.3.2 Variables in schools**

Fogelman, Tibbenham and Lambert (1980:37), in research they conducted, maintain that the characteristics of schools play a role in truancy. The size of the school plays a minor role and often schools with similar intakes can vary considerably from each other as regards truancy.

Reynolds (1987:8) mentions American effective school factors that could reduce truancy and bring about better educational results. Reynolds (1987:10) cites a study by Bayliss (1986), which gives twelve factors which could be associated with a high result in “non-cognitive areas such as truancy levels.” Some of these factors are purposeful leadership, involvement of teachers, a structured school day, a work-centred environment, maximum communication between teachers and staff and so on. Apart from this, Reynolds (1987:12) states that a strategy which incorporates learners into the organisation of the school and parents into support of the school, could be possible answers to truancy.

Fogelman, Tibbenham and Lambert (1980:37 & 39) found that a range of variables in schools play a role in the truancy that is experienced. The variables they used are whether the school has a uniform, whether it uses corporal punishment, the ability of the age group assessed, the pupil-teacher ratio and teacher turnover, the frequency of teacher-parent meetings, the size of the school and if the school is co-educational. Some variables did not show much of a significant variation between learners that attend and those that do not. The only significant result obtained was that schools using a uniform reported less truancy, schools reporting more teacher turnover reported higher truancy and lastly, that schools that had fewer teacher-parent meetings also reported more truancy.

#### **4.4.3.3 Teachers**

An earlier study (Fornwalt, 1947:87) looked into truancy and indicated that teachers have both a definite and a vague idea of truancy. It mentions that teachers are definite in their understanding that truancy has a legal implication in that it must be reported but vague as far as their understanding of the reasons for it. The vagueness could stem from their busy schedules in that they need to plan and do administrative duties, mark books, tests and make reports, attend meetings and take care of extra-murals and therefore do not have the time to look into the reasons for the truancy. It could also point back at them for their own personalities, teaching ability and methods which would be difficult as few teachers want to point out their lack of ability. The study points out that should teachers become more sympathetic to the needs of the students, there would be fewer conflicts and that the truancy cases

would diminish (Fornwalt, 1947:92). This appears to be in contradiction to later studies such as Reid (1987:26) and Oosthuizen (2005:3) which question the attitude of teachers and ignorance of the duty of care by teachers.

Indeed, Reid (1987:80) stresses that teachers need to learn a great deal about the motivation of learners as learners enjoy structure and relevance in their schooling. In fact, learners need to feel success in what they are doing as without it they will withdraw or develop their own defence mechanisms. Truancy is one form of withdrawing from school. Teachers need to make learners feel that they can learn, as often teachers will not drive lower achieving learners as hard as they do the academic achievers and this then causes the lower achieving learners to give up.

Reid (1987:26) concluded that matters in schools would not improve unless the staff had a change of attitude; there was better leadership and more understanding and knowledge from the staff about truancy and ways of combating it and a clearly agreed and identified policy on truancy and absenteeism. Matters such as underachievement, badly disciplined learners or learners with learning difficulties need to have good working policies in place, to ensure that it would provide positive encouragement to disturbed learners when they are truant. Not only will this ensure that truant learners will realise that their absenteeism will be seen but at the same time it also assures them that staff care and value their being at school, much as a good pastoral care system should do.

A study conducted in Wales (Reid, 2009:1) used learners affected by or taking part in misbehaviour or truancy. Some of the general findings were that the learners in the study were aware of the benefits of education and knew the consequences of not attending and bad behaviour. The learners who took part, spelt out that the quality of teaching was a problem, especially when “supply teachers” were used. They were also critical about schooling styles and boring lessons, and especially that a system of “*one size fits all*” was not right. Incentives were a good idea according to them, especially trips, activities, certificates and prizes. They (the young people who took part) did not think that excluding learners from these incentives for truancy was effective.

On the other hand, Carlen *et al.* (1992:5) maintain that social regulation has led to teachers in state schools having lost their ability to decide what should be taught and when, thus effectively reducing them to having to be 'led' or regulated in the content and the rate at which learning will take place in the school. This appears to be pretty much what the situation is like in modern day public schools, especially in South Africa, with the changes in the curriculum and the dismal results when compared to the rest of the world and Africa. According to Carlen *et al.* (1992:5), only parents who are able to pay for private education or schools that charge fees, "will be taught by teachers that can use their professional judgement about what should be taught and when." Because of the above research, teachers would appear to have a major role in learner truancy or absenteeism according to some truant learners.

Reid (1987:16), in a study conducted in Wales, identified factors at the school he did research at which included large incidences of a lack of specific lessons, large numbers of confrontational situations between teachers and learners, large groups of learners involved in underage smoking, a high daily turnover of learners from lessons and a lack of respect between teachers and learners. The result of this has been increased vandalism and indiscipline at the school.

Research by Lethoko (2002:238) discusses achievement motivation as an internal motivation for teachers and it is stated that learner achievement has an impact on the motivation of teachers. Learners who do not perform, fail classes or drop out affect the desire of the teacher to perform, hence they do not take much of an interest in the school child. The research states that teachers need to be open and approachable to the learners (Lethoko, 2002:238) while advising them about their personal and academic problems. These qualities of a teacher would make them more accessible to the learner and would enable the learner to be themselves in the class and participate in the class. It states that a teacher would probably be more open to care for the personal and family problems, experienced by the learner (Lethoko, 2002:238). This approachable attitude would enable a teacher to see when there is something wrong with the learner and can thus help both in a personal manner and academically.

Lastly, Reid (1985:40) states that teachers should understand the *in loco parentis* concept and the way it relates to school attendance. Reid indicates that a teacher not knowing why a learner is absent is no excuse before the law. Knowing about the learners you teach is the duty of every teacher who cares. Should this happen, according to Reid, there would probably be less absenteeism.

#### **4.4.3.4 Curriculum and lessons**

In addition to the above views, Felsenstein (1987:96) makes the point that learners often do not have a concern with the teachers but with the curriculum and the way in which it is taught. Learners feel that the school organisation is inflexible and does not cater to the needs of the individual learners in the school. Thus the curriculum in schools should be relevant and flexible so that it can respond to those needs, even though those needs may be a wide range of needs.

Carlen, Gleeson and Wardhaugh (1992: 67) mention that learners who truant themselves are doing so out of choice and in effect are “voting with their feet” and hence not wanting the education which is being offered to them. They mention teaching styles in schools, the curriculum and non-essential subjects as the main reason why learners are going truant. They also question the assumption from many researchers that truancy is linked to delinquency.

#### **4.4.3.5 Time of absence or truancy**

A study conducted in four large Dutch cities (Bos, Ruijters & Visscher, 1992:382), discusses two types of truancy, those being truancy or disallowed absence, or allowed absence, with the only difference being that the school will determine whether a reason is valid or not. The study also found that truants are absent either early in the first period, the last few periods of the day or especially on Fridays for various reasons. Another conclusion reached was that the percentage of truancy for schools which had pre-university education was lower than for the general education classes and one of the presumed reasons for this was due to socio-economic backgrounds. Bos *et al.* (1992:390) also found that truancy for commercial subjects, taught in the pre-university schools, was higher than for subjects such as own



language, history and geography, sociology and religion. The study asserts however, that a great deal of research on truancy still needs to be done, especially as this truancy is difficult to measure.

A study conducted in the Northern Cape Province of South Africa (Moseki, 2004:2), makes numerous references to truancy and the nature thereof. The researcher cites an unpublished dissertation (Masithela, 1992:45) that states that learners could not only be truant but also be missing lessons at certain times of the day. Reference is made to learners missing lessons at the start of the day and also at the end of the day and mention is also made that learners may be marked present in the register, but not attend lessons. Moseki states that this is referred to as hidden truancy and that this is prevalent but that the data concerning it is not reliable. Reference is also made by Moseki (2004) to another unpublished dissertation, by Mashiane (1997:4), that states that the roles that teachers, peers and parents play in truancy needs to be looked at as well as the relevance that students attribute to their schooling (Moseki, 2004:5).

In a media release from the Western Cape Education Department (28 July 2005), it is stated that the WCED was cooperating with the Department of Community Safety in dealing with truancy. It was found that persistent truancy shows social issues that cannot be dealt with simply by applying school discipline. They had appointed Learner Support Officers (hereafter LSOs) at selected schools in an effort to assist the safety coordinators to meet the challenges such as “gangsterism”, abuse, crime, rape, racism, teenage sexuality, vandalism and burglaries faced at schools. Learner Support Officers (LSO’s) prop up the safe schools coordinators in various attitudes and behaviours found in the community. Schools are normally accountable for looking into incidents of truancy. The LSO’s visit the learners who have been absent for more than seven days, at their homes. They will hand a letter to the parents explaining their rights and responsibilities according to the SASA of 1996, and parents are supposed to reply within 14 days. If there is no improvement in the behaviour, the LSO sends a report to the Education Department for further steps.

They thus assist the schools and community to have support structures in place to deal creatively with truancy and learners at risk. However, this venture is seemingly not followed by any of the other provinces in South Africa.

#### **4.4.3.6 Regulations in schools**

In Wisconsin, a framework of laws govern the approach to truancy. School districts thus have different types of truancy, entitled simple truancy (single unexcused absence), and habitual truancy (five unexcused absences) which is a status offence or is an offence that would not be criminal if done by a grown-up (Eastman, Cooney, O'Connor & Small, 2007:3). Individual schools and school districts can determine what constitutes their own definition of what the two types are, but determines that parents must be informed about simple truancy and must be informed in writing about habitual truancy as the parents could be fined or have other penalties levelled against them (Eastman *et al.* 2007:3).

The state has local laws in the municipalities which they have found can increase the rate and the level at which the truancy is addressed, and even have sanctions, where a student may lose their drivers licence if truant. They (Eastman *et al.* 2007:3) also note that all involved, family, schools and community, must work together to set the rules for the school attendance and to enforce them as quickly as possible. The study also states that incentives need to be used to encourage learners to attend while there should be a focus on the school environment itself, for example, they state that “*schools need to be places where students want to be*” (Eastman *et al.* 2007:5). They found that five aspects of school environments were linked to truancy: that is dangerous, unfeeling, uncooperative, boring or inconsequential schools (Eastman, *et al.* 2007:5). They assert that each community will need the way out that is unique to their situation in the community (Eastman, *et al.* 2007:9).

#### **4.4.3.7 Learners**

In schools, learners who are absent may be absent for legitimate reasons, such as for medical reasons. Reid (1985:41) cites a number of studies which indicate that the majority of absentees have legitimate reasons, such as illness, accident or some

other medical reason for being absent. Other causes given included that of being on holiday, family neglect, truancy and school refusal.

In California, Conchas & Drake (2011:1) found that truancy could have devastating effects for young people in urban areas. This could take the form of drug and alcohol abuse, violence and even crime and lead to them ending up in the criminal justice system. These authors state that some truants do so as they need to work to help support their family or care for ill people at home, or even for younger learners. Sometimes they are just fed up with school. Conchas and Drake maintain that truancy leads to the “ultimate form of school exclusion – dropout.” They add that the association between truancy and dropout is a test to see whether schools will assist the learners in their struggles and help them to face up to them.

Reid (1987:81) on the other hand notes that learners, including absentees, rate skills which develop self-confidence, socialization, financial management and self-esteem highly as these are important to them. A last concern from Reid (1987:82) is that of learners who behave badly in schools, as one badly behaved learner or a group of these learners could destroy the lesson taking place. He feels that the learner who is affected by the behaviour should be taken into consideration as often it would be this learner who withdraws.

White (1987:74), after interviewing truants, states that truants are simply asking for their opinions to be taken into account by teachers and schools. The problems will not go away immediately but we cannot treat only the symptom, in this case truancy, as this will not get rid of it.

Parents, the principle care givers for much of the child’s early life, are mostly responsible for ensuring that their child attends school, but often, even they are unaware of what is going on in the life of their child. Reid (1985:9) points to a number of factors which he found in his own research for the reasons why learners miss school, such as boredom in lessons, missing work and then not being able to catch up, bullying and other strife at schools, inadequate pastoral care, not being able to cope with school rules and regulations, and conflicts between teachers and learners.

Finally, Reid states that “it is my assertion that most truants miss school for a combination of social, psychological and educational factors” (Reid, 1985:10).

#### 4.4.3.8 Age of the learner

There are many reasons found for truancy or absenteeism and it is not just the disillusionment that a child experiences in attending school.

Pring, Hayward, Hodgson, Johnson, Keep, Oancea, Riss and Wilde (2009:26,27) mention the adolescence of learners as being a factor which could cause disagreements and confusion between young learners and people in authority, such as parents or teachers. They mention that adolescence “is the period of transition between the perceived dependency of childhood and the perceived independence and autonomy of adulthood, heavy in the possibility of conflict and misunderstanding.” The researchers posit that there appears to be uncertainty about what role schools should play to provide support or help to these young people in this stage. It is often at this time that young learners of this age will show their disillusionment with, and in schools, through acts of bad discipline, truancy or exclusion (Pring *et al.* 2009:28).

In support of this, Fogelman, Tibbenham and Lambert (1980:33) assert that unjustified absence of learners is considerably higher in the last two years of compulsory schooling. The research indicates that in this age group the ratio could be as high as one out of every ten learners as opposed to one out of every hundred learners in a primary school.

Pring *et al.* (2009:45) also mention that in England and Wales they have a “NEET” problem. This is a term coined indicating learners “Not in Education, Employment or Training.” They mention that young people can enter the population of NEET in many ways, and that one of them is where young adolescents stay away from school early on during their secondary or high school career. This can be seen by continual truancy and increased levels of “permanent exclusion and persistent absence (truanting)” (Pring *et al.* 2009:45).

This absence appears to be due to the fact that the young people are not able to cope with the authority and discipline found in schools and not necessarily that they are not able to cope with the curriculum.

The likelihood was that learners who truant themselves in primary or elementary school was positively linked to truanting in high school, and it was found to be as high as 49% as opposed to those who were not truant as found by Robins and Ratcliff (1980:69). The link between the learners who were absent in both elementary school and high school and those who failed to finish school was as high as 75% as found by Robins and Ratcliff (1980:71). They agree that this figure is high and seems inevitable, but it must be noted according to them that the dropout rate was as high for those elementary school truants who did not truant themselves in high school.

This point of truancy and final educational level is supported by Pring *et al.* (2009:49), who states that the persistent truancy of learners appears to lead to fewer qualifications being obtained by the NEET learners as opposed to those who do not truant themselves from school. Lastly, Pring *et al.* (2009) mentions a study by Haines (2006) which shows that this issue of fewer qualifications obtained is again relevant as disabled people who are NEET are more likely to not proceed to a higher education (Pring *et al.* 2009:112-3) than their able bodied peers even though their vision for themselves are the same as those of the able bodied persons.

#### **4.4.3.9 Streaming**

A study conducted in Canada (Crespo & Michelena, 1981:40) looked at the issue of absenteeism and dropping out in an educational setting. In Canada, learners were divided into three streams after their primary school years, namely slow, average and enriched streams, and this was determined using the academic results obtained by the students. It was felt that this streaming could have an effect on the absenteeism or dropping out of learners in the lower stream and they were more likely to be absent than in the higher streams. The conclusion reached was that absenteeism and dropping out was linked to this streaming, but that the main issue

to look at would be how the curriculum was structured. Low attendance was, however, seen as an indicator of a drop-out.

#### **4.4.3.10 Grades of learners**

Research conducted in Chicago (Allensworth & Easton, 2007:1) found, in their report on the freshman year, indicators that where freshman failed their courses in their freshman year they were more likely to drop out. Learners who were obtaining high grades and were not truant were more likely to stay in school and graduate after their four years than those who came in with low grades and were truant (Allensworth & Easton, 2007:26). During their research they found that the performance of students was better in schools where there were good relationships between teachers and students and where students could see school as relevant to their future (Allensworth & Easton, 2007:30).

#### **4.4.3.11 Bullying and forms of victimization**

Joubert (2008:159) states that bullying is calculated, takes place all the time in schools and often has as its aim, spiteful actions that intend to demean the intended victim. These actions can be spoken or physical while it could also be emotional or psychological. Boys are often seen as being inclined to play rough games but it is still the duty of the teacher to ensure that the safety of all learners is vital in every situation, especially in cases involving bullying. Should the teacher neglect to take action, the teacher or the school could be liable if proof of negligence can be found.

In an article entitled, *Truancy in Teenagers*, (Walters, (2009) states that “truancy, like smoking, drinking or drug taking, is a cry for help.” Walters continues and states that when a child decides to skip school, “this normally means that society, the custodian of the child, is somehow not serving this one individual.” Truancy is often a response to some form of trouble in the family situation, according to Walters. She states that bullying can be a cause for the truancy and that the answer to this is to open some form of communication for the child in order to get to the root cause of the problem, and thus assist the child as it could be serious and must be treated as such.

#### 4.4.3.12 Dropping out/Absenteeism

In a study conducted in Chicago (Allensworth & Easton, 2007:1), the issue of drop-outs, that is, students who do not complete their high school studies, was investigated. The study focused on students starting their freshman year at high schools in Chicago as it was found that almost half of the students in Chicago did not graduate from high school. This was critical as it was the basic requirement for a good education and success in a job. The researchers mention that many related factors such as “family, school, neighbourhood and peers” play a role in persisting in school or dropping out. They focused on one aspect that they felt was often neglected and that was a student’s performance at school as an indicator for dropping out. They assert that “success in high school coursework is directly tied to eventual graduation” (Allensworth & Easton, 2007:2).

On the other hand, Crespo and Michelena (1981:41) adds to this aspect of dropping out by citing studies which give the profile of a drop-out as someone who has one or more of the following qualities which are: lower than average intelligence, a broken home, major academic problems, low attendance rate and lower class background.

In contrast, Lee and Burkam, (2003:353) state that in most cases, dropping out can be linked to or associated with the personal qualities of individual students. They mention three broad categories for these risk factors as, the social background, the academic background and academically related behaviours. They mention that learners themselves are to blame for dropping out. It is seen as a bad decision taken by the learner, often based on a series of actions that were not thought through, as well as a low dedication to school and the necessity to attend (Lee & Burkam, 2003:354).

Allensworth and Easton (2007:4) suggest a number of indicators to determine whether a student is passing a certain number of courses in their freshman year (first year of high school). They are on-track versus off track indicators, which simply means that a student has either obtained a total of five full credits (10 semester credits) or has not obtained them, the number of semester course failures (which means that the student has no more than an F in a core subject), the grade point

average (which indicates that the higher this average, the more likely it is that the student will graduate) and lastly, the course absences (which show the number of courses or days the student was absent for their courses). This absence was calculated when students were truant with 20 unexcused full-day absences (Allensworth & Easton, 2007:4).

The course absences and the duration of the absences are specifically relevant as these indicated students who had virtually given up on their schooling or had the potential to be “off-track”. Students also have less chance of graduating according to the study due to the absences, and Allensworth and Easton (2007:6) again point out that “*even moderate levels of absence are a cause for concern.*”

Jardine (1987:59) cited Reid (1985a) who had reported in a study that many absentee learners reported that they made very little use of the guidance and support services from schools. Jardine indicates that this could be due to the fact that the teacher’s guidance role is often confused with the policing function that teachers or staff have to perform as part of their normal duties at schools.

Allensworth and Easton (2007:15) on the other hand, give two reasons why students do not do well in their courses. They mention attendance of classes/not coming to classes and not spending time on those classes as well as prior academic preparation or not being prepared for the academic work that is needed. They state that there is a correlation between low performances in elementary school with missing classes and they mention that this performance will probably continue into high school unless it is attended to. They declare that attendance in classes is “*eight times*” more likely to indicate course failure than past test scores (Allensworth & Easton, 2007:16). Academic preparation remains important for getting higher grades but in this study, course failure is connected with course attendance to a large degree. It is also important that the course performance of students was significantly better in schools where strong teacher/student relationships existed. It is stated in the study that where students receive personal support and there are high levels of trust between the teachers and students, the student performance is better (Allensworth & Easton, 2007:30).



#### 4.4.4 Criminal Behaviour

Farrington (1980:59) suggests that self-reported truancy and secondary school truants had first convictions as a young adult that could have been predicted (that is between the seventeenth and twenty-first birthdays). High school learners and truants that were self-reported and had previous contact with officials also reported delinquency at various ages from 14 to 18, according to Farrington (1980:59). He mentions reports by teachers of *“troublesomeness”* from certain learners in primary school as an indication of truancy later on (Farrington, 1980:62). He found that many researchers have seen a link between low intelligence and attainment and truancy (Farrington, 1980:57). The truant learners were often likely to have parents who displayed bad or poor parenting habits and that they had parents or siblings who had criminal tendencies (Farrington, 1980:55).

Ramsay (1981:50) mentions some effects of truancy and one of them is an *“increase in vandalism and crime.”* He indicates that in such cases, truancy would continue to grow and he gives reasons such as single-parent families, a growing number of non-English speaking students, and a great number of pregnant young women of school age, as factors which seem to be relevant specifically to our schools in many ways at this time, as many of our schools in South Africa seem to have many of these characteristics in common.

#### 4.4.5 Drugs

The use of medication as a supportive measure was discussed by Hersov and Berg (1980:252) due to its use in minor cases for a child who was whining or was reluctant to go to school.

In part support of the above view, Carlen, Gleeson and Wardhaugh (1992:117) mention the use of drugs in truancy as having a two-fold purpose in that drugs may be used to control learners who truant, to prevent them from becoming pregnant, while others are given drugs to enable them to come to school. They mention two cases, a boy and a girl from a home who had medically prescribed drugs to control them, one to prevent pregnancy while the other to get him to calm down enough to

come to school. Carlen *et al.* (1992:154) state that learners who had been identified and targeted while being absent during school hours were, however, open to the temptation of engaging in criminal activities or drug related activities. Miller and Plant (1999:893) on the other hand state that the use of drugs can best be seen as part of a general pattern of deviance or behaviour linked to that of taking risks.

In a further study, Robins and Ratcliff (1980:76) found that street life and drug abuse were found in men who had become truant in high school for the first time. They also found that drug abuse was mostly prevalent in learners who were over the age of 15 and started getting involved in drinking and sexual activity, but this was not in cases involving early school problems.

#### **4.5 Interventions to manage truancy**

Collins (1998:24-27) finds several factors from research that influence attendance such as the effects of social class, the effect of ability, the effect of age, the effect of gender and the effect of “*endings*” on attendance. He says that truants would be more from disadvantaged homes, learners with below average intellectual ability, older learners, and that more girls than boys were affected by absenteeism. He states that absenteeism tended to increase towards the end of the day, the week and the term.

##### **4.5.1 Understanding truancy**

Reid (1985) indicates that truancy in schools is not a new concept and has in fact been around for many generations. Reid (1985:3) mentions a number of reasons for these acts, such as being from a legal, educational, psychological, sociological and institutional state. He mentions that parents could be prosecuted legally, educationally students fall behind in their studies, psychologically it is a normal indication of some deeper dissatisfaction within the person that could produce more serious consequences later in life, sociologically it is linked with bad home conditions and lower class background while institutionally, it shows estrangement from the school. He goes further in saying that schools have failed in dealing with truants. This failure is for a number of reasons. According to Reid, truancy has multiple

causes, every truant is unique and many teachers have little understanding of the topic. Reid also mentions that in his view, teachers do not have much understanding for learners who are truant. Teachers have a job of teaching to do and have little time to deal with truant learners or even to get to know much about the learners in their care, and they often take delight in having fewer and less disruptive learners to teach in their classes.

Harris (2002:57) on the other hand, considering the United Kingdom, the United States and other parts of Western Europe, understands misbehaviour in a wider system of social problems which incorporates drop-out, truancy and school delinquency. He seems to attribute most social problems to a form of indiscipline among learners and even to teachers not doing their part for social responsibility in schools.

Reid contends that there are no easy solutions as there is very little evidence of “*good practice*” with truants, each person is unique and has to be dealt with separately, and that teachers do not know much about the topic of truancy (Reid, 1985:3-4). Reid is firm in the opinion that schools are not doing enough to combat truancy and in some ways, can be blamed for the truancy, even more so than parents (Reid, 1985:8). Reid mentions Carroll (1977a:4), who argues that absenteeism is not just about people not attending school but is also related to the home, the school, and the neighbourhood in which the home and school are found, and in society as well (Reid, 1985:6).

In fact, it is worth noting that Reid (1985:8) mentions that it is his belief that teachers and schools could do more to prevent truancy and, in some cases, teachers can be blamed as much as or more than parents. The beginning for much absenteeism lies inside the schools, but too many teachers seem unaware of this fact and have no idea of their part in the process. There are sizeable differences between schools and teachers in the way they treat truants and regard their absenteeism problem, but in general most truants and absentees blame their schools and their teachers rather than other people or any other factor for their own non-attendance (Reid, 1985:8).

#### 4.5.2 Early intervention

Nakamura (2003-2004), in a study conducted in Hawaii, indicated that most interventions concerning delinquents or offenders focus on correcting the negative behaviour after the event. This study maintains that “interventions seek to remediate delinquent and more serious behaviours after such behaviours have occurred.” It maintains that it would be better if the intervention could be earlier rather than later, as by trying to prevent the behaviour earlier there would be more chance of eradicating the behaviour (Nakamura, 2003-2004:2).

#### 4.5.3 Out of schools versus in-school factors

A study in America (Brodbelt, 1985:64) investigated the issue of absenteeism from two bases, the nature of out-of-school factors that give rise to poor attendance and secondly, the in-school factors that have an influence in causing absenteeism.

Brodbelt (1985:66) uses a model of achievement which is indicated in the following:

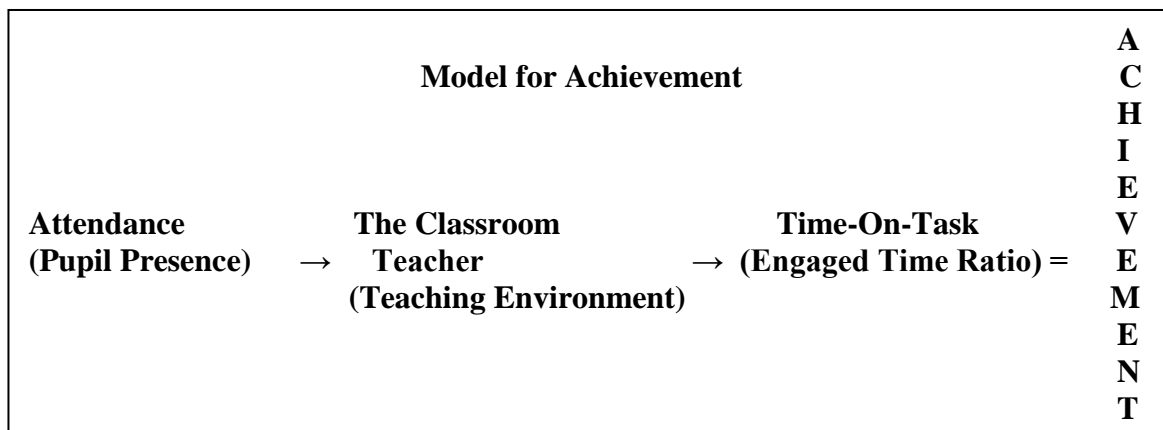


Figure 7.

(Figure taken from Brodbelt, 1985:66)

Brodbelt mentions that many schools see the connection between a student’s physical presence and learning. The study says that any solution to the absenteeism should take into consideration the student, the parent, the principal, the teacher and other school personnel. The study sees the roles of the teacher and the principal as being vital to address the absenteeism, as the principal has a key role to ensure that the proper leadership is available to deal with the absenteeism while the teacher should ensure that all students are dealt with at all times with respect and have the

best possible setting to learn. Finally, the study points out that the student needs to be involved to ensure that their attitude is addressed, while the role of supportive school personnel and the role of the parents need to be looked into for attendance to improve (Brodbelt, 1985:68).

#### **4.5.4 Organisations or structures**

One of the interventions mentioned (Conchas & Drake, 2011:2) is that of the Boston Urban Youth Foundation (hereafter BUYF), which is an organization in a community that seeks to help prepare disadvantaged black and Latina/Latino youth for college and successful careers. This organisation redefines the term community based (Conchas & Drake 2011) as they would step over the barriers keeping school and community apart by knocking on doors, picking youth up at their homes and creating safe spaces for engaging the participants and leading them to action. The BUYF programs enable these safe spaces to develop, as this can ultimately promote positive peer relations. According to Conchas and Drake (2011:3), space is viewed as any designated place where young people can go to engage in dialogue, to enable them to build up or to bring out the knowledge and truth through this dialogue and to have the means to work together so that opportunities can be created for these young people. They also provide incentives to achieve good results from an academic and social perspective.

Allensworth and Easton (2007:20) did research on the backgrounds of students and mentioned that attendance was affected by many different factors such as the health of the student, the family and the experiences that the student had in school. There are many characteristics that might influence absence but they found that age of entry to high school, scores, mobility in elementary school, poverty level, gender and race were associated with absence, although to a marginal degree.

Harris, (2002:70 & 71) states that the government in England has stopped setting targets for the reduction of detention in schools to curb truancy, which reduced the pressure on schools. However, it had been decided by the government to increase the parenting orders, which are the orders from the court for the parents, while establishing more mentor units and learning support units at schools. A further point

made was the intention of the government to establish more referral units that can provide full-time education for learners, who have been excluded from school.

A recent article suggests a checklist of strategies to help at-risk learners based on the research by Allensworth and Easton (2007) mentioned above. Monitoring of pupil attendance such as absence of five days or more should trigger some follow-up action, early identification of “at-risk” learners by at least the end of their first year at primary or high school, responsibilities of class teachers and grade and phase heads must be extended to include or make a check-list of at-risk learners each quarter and note their absence. The responsibilities of subject teachers and subject teams must include having processes in place to ensure that subject teachers identify learners who are falling behind. Keeping parents informed of the attendance must be done via policy so that the procedure to be followed must be stipulated and the kind of advice given to parents on supporting their child must be available. Lastly, record keeping through policy and systematic recording of information on each at-risk child must be ensured (SM & L Comment p. 5).

#### **4.5.5 Effective schools**

There does not seem to be consensus yet on what constitutes an effective school but Reynolds (1987:7), refers to researchers looking at school processes but not directly at truancy. However, effective schools have lower incidences of truancy. According to Sammons, Hillman and Mortimore (1995:7), there is agreement that the focus should be on student outcomes, and especially the concept of “*value added*” by the school, seen by most as an important factor. Sammons *et al.* (1995) mention Mortimore (1991a), who defines an effective school as one in which students’ progress further than might be expected from looking at their intake (Sammons *et al.* 1995:7). A description of the key characteristics of effective schools that were identified as common features is provided by Sammons *et al.* (1995:12).

Sammons *et al.* list eleven factors:

<b>ELEVEN FACTORS FOR EFFECTIVE SCHOOLS</b>	
1. Professional leadership	Firm and purposeful A participative approach The leading professional
2. Shared vision and goals	Unity of purpose Consistency of practice Collegiality and collaboration
3. A learning environment	An orderly atmosphere An attractive working environment
4. Concentration on teaching and learning	Maximisation of learning time Academic emphasis Focus on achievement
5. Purposeful teaching	Efficient organisation Clarity of purpose Structured lessons Adaptive practice
6. High expectations	High expectations all round Communicating expectations Providing intellectual challenge
7. Positive reinforcement	Clear and fair discipline Feedback
8. Monitoring progress	Monitoring pupil performance Evaluating school performance
9. Pupil rights and responsibilities	Raising pupil self-esteem Positions of responsibility Control of work
10. Home-school partnership	Parental involvement in their children's learning
11. A learning organization	School-based staff development

(Sammons, *et al.* 1995:12)

Sammons *et al.* (1995:8) examine a number of the concepts above that they feel constitute evidence of an effective school. Among the evidence of effectiveness is that of school attendance. They posit that the effects of a primary school can have “*significant long term impact on later attainment*” in higher grades (Sammons *et al.* 1995:9). They further refer to a study conducted in the USA (Teddlie & Virgilio’s, 1998) which shows that the discrepancy and impact of teacher behaviour at the lower grades is more than at the higher grades level (Sammons *et al.* 1995:9).

Sammons *et al.* (1995:26) cites a number of studies which focus on high expectations, positive reinforcement in the form of clear and fair discipline and feedback to learners, a learning environment, monitoring of learner progress, learner rights and responsibilities and parental involvement. These are factors that could have a very positive influence on whether a school is seen as effective or not. The study also mentions parental involvement at schools as having a very positive influence, especially in light of difficulties which arise at schools, such as in attendance or behaviour.

Harris (2002:58) states that indiscipline among learners could be a threat to the quality of education that the school can provide while also influencing the effectiveness of the school.

A learning environment in particular provides the climate in which learners work in a school. The special features of this appear to be an orderly atmosphere and an attractive working environment (Sammons *et al.* 1995:16). An orderly atmosphere is normally characterised by calm rather than chaotic places (Sammons *et al.* 1995:16). They refer to Mortimore *et al.* (1988a) who pointed out that, encouraging learners to exhibit self-control in the classroom was more beneficial, as high levels of disruption in the class were detrimental to concentrating on work. Generally, according to Sammons, the research shows that schools become more effective as they become more orderly.

Sammons *et al.* (1995:17) refers to studies such as Rutter *et al.* (1979) in reporting that a school in a good state of repair and maintenance resulted in higher standards of academic attainment and behaviour. Sammons *et al.* says that Rutter *et al.* (1983) mention two reasons why this is so. Firstly, attractive and stimulating working conditions tend to improve morale and secondly, that neglected buildings tend to encourage vandalism (Sammons *et al.* 1995:17). Apart from this Sammons *et al.* (1995:26) refer to studies such as Tizard *et al.* (1982) and Mortimore *et al.* (1988a) that posit that parental involvement might be crucial when problems develop at schools due to the poor attendance of learners, as parents who are involved in the school would be prone to support the school and its standards and requirements.



#### 4.5.6 Schools that work

Christie, Butler, and Potterton (2007:18) refer to the Effective schools research that was conducted by Sammons *et al.* (1995) and others, and the statement was made that it is certain factors of effective schools (as seen previously) that make a distinction to “*school functioning*” and “*student performance*” (Christie, *et al.* 2007:71). At two township schools it was found that often learners would not come to school for a number of weeks and yet the parents remained silent about that. Parental involvement was seemingly a problem leading to absence of learners. The level of parental involvement in rural schools was however more supportive. Discipline was also mentioned as becoming harder to maintain and a possible reason for this was given as to homes not being “as structured” as they were in the past. It was stated that in some cases schools have to become a “superparent” or the child becomes the baby of the school (Christie, *et al.* 2007:72).

In this research project principals were asked whether they had had any problems with absenteeism or punctuality. In these schools that worked, although learners sometimes came late, they would be in class when the bell rang and, ultimately, everybody would be present in class. Gates were locked at a certain time when the bell had rung (Christie, *et al.* 2007:73). A far greater concern to principals in schools that work was the effect of drugs on the learners. It was also mentioned that substance abuse and especially “dagga” and smoking before school, was a problem. However, due to their partnership with the police, this aspect could be investigated and curbed (Christie, *et al.* 2007:74).

#### 4.6 Conclusion

Many of the researchers from the foregoing literature surveyed, refer to the family, the school, socio-economic background, gender or poverty when examining truancy, its causes and how it should be addressed. There has been a great deal of research into how these factors influence truancy.

This study begins with the existing theories and research mentioned above, and adding to the literature by researching specific schools and the role that their

teachers play in addressing truancy. The study will attempt to ascertain what more the schools and teachers can do to try and address truancy, and how they are using the policy on attendance that was introduced in January 2011. It will also investigate teachers' duty of care and their pastoral role in the individual schools to determine whether teachers understood their role in combating truancy, while also asking whether the schools had the pastoral policies to help learners at risk, much as Southwell (2006) does in a "*truantist*" perspective. Input from a legal practitioner and a judge will also give a different view of the truant and of the teachers' duty of care, making clear the role of these judicial offices in relation to the schools' pastoral duty.

The next chapter will discuss the research design and methodology used in this study.

## CHAPTER 5

### RESEARCH DESIGN AND METHODOLOGY

#### 5.1 Introduction

The research design is seen as the manner in which the research will be done. It can be likened to starting with some idea of what you would like to research, and then to plan so that you can carry it out with a systematic implementation, to arrive at the intended conclusions. It will be done in such a way in this study that the interviewees will respond to the questions that will be posed to them so that conclusions may be reached.

#### 5.2 Research design

This aspect will be divided into the research paradigm and the research approach.

##### 5.2.1 Research Paradigm

An interpretive paradigm was used as it is “*characterised by a concern for the individual*” (Cohen, Manion & Morrison, 2000:22). The authors state that the main idea in the interpretive paradigm is “*to understand the subjective world of human experience.*” They contend that to retain the integrity of the phenomena being investigated, efforts are made to get inside the person and to understand from within. A study of the individuals involved in the research will help us to “*understand their interpretations of the world around them*” (Cohen, *et al.* 2000:23). This was especially relevant in this study as each interviewee from the different sections, schools or legal department and the judge had a perspective of their own for interpreting the research questions. The participants from the same school also had different perspectives in that one answered from the management point of view while the other viewed it as a teacher.

According to Cohen *et al.* (2000:23) the data that was generated in this way through interviews would be infused with the meanings and purposes of those people who

are the source. The aim of the research from an interpretive paradigm would thus be to understand how this reality, as seen by the participants at one time and place, compares to other times and places from different participants in the study. Cohen *et al.* (2000:23) state that from this interpretive perspective a multi-faceted image of human behaviour will emerge that will be as varied as the situations and contexts supporting them.

### **5.2.2 Research approach**

A qualitative study was attempted using a narrative research design through interviews, as many different assumptions can be made of the world. McMillan and Schumacher (2001:15) mention “*realities*” that can be built up through the way in which the individuals being interviewed will have viewed the world they are in, and they state that this kind of study is more concerned with understanding the social occurrence from the view of that particular participant. The participants in the study will have stories to tell and the researcher will describe these stories through the narratives about their experiences. Narrative research captures a normal form of data that is familiar to the individuals that participated in the study. This narrative form of research developed as there is currently a great deal of emphasis on teacher reflection. More emphasis is being placed on teachers’ knowledge in what they know, how they think, how they develop professionally and how to make decisions in the classroom. Teachers will also become more empowered when they are able to talk about their experiences (Creswell, 2002:513). In education these stories are often connected to incidents and stories that relate to classroom experiences or activities in schools (Creswell, 2002:61).

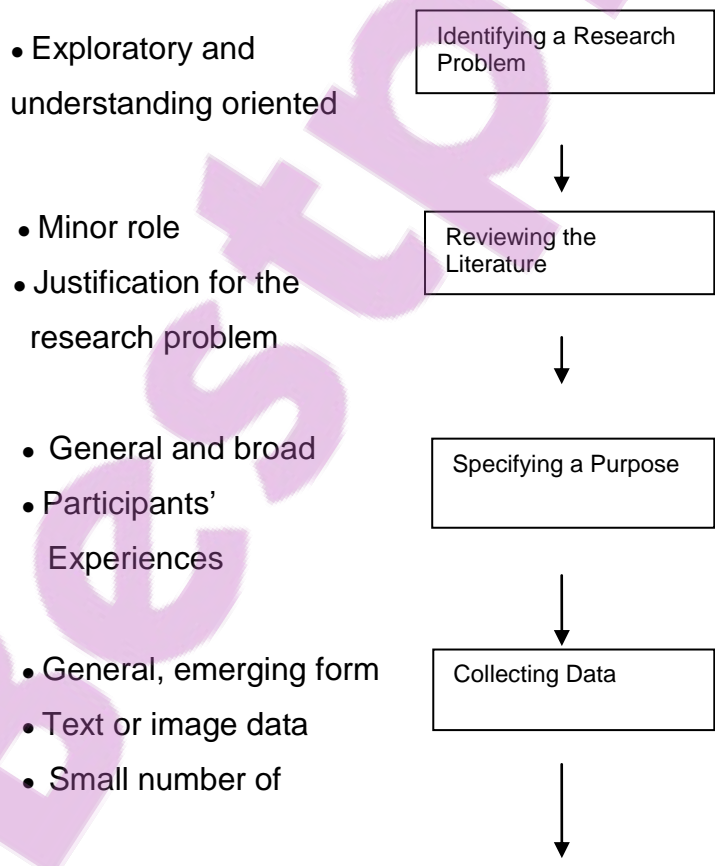
Creswell (2002:213) identifies five steps that need to take place in any qualitative study. Firstly, to identify our participants and sites based on places and people that can best help us understand our central phenomenon. This was done by the researcher using purposive and convenience sampling as it enabled him to get easy access to the participants for the study. Secondly, permission is needed to begin the study but greater access to the site is needed to interview or observe the participants. This requires a greater level of participation between the parties. Permission for the study was sought from the North West Education Department and

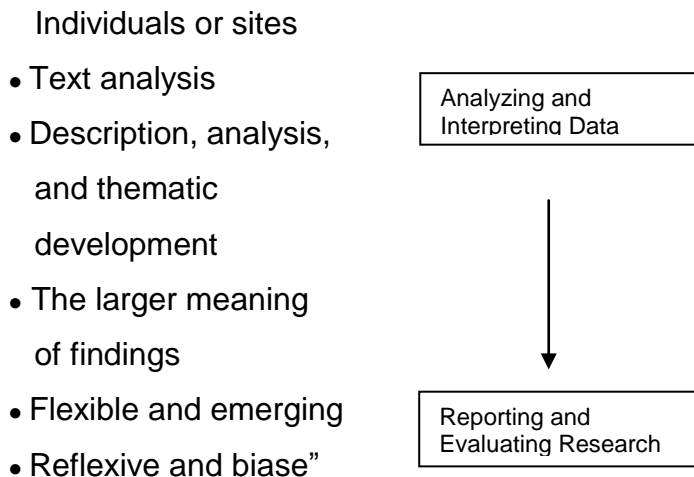
letters were written to obtain permission to approach schools, while a further letter was written to enable the researcher to approach the legal section of the provincial department. Thirdly, the approach relies on general interviews or observations so that it does not restrict the views of the participants. Data was collected with interviews using open-ended questions. Fourthly, the information must be recorded as supplied by the participants. Information was recorded and used with self-designed protocols that would help or enable the answers from the participants for each question to be organized, coded and grouped into themes.

Lastly, the procedures must be administered with sensitivity to the challenges and ethical issues of gathering information face-to-face and often in people's homes or workplaces or their own environment. This was strictly adhered to during the interviews and in the visits to schools prior to the interviews.

The following diagram from Creswell (2002:52) shows the Characteristics of Qualitative Research on a Continuum in the Process of Research.

**“Qualitative Characteristics Steps in the Process of research**





(Figure 2.1, Creswell, 2002:52)

The diagram above was indicative of the procedure followed by the researcher. Firstly the problem was identified in the observations made in the trips to the local education offices as well as the numerous media articles. Literature was then reviewed on the topic of the duty of care of teachers and truancy as well as the applicable legislation that affected the duty of care and truancy. The purpose of the study was then to obtain the lived experiences from the participants that could be used while at the same time enabling the researcher to collect that data through the interviews that were conducted and taped. This in turn would allow for the analysing and interpreting of the data after it has been placed in themes so that ultimately it can be reported on.

### 5.3 Research Methods

The following methods were used:

#### 5.3.1 Data collection and recording of data

The data collected was done mostly through qualitative collection techniques through a number of methods. Firstly, numerous newspaper articles from various newspapers such as the Sunday Times, the Mafikeng Mail, The Daily Sun and Die Noordwester, which specifically highlighted the problem of school safety were collected and read to enable the researcher to identify the research problem. This

was with special reference to the following articles: the kidnap of Merissa Naidoo, “School sends boy to death”, “Chaos at schools” and “Teacher admits rape”. These articles and others were looked at and used to highlight the problem faced by schools, teachers and parents as regards safety, the duty of care and pastoral care, including truancy. This collection of newspaper articles was thus not a literature study as such but was the basic literature that piqued the interest for the study.

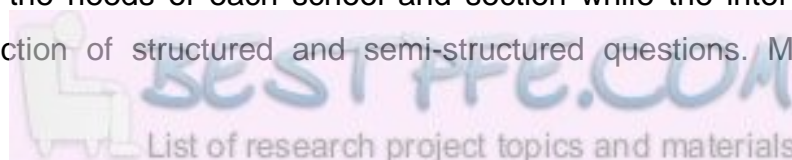
Secondly, staff members and management of seven schools, in two broad categories of advantaged urban schools as opposed to disadvantaged, township/rural schools were interviewed using basic questions about pastoral duty of care and “*in loco parentis*”, safety policies, codes of conduct and truancy at schools, while also bringing in discipline of both teachers and learners. Participants were invited to share some of their experiences about incidents which have a bearing on school safety/truancy and their pastoral roles in these activities at their schools.

The purposeful selection of the advantaged and disadvantaged schools was to determine whether there was a difference in how the duty of care and truancy is viewed from the different perspectives of advantaged versus disadvantaged schools.

Thirdly, the opinion of a lawyer/member of the section dealing with legal matters at the North West Department of Education was approached about their viewpoint on the duty of care of teachers as it pertains to truancy.

Lastly, a judge at the Mmabatho High Court was approached to make an input into how they (judges) view the “pastoral *duty of care*” of teachers at schools in broad terms, how it relates to truancy and how it is interpreted in the courts through past court cases. Other insights that might be relevant were also offered during the course of the interview.

Data collection was done by means of structured and mostly semi-structured interviews. An attempt was made to have questions that were more open-ended so as to follow up answers given by the participants. The interview schedule was set up to fall in line with the needs of each school and section while the interview guide included the selection of structured and semi-structured questions. Most of the



questions were flexible as there was specific data that was required from each school and the other participants.

This was followed up as well by conducting similar structured and semi-structured interviews with the lawyer and/or the labour section in the Education Department as well as a judge to determine their knowledge, understanding and their experiences with teachers and schools regarding the two factors mentioned above, namely, teachers' duty of care and pastoral duty of care as well as truancy and the possible ramifications of these two factors for teachers in schools.

### **5.3.1.1 High Inference Observations**

This was used to make judgements or inferences based on the observed behaviour. Most of us, in our daily movement around our work places or our work or social community render us to be natural observers. What we learn through these observations help us to make sense of the world around us and probably guides us in our future thinking and actions. In this study the researcher was probably seen as a non-participant observer in the work or social setting as he tended to move around between schools, the education area offices and other school related institutions, including the education department, making notes but not becoming involved in the activities of the participants (Creswell, 2002:222). Creswell (2002:223) indicates, however, that by not taking part in the activities you are actually removing yourself from actual experiences and the results may not be as concrete as if you had participated. The non-participant observer is thus an "outsider" who sits on the periphery or some advantageous place to watch and record the phenomenon under study. This would require less access than the participant role but might make individuals on the sites more comfortable (Creswell, 2002:223). The researcher in this role did not move onto the sites but took a position near the schools to view chiefly whether learners leave the premises and the times that learners would leave and return to schools.

The observations used, together with the interviews and study of the literature, would however provide or triangulate findings and substantiate the findings. In this case it was also used to provide insight into specific questions, incidents and behaviours at the schools that could guide the interviews.



### 5.3.1.2 Interviews

Use was made of a combination of structured and semi-structured questions to interview the voluntary participants at each school and at the department of education and the court. The same basic structured questions were put to each participant while the semi-structured questions allowed for prompting of interviewees when further information or follow-up questions had to be used to clarify certain data. Interviews in qualitative research could have advantages and disadvantages. Some advantages are that they provide useful information when you cannot directly observe the participants and they allow for detailed personal information from participants. The interviewer also has better control over the types of information received as more specific questions could be asked to elicit the information. Some disadvantages are that information could be “filtered” through the view of the interviewees and may be deceptive as to provide the perspective from the interviewee as to what the interviewee wants the researcher to hear. The presence of the researcher could also affect how the interviewee responds.

One-on-one interviews were used as this allowed for interviewing participants who are not hesitant to speak, are articulate, and who can share ideas comfortably. This is a data-collection process where the researcher asks questions to and records answers from only one participant at a time and although time-consuming and costly, due to having to travel to and fro, it was ideal as it provided participants who were willing to speak and could share ideas (Creswell, 2002:226).

The following considerations as mentioned by Creswell (2002:228) were taken into consideration during the face-to-face interviews that were conducted. These included finding the participants to interview by means of purposive sampling, which was done as indicated by the sample. Firstly, the purposive sampling was done to facilitate getting specific people for the interviews that were firstly, on management and secondly, a PL 1 teacher at the identified schools while at the same time had also been at the school for a period of at least three to five years. Secondly, convenience sampling was also used to ensure that the researcher could find the closest schools to where he is located to ensure the least amount of time and expense when the interviews were to be conducted. The type of interview to be

conducted was to be face-to-face interviews which necessitated travelling to the site, using the researcher's private transport to ensure a meaningful interaction with the participants.

I made use of a small device to audiotape the interviews to ensure that all the responses could be captured correctly and the participants were requested to allow this taping. This request was put to each participant and subsequently a small unobtrusive device was used to record the questions and the responses, Taking notes during the interview was dispensed with in an attempt to not be distracted and also as it was felt that the recording would be sufficient or accurate enough. All interviews were conducted in an office or area at the venue identified that was, under the circumstances, fairly adequate with minimal interruptions taking place.

A typed consent form that had been discussed with each participant at the initial meeting to discuss the dates and times for the interview was presented to each participant prior to the actual interview being conducted. The questions were followed in order excepting where more clarity was asked for or had to be extrapolated on. In this case follow-up questions or probes were used to elicit a further response. After the interviews the participants, and where possible, the principal of the school was thanked for allowing the interview and being a part of the data collection process. It was mentioned that should further questions be necessary they would be contacted again and that should they need any information they were free to contact me.

### **5.3.2 Sampling**

This study could have made use of a probability (random) or non-probability (purposive) sampling method. However, for purposes of this study, a purposive sampling method was used as according to Cohen, Manion and Morrison (2000:99) *“some members of the wider population definitely will be excluded and others definitely included.”* The researcher has thus in this case purposely selected a certain section of the wider population around the area to include in or exclude from the sample used for the study at the schools selected. Merriam (2009:77) posits that purposeful sampling is due to the postulation that the researcher wants to find,

understand, and learn from the situation and thus must select a sample from which the most can be learned. To do so, the researcher needed to select samples which could provide the necessary information for in-depth study.

Creswell, (2002:214) shows the steps for Purposeful “Qualitative” Sampling as follows:

### Purposeful “Qualitative” Sampling

Select people or sites that can best help us understand our phenomenon



To develop a detailed understanding

- > That might provide “useful” information
- > That might help people “learn” about the phenomenon
- > That might give voice to “silenced” people

Figure 8. Adapted and taken from Creswell, (2002:214)

The diagram above illustrates how the sample was used in the study. The teachers, the lawyer from the education department and the judge were purposefully selected as they would be the people from the sites selected who would best be able to give insight into the duty of care of teachers and the way in which it is used in schools regarding learner truancy. The data obtained would lead to a better understanding of the phenomenon and in this way not only provide useful information but assist people to learn about the phenomenon of the duty of care of teachers and at the same time, give insight into the truant learners and assist others to learn more about what causes these “silenced” people to stay away from schools.

Secondly, the researcher also made use of convenience sampling as this is where “*you select a sample based on time, money, and location, availability of sites or participants*” (Merriam, 2009:79). This aspect was especially relevant as working on a full-time basis you are often not able to free yourself from your duties to go out and do the necessary research and the expense was an added concern. Cohen, Manion and Morrison (2000:102) mention that this form of sampling “*involves choosing the*

*nearest individuals to serve as participants*” and carrying on with that until you find the required sample needed. The area and most of the schools to draw samples from are known to the researcher, they are easily accessible with a minimum of funding required for transport and was therefore convenient to use.

The researcher thus chose the sample according to what was required from the closest schools for his needs, based on the requirements that they (the school) should be reachable shortly after closing in the afternoon, while also providing two willing participants during that time. The same purposive sampling and convenience sampling was again used to select the participant from the legal section of the Department of Basic Education, and the judge.

The researcher requested permission from the Department of Basic Education to visit selected schools to sample a selection of teachers, as it might be problematic to try and sample truants. Teachers were probably the best participants to answer interview questions concerning the duty of care and pastoral duty, as well as offering their observations and experiences on that, and on truancy in their school. Further permission had to be obtained to sample the member of the legal section at the department of education.

The sample consisted of a group of two members from each school which were selected using the criteria that at least one of the participants had to have been on management and the second had to be a PL 1 teacher. Both participants had to have been in the system or at the school for at least three to five years prior to the study. It thus entailed collecting data from teachers and management from various identified (by me) schools (seven) to determine their knowledge of the duty of care of teachers, and knowledge of truancy at their schools, how this was handled in schools, and whether this procedure was part of their internal policies in the school. Real life experiences with the two aspects at the schools were also looked for. The schools had been selected purposely to include a cross section of schools from former advantaged schools to schools found in townships as well as rural schools, but this had to include at least two primary schools and five secondary schools. One participant from the legal section of the department as well as one judge were also

interviewed, thus a total of between 15 to 17 participants were to form the sample for this study.

The main focus during the interviews with this sample was to be experiences that these teachers at each school would have had about the two aspects, duty of care and truancy, at their own schools. The legal specialist from the education department and a judge from the court would probably be best suited to provide responses on their experience, and understanding of and interaction with, schools regarding the duty of care and truancy.

The population consisted of all schools found in this surrounding area around Mafikeng/Mmabatho in the North West Province and must have had the criteria that one member must be on management at the school while the other must be a PL1 teacher at the same school as mentioned. A second criteria looked at is that each must have been at the school for at least three to five years prior to the research being conducted. It thus entailed collecting data from teachers and management from various identified schools to determine their knowledge of the duty of care as well as truancy, how these aspects were handled in schools and whether it was handled as part of their internal policies in the school.

The focus of the population would be the experiences of the staff at the schools, the lawyer from the legal section at the Department of Education as well as the judge in his court concerning the safety of learners, the duty of care of teachers/*in loco parentis* duty of care of teachers in schools and truancy.

It also focussed on one participant, a lawyer or practitioner from the Legal section of the North West Education Department who talked about the lived experiences around the two topics, duty of care and truancy, and their experiences in the legal section with schools and teachers, based on the above two topics.

Lastly, the population also consisted of one judge from the local high court who was asked about his experience and knowledge of schools, with real life experiences of court cases around the same two topics. Insight into different court cases like the

*Tania Megan Jacobs v Chairperson of Rhodes High School* court cases was also requested or elicited.

#### **5.4 Analysis of qualitative data**

The analysis of data entailed a system that would organize and manage the data. This entailed a system of coding, a term which means the assigning of a kind of shorthand “designations” to the data so that you can easily retrieve specific pieces of the data. It could entail single letters, numbers, phrases, or combinations of these (Merriam, 2009:173). Each interview needs this coding so that the interview can be interpreted at a later stage. In this case the data analysis is the process whereby you answer the research questions (Merriam, 2009:176). Merriam states that these small units of data (coding) will ultimately be compared to similar raw data from other interviews and after sorting them out they will be arranged together to form themes or categories. This category construction is the data analysis. Creswell (2002:256) reiterates this stance that the use of themes is another way of analysing qualitative data. The overall process of data analysis starts by identifying segments of your data that are responsive to your research questions (Merriam, 2009:176).

Merriam (2009:178) uses the term category but sees it as the same as a theme, a pattern or an answer to a research question. Merriam (2009:180) also names this system of grouping as open coding and this is then used for each set of data that you encounter and each original category could also have subcategories or subthemes. All of the data or evidence derived from the data is then sorted into the categories.

According to Creswell, themes are similar codes put together to form a major idea in the data. This process of creating themes will condense the number of codes and make the themes more manageable to analyse. This, according to Creswell (2002:257), allows multiple perspectives to emerge from the data which is provided by the different participants.

## 5.5 Triangulation

The validity of the research might be seen in the data that is obtained by the research or by the participants such as the teachers, the lawyer and the judge. MacMillan and Schumacher (2001:478) mention that triangulation is a “cross-validation among data sources, data collection strategies, time periods, and theoretical schemes.” The researcher has made use of a variety of different methods to obtain the data that is necessary, such as the observation that sparked the interest in the study, interviews and analysis of legal documents and the literature on the subject. According to Cohen, Manion and Morrison (2000:112), triangulation “*is a technique of physical measurement in its original and literal sense.*”

MacMillan and Schumacher (2001:428) mention the use of multi-method data collection techniques or “strategies”. The study made use of observations, and then was followed up with the study of the literature on the phenomena and then interviews. These strategies mentioned were sufficient to enhance the credibility of the study. MacMillan and Schumacher also mention “institutional collaboration” and that this could be cross-checked by comparing data through observations or interviews or even looking at documents. Triangulation also refers to the many perspectives in this research, from the school and teacher perspective, to the lawyer’s and the judge’s perspectives that could be validated through the methods used.

## 5.6 Limitations of the study

A small sample of schools was selected as the focus of the research and the schools were selected based on specific criteria. A good cross section of schools was chosen, so it is hoped that this will not detract from the value offered up by the data collected into the experiences each participant had about the duty of care and truancy.

It is possible that as a principal from the surrounding area, I know the area and might have been well known to many of the participants which could impact on the results of the study. I also have preconceived ideas about the topics from my own

experiences during my teaching career and at my own school, while principals/management/teachers could have tried protecting their school reputation.

### **5.7 Significance of the study**

It was hoped that, with this study, a remaining factor that can endanger the lives of learners and cause ruin to the teacher, both financially and professionally, could be recognised and urgent attention given to its significance for schools, staff at those schools, learners and parents, as well as Education Departments. It would also define the absence of what defines the duty of care for teachers, schools and management in the schools in South Africa, and its relevance to truancy in the school.

The findings could be used by:

- a) Provincial and National Education Departments and their policy-makers who could use the information to try and introduce or permit changes to existing documentation that would influence behaviour of both staff and learners at schools.
- b) Principals, SGB's and staff of schools who could introduce policies to minimise the danger to learners and possible court cases against staff, schools and Education Departments.

### **5.8 Conclusion**

This chapter focussed on the research design and methodology of the study. The problem regarding duty of care of teachers regarding learner truancy was identified and set out. An interpretive paradigm was used for the qualitative research approach as this helped in the understanding of the phenomena from the view of the participants. The data obtained from the participants through the interviews was mostly done through stories and incidents that were related in a narrative way. Thereafter the literature on the duty of care and truancy was reviewed and the legal framework was set out as guided by the Constitution and the relevant legislation.

The management members and teachers of schools were specifically selected using purposive sampling. Members of specific schools, from former advantaged school,



and township or rural school perspectives, and having been at the school for three to five years were selected. The knowledge they have about the two topics being researched would provide the necessary data that could be reviewed. The data that could be obtained from the legal section of the Education Department and the judge would also provide meaningful insight into their experiences with schools about the two topics. Thereafter convenience sampling was used to choose the nearest schools that could provide the relevant data.

High inference observations were done in trips to the education district offices when required to be at the offices to meet with education officials. Interviews using semi-structured questions and open-ended questions were used and the interviews were taped to ensure that the data could be analysed and interpreted. The reporting and evaluation of the study was then completed from the data obtained. Coding was used to arrange the data in themes that could be reported on. Triangulation was achieved through the observations, the interviews of the different participants as well as the literature reviewed.

The limitations of the study were also pointed out as being that of a small sample but also being known in the area and my own ideas about the topics. Finally this study could have the following merits:

- a) The study could find aspects which can be used to promote the safety of learners;
- b) staff at schools could be unaware of their role towards school safety and their obligation of trust and care towards the learners in their care through their duty of care or pastoral care at the school.
- c) It is also crucial that any social factors that influence school safety through truancy are addressed by schools and the authorities.

The next chapter, Chapter 6, will cover the data analysis and the findings of the research.



## CHAPTER 6

### DISCUSSION OF FINDINGS

#### 6.1 Introduction

This chapter will cover information or short biographical notes on the participants from each school and the basic profile of the school. It will present the themes that have emerged from the interviews due to the coding, and the responses from the various participants to the questions that were posed to them individually. As stated in the previous chapter the schools were contacted through the principal and dates were set up to visit the school at a time that suited them, to interview the participants without impacting on any teaching time. There are verbatim excerpts from the responses during each interview, to highlight the points made, and at the same time, there are the real life experiences of the person interviewed. The objective of the findings from the interviews will be to look at the legal interpretation of teachers' duty of care with an emphasis on learner truancy as was stated in the purpose of the research.

#### 6.2 Background Information

Two teachers were interviewed at each of the following sampled schools, listed as A to G. One of the teachers serves on the senior management of the school while the other is a PL1 teacher at the school. The proviso was that they had to have been teaching at the school for at least three to five years.

One member from the legal/labour services section of the North West Department of Basic education was also interviewed, as well as a judge from the Mmabatho Central High Court in the capital town of Mahikeng. The participants are categorised according to the school, (A, B, C) they are from, namely A1M or A1T. In each case the M will denote the school management team (SMT) member at the school and the T, the teacher at the school. L1 and J1 will denote the lawyer and the judge

respectively. The number will denote the sequence of schools from 1 to 7 while the judge and the legal section are singular interviewees.

### **6.3 Profile of schools**

The following information is a short profile of each school sampled, indicating the size of the school, the staff and learner complement and the area where the school is found. A short breakdown of both the lawyer and the judge is also provided as background to indicate their experience and knowledge of the law in their respective fields.

#### **School A**

School A is a local high school situated in the capital town. It was a former whites-only school but has subsequently become a multiracial school as regards both learners and staff. It has a good reputation and has produced good grade twelve results consistently over the last number of years. The school has a principal, one vice principal and three department heads and twenty-two teachers, five paid by the School Governing Body. There are five hundred and twenty learners from grade eight to twelve, with both English and Afrikaans spoken (parallel-medium) as the medium of Instruction in an Afrikaans stream and an English stream. There are twenty-two classes and a total of about thirty-five learners per class on average. The school draws learners from all around the capital and has severe challenges with regards to providing space for new learners. The parents' socio-economic status ranges from well-to-do to economically challenged, while the school is situated in an area close to the town centre. The school is a quintile three school.

#### **School B**

School B is a local primary school situated in the capital town. It was a former whites-only school but has subsequently become a multiracial school as regards both learners and staff. The school has a principal, a vice principal and two department heads as well as five hundred and eighty learners. It used to be a dual-medium school catering for both English and Afrikaans but the medium of instruction

is slowly changing to English as the medium of instruction as they admit fewer Afrikaans speaking students and some Afrikaans classes have already been phased out. The school has three classes in every grade, ranging from grade four to seven, with about thirty seven learners in every class. They have seventeen classes and twenty teachers, four paid for out of school funds. They draw learners from all around the capital and have severe challenges with regard to space for new learners. The parents' socio-economic status ranges from well-to-do to economically challenged, while the school is situated in an area near the town centre. The school is a quintile three school.

### **School C**

School C is a high school situated in one of the suburbs of the capital town. It was a former "coloured" school but has subsequently become a multiracial school as regards both learners and staff. The school has a principal, two vice principals and three department heads as well as thirty four teachers. There are eight hundred and ninety seven learners from Grade eight to twelve, with both English and Afrikaans used as a medium of instruction. The school has twenty classrooms with about forty to forty-three learners in every class. The school draws learners from all around the suburb and has severe challenges with regards to providing space for new learners, especially those from rural areas wanting to migrate to better-resourced schools. The parents' socio-economic status range from well-to-do to economically challenged, but most are economically challenged. The school is a quintile three school.

### **School D**

School D is a primary school in the rural area around the capital town. It is a public school run by teachers paid from the state but subsidised by the church. The school has a principal, two department heads, twelve teachers and three hundred and eighty one learners in the school. It is a former mission or Catholic Church school run on the same premises as the high school bearing the same name. Many of the Catholic Church principles of the former school have been retained, and the school still receives a grant from the Church. The parents' socio-economic status is mostly

economically challenged while the rural area surrounding the school is severely economically challenged. The school is a quintile 2 school.

### **School E**

School E is a local high school situated in a suburb of the capital town. It is a relatively new multiracial school with newly appointed staff having only been in operation since 2002 and was built to accommodate learners from the primary schools in the area. The school has a good reputation and has produced good grade twelve results consistently over the last few years. The school has a principal, two vice principals, four department heads as well as thirty six teachers. The total staff complement is forty-eight employees. Six are paid for out of school funds. There are eight hundred and thirty two learners from grade eight to twelve. They have twenty-four classes ranging from forty to forty five learners per class. The school admits learners from all around the capital and has severe challenges with regard to providing space for new learners. The parents' socio-economic status ranges from well-to-do to economically challenged, while the school is in an area of an upmarket suburb of the capital. The school is a quintile four school.

### **School F**

This is a big high school found in a township near the capital town. It has a good reputation and has produced good grade twelve results consistently over the last few years. The school has a principal, two vice principals and four department heads, as well as fifty-two teachers. Five are paid out of school funds. There are one thousand five hundred learners from grade eight to twelve. There are thirty-eight classes with about forty learners per class. They draw learners from all around the capital and have severe challenges with regard to providing space for new learners. The parents' socio-economic status ranges from well-to-do to economically challenged. The school is a quintile four school.

## **School G**

This is a big high school which is found in a rural area near the capital town. It has not produced good grade twelve results over the last few years. The school has an acting principal, one vice principal, four department heads and thirty-five teachers. One vice principal's post and two department head posts are vacant. They have one thousand and ninety four learners from Grade eight to twelve and classes have about fifty learners per class on average. They draw learners from the surrounding rural area. The socio-economic status of the area as well as that of the parents' is economically challenged. The school is a quintile three school.

## **Legal Services**

This member of the legal section of the North West Department of Basic Education has been a member of the section for several years and has served in the legal section in a senior position. She has represented the North West Department of Basic Education on numerous occasions during hearings and court cases, including cases involving claims against the Department of Basic Education or against schools in the province. She is a qualified lawyer with various diploma's and degrees, and she has specialised in educational law.

## **Judge**

This member of the North West High Court in Mahikeng has been a member of this and other courts after being admitted as an advocate of the Supreme Court. He holds numerous degrees and has served various courts such as the Industrial court of Kwazulu Natal, the Labour Court and the High Court in the Witwatersrand and presently in the North West High Court. He also lectured at the University of South Africa as the head of the Department of Mercantile Law. He has contributed to several books, written some articles and participated in a number of seminars and conferences. Numerous of his judgements (about 250) have been reported in various law reports.

## 6.4 Analysis and interpretation of data

The interviews obtained were coded and the following themes were set up.

### 6.4.1 Duty of care and the interpreting thereof

The duty of care is seen by many of the participants much like that expressed in the definitions of the duty of care or as *in loco parentis* as ascribed to it by the common law interpretation, which is that the teacher acts in place of the parent. In the recording L1 says, *“At the Department we view the in loco parentis principle as that the educators must actually stand in the shoes of the parent of the learner. So within the care of educators, they must act as if they are the parents of that specific learner.”* She continues by saying, *“In my view it is an extensive right that parents and learners have in the educational field, that the moment that I hand over my children to teachers or educators at school, that they act as if they are the parent.”*

J1 on the other hand states in the recording that the term ‘duty of care’ is a very broad one, and he says, *“Courts don’t normally sit down and work out a broad picture and then work within that.”* He indicates that courts will only react to a breach of the duty of care through a complaint or a summons. He says, *“You have to try all the law that is applicable to that particular dispute, to work out the rights and duties of the respective parties.”*

After that he states that *“the law tells us as to how to go about that. It has changed in recent time insofar as it is now recognised that this is a value judgement that the Judge will make by looking at all the facts concerned, starting from the Constitution and going through all legal enactments, whether they are Statutes or Regulations.”* He continues by saying that even non-statutory documents will be looked at.

J1 also says that an enquiry into what the duty of care is, *“is actually a factual enquiry into what was done and what should have been done and if what was done and what shouldn’t have been done does not measure up, that is when liability comes into play.”* So it appears from this account that the duty of care will be

dependent on the judge in that case and on all the other legal investigations that were done by the judge and previous legal matters.

What is crucial and mentioned by J1 is

*“that old cases, old precedents of how things were handled in the past, are useful but if they, if those precedents, in other words previous judgements of the law regarding facts at that stage, they may no longer be applicable in the light of the Constitution because the Constitution, has changed the whole, the whole legal environment. Anything that happened before this, every case, every law has got to be re-examined in the light of the Constitution.”*

J1 goes further and indicates that *“there is more of an emphasis on the rights of the child, there is an emphasis on the best interest of the child.”* So he emphasises that with this possible change in interpreting what the teachers’ duty of care is, *“that duty may well have been extended.”*

That idea of a possible change appears to be echoed by L1 when she says, *“I think that the essence of duty of care has, the fact that you stand in the shoes of the parent that has not changed.”*

What has “changed” according to L1 is that

*“the Courts try to interpret the principle of duty of care within the circumstances, and therefore you will find that the principle of duty of care will evolve. It will be bigger. And that has, it is exactly is what happened.”*

However, L1 indicates that all teachers *“must be aware of all these changes that has taken place over the years.”* She refers to a court case from Kwazulu-Natal about an additional language, to indicate that court cases increase the duty of care on teachers and schools, as well as the Education department by saying, *“So that Court case now places a slightly increased responsibility on the education system as well.”*

L1 believes that the teachers’ duty of care cannot stop when it has been reported to either the department or the parents, but it continues. She says, *“No. It can never be. It can just never be. It is a process thing, I think to report issues.”* She goes on to



highlight the process as it unfolds at the department, and the investigations that need to be done, and she ascribes the delay to the time that investigations take as it is delegated to only one person and that is the HOD, and schools do not always hand in the necessary documentation, *“We have also struggled to get all the proper documentation from schools”* and she ends by saying, *“So even if they wait for the Department they must still manage that.”*

J1, when asked whether this duty of care ends at some time, gave an explanation involving scholar patrols at schools and indicated that the duty does not end when the learner has crossed the road. It can be extended further, according to him, especially if there is a major highway or railway line a bit further on or within the proximity. The duty extends as he indicates,

*“the Court will only pronounce on it once something has happened and there is a complaint before it in the form of an action or application. It is conceivable that a Court will say that your duty of care extends further.”*

He added that reporting issues at the school is not enough either. You are indeed responsible while the learner is in your care so you cannot just say, *“I will leave the child with the caretaker. Red lights must be flashing.”* He continues by saying,

*“the mere fact that you reported it, it is probably not enough. You cannot report it and say, I am now entitled to wash my hands. If that duty of care requires you to look after them until the Department reacts, the duty of care goes up to that stage. So again the facts are specific.”*

In addition, J1 indicates that

*“ the fact that you are getting child headed households means that there may be a greater duty on the schools as regard that kind of child than if the child [who] had a mother or a father or a grandparent.”*

L1 states that, *“Our experience in some instances [is] that the duty of care is not well understood by educators. And this of course leads to, sort of negligence on the part of the educators.”* She related some instances and cases from the province where

teachers were negligent at schools, to emphasise her point that teachers do not appear to know their duty of care. She continues about teachers and their apparent lack of duty of care by saying “*and if you talk about the legal duty of care or in loco parentis, it is as if you speak of something that is never heard about.*”

On the other hand, J1 says that according to his own observations, teachers

*“may not know precisely what the law [is] with regard duty of care, duty to take care of people in your custody and so on, but they know reasonably speaking that there is such a duty and if you look at the organisations at school and so forth, they are geared to doing what the law required them to do.”*

He ends this section about duty of care by saying, “*I would say by and large they (teachers) are doing well.*”

This idea is further mentioned by A1T because she knows about the duty of care and said, “*What do you call this parent in the place of the parent, I do believe it is part of our calling.*” Another management member, A1M, says “*We must remember that we are in loco parentis*” and that it is “*your duty as a grownup, as a teacher.*” A further explanation comes from B2M who says,

*“You are the parent at school and you are working with children here who do not know their rights and who don’t know when something is wrong. You are busy educating, you are not only teacher and so you are the mother and the father there at school. So it does not stop anywhere.”*

This sentiment is echoed by a number of the teachers at the school including E5T when she says, “*You serve a role of a parent and an educator as well.*”

During times of early closing for learners at school, many schools confirm that letters are sent to parents informing them about early release of learners, and some of the more privileged schools appear to have “*portals*” and SMS systems, to inform parents. This is a requirement from the policy on learner attendance. However, it is a matter of concern that this apparent knowledge of the legal duty of care does not appear to be carried over to the actions of many of the teachers. The school management and teachers at schools who randomly close schools and release learners on their own recognisance without informing parents or sending letters to parents, appears to be a regular occurrence, and the fault for that appears to have to

be borne by both schools and the Education Department. In many cases, the participants mentioned that letters are sent to parents informing them about early release, as is mentioned by C3M when she says, *“We inform the parents by writing a letter to inform them that school will be coming out earlier Friday.”* This matter is echoed by many of the participants. However C3M takes the matter further: *“We try very hard not to have haphazardly decide for the school to come out earlier than the normal time, although there are really some instances when it happens.”* On the contrary, a matter of grave concern comes up from the same school C when C3T mentions about the same early release,

*“Okay the truth – I don’t know. Sometimes even the educators are not informed all the time that the school is going to dismiss and children have to go home. And then the bell go and then the learners are free to go. And then they will have to wait outside, they will have to wait for their transport. It is very rarely that educators know long before the time for a school to dismiss early.”*

This aspect of teachers not being aware that the school will come out earlier is very worrying as it points to a lack of communication in the school. School D, however, seem to have the right idea when the participant, D4M, indicates that they try to keep learners *“until school out”* while D4T states that *“if something crops up then we have to go, the principal is usually at school and usually uses his transport.”* This concern for the well being and safety of the learners indicate that the school is aware that the learners must be under supervision when teachers have to leave earlier than normal but then uses private transport to convey them.

A1M also indicates that they release learners early when she says, *“It (contacting parents) is not always possible because it can happen that teachers must attend a meeting.”*

Some schools alluded to the issue of strikes by teachers, and in this regard, the site steward, who was one of the participants at school E, indicated that after informing the management about the strike, *“proper arrangements were done whereby the relief educators were called and then they said educators were advised to leave work. Unfortunately because of the union issues they said no work should be left.”*

This could have been very problematic in class for the learners, and the relief teacher coming into the class. School A also mentioned the influence of strikes on the learners in their classrooms and the influence that it has on learners in the school as a whole.

It would thus appear that the sentiment expressed by L1 is not entirely correct, and that teachers very definitely are aware that they have an *in loco parentis* duty of care towards the learners in their schools, although in some cases it is not followed.

#### 6.4.2 Pastoral care

Most of the teachers' who were interviewed, convey the impression that pastoral duty in schools is, to a large degree, alive and kicking.

B2T defines pastoral care in schools as,

*“Looking after your children, having their back[protecting them], making sure nobody harasses them at school, no bullies and things get to them. You sort that out for them, even if it is teachers they have problems with, you have their back, you go and settle any problems that may have arisen.”*

She even suggests that should these problems be out of school, they need to be addressed, *“if there is [are] issues at home I can address it with the parents and I can work together with the parents to help the child better.”*

A1T says *“I do not know if pastoral duty or care is prescribed or described anywhere. So I do not know where to draw the line on that because pastoral care is not as such part of your duty as a teacher.”*

She explains this by saying,

*“It is part of our calling, pastoral care, more than our duty, that we do it or where we go too far, yes, sometimes teachers can get involved so much that, that the relation between teacher and child becomes too intimate.”*

She says this while relating the story of a female teacher who had a relationship with one of her learners but adds that this is the exception.

A1T also says,

*“there is [are] a lot of teachers at our school that really do care about the learners and they really look after the learners, and go out of their way to help in many ways, bringing bread for learners that don’t have food at home”* and she continues in this trend by saying, *“looking after them in a healthy way when learners did not have breakfast in the morning and become dizzy.”* She says that the teachers *“do not see this outside their duty or outside their calling.”*

A1M on the other hand likens this pastoral duty of teachers to giving the learners, *“guidance”*, and insists that as a professional person you need to assist. She says that as a teacher your pastoral duty involves, *“Not taking sides, listening to, with an open mind and to, and if need be, involve psychologists.”* She further states that pastoral care is *“an ongoing process.”* She continues by saying, *“But our pastoral duty, there is no ending, there is no stopping. It is ongoing.”* This feeling that pastoral care is ongoing is again echoed by the teacher F6T when she says, *“Our duties do not stop.”* She goes on to say that it continues, even over weekends where you find a learner who is *“doing something which is against the rules of the school.”*

She also pointed out that in pastoral care,

*“..you go all out to help that child but before you can help you start looking first, what is the cause of this problem and then maybe you can even check at home, the background.”*

E5M states that a teacher is *“an exemplary role model for the learners”* and that *“through her experience and loving concern, genuine concern show the child a sense of responsibility, a sense of feeling and a sense of what, of significance.”*

F6M was very emotional about pastoral care saying, *“we are faced with a challenge but we do not have help to deal with it. We are even really, to a certain extent in trouble, we will be killed one day.”*

B2M says that pastoral care is *“part of your job. It is just what you do and I think the good teacher do [does] not even think about it. Because as a teacher you are not only there to teach academic work, you are there to develop the whole child.”* C2M echoes some of these sentiments when she says, *“I think pastoral care is one of the core duties of an educator. Sometimes we forsake this duty but I believe it has got a very, very central place in the school today.”* She insists that once teachers realise their pastoral duty it can help learners, because, *“our learners so desperately need and I think without a school and staff trying very hard because we are in a community that is broken.”*

A further point that is stressed by many participants in schools is that this pastoral duty involves many roles. C2M also attests that in this pastoral role at schools teachers *“fulfil roles as nurses, we fulfil roles as social workers. We fulfil roles with councillors here at school and ja, the need is endless.”* G7M is another teacher who echoes this diversity of roles for teachers as part of their pastoral duties, *“So the teachers goes out of that work that the teacher is expected to do of any class teaching and marking. So there is this other duties that we do.”*

C2T also echoes this by saying, *“we do all go the extra mile with learners.”* She emphasizes this by indicating that *“some educators are also busy after school where they are going to, where they are going to parents, to see parents in connection with their children.”* She even says that this pastoral duty does not end for some teachers *“they work even on a Sunday at church they will tell the parents this, this is what happened, do you know about that.”* D4M states that teachers are *“becoming more than what they are supposed to be doing.”* He relates the story of a learner who brought a knife to school and he says that *“teachers themselves now make sure that they become police. They become social workers to try to find out where this child was before.”* He also stated that pastoral duty in a school does not end.

C2M also talks about partnerships that teachers need to form with social workers, pastors, hospitals and clinics because *“we have a core duty when it comes to pastoral care. It is something that you never forget, it is daily and we have to be vigilant as educators. Learners, learners are here with deep needs.”* C2M also stresses that this pastoral care does not end. She mentions that some teachers

would jump into their cars and “*go to the parent’s house just to find out what the circumstances are.*” C2M emphasises the importance of this pastoral care: “*what I have realized in the past is [that] wonderful potential has been unlocked*” with those learners that are assisted. She ends her statement about pastoral care by indicating that she feels that the pastoral needs of teachers must also be looked into. She asks the question, “*but the question that I had today is, how well, what pastoral care does an educator have?*” She asks this question as she feels that teachers or her colleagues, “*are vulnerable and they are also broken.*”

A very promising development was mentioned by one teacher, D4M, who indicated that their school was assisted from Australia with donations to help learners and the school with pastoral care. He indicated that “*this [these] donations come from Australia for pastoral care.*” They also have a pastoral committee at the school to deal with issues of truancy. Learners are assisted with food, water, transport and school fees in this way. D4T confirmed this, and added, “*there’s a group of people who comes from Rustenburg and they are involved with part of the pastoral activities and every time when they come they workshop us on that.*” The learners would go to the committee at the school “*and we see these learners to talk to us whenever there is a problem and you do not have money for, for transport.*”

Some of the other teachers, including E5T, indicate that there is a limit to the pastoral duty and the duty of care. She says,

*“I think teachers should be more engaged when coming to educational issues, timeframe meaning from eight to, depending at what time does the school end.”* She continued by saying “*when it is during that demarcations of eight o’clock or periods of eight o’clock to three o’clock,...* This is the area whereby an educator has to be more focussed into school issues, but after three o’clock I think educators no longer have a control over learners. It is now the chance of parents to take charge of them.”

Of the 14 participants, only about one says that teachers' pastoral duty has limits. F6T says that the pastoral duty of teachers ends "*right here in the school, before school out.*" She continues by saying, "*it is up to you as an educator whether do you give out extra time for your learners.*" This sentiment is not really echoed by the other teachers. This sentiment is however echoed by G7T who indicated that while in school it was the duty of the teacher but that "*outside it is the parents who must do the job.*"

The numerous positive feelings expressed above about pastoral care are negated by the limit of time put on it to some extent, while a lack of care is highlighted by A1T when she talks about classes of up to 40 and states,

*"The learners inside the class cannot be left alone so that you can go out and look for the one lost sheep, so to speak. So I guess a lot of care is just not happening in that sense. And if we do catch them on truancy, I guess it is just punishment and not really caring. So how much we care about learners being late or not there for classes, I guess it is a lack, that we do not care enough."*

C2T also talks about this lack of care and states that it is often brought about by teachers who "*are so busy to cover the syllabus, we are so busy with to, to make them full of knowledge.*" C2T however states that this lack cannot prevent you from doing your pastoral duty: "*Thank God that we can sometimes see here is someone crying out. So you cannot stop with them.*"

In the schools where teachers were interviewed there is or they do have a definite system of pastoral care and many teachers show a deep sense of taking care of the learners, even after school and over weekends. This is gratifying, and although it does not appear to be structured according to a policy as it is in schools from the literature on pastoral care, a very definite care system is found in our schools, often involving finances or a contribution by teachers at the school. However, there also appears to be a number of teachers who tend to think that their pastoral duty does not extend beyond learners going out of the school gates after school.



### 6.4.3 Truancy

Learner truancy at schools is an aspect that has enjoyed a great deal of attention in the literature around the duty of care from countries such as England, Australia and North America. The safety of learners at schools is paramount and the policies in the school must govern that, and allow for the control of the truancy in schools. The participants interviewed were asked about their policies and whether their school policies addressed the issue of truancy and how it was addressed in the school.

L1 states the obvious when she mentions that we need to remember that “*in terms of legislation children must go to school until the age of fifteen, the compulsory school-going age.*” She again states that until that day the school “*must ensure that they do everything in its power to ensure that, you know, the learner attends.*”

L1 has her doubts about schools and says that it appears that truancy is a major concern within the school system. She indicates that “*at the departmental level it seems as if schools struggle to manage truancy.*” In contrast, the teacher D4M says that he thinks “*the Department have a different view of what is truancy.*” He says that the Department know about the policy on learner absenteeism and therefore they should know how to help schools. He feels that they (department) “*must talk to the parents of this [these] children and find out what is wrong with truancy at school level.*”

Record keeping about truancy, L1 sees as a lack in schools, which is also echoed in the literature, but she indicates that it seems to them that “*the school does not care enough.*” She goes further by saying that in their opinion, learners who grow up without one or two parents or who stay at the granny’s house and are left to their own devices is not always known by the teachers and this contributes as “*these things have a definite impact on, I think whether children attend school or not.*”

J1, in his explanation as to how the duty of care can be extended by the Courts to include investigations for truancy says,

*“It is also possible that in the context of the truancy that, and I think it is very possible, that some home visit would be required, to find out what is going on or what is the real cause because although the harm is not taking place at school, the origins may be there, and the duty of care may be such as encompassed, and enquiring into the home circumstances so that the school, within its mandate and the limits, that it has determined whether or not there is something which they can do.”*

J1 appears to echo the opinion of L1 when he talks about the *De Blom* case and indicates that

*“if the teacher is a teacher, the teacher must know what are the rules related to truancy and cannot say, well I did not know because there is a legal obligation to find out and keep yourself abreast of what the law says regarding your duties as a teacher.”*

Teachers are mostly in agreement about truancy, and the fact that it is a huge problem in schools and is increasing, as A1E states, *“Truancy is increasing. That is, coming late in the mornings, that is, bunking classes, that is leaving school early, all of that is increasing.”* A1M feels that there is a *“loophole for children”* in controlling attendance of learners with period registers as it is not done *“more regularly.”*

A concern voiced from one of the teachers in a high school regarding truancy, F6M, was that often parents would give money to learners to come to school using a taxi. However, as she indicated,

*“They do not prefer to use taxi’s that come early. They prefer the taxi[s] that make noise that come late. Then they go somewhere subway and smoke dagga or whatever.”*

F6T voiced the opinion that although teachers were going the extra mile, *“when it comes to that (truancy) we can help this learners and reduce it because it seems like it is the most [serious] problem. It is a very problematic area when it comes to school.”*

One teacher out of the 14, at school G, G7M, indicated that he feels that truancy has reduced due to the marking of registers. He said, *“Absenteeism or truancy has reduced.”*

A plea for help was also made by a teacher F6M, where she said, *“let there be support from the Department of Education, social and all other affected people, please let them help us to deal with this thing of truancy because this thing of truancy is the one that is creating the issue of drugs.”*

The two primary schools do not appear to have too many learners who are truant and the numbers vary. School B, according to B2M, has *“one or two severe cases”* and also what is referred to as *“the normal situation I would say, a small percentage.”* The other, School D, according to D4T has *“three boys”* so it does not appear as if the primary schools have a serious problem with truancy.

#### **6.4.3.1 Factors or issues causing truancy**

It has already been mentioned that L1 did not feel that schools were keeping good enough records of truancy and did not know the circumstances under which learners lived. However, apart from the family circumstances which will be discussed separately, the participants mention many factors that cause or appear to have an influence on truancy. One of these is a lack of initial training concerning legal issues for teachers which was mentioned by L1 above. However, L1 adds that she does not feel that the Department has the infrastructure to handle the *“paperwork”*, *“So the Department, I do not think has enough staff to physically monitor every school in this regard.”* This aspect could relate to both the policies found in schools as well as to issues around truancy. This factor is echoed by A1T *“I think sometimes we feel that our hands are tied because you can only take it that far and then nothing really happens to the children. They must come back to school, and everything just carried on.”*

L1 mentions another factor concerning issues in schools *“I do not think all principals – it is not a given that you will know how to manage. It is something that you must learn over a period of time with the necessary support.”* She also mentions the time

that it takes for disciplinary issues to be addressed by the Department: *“I think sometimes schools feels [feel] that there is not enough support in that regard for schools. And the sad thing is that schools are most probably right, because it takes time.”*

A teacher, A1T, mentions the demands on the teacher, especially as *“admin is becoming bigger and bigger.”* Not only are the classes getting bigger and bigger but *“periods are shorter in minutes than there is learners in the class. You cannot even spend one minutes [minute] per child if you want to get through the class.”* Another factor mentioned was that of *“loopholes”* in policy mentioned by A1M and at least one other participant. A1M, also included the issue of teacher absenteeism as a major factor,

*“when teachers are absent I am afraid to say we are short of staff. We have huge classes. We try to work out a timetable but no teacher have one or two periods per day which we call admin periods and then they do photocopying and admin work and even for them to go to a class of an absent teacher. So many a time the children are left on their own which creates a problem in itself because they run around, they upset neighbouring classes.”*

There is a sense of despondency from a number of the participants around the issue of drugs as this relates to truancy. A1M says, *“I would be dishonest if I say that we do not have problems relating to drugs and alcohol.”* She says that learners congregate in guest houses and then proceed to drink and smoke and do *“other wrong things.”* She also related the story of a child that came to class *“so under the influence. He did not really know what was going on around him, vomiting all over the place.”* This issue of drinking was echoed by the other teacher from the same school. A matter of serious concern was raised by one of the teachers from a primary school who says, *“a learner was using drugs”*. She adds that *“..Parents were both alcoholics and the little brother in prep school was already using drugs.”*

C3M also talks about the fact that *“learners they already start getting involved in drugs even before school.”* There is apparently *“a tuck-shop”* near the school where

*“they do get these substances”*. E5M also indicates drugs that *“some things that they carry from home makes them unfit to go into the class and they just hide away from there and try to either take it out in some other way.”* F6M appears to be very agitated by the truancy and indicated that learners would come late for school as they had stopped somewhere and smoked *“dagga.”* She had even tried to get the learners to exhale for her to smell and the boys tried to fool her by saying that the learners *“were inhaling instead of exhaling.”* The issue of drugs in this school was echoed by F6T, from the same school, so it would appear as if drugs really are a problem in this and other schools. G7M was also very vocal about drugs at his school and indicated that learners smoke drugs (dagga) and drink alcohol. E5M also mentions *“being bullied”* as one of the causes of truancy and this was also confirmed by F6T at her school.

C3M raises the issue of *“gangs at our school”* and says that they became aware of this phenomenon and although it was not prominent they *“were aware that gangsterism exists.”* The issue of learners who repeat a grade is also mentioned as well by C3M, saying that these learners are *“sometimes used by people outside to sell certain substances”* and they had no real interest in school as they were there *“for other purposes.”* E5M makes the case of learners in their school who gamble for money in saying, *“he was gambling, that is what [the] majority of our learners’ do.”* Apart from the gambling there was also, *“like money, intake money lended to learners, I do not know for what and charged on interests.”*

C3T raises the issue of learners who have followed *“the wrong stream”* and were taking subjects that they had no interest in as their marks were not good enough to take subjects like maths and science. E5T says learners claim *“transport issues”* while others will tell you that they have *“too much homeworks and the learner was afraid to come to school.”* E5M adds to these causes by stating that it could also be the *“presentation manner”* of teachers that cause truancy, or just that the teacher and the learner cannot stand each other or have an attitude towards each other.

Lastly, although many schools such as school A, D, C, E and school F speak about security at the gates and that gates are locked, it appears as if truant learners have found ways of circumventing these security measures at the school. The participant,

A1M mentions that *“children disappear. They jump the fences.”* She continues by saying that *“Many a time the parents drop the child on the school premises, the child walks in or they have entered the front gate, the child go out the back gate.”* This is despite the security arrangements. A1T mentions learners who *“leave the school grounds”* while at school F, the participant F6M tells that learners, *“because of township life the yard, they keep cutting, these learners who come late to school. They bring their own tools to cut the yard [fence].”*

An even bigger issue that influenced truancy was that of pregnancy of girls that was raised especially by schools F and G. Two participants, F6M and G7T talk about the issue of pregnancy in schools and were clearly emotional about this matter. F6M mentions that *“kids they come to school being pregnant. If something happens in class, if they can, have miscarriage in class, what next?”* She continues by saying that *“nobody is taking care of this situation. They say kids should come to school, pregnant, but there is no means to protect even the unborn and the pregnant.”* She also states that these learners are not suited to *“put on uniform”* and that when writing exams there is confusion as these girls want to go to the toilet all the time during the examination. G7T on the other hand says that the pregnant girls often have to go to the clinic and when she comes back *“she cannot cope.”* Participant G7M says that it may be better to let the pregnant learner stay at home, *“when the child is pregnant stay at home and you know, come back later.”*

Seemingly many of the learners did not really want to learn and A1M states that learners have *“a lack of commitment”* and prefer to *“socialise.”* They even stay away as they *“do not want to feel sort of out, and they join in.”*

A particular sad aspect was mentioned by C3M in pointing out that at their school truancy was due in a large part to the *“social-economic set-up”* (in that up to 80% of learners) where learners *“come to school on a hungry stomach.”* She ends this topic by saying, *“it seems like the socio-economic environment that can largely contribute to most of the problems that we have.”* D4T also raises this issue of hunger causing truancy when she refers to the poverty in some households: *“there is nothing to eat in the morning”* when referring to the poverty in some households.

Teachers at all the schools that were visited, excepting the primary schools, felt that truancy was a major concern in their schools and that factors such as drugs, pregnancy and the home environment as well as the family circumstances were largely to blame for the increase. Related to this are the poor results of learners which necessitate them having to take subjects which they have no interest in, often truanting themselves due to their lack of interest in the subjects that they are able to take in school. The teachers also mention the lessons and planning of teachers as a contributory factor for increasing truancy.

#### **6.4.3.2 Procedure in dealing with truancy**

The schools seem to have some similar procedures in dealing with truancy in the school but seem to follow their own internal policy on how to deal with truancy, if it is there and available. Participants from most, if not all of the schools, talk about registers, class and period registers and that all learners are checked off against the register and even against class lists. However, it is not being done in the same way at all schools, which is a worry as some appear to be doing it in the morning while others do it after break and so on. Some schools only follow up after a few days. School A and C indicate that the class teacher will follow it up first, and in the case of school C, C3T she *“personally inform the parent.”* Schools appear to have various systems of informing the principal or letting the principal or management contact the parent by phoning, through letters, SMS or portals and asking them to come in to the school for a meeting.

Of particular interest is the fact that none of the schools mention that cases of truancy are reported to the Department of Basic Education, as mentioned earlier by L1 when she says, *“it (charging a parent) has never been done”*. There appear to have been very few, if any reports or cases of this nature and even that parents have been charged although L1 mentions that it is *“one of the tools that the Department or schools can utilise.”* Of interest was that at one school, school D, the participant D4M indicated that they do not take it further as, *“you know ultimately you know that that child will be taken to another school and so, no, we, we do not take it further.”*

F6M suggests that one of the ways of dealing with truancy was to have a social worker and various other people attached to a cluster of “*about 5 schools*” to help deal with issues at schools. This could be a solution in their case.

Food for thought was a criticism against the Department of Education, that came from one of the participants, A1M, when she said,

*“I think from the side of the Department they feel very serious about school attendance. But in schools under their noses children walk around in the street. Nine o’clock, ten o’clock, eleven o’clock.”*

The procedures dealing with truancy in the schools visited do not appear to be strictly monitored by the Department of Basic Education and schools do not have fixed ways of dealing with the truancy. They tend to follow whatever procedure has worked for them in the past, and it does not appear to involve the Department of Basic Education. This is unlike the procedure in other countries where strict procedures are implemented, with officers that monitor truant learners following up on them and even charging parents when learners do not attend school.

#### **6.4.4 Family structure and parents**

The legal duty of parents is to ensure that their child attends school from the age of seven until they are at least fifteen years of age (RSA, 1996:5). However, many of our learners in schools come from families which are mostly single parent families, or where both parents are absent or have died, leaving the child with relatives or as child-headed households.

Participant L1 and participants from many of the schools allude to the role that parents play, or do not play, with regard to learners not in school or truant.

L1 says that the impression of the Department of Basic Education (hereafter DBE) is that schools often are not aware of the circumstances within which the learners find themselves in. She says, “*the fact that the children grow up without one or two parents or they stay at the granny’s house and so on and they are sort of left to their own devices.*”



L1 makes the case that although provision has been made to lay charges against parents for allowing truancy, “*as far as I know in our Province in North West it has never been done.*” Although it has been discussed, she continues, “*However, it has never been done and I am not so sure what the impact will be and as far as I know even within South Africa there is no, no case ever reported where this has been done.*” This is unlike other countries, like Australia, England and North America, where it appears to be a common practice. She does however acknowledge that it is one of the “*tools that the Department or the schools can utilize.*”

J1 talks about the liability of teachers in various cases, and contends that when “*the parents has [have] allowed that and it is happening at the school. The teacher is not liable.*” This matter could refer to truancy or school absenteeism as well and not just games that are played at schools although as J1 says, “*the matter depends on the facts.*”

A1M talks about an “*underlying problem*” for among others truancy and mentions that “*many a time parents are too strict.*” She also mentions referral of these learners but says that very often “*parents and children are not really in favour of that, because it is sort of a bad reflection.*” She also refers to an incident after a dance where they had to wait until the early hours of the morning (02:00) for a child to be collected and the parent “*just yelled at the child and off they went.*” No thanks had been offered for their waiting with the child. She also says that as far as she was concerned, “*parents are too busy pursuing their own career, their own studies, their own social life*” and although she states that she is generalising, it is a concern. She acknowledges that there are still good parents as well.

B2T relates the incident where “*a parent wanted to keep the child at home because she was lonely and then the child stayed with her, but she was never at school, hardly did any homework.*” This emphasises some of the concerns that teachers have with parents of learners in schools. B2T says “*Often its parents not looking after their children, making sure that they are dressed and fed in the morning, before they leave for work.*” She also refers to learners who “*don’t stay with their parents*” but with grandparents who are too lenient so “*children can fake an illness and the grandparent would allow it.*” The alcoholic parents mentioned by B2M has already

been mentioned and C3M who relates the story of a grade 12 learner who had a problem as *“She is taking care of her 90-year old grandfather.”* J1, in the section under duty of care, discusses the different rules for care that schools should probably have when child headed households are to be found.

The family structure is mentioned by D4M, when talking about the Australian donation to his school as *“some of the children do not have parents.”* He also criticises parents who use different methods to discipline their children: when they come to school *“they use the rules of the Department. But when they go home it is a different situation.”*

The attitude of parents towards the child is mentioned by E5T when she relates the story of a child who came to her about *“The manner in which a parent is treating her.”* E5M says that learners *“experience problems at home.”* This according to her could be a lack of *“attention”* from the parents or even that truancy is caused by *“what they experience from home.”* She also suggests that the *“atmosphere that they have at home is the major cause of a child’s behavioural problem.”* She relates the story of a child who tells male teachers that he hates them after an experience at home: *“what he saw of his father that day, brought about this huge transformation.”* She also addresses the issue of learners that are *“coming from split families where they have had a solid family background, now splitting up. Either split up or splitting up or in the process of splitting up.”*

E5M also makes an interesting point about problematic learners when she indicates that male learners specifically need their fathers in high school in saying, *“a male child goes for the father and the role, he looks at the father and that is lacking in their lives.”* The issue of blame also comes up as well in this discussion of problematic learners where E5M mentions that parents would come and *“They always want to blame, it is always, you know the father wants to blame the mother, the mother wants to blame the father, and then the whole blame comes onto the teacher, that we are not doing enough.”* She mentions that parents do not want to accept the blame and do not want to *“understand that that is a problem.”*

A participant from school F, F6M, mentions parents who leave home early in the morning and allow learners of fifteen to eighteen years old to fend for themselves, “*without follow-ups.*” She contends that as teachers “*we are teenage-sitting*” because of that. She also related the shocking stories of a fourteen-year-old girl who was “*raped*” by the father at gunpoint, contracted HIV and how she had to apply for a grant and the problems she experienced with the government because of that, as well as the trauma of the child whose father poisoned members of the family.

A serious indictment against parents came from A1M where she mentions that a learner came to the school under the influence (of alcohol) and was vomiting all over his school case. She then said,

*“It was reported. We have reported to the parents. The parents then phoned the school and his sister who was also here and said, he came to school this morning by himself. He must get home by himself. The parents did not want to get involved.”*

G7T talks about the poverty in families that “*the learners are trying to do something that can, where they can get something to eat, generally, the background is not good.*” G7M also talks about the fact that parents are not really educated and that this influences their handling of issues at the school. He says,

*“Most of our kids are born of parents who are, who have not go [gone] to school deeply and they are not very much aware what, what is it they can do with the kid, cannot be brought under control by both the parents themselves and the school.”*

This school, as mentioned, is found in a very rural area, which is economically very deprived, with parents who are either unemployed or have menial jobs and thus this comment about parents who do not appear able to control their children.

The participants in general ascribe many of the challenges brought about by truancy to the family structure and the parents. They mention learners who grow up with absentee parents, in single-parent families or are left with elderly grandparents who are not able to assist the learner. They also contend that parents are sometimes too

strict with their children or allow them too much leeway, often allowing them free rein after school and even till late in the evening, while not paying attention to the learner and the needs of that learner. The role of parents to guide learners in their social roles as men or women is also lacking. Thus the lack of parental guidance appears to be ascribed to many of the issues involving truancy in schools by learners in the schools.

#### **6.4.5 Sanctions against schools, principals and teachers**

The literature study made it clear that in cases of misconduct or hurt to people within the school, damage lies where it falls (Neethling, Potgieter & Visser, 2006:3). This appears to be taking on a great deal more prominence in matters that the Department of Basic Education (DBE) is involved in at schools.

L1 states that in instances of negligence of a teacher or school there could be a two-pronged legal approach. The first is a civil claim for damages and the other is a charge of misconduct from the DBE for whoever is found to be negligent but in most cases, *“it was the school Principal”* as he was the accounting officer at schools as she stated *“is it section 16(a), it is the one that gives all the responsibilities to the Principal”*. However, she says that an *“educator that is negligent must be cautioned and the Department has now in, with these kind of matters, in all matters, [the] educator will be disciplined as well.”* This is echoed by J I in his explanation of how the duty of care is seen by the courts. He mentions one specific case he was involved in, the *Modise case*, where he found the school negligent. He does not state what the outcome was against the teacher or the principal of the school but one can only surmise that some form of sanction was brought against either when one looks at what L1 indicated about cautioning people from the department side.

J1 and L1 explain the issue of mitigating issues against schools, principals and teachers and state quite clearly that there are normally two issues at stake, one of misconduct from the Department side and that of a civil claim from the claimant. L1 says, *“there it is two legal issues”* and this is echoed by J1. L1 also states that the department of education has decided that the *“educator will be disciplined as well”* and adds that it is *“now a rule that you will be disciplined.”* The judge in J1 makes it

clear that it (any enquiry or case) is a *“factual enquiry”* into the merits and the law of the case while L1 makes the statement that any circumstances in a case will *“depend on the merits of the case and of course the aggravating and mitigating circumstances in the end.”*

Both L1 and J1 acknowledge that according to legislation, the DBE becomes liable for damages involving schools or as the employer of the teachers responsible. However, L1 reiterates that in actual cases, there will be a *“two-pronged approach towards this issue.”* (Charges against schools or teachers and so on) She indicated that the department will look at whether it is a *“capacity issue at school.”* If it is not a capacity issue but a case where the school was not following what should be done, *“In that regard the person responsible would be the school principal.”* She explains that various steps could be taken against teachers following the *“normal process of discipline.”* Depending on the mitigation aspects and aggravating issues, a teacher could be dismissed, demoted, given a final warning or even *“suspended without pay for three months.”*

In civil cases, L1 indicates that an *“educator can agree to repay the money owed.”* She says that the teacher will have to agree to this, but again the teacher or principal will be told, *“we will not dismiss you, we will rather demote you or give you a final written warning that this amount now must be deducted or must be repaid to the Department.”* She says that it becomes a problem, however, as in the case of the learner whose leg was blown off *“if you talk about R4 million, so who is going to pay that.”* L1 explains that this clause, which makes the Department of Education liable for fines was included chiefly as it *“safeguards the person.”* J1, on the other hand indicates that any money to be paid by a teacher or principal will depend on the *“context again.”* The legislation will be looked at or in the case of a criminal case, if it constituted a fine which had to be paid.

What was interesting is that J1 explains that

*“it is possible that if an educator has been found guilty of misconduct of some kind, the possibility that the pension pay-out could be blocked. Normally a pension may not be used for any other purpose but I have seen, I have seen some change and I think it may be possible in certain circumstances.”*

It was mentioned under duty of care, by both L1 and J1 that the question of ignorance of the law would not be able to be used as a defence by teachers, principals or schools as it is their duty, according to J1, to ensure that they *“keep themselves abreast of what the law says regarding your duties as a teacher.”*

What is clear from the discussion above is that schools, principals and teachers have an obligation to ensure that they know the law that applies to them. The court cases such as *TM Jacobs v The Chairperson of the Governing Body of Rhodes High School and Others* as well as that of *Wynkwart NO v Minister of Education and Another* are testament to the fact that various legal duties are attached to the duty of care exhibited and displayed by schools and teachers.

#### **6.4.6 Policies in schools and knowledge about them**

Case law in the *S v De Blom 1977 (3) SA 513 A* case has made it abundantly clear that ignorance of the law is no excuse. L1 says legal knowledge of teachers over the years has improved but *“I do not think that maybe the legal obligations that educators have received necessarily all the attention that it should have during the courses when they study.”* J1 echoes this basic idea in saying, *“there is a legal obligation to find out and keep yourself abreast of what the law says regarding your duties as a teacher.”* He continues with these words,

*“The whole gambit of what is expected from a teacher, [the] teacher must know the limit of their powers, the extent of their rights and the extent of the obligations towards those who are in a relationship with them as a teacher.”*

He continues by saying that anyone who is not complying with their obligation, *“they are on dangerous grounds.”*

With the above comments from L1 and J1 in mind, it came as a surprise to see how many of the participants from the seven schools did not know about the internal policies in schools or in some interviews did not know and had not seen the policies in their schools that govern what should be done in the school and with the learners, such as the National Education Policy Act 27 of 1996 and the Policy on Learner Attendance that was introduced in January 2011. This was especially concerning regarding two of the basic policies namely the code of conduct and the safety policy in schools. A1E mentions that they do have a code of conduct and *“as far as I know our school have a safety policy”* but she is not sure that they do have one. She also does not have any idea about the regulations for safety measures that were so recently introduced, *“I am not aware of anything like that. Maybe, but I have been there since 2001 and I cannot remember that, something like that was ever passed onto the staff.”* Concerning her knowledge on one of the later policies on learner attendance she says, *“I have no idea.”*

School B participants appeared to have the necessary policies and know what they were about. One of the participants from school C, C3M, mentions that they had all the necessary policies, adding that she knew about the policy on learner attendance and that it was addressed in *“our Code of Conduct.”* However she also mentions that the Code of conduct *“hasn’t really been revised. I think maybe five years ago.”* This policy on learner attendance was only implemented in January 2011 so this comment is odd.

C3T states that as far as she is concerned, *“I have never seen it at the specific school. I have never seen one. I never had one in my hand or in front of me. But I do believe there is one.”* On the issues of safety measures in schools she states, *“Nope. No Mister ..., I know nothing about that. We never had a meeting or it was never discussed in a meeting like that given to us to discuss.”* On the National Education Policy Act 27 of 1996 and the Policy on Learner Attendance she says, *“I am thinking if I have ever heard of it. I have never heard about it.”*

Another participant, E5T, when asked about the learner attendance policy, does not appear to know about it but tried to mention things that it contained such as *“it is more learner centred than educators issues”* and *“that it emphasises more on [the]*

*contact session with learners.*” The management member from the same school asked, *“What is policy Act 27?”*

F6M says that as far as she knows, the safety policy at their school *“was adopted from one school just to be there. It is not working for us.”* On the policy on learner attendance she says, *“I do not want to comment about this one. Because you know if you hear, here and there about something.”* School G participants appeared to have a basic idea about what the policies were about and said so in so many words but did not or were not able to elaborate about specifics.

The revising of policies was of concern in most of the schools. Only one school, School G, had a fixed time or dates for revising policies. One participant, G7M, said, *“it should be revised in fact every two years and a... It is informed by what is happening in the school at the time because a policy never covers everything.”* The other participant from school G said they are revised *“after a year”*. School F participants said that their policies are revised, *“Not usually often”* while the other said, *“it is since in 2004 up to now, we did not revisit this at all.”*

School E participants gave differing dates with the teacher saying that policies were revised in 2004 and 2006 while the management member said in 2011. This was a concern as it suggests that the management member was trying to make it appear as if they had recently revised their policies.

Most of the other schools had no fixed time for revising, except for school D, participant D4M, who indicated that their policies are revised every three years saying, *“We revise the policies especially when you have a new Governing Body. The hand-over shows that these you are doing, following this policy but we allow the new ones to also reflect on the policy and if they want to amend, they can amend on that.”*

It is quite clear from the above that policies in schools, knowledge about policies and revising them is a serious issue, especially regarding the legal requirements for all staff to know about the policies that govern them in schools. The policy documents include the South African Schools Act, 84 of 1996 (DoE, 1996:5) which clearly states



that learners need to be in school while they are of school going age. This same document (DoE, 1996:7) also states that the Governing Body of the school must ensure that a code of conduct is drawn up for the school to govern discipline of learners at schools. The Amendment Regulations for safety measures at public schools also set out procedures that need to take place when schools are to close early and the regulations state that parents need to be informed in writing. The Policy on Learner Attendance (DBE, 2010) discusses various other legal stipulations such as keeping proper records in the form of registers, the importance of regular attendance and the responsibilities of principals, teachers and district officials who have to show “zero tolerance for absence from school without a valid reason”.

#### **6.4.7 Management and discipline in schools**

From the findings concerning internal school policies and those introduced by legislation (discussed above), it is clear that management in schools and especially the role of the principal in schools, leave a lot to be desired. L1 says that the principal should be the one in the schools to ensure that these matters are addressed there: the duty of care, with responsibilities introduced by legislation and in internal policies, especially issues of safety and truancy. The issue of the difference in knowledge about policies between the management member and the teacher from the same school is worrying as it is an indication that communication in the school is either very bad or non-existent. One can see this with numerous schools, for instance between the teacher and management member from school A, where A1T says she is “*not aware of anything like that*” and that of the management member saying that “*once a term we practice it.*” This appears to be in line with the words from L1 who says, “*I do not think all Principals – it is not a given that they will know how to manage. It is something that you need to learn over a period of time with the necessary support.*”

A1T again indicates that “*from the management side the discipline of the staff is not good. It feels to me if all our staff members, including me, can get away with murder at some times for whatever we do.*” She continues by saying, “*The biggest thing is because the Headmaster don’t [doesn’t] know how to confront his staff members and do not ever say no and I just think from that side the discipline is not good.*” It

continues in this trend with the suggestion that their code of conduct was *“adopted from one school just to be there. It is not working for us.”* If this is indeed the case it is a serious indictment on the principal and management of the school as they are called to be instructional leaders in their schools.

There are different versions of how and when learners are released from schools. At school C, participant C3T says, *“I don’t know, Sometimes even the educators are not informed all the time that the school is going to be dismissed and children have to go home”* is once again pointing a finger at the communication in the school together with the monitoring, cascading of information, policies and their implementation and all that needs to be done in schools, is a function of the management of the school. L1 however states that according to her, *“if there is a policy that must be implemented, the person responsible for that will be the school Principal.”*

One can therefore see that management in such schools appear to be lacking the skills that are necessary to run schools properly. Principals are sometimes sent on workshops where the issues of new policies are discussed, and these policies must be studied and interpreted by the principal, and then cascaded down to the school management and the teachers of the school, so that all are on the same page as regards the rules and the law that govern them at schools.

#### **6.4.8 Support for schools**

The Policy on Learner Attendance, (DBE, 2010:11) clearly spells out that “district offices support schools by promoting and monitoring learner attendance and following up where there is evidence that a school has a problem of learner absence.” This aspect is crucial as it brings about the support so needed in schools.

An extremely worrying aspect that was raised by L1 was where she indicated that with policies, *“The physical implementation thereof is difficult and I think from the Department’s side, I think even the educators at school sometimes feel that there is too much paperwork.”* She also raised the issue that she does not think that the Department *“has enough staff to physically monitor every school in this regard.”*

The sad thing mentioned by L1 is that according to her, “*Schools [feel] that there is not enough support in that regard for schools. And the sad thing is that schools are most probably right because it takes time.*”

It is touching to read the calm acceptance in the voice of the participant from school F, F6M, when she relates a story of being charged with fraud, because she tried to help a learner get a grant to buy antiretroviral medication. She could not get help,

*“I tried to consult the school, the Department of Education and everybody but the legal person at the Department of Education, she was at least fair enough to tell me that mother, you when, they did not budget that you will help anybody.”*

It is also quite obvious that very few schools actually try to get help from the DBE and it was only a participant from school D who reports that they “*called the Circuit Manager to come and address all teachers on that issue*” and at school B, participant B2T, who says “*we will report it to the Department and so on.*” All other schools expressly mentioned that they use psychologists, pastors and community people to try and address the issues in their schools. L1 and J1 also mentioned the time it takes to address issues from the side of the Department because only the HOD was able to decide on the issue, and he or she was too busy to do it within the allotted time period in many respects. Thus there is not much support for schools, especially from the side of the Department.

#### **6.4.9 Performance at school by learners**

The Bill of Rights, in sections 24, 28 and 29 clearly stipulates that everyone has the right to an environment that is not harmful to their health or well-being, that learners are protected from harm and that learners have the right to basic education. When learners do not have these rights fulfilled because they are truant, this absenteeism endangers these rights. L1 gives her impression that truancy has a very definite impact on how learners perform at school. She says, “*if they are not at school for an extensive period of time, the learner’s performance will go down.*” She continues by saying, “*it does definitely have a severe impact, I think, on the school system as a whole.*”

Participant A1M says that learners have a *“lack of commitment”* and that they only want to *“socialise.”* She explains that the learners often *“neglect to do their homework”* and hence do not want to come to school, and therefore stay away. B2T talks about the child who was kept at home by the mother but said that she *“hardly did any homework.”*

Participant C3M indicates that some learners are not *“here for academic purposes.”* She continues by saying that for these learners, *“the academic side of this institution is not their interest. They are here for other purposes.”* She gives an example for girls especially who are *“getting into relationships with elderly men and later their interest is no longer at school and in school.”* She adds that these young girls are *“too much involved in other things outside.”* They also get *“pregnant”* and then absent themselves, *“thrice a week.”* It is understandable that the academic performance will drop.

Learner discipline is also a factor that was mentioned by E5M. She gives an example of two learners, one who did not attend class but *“disturbing other classes if at all he was here by throwing things into the class”* and the other who ran out of the class and *“ran away from the school after he failed his question paper.”* She mentions further incidents of gambling at the school where learners were bunking classes only to find them *“in the toilets gambling.”* F6M shares her frustration about learners not studying by saying *“they are here just to keep themselves busy.”*

One can share the frustrations of the teachers about the learners who do not want to study as in the end the results are a reflection on the teachers: this would influence their wanting to teach the learners and in other words, their motivation to teach.

## **6.5 Conclusion**

It is clear from the foregoing that the responses are from the lived experience of the participants as regards their experiences in these schools, in the courts and in the legal section of the Department of Basic Education of the participants. The participants certainly all have different experiences and thoughts to relate during the interviews. The legal interpretation of teachers' duty of care is spelled out during the

study, and it is made clear through the responses by the participants that these experiences are not in line with the expected legal interpretation of the duty of care in schools, and that this could often be due to a lack of direction in the schools. This direction should probably be provided by the principal, as repeatedly mentioned. The uncertainty of many of the teachers regarding policy, the implementation and revising of policy, both internal and national policy, spoke at length to the inadequate communication from management and the lack of knowledge about the legal interpretation of a duty of care in the schools.

The issues regarding learner truancy and the causes, as well as the procedures in dealing with it and the duty of care in these situations, all came out strongly during the interviews. The lack of policies to deal with truancy in the schools and the causes of truancy became clear through the interviews conducted. This truancy appears to have a serious influence on the teachers, and the resulting bad performance from many learners is very problematic to the teachers. The truancy is especially worrying, as the teachers try to fulfil their mandate from an academic and a pastoral care viewpoint. The seeming inability and reluctance of parents in many cases to get involved and to stay involved, by fulfilling their own duty of care with their child's education particularly in high school, is very definitely a major concern and should probably be addressed by future researchers.

The way in which the different strata, from the teachers to the lawyer and the judge, viewed the pastoral care and duty of care came through very strongly. The duty of care and pastoral care, when viewed through the lens of the judge and the lawyer became much clearer through the interviews and this should inform teachers that they need to take this duty of care much more seriously in their schools.

The next chapter, chapter 7, will deal with the contributions that this study made to the body of knowledge, the conclusions of the study, the immediate implications and recommendations as well as recommendations for any future studies.

## CHAPTER 7

### CONCLUSIONS AND RECOMMENDATIONS

#### 7.1 Introduction

This chapter will present the conclusions and recommendations and will attempt to provide explanations about the study around the legal interpretation of the teachers' duty of care with the emphasis on learner truancy. The conclusions reached from the findings related to the study and the literature will be discussed. The conclusions will be followed by the recommendations for various stakeholders as well as the recommendations for future research based on the conclusions and findings.

#### 7.2 Summary of the study

The following is a brief summary of the study in order to restore the memory of the reader about previous chapters. Chapter 1 was an introduction to the study around the legal interpretation of the teachers' duty of care regarding learner truancy through a brief view into an interpretation of various legal aspects, such as the Constitution, the Bill of Rights and other legislation that forms this legal framework, as well as media reports and court cases. This was preceded by the research questions and the aims and objectives of the research. Various concepts used in the study were clarified and finally the research design and the method which was to be used, was clarified. A qualitative study was done using an interpretive approach through the use of semi-structured interviews.

Chapter 2 is an interrogation of the literature around the structure of a legal framework for interpreting the teacher's duty of care owed to learners. This was followed with an adapted legal framework indicating the importance of the Constitution and various sections of the Bill of Rights and other legislation, and their applicability to education and teachers specifically.

Chapter 3 was a further interrogation of the literature and dealt with the teachers' duty of care and the various contributions of the role players in the life of a child, such as the parents and family, and also the teachers, considering the fact that teachers have a special relationship with the learner and have a duty to act when supervision of learners is required while at school. This duty to act and care could place a liability on the teacher, which could see them charged with negligence in the courts or misconduct from the department of Education should they have transgressed or not fulfilled their duty towards the child. Teachers also have a pastoral role towards the learner in their care to ensure the safety of the learner.

Chapter 4 further discusses the literature around the issue of truancy and gives a background and a brief history thereof. The chapter mentioned the myriad of reasons for truancy found in the literature, and these included criminal activity, family circumstances, parents' attitudes and behaviour, and streaming in schools. A number of strategies to curb truancy from various countries are mentioned, including a strategy of learner support officers introduced by the Western Cape Basic Education Department to assist in curbing learner truancy.

The next chapter, Chapter 5, discusses the research design and methodology in more detail. The significance of the study and its uses for schools, teachers and the Department of Basic Education would be important. The sample and sampling procedure and the data collection techniques through semi-structured interviews were discussed in this chapter as well. Ethical considerations and limitations of the study then bring the chapter to a conclusion.

Chapter 6 is an introduction to the schools involved in the research, with a synopsis of the findings after analysing the data obtained during the interviews. The data-collection interviews were conducted with the three sets of participants, the various teachers, the lawyer and the judge. A view into their life world is provided by the various excerpts shown in considerable detail through the course of the chapter, on the eight themes provided by the interviews, which were coded, then arranged into themes and finally discussed.

Chapter 7 looks at the factors that add value to the body of knowledge through the research of the duty of care of teachers regarding learner truancy, the conclusions of the study, the immediate implications and recommendations as well as the recommendations for any future studies.

### **7.3 Overview of the problem**

As we reach the last chapter, it is necessary to engage ourselves in what we set out to achieve with the questions which were posed in Chapter 1. They included:

- What is the legal interpretation regarding the teachers' duty of care/pastoral duty that is prescribed to them regarding truancy in schools;
- How are issues of truancy in schools handled;
- How is the duty of care seen or differentiated between by the different strata from school to lawyer and judge, and is there a difference in the way it is seen by the different strata?

The aim of the study was to investigate the legal interpretation of the teachers' duty of care regarding learner truancy. The objectives were to determine the different ways in which this duty is viewed, whether teachers and principals have knowledge about school safety and education law as pertaining to truancy, and to determine the legal aspects surrounding the possible dangers of learners not being in school, as well as the implications for schools, management and teachers in schools.

### **7.4 Concluding remarks**

The next section will discuss the conclusions which are drawn from the interviews that took place, as well as the findings during the analysis and interpretation that took place in the previous chapter.

#### **7.4.1 Legal interpretation**

The question that was originally posed was to determine what the legal interpretation of the duty of a teacher was. Russo (2010:8) states, as quoted in Chapter 2, that leaders in a country must take steps to safeguard education "as a fundamental

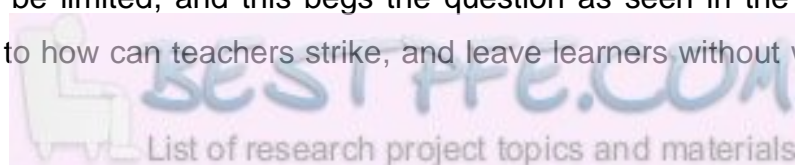


human right for children”. He further adds that all nations must develop “laws and policies” to protect those rights.

The South African law making or decision making structure has made this safeguarding mentioned by Russo possible, by the drafting of the Constitution of South Africa, the Bill of Rights and other legislation such as the Children’s Act, (No. 38 of 2005) and the South African Schools Act (DoE, 1996) with all the amendments that are periodically added as and when the need arises. Prinsloo (2005:5) reminds us that South Africa is a member of the United Nations Convention on the Rights of the child and other organisations that look after the welfare of the child, which effectively calls on the South African Government to pass laws to safeguard the child and to keep learners safe in schools. These laws or policies introduced, are absolutely necessary, as many incidents arise in schools which lead to court cases as seen by the cases mentioned in Chapter 1 such as the *Jacobs v The Chairperson of the Governing Body of Rhodes High School and others (hereafter Jacobs case)* as well as *Wynkwart NO v Minister of Education and another 2004 (3) SA 577*. These are just two of the cases that have originated due to a lack of care in the school and this is the main reason why a legal interpretation is so necessary.

The Constitution of South Africa is the supreme law in the country and super-cedes all other law. The legislation introduced actually contributes to this supreme law in setting a very definite legal framework that should guide all who have dealings with schools or students. Some of the legislation has been mentioned above. The various sections of the Bill of Rights that were mentioned in the legal framework definitely ensure that learners and students in schools enjoy the privilege of the education that they are entitled to as guaranteed by the Constitution. The right to equality, a safe environment, the right to education, and the right to just administrative action are just a few of the sections that ensure the rights of the child.

It is stated in section 28 of the Bill of Rights (h) (2), that a child’s best interests are of paramount importance in every matter concerning the child. It also states in section 36 that rights can be limited, and this begs the question as seen in the interviews from school E, as to how can teachers strike, and leave learners without work when



these sections mentioned, could be applicable to the rights of the child to an education?

The South African Schools Act (DoE, 1996) also ensures that school governing bodies are tasked with setting up various policies that should help in schools, such as codes of conduct, school rules and policies dealing with language and religion in schools. This, together with the Constitution that includes the Bill of Rights (RSA, 1996a), together with other legislation, plays a crucial role in ensuring that the discipline and safety of learners is of such a nature that learners can safely, and in freedom, attend school and get the education that they are guaranteed by the Constitution. The South African Schools Act also states that attendance of learners at schools is compulsory from age seven until fifteen, and that parents are to ensure that this happens. The law is clear, that parents could be cautioned should this not happen. However, as seen from the interviews, this is not taking place, and there is very little evidence, if any at all, of cases of truancy being taken to court, by schools or by the Department of Basic Education.

It is also important to note that, not only does the legal framework provide an interpretation of the laws that are applicable for the safety and security of learners in schools; it also provides a view into the laws that govern what takes place in the schools through truancy and teachers' duty of care.

The interviews provided the necessary data to show that, despite the legal framework provided by the law, after reviewing the factual evidence, the judge in a court case could move to a value judgement to finalise the proceedings for his/her findings in a court case. The interviews have also clearly demonstrated that teachers and the School Management Team in schools do not know much about the law and its ramifications and in cases where they are knowledgeable, it is limited mainly to the management of the school and does not appear to have been cascaded down to the teachers.

In concluding this part it is imperative to note that in the legal interpretation of the law that governs schools and the people that work in them, a very definite legal framework does exist in this country as espoused by the Constitution of South Africa,

the Bill of Rights and the legislation and secondary legislation in the country. It is also clear that using a defence of no knowledge of the law or policies that govern education in schools, will not be accepted.

#### **7.4.2 Teachers' duty of care**

Alexander and Alexander (2005:431) postulate that through common law, society has built up an idea of what they expect from schools and hence a common law of the school has evolved over the years. To work in schools, teachers need discipline and order to fulfil their teaching duties. The law and the courts, through the ages, have built up a common law of the school to ensure the best interests of the staff, the learners and the community. It is through this common law expectation that a duty of care is placed on the teacher, to care for the learner while the learner is in their care, as they have been professionally trained to deal with learners.

The duty of care of a teacher is seen as being *in loco parentis*, which means in place of the parent, according to Oosthuizen and De Wet, (2005:66). They further add that this acting in place of the parent places the duty of caring supervision on the teacher, and secondly, having to maintain authority over the learner while in the teacher's care. Prinsloo (2004:9) however, indicates that teachers must care for the child, with power delegated from the principal and the employer, in addition to the original duty that is imposed through the common law that it is derived from. What is clear and is explained in Chapter 3 is that teachers have a legal and a professional duty of care.

As can be gathered by the findings in the interviews, a major concern in education at present that came out in the study was that teachers might be aware of the duty of care, but not know much about it. They are not all familiar with the term *in loco parents*, and in fact, tend to think that their duty of care ends when the learners walk out of the school gate, as mentioned by a number of people during the interviews. Very few teachers appear to know the repercussions of a lack of duty of care towards learners in their care. Neethling, Potgieter and Visser (1993:3) mentioned in chapter 3, clearly stipulate that should any harm befall a learner, the responsible teacher must be liable because the damage or harm "rests where it falls". This is a concern when the literature clearly indicates, though studies by Schouwstra (2009)

and Netshitahame and van Vollenhoven (2002), that teachers have an apparent lack of understanding of the law and the legal obligations of the duty of care as well as a lack of knowledge and understanding of policies in schools, as mentioned in Chapter 3. In a comparison with the present study, this situation appears to not having been resolved since the earlier research.

A very worrying factor came to light during the discussion with the two legally trained participants and this would add to the burden of the teachers' duty of care. All earlier court cases that could act as precedents had to be re-examined in light of the Constitution, and the added pressure to ensure the best interests of the child when new cases are brought before the courts. It is also imperative to mention that the duty of care is not static, and although this duty has not changed, each court case around the duty of care, could potentially add to the duty of care expectations of the teacher in school. Cases in point are corporal punishment and restrictions in terms of religion. It is also important to note that teachers should be aware of potential dangers to learners or dangerous situations, as mentioned during the interviews as teachers could be charged with misconduct, expected to foot the costs of medical services, or even have a part of their pensions taken to defray the costs of a case of negligence levelled against the teacher as mentioned in the findings in Chapter 6. This caring supervision is what the law requires of teachers as skilled professionals entrusted with a duty towards learners in their care.

A further obligation of teachers pertaining to their duty of care is a pastoral duty that is imposed on teachers through the Employment of Educators Act 76 of 1998, where one of the provisions mentioned in Chapter 2, is that teachers also have a pastoral duty in the schools. This duty entails having to do school grounds duty, detention and other extra- and co-curricular duties outside of the formal school day. (DoE, 1999:5) Many of the court cases mentioned in the first chapter have to do with a challenge on the duty of care in schools and as stipulated by the judge in the *Jacobs* case, it is also important for the school and teachers to cater for the social and other factors that could influence a learner during his or her stay at a school. This could include truancy of the learner if the factors that cause the truancy could be solved by the school through pastoral programmes or interventions such as those mentioned in Chapter 3. However, although this aspect of pastoral care in schools is, in some

cases, somewhat haphazardly done, it is pleasing to note that the teacher participants generally appear to have the best interests of their learners at heart, and they often go out of their way to help them.

In finalising this section, it must be reiterated that a very definite duty of care exists in schools and that a lack thereof could be potentially devastating to not only schools but also to teachers and the Department of Basic Education.

### **7.4.3 Truancy by learners**

The literature mentioned in Chapter 4 indicates that truancy of learners in many countries is a major concern and has been since the 1900's and even the 1800's. Lipsett (2009) mentions that it is estimated that more than 10 000 teenagers in the United Kingdom were leaving school as they did not feel that the school was offering them anything, while other researchers, such as Reid (1985:13) and Shepherd (2010) also give worrying figures of learners who are not attending school. In South Africa, a report by Govender (2012:5) gives figures of about 600 000 learners who were not attending school. This trend of truant learners is seemingly quite prevalent in high schools that were part of this research.

A factor that does not appear to be extensively covered in South Africa is the social aspects or home situation that pertains to truancy or even contributes to it. It is well covered by researchers in other countries, such as Mitchell and Shepherd (1980:7) and Reid (1985:25) among others in the literature. What is evident from the present study is that there is a serious concern from not only the teachers but also other participants about the role of the home and the family situation and its contribution to truancy as it may well be the cause of the truancy. The role of single parent families, families in the throes of splitting up or even child-headed families are a major concern while a growing concern from the teachers was the lack of direction and care by parents, for their children. The lack of good paying employment or even any employment was also a concern due to its impact on learners who come to school hungry or have to try and get funds somewhere to attend school.

There was a serious indictment levelled by the teacher participants, at parents who seemingly abdicate their parental duty in search of better jobs, careers and social life

to the detriment of their children. Hence a growing incidence of truancy is seen in schools, with worrying contributory actions involving alcohol and drugs. From the study it became evident that the main causes of truancy in the schools visited, was related to alcohol, drugs and pregnancy while the family or parent situation and the guidance of students into making good choices of subjects at school was a contributory point. A further issue of concern is a seeming lack of action from the DBE towards parents whose children are not attending school. This could be attributed to the schools not reporting matters as seen during the interviews but this again brings in the issue of support and the apparent lack of support from the DBE.

Finally, it must be stated that truancy in some of the schools is apparently fast reaching a point where teachers will not be able to cope with the demands placed on them, with large classes and learners who arrive intoxicated or under the influence of drugs. The incidence of pregnant girls and “older men” according to the teachers that the teenage girls are involved with, also needs to be addressed.

## **7.5 Contribution to the body of knowledge**

This study looks at various factors that could benefit the body of knowledge in the fields of Education Law and Education Management. Firstly, it investigates the legal interpretation of teachers’ duty of care regarding learner truancy. As such, the study set out what the legal interpretation of this duty of care is, how and where this duty of care originates and then interrogates the aspect of truancy. It therefore contributes not only the legal interpretation but also the legal framework that could be utilised to investigate the duty of care and also the pastoral duty of teachers, using the different aspects of the law. The body of knowledge also benefits through the interrogation of the insight into the existence and possible causes of truancy in the schools investigated.

It also attests to the conclusions reached in previous research around the issues of a lack of policies and knowledge about those policies, and indicates that this lack of policies and knowledge about the policies was still rife in schools. The serious lack of knowledge about the law and legal matters that are vital to teachers, and that govern the running of schools, is another contribution that is pointed out and needs to be

further investigated. Lastly, it gives a possible simple solution to the lack of communication which is so evident in the schools that were part of the study.

A multifaceted approach around the management of truancy in schools must be introduced and followed. Schools need to ensure that all in a school are knowledgeable about the issue of truancy and how to deal with it using the applicable policies and procedures that are in place. This also includes the issue of parents and the procedures that they need to follow when learners are truant or absent. The prevalence and statistics relating to truancy must be monitored by principals to ensure that the correct statistics can be given to the authorities when needed, and this will entail the meticulous keeping of records by management and principals of schools, through all registers as envisioned by the Policy on Learner absenteeism. The DBE similarly need to ensure that they monitor the issue of truancy in schools and that serious cases of truancy are followed up, and where necessary, the matter is addressed, even if it entails having to take steps against the parents for failing to ensure that their child attends school. Knowledgeable people from the Department of Basic Education could also provide the support that schools need or ensure that guidance teachers be appointed at all schools. It is only in this way that the issue of truancy in schools, which at present is creating severe challenges for teachers, as pointed out by this study, will receive the attention that it deserves.

In conclusion, the study highlights the importance of in-service training for all teachers in schools from all levels in the school. This training would ensure that all connected to schools understand the legal interpretation and the legal implications on all principals, management of schools, school governing bodies, teachers and the DBE in their efforts to ensure that learner truancy is handled effectively in schools.

The legal framework contributes a list of statutes, regulations and policies dealing with the duty of care of teachers and how this pertains to learner safety through the duty of care. It is further a concern that the provisions of the law, especially with regard to learner supervision and pastoral care are not understood or gauged to be of importance by teachers at all levels in the department of education.

The study also reported on the reasons for truancy in schools and interventions in schools to try and manage truancy.

Finally, the issue of learner safety, the interpretation of the duty of care of teachers and pastoral care regarding learner truancy could lead to an understanding of the issue of learner truancy in our schools and also suggests further study into future research.

## **7.6 Communication as a method of dealing with legal aspects**

Van der Westhuizen (1991:205) discusses communication as a management task and posits that management cannot take place without communication. Van der Westhuizen adds that it is an important management task for the educational leader. He indicates that Van Schoor (1977:13) has pointed out that there are four concepts that are important in communication: making contact, informing, interpretation and messages. Van der Westhuizen prefers the term *to make contact with*, as it indicates a back and forth movement which is important to communication.

The four concepts above involve thought and planning when you inform people, that there is active participation when you interpret, while the message conveys the meaning of the communication. Hence in making contact with people as in a school situation, there should be a clear message that is conveyed to all the stakeholders. Van der Westhuizen continues with various other points, such as what the purpose of communication is and the act of communicating. However, the point that is stressed is that the interest in communication in education has come about because a good educational leader uses communication “*to prevent the numerous misunderstandings and misinterpretations that occur in human relationships.*” (Van der Westhuizen, 1991:210) He posits that it is probably one of the most difficult management tasks as it involves interaction with a whole host of people inside and outside the school.

Van der Westhuizen thus states that communication should be of a high and professional standard because effective communication must play a very important role in the interaction between those in and outside the school. That communication



includes learners, parents, teachers, the community and the Department of Basic Education, thus effectively cutting out misunderstandings. This aspect of communication as an important management task, discussed by Van der Westhuizen, would cut across many of the themes discussed in the previous chapter. The themes of legal interpretation, duty of care and pastoral care, truancy and factors such as family structure, the parents, and policies that are seemingly not cascaded and known, could have benefitted from this communication.

## 7.7 Conclusion

Finally, the legal interpretation of teachers' duty of care is covered extensively by the legal framework and set out for this study. The actual experiences of the teachers and participants interviewed about the duty of care, pastoral care and truancy, as experienced by the participants and brought out in the study, have indicated that truancy in the schools under the study was definitely a problem, and the study shows how the teachers, other staff and management in those schools approach the issue of truancy. It was clear that no fixed approach was used in schools to address these issues, but that each individual school had their own unique way of dealing with the various issues found in the school, even though it might not have been in the form of a written document.

It is evident that the interpretation of the legal aspects regarding truancy of learners and teachers' duty of care raises some serious concerns about the knowledge of policies, duty of care and truancy. That this lack of knowledge could influence their job security is obvious, especially when taking the comments of the two legal specialists into account, compared to the views of the other participants. It is thus clear that a two-way communication in schools between staff and management, school and department, learners and teachers and with staff and parents is very necessary in the immediate future in schools in this area.

## 7.8 Recommendations

The recommendations that follow are geared for making the issue of truancy and the legal interpretations of the duty of care, more imprinted on the minds of all stakeholders.

1. A system which incorporates compulsory training on education management for all principals and management of schools, should be investigated;
2. Policies introduced should be “work-shopped” for schools and the implementation thoroughly explained to all concerned in that sector by the DBE, or by knowledgeable legal practitioners from the DBE or tertiary institutions;
3. A more thorough system of monitoring by the DBE needs to be introduced to ensure that all teachers in schools have the necessary policies and that they are close at hand;
4. The issue of policy implementation should be investigated to ensure that from the DBE side they have been introduced at schools on a regular basis;
5. The issue of policy implementation in schools should ensure that input regarding the structure of said policy at schools has been made by teachers who are directly affected by it;
6. The issue of truancy in schools should receive a great deal more importance to stop it limiting the future prospects of our learners;
7. The issue of learner pregnancy in schools and the right to attend while in this state should be investigated for assistance to schools by measures such as the introduction of school nurses;

8. The issue of qualified guidance teachers for all schools be investigated and made part of the post establishment of schools without detracting from the number of teachers on their establishment;
9. The efficiency and effectiveness of the DBE and schools be investigated to develop professional and competent handling of serious issues such as the cautioning of learners and parents and the time limits linked to that or as it relates to truancy;
10. The system of charging parents for issues of truancy in schools be utilised by the DBE to reduce this scourge in our schools;
11. Lastly, establish a co-operative system between all support structures in the surrounding community to ensure that all schools are linked efficiently to this support for maximum utilisation at a minimal cost to schools and parents where possible.

## 7.9 Recommendations for future research

1. How and where new policies such as that of Learner Absence must be introduced with appropriate systems to facilitate these changes in schools;
2. Truancy, its effects on and in schools in SA as well as its link to drugs and crime;
3. The role of teachers and management in schools in curbing smoking, drug and alcohol use and its effect on the learners in our schools;
4. School based systems to make schools and lessons more effective, attractive and learner oriented in South Africa;
5. Learner pregnancy, its effect on teachers in schools, and ways in which it can be managed or reduced in schools.



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*C M Baloyi v Department of Education 2005*

*Paul Steyn vs MEC for Education and High School Coligny (2005)*

## ANNEXURES

### **Annexure A – Form for basic biographical information of participants**

#### **A LEGAL INTERPRETATION OF THE PASTORAL CARE OF TEACHERS WITH AN EMPHASIS ON LEARNER TRUANCY IN THE NORTH WEST PROVINCE**

#### **TEACHERS /LEGAL SECTION/JUDGE**

This interview is aimed at *inter alia*, getting responses from teachers at public primary schools, the legal section of the department of education and judges concerning the pastoral care/duty of care of teachers with an emphasis on learner truancy. Please answer all questions accurately and honestly. The information will be treated confidentially.

ANSWER EACH QUESTION AFTER THINKING CAREFULLY ABOUT YOUR RESPONSE. FIRST SECTION: TO BE COMPLETED BY INTERVIEWER.

#### **PERSONAL DETAILS – Section A**

##### **Question 1: Gender**

<b>Male</b>	<b>1</b>
<b>Female</b>	<b>2</b>

##### **Question 2: How many years have you been teaching/lawyer/judge?**

<b>Teacher – PL1</b>	
<b>HOD</b>	
<b>Vice-Principal/2IC</b>	
<b>Principal</b>	
<b>Total no. of completed years</b>	

##### **Question 3: What degree or diploma have you done?**

Certificate/Advanced Certificate/Diploma	<b>1</b>
Second Certificate/Advanced Certificate/Diploma	<b>2</b>
Degree	<b>3</b>
Honours Degree	<b>4</b>
Masters Degree	<b>5</b>
Doctorate	<b>6</b>
Other	<b>7</b>
<b>If other, please specify</b>	<b>8</b>

**Question 5: Area of specialization**


**Question 6: Have you taught at many schools?**

	<b>Yes</b>
	<b>No</b>

## **Annexure B – Interview questions for teachers at schools**

**School: A / B / C / D / E / F / G**

**URBAN / TOWNSHIP**

**STATUS: POSSIBLY ADVANTAGED / POSSIBLY DISADVANTAGED**

**INTERVIEW SCHEDULE** (2 staff members {management and one other staff member} of public primary or high schools.)

### **QUESTIONS TO ASK FROM PARTICIPANTS**

1. Does the school have a code of conduct and if so, when was it adopted?
2. How did you go about consulting all the stakeholders when your code of conduct was adopted? What is the procedure for this process?
3. Does the school have a safety policy? Elaborate!
4. Are your staff familiar with the Regulations for Safety Measures at Public Schools (2001) as amended in 2006 and any other legal aspects pertaining to school safety? Please elaborate!
5. How often is the safety policy and code of conduct at your school revisited? Explain how you go about revising these policies?
6. How does the safety policy address the issue of truancy or learners staying away from school during school hours? If not, is it part of the code of conduct?
7. How do staff members control learner attendance during classes and during the school day! Elaborate!
8. Explain how your school goes about ensuring that learners stay in school all day? Elaborate!



9. What procedure is followed when the school must come out early? Explain typical situations where the school sometimes has to close early. What happens then with the learners?
10. What role does discipline of staff and management play in the safety and security of learners? Elaborate!
11. How do you handle issues of truancy at your school?
12. Have you had other issues involving truancy of learners which had to be reported and if so, what was done about them?
13. What, in your opinion or experience, has been the causes of truancy at your school? Elaborate and cite some examples!
14. How do you interpret the duty of care/pastoral duty of teachers with regards to truancy in your own words?
15. Are you familiar with the National Education Policy Act 27 of 1996 and the Policy on Learner Attendance that was implemented in January 2011? What is your opinion about it and the practical implementation thereof?
16. Teachers often say that they end up doing things that is not part of their pastoral duty. Do you agree and can you elaborate on some of the issues or give examples thereof?
17. Where does the pastoral duty of teachers end with reference to truancy? Give specific examples and elaborate as to how far teachers must proceed to try and resolve the issue!

## **GENERAL COMMENT**



## **Annexure C – Interview questions for legal section at department of education**

**INTERVIEW QUESTIONS** (Lawyers/advocates attached to legal department at provincial education department)

**The following concerns the knowledge and the experiences of lawyers/advocates of schools regarding the pastoral duty of teachers and truancy at schools**

1. Teachers at schools have to act “*in loco parentis*”. How do you at the department see the pastoral duty/duty of care of teachers in schools?
2. What has been your experience in cases with schools/teachers where the topic of truancy has come up and can you extrapolate?
3. What has been your experience in cases with schools/teachers where the topic of the pastoral care of teachers has come up and can you extrapolate?
4. In your experience with cases at schools, has it become apparent that teachers are familiar with and exhibit what is expected from the duty of care/pastoral duty of teachers?
5. Have you had any dealings or do you have any knowledge of cases where schools have been accused of not showing the proper duty of care/pastoral duty involving learners, directed against them?
6. The new policy on truancy, National Education Policy Act 27 of 1996 and the policy on Learner Attendance must be administrated in schools by the principals and teachers as from January 2011. What will this mean in the larger scope of the duty of care/pastoral duty of teachers?
7. When schools or teachers have charges laid against them concerning a lack of the duty of care/pastoral duty of teachers, what mitigating issues are taken into consideration, if any?

8. What happens in the case of a school that does not act as prescribed in the policy on learner truancy? E.g. sanctions, misconduct charges etc
9. In cases where teachers or schools are found guilty, what happens?
10. In cases where large amounts of money must be paid over in compensation after court cases, the Department is liable. How does this work?
11. In your opinion, when teachers are found guilty of negligence, are they sometimes or can they sometimes be required to pay part/all of the costs of the settlement or might they be required to pay back some of the “lost” money at some stage?
12. In a hypothetical case where a child is consistently truant, how should this matter be handled/have been handled by the school/teacher from a law point of view?
13. Does a teacher’s duty of care stop, from a legal viewpoint, after a matter has been reported to either the parents or the department of education?
14. Has the pastoral duty of teachers/duty of care changed with the education system that has evolved over the years i.e. No corporal punishment, limits on religion, no medicine etc?
15. Teachers and schools often feel that their pastoral duty or duty of care towards learners stop as soon as the learner goes out of the school gates. What are your feelings on this?
16. What does the Education Department expect from schools in their handling of Truancy in light of the Regulations for safety Measures at Public Schools (2001) as amended in 2006? I.e. How far this should be investigated?

General comment

## **Annexure D – Interview questions for judge**

**INTERVIEW SCHEDULE** (Judge on the bench in the court in Mmabatho in the North West Province)

**The following concerns the knowledge and the experiences of judges regarding the pastoral duty of teachers and truancy of teachers**

1. How do you see the pastoral duty/duty of care of teachers from a legal viewpoint?
2. Have you had any dealings with schools/teachers and if so, can you extrapolate?
3. In your dealings with schools, has it become apparent that teachers are familiar with/know about the term duty of care/pastoral duty of teachers and how to go about fulfilling this pastoral duty with learners?
4. Have you dealt with cases where schools have had charges of negligence/misconduct involving learners, directed against them?
5. The new National Policy Act (27/1996): Policy on Learner attendance must be administrated mostly by schools, principals and teachers. What will this mean in the larger scope of the duty of care/pastoral duty of teachers as it pertains to the courts?
6. When schools or teachers have charges laid against them concerning the duty of care/pastoral duty of teachers, what mitigating issues are taken into consideration, if any? I.e. Do you stick chiefly with the issues of the law here?
7. What happens in the case of a school that does not act as prescribed in the above Policy on Learner attendance? E.g. sanctions, misconduct charges etc
8. In cases where teachers or schools are found guilty, what happens?
9. Does the pastoral duty of an teacher towards a learner stop when they go out of the school gate, with or without permission?
10. In your opinion, when teachers are found guilty of negligence, are they sometimes or can they sometimes be required to pay part/all of the costs of the settlement or

might they be required to pay back some of the “lost” money at some stage?

11. In a hypothetical case where a child breaks an arm at school, how should this matter be handled/have been handled by the school/teacher from a law point of view?
12. Does a teacher’s pastoral duty stop, from a legal viewpoint, after a matter has been reported to either the parents or the department of education?
13. Has the pastoral duty of teachers/duty of care changed with the education system that has evolved over the years i.e. No corporal punishment, limits on religion, no medicine etc?
14. An interesting court case took place in Cape Town, *TM Jacobs v The Chairperson of the Governing Body of Rhodes High School and Others: November 2010*. The principal/school and the Education Department were negligent. Could you provide insights into why these findings were made in this case and extrapolate?
15. In a further court case, *S v De Blom 1977 (3) SA 513 A*, the judge stated that ignorance of the law is no excuse. What does this mean for teachers regarding their pastoral duty or their duty as regards truancy of learners?

General comments

Thank you!

## **Annexure E – Participant letter**

01 October 2012

Dear Participant

You are invited to take part in a research project which is aimed at looking at the Legal interpretation of the Duty of care of teachers with an emphasis on learner truancy in the North West Province.

As part of this research, interviews need to be held with teachers at seven schools, one of which must be a member of management and the other a PL1 staff member. It should include teachers – who are experienced with at least a minimum of 3 to 5 years experience.

Your participation in this project is *voluntary*. You will not be asked to reveal any information that will allow your identity or that of your school to be established. Follow-up interviews might be required to clarify some matters but this will also be voluntary and confidentiality will be guaranteed. You may withdraw at any time should you not wish to continue with any matter pertaining to the interview.

Your role as participant in this project will be to respond to questions put to you during the interview, and you may also ask questions of your own, to clarify any issue concerning the interview or a matter that may crop up during the interview.

Please be assured that your answers will be treated with complete confidentiality. Your name and that of your school will not be used in the final research report. The results from the study will be used to determine the legal interpretation of the term Duty of care for teachers as it pertains to truancy and pastoral care of teachers.

If you are willing to participate in this study, please sign this letter as a declaration of your consent, i.e. that you participate in this project willingly, and that you understand that you may withdraw from the project at any time. Under no circumstances will the identity of the interview participants be made known to circuit, district or provincial officials or their representatives.

_____	_____	_____
Participant	Signature	Date
_____	_____	_____
Researcher	Signature	Date

Yours sincerely

L.P. Bremner(Mr)

## Annexure F – Permission to conduct research – Schools



### **education**

*Lefapha la Thuto*  
Onderwys Departement  
Department of Education  
**NORTH WEST PROVINCE**

Quality Assurance Building,  
No.: 861 Modiri Molema Drive, Montshiera  
Private Bag X2044, Mmabatho 2735  
Tel.: (018) 397-3000  
Tel.: (018) 397-3090  
Fax: (018) 384-1598 / 9249  
email: skgositau@nwpg.gov.za

### **CHIEF DIRECTORATE: QUALITY ASSURANCE**

ENQ: Seipei Kgositau  
Tel: 018 397 3011  
Fax: 018 384 1598

**TO : MR L BREMNER  
SOL PLAATJIE PRIMARY SCHOOL  
MMABATHO**

**FROM : DR I S MOLALE  
EXECUTIVE QUALITY ASSURANCE MANAGER**

**DATE : 23 AUGUST 2010**

**SUBJECT : PERMISSION TO CONDUCT RESEARCH AT SCHOOLS IN THE NORTH WEST**

The above matter refers. This communiqué serves to grant you permission to conduct the research in the schools sampled, as requested.

Notwithstanding the above, the said research should be conducted without any disruption to Learning and Teaching process and the final product should be shared with the Department of Education.

Besides the above, we wish you the best in your efforts to increase the pool of researchers in this country.

Thanking you

Yours sincerely

**DR I S MOLALE  
EXECUTIVE QUALITY ASSURANCE MANAGER**

*"Opening the Doors of learning and Culture through Quality Education in the Year of the Foot Soldier!"  
"Building a South Africa that truly belongs to All!"*

## Annexure G – Permission to conduct research – Legal section – PDE



### **education**

Lefapha la Thuto la Bokone Bophirima  
Noord-Wes Departement van Onderwys  
North West Department of Education  
**NORTH WEST PROVINCE**

1st Floor, East Wing,  
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### **OFFICE OF THE SUPERINTENDENT-GENERAL**

Enquiries: Mpitiso Tyatya  
Tel.: +27 (18) 388-3429  
Fax.: +27 (18) 388-3430  
e-mail: ptyatya@nwpg.gov.za

28 May 2013

**To: Mr. L. Bremner (018 386 2512)**  
**University of Pretoria**  
**Department of Education Management & Policies**

**From: Dr. I.S. Molale**  
**Acting Superintendent-General**

#### **REQUEST FOR PERMISSION TO CONDUCT RESEARCH**

Reference is made to your letter dated 15<sup>th</sup> May 2013 regarding the above matter. The content is noted and accordingly, approval is granted for you to conduct the research as per your request, subject to the following provisions: -

- That you notify the Acting Director for Legal Services, Mr. X. Nyoka, about your research and intention to interview him.
- That participation in your project will be voluntary.
- That, as far as possible, the general functionality of Legal Services Unit should not be compromised on account of this exercise.
- That the findings of this research must be made available to the North West Department of Education upon request.

Please revert to this office should you require further clarification in this regard.

With my best wishes.

**DR. I.S. MOLALE**  
**ACTING SUPERINTENDENT GENERAL**

*“Towards Excellence in Education”*

## Annexure H – Approval of Title: Thesis



UNIVERSITEIT VAN PRETORIA  
UNIVERSITY OF PRETORIA  
YUNIBESITHI YA PRETORIA

Faculty of Education

01 October 2012

**STUDENT NO:** 04315049

Mr LP Bremner  
Private Bag X23  
Mmabatho  
2735

Dear Mr Bremner

### **APPROVAL OF TITLE: THESIS**

**DEGREE:** PhD: Education Management, Law and Policy

I have pleasure in informing you that the following has been approved:

**TITLE:** A legal interpretation of the duty of care of teachers regarding learner truancy

**SUPERVISOR:** Prof HJ Joubert

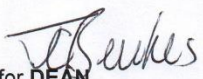
**CO-SUPERVISOR:**

The requirements for theses are listed in the General Information and Regulations of the University. Consult Regulations G.45 to G.61 which are related to theses and the assessment thereof.

Summarised guidelines for the submission and technical details of theses, a checklist as well as a "Notice of Submission" are attached. Kindly note that, in accordance with Regulation G.60 1(a), your written "Notice of Submission" should reach the Student Administration three months prior to submission.

Your registration as a student must be renewed annually before 28 February until you have complied with all the requirements for the degree. You will only be entitled to the guidance of your supervisor if annual proof of registration is submitted.

Yours sincerely

  
for **DEAN**  
**FACULTY OF EDUCATION**



Administration Building, H09  
Groenkloof Campus, University of Pretoria  
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## Annexure I – Ethics Clearance



UNIVERSITEIT VAN PRETORIA  
UNIVERSITY OF PRETORIA  
YUNIBESITHI YA PRETORIA  
Faculty of Education

### RESEARCH ETHICS COMMITTEE

<b>CLEARANCE CERTIFICATE</b>	<b>CLEARANCE NUMBER :</b> <span style="border: 1px solid black; padding: 2px;">EM 11/02/02</span>
<b><u>DEGREE AND PROJECT</u></b>	PhD A legal interpretation of the duty of care of teachers regarding learner truancy
<b><u>INVESTIGATOR(S)</u></b>	Leonard Peter Bremner
<b><u>DEPARTMENT</u></b>	Educational Management and Policy Studies
<b><u>DATE CONSIDERED</u></b>	18 September 2013
<b><u>DECISION OF THE COMMITTEE</u></b>	APPROVED

Please note:

*For Masters applications, ethical clearance is valid for 2 years*

*For PhD applications, ethical clearance is valid for 3 years.*

**CHAIRPERSON OF ETHICS COMMITTEE** Prof Liesel Ebersöhn

**DATE** 18 September 2013

**CC** Jeannie Beukes  
Liesel Ebersöhn  
Prof HJ Joubert

This ethical clearance certificate is issued subject to the following conditions:

1. A signed personal declaration of responsibility
2. If the research question changes significantly so as to alter the nature of the study, a new application for ethical clearance must be submitted
3. It remains the students' responsibility to ensure that all the necessary forms for informed consent are kept for future queries.

Please quote the clearance number in all enquiries.

