
BIBLIOGRAPHY

- Cockram, G-M. 1987. *Interpretation of Statutes*. Third edition. Cape Town: Juta & Co.
- Cowen, D.V. 1980. The interpretation of statutes and the concept of "the intention of the legislature". *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* (43) 374. Durban: Butterworths.
- Du Plessis, L.M. 1986. *The Interpretation of Statutes*. Durban: Butterworths.
- Steyn, L.C. 1981. *Uitleg van Wette*. Fifth edition. Cape Town: Juta & Co.
- University of South Africa. 1987. *Interpretation of Statutes*. Study guide (IST100-T). Pretoria: University of South Africa.

SECTION C

1. INTRODUCTION

GENERAL GUIDELINES FOR DRAFTING EDUCATION LEGISLATION

The drafting of legislation is a complex task that requires a high level of skill and attention to detail. It is a process that involves the translation of policy objectives into legal language that is clear, concise, and enforceable. This section provides a comprehensive overview of the principles and practices that govern the drafting of education legislation, from the initial identification of a problem to the final enactment of a law.

The first step in the drafting process is to identify the specific issue or problem that the legislation is intended to address. This requires a thorough understanding of the current legal and policy landscape, as well as a clear vision of the desired outcome. Once the problem has been identified, the next step is to develop a set of policy objectives that will guide the drafting process. These objectives should be clear, measurable, and achievable, and they should be consistent with the broader goals of the education system.

The third step is to conduct a detailed analysis of the legal and policy issues that are relevant to the problem. This involves identifying the relevant laws, regulations, and precedents, and assessing their impact on the proposed legislation. It also involves identifying the interests of the various stakeholders who will be affected by the legislation, and understanding their perspectives on the issue.

Once the analysis is complete, the next step is to draft the legislation. This involves translating the policy objectives into clear and concise legal language that is enforceable and consistent with the existing legal framework. The drafting process should be iterative, with multiple drafts and revisions as needed to refine the language and address any concerns that may arise.

The final step in the drafting process is to review the legislation for clarity, consistency, and enforceability. This involves checking for any ambiguities or inconsistencies in the language, and ensuring that the legislation is consistent with the existing legal framework and the policy objectives. Once the legislation has been reviewed and approved, it is ready to be enacted into law.

CONTENTS

1. Introduction 133
2. Preparation 134
3. Drafting a law 135
4. The content of a law 136
5. Hints for the draftsman 138
6. Revision by the draftsman 140

Résumé 141

Bibliography 142

Draft legislation is usually referred to as a **bill**. Bills go through the normal legislative process and once they have been adopted by Parliament, are called **laws** or **Acts**. This law or Act will then form part of **statutory law** or the body of **legislation**.

1. INTRODUCTION

It is clear from the discussion of **legislation** as a **source** of the law of education, and **administrative legislative acts** of education, that legislative **drafting** takes place at all levels of the education structure and is performed by different legislative bodies.

The drafting of legislation, like the interpretation of statutes, is an extensive and independent field of study which cannot be covered in detail here. Although these disciplines involve different fields of study, in reality they cover **adjacent** areas of application in which overlapping often occurs. In legal circles serious criticism has been levelled against the lack of **positive** co-operation and co-ordination between legislative drafters and the legislature. The task of the interpreter of legislation would be considerably lighter if the draftsmen were to uphold **uniform** rules that are generally **acknowledged**: the intention of the legislative body and the purpose of legislation must be transmitted in a clear and accurate manner to enable the interpreter, through application of the rules of statutory interpretation, to determine the true intention or purpose. **Objective** criteria must therefore be established for the drafting of legislation as **education laws** and other subordinate **legislative rules on education** form part of an extensive legislative network which is linked to central education legislation. The draftsmen must be conscious of the underlying **juridical** principles or concepts which govern education activities. As is mentioned above, a sound **legal basis** is essential for effective education administration and the well-informed draftsman can contribute a great deal towards improving legal awareness.

In most cases, in particular where administrative legislative rules are concerned, the **specialised** task of drafting is performed by education officials who have not had any formal legal training: the principal formulates school policy; the management council of the school and the committee of university principals each draft their own internal rules.

Because the persons concerned lack formal legal training, one cannot expect the use of strict statutory language in, for example, internal legislation and other legislative rules. On the other hand, it must be borne in mind that the principal may be promoted to a senior administrative post where he may become directly involved in the **formal** drafting of central education legislation. Internal legislative rules on education will, naturally, not bear the same formal characteristics of general education laws. Although this discussion will focus on **formal legislative drafting**, useful **general guidelines** for the drafting of education legislation, may be offered.

2. PREPARATION

The draftsman – the legislative body or the specialist body – must have clarity about the **purpose** or object of the legislation. He must also be acquainted with the **subject-matter** and **status** of the enactment in the legal and legislative environment. For instance, the principal must understand the purpose of school policy; he must realise that it forms part of public-education legislation and fills a special place as internal subordinate legislation within the broad education framework.

With regard to the **subject-matter** of legislation, the draftsman must take cognisance of the legislative network and the case law pertaining to the particular subject. Questions that may arise in this respect are: whether the proposed legislation will cover a new subject, or whether it will merely amend, repeal or co-ordinate existing legislation. Furthermore, it must be ascertained whether the proposed legislation may clash with existing legislation or authoritative case law on the same subject.

The **application** of the proposed legislation must also be examined. School rules have limited (internal) application within the school; provincial ordinances or proclamations operate within specific geographical areas; the overriding education laws for general affairs have general application. When general education legislation is amended or repealed, its overriding force must be considered; the whole spectrum of education legislation –

central or subordinate, "general" or "own" – may be influenced in this way. It must be established whether other general legal principles which also apply outside the education field, are affected.

The draftsman must also consider specific **formal requirements**; for example, if the proposed legislation covers more than one topic, an interdisciplinary enquiry and drafting are often required; if certain procedures are prescribed for adoption, the same procedures are followed in drafting amendments and repeals.

3. DRAFTING A LAW

The two main ingredients in the formulation of legislation are **substance** and **form**. The substance is the language used to give meaning while the form consists of style, divisions and classification. The accurate and correct application of these requirements ensures sound **legislative drafting technique**.

- The most important element of **substance** is the legal **language**. Language must be concise but comprehensive, clear, accurate, direct and linguistically correct. The draftsman must continually strive to enrich and develop his language skills. Quite appropriately the American source (see bibliography) remarks on 90: "Bill drafting must have the accuracy of engineering, for it is law engineering; it must have the detail and consistency of architecture, for it is law architecture."
- The **form** (structure) of legislation does not only create visual systemisation but also classification of content. Although the form in itself does not bear any legal meaning, the division of the contents into chapters, sections, subsections and paragraphs enhances the meaning of the text. A **chapter**, for example, deals with a specific topic of the legislation and is subdivided into **sections** with separate marginal headings. Each section covers a particular aspect of the topic of which the gist is reflected in the marginal note. If the particular aspect requires more elucidation, **subsections** are used for further discussion or to list the relevant points. A further division would be into **paragraphs** and **subparagraphs**. In many cases a law also consists of a **schedule** which should be read in conjunction with it. When **reference** is made to laws, the following citation is normally used: section 12(2)(b)(i) refers to section 12, subsection (2), paragraph (b) and subparagraph (i). (The sections of a **bill** are called **clauses**.)

In most cases, in particular where administrative legislative rules are concerned, the **specialised** task of drafting is performed by education officials who have not had any formal legal training: the principal formulates school policy; the management council of the school and the committee of university principals each draft their own internal rules.

Because the persons concerned lack formal legal training, one cannot expect the use of strict statutory language in, for example, internal legislation and other legislative rules. On the other hand, it must be borne in mind that the principal may be promoted to a senior administrative post where he may become directly involved in the **formal** drafting of central education legislation. Internal legislative rules on education will, naturally, not bear the same formal characteristics of general education laws. Although this discussion will focus on **formal legislative drafting**, useful **general guidelines** for the drafting of education legislation, may be offered.

2. PREPARATION

The draftsman – the legislative body or the specialist body – must have clarity about the **purpose** or object of the legislation. He must also be acquainted with the **subject-matter** and **status** of the enactment in the legal and legislative environment. For instance, the principal must understand the purpose of school policy; he must realise that it forms part of public-education legislation and fills a special place as internal subordinate legislation within the broad education framework.

With regard to the **subject-matter** of legislation, the draftsman must take cognisance of the legislative network and the case law pertaining to the particular subject. Questions that may arise in this respect are: whether the proposed legislation will cover a new subject, or whether it will merely amend, repeal or co-ordinate existing legislation. Furthermore, it must be ascertained whether the proposed legislation may clash with existing legislation or authoritative case law on the same subject.

The **application** of the proposed legislation must also be examined. School rules have limited (internal) application within the school; provincial ordinances or proclamations operate within specific geographical areas; the overriding education laws for general affairs have general application. When general education legislation is amended or repealed, its overriding force must be considered; the whole spectrum of education legislation –

central or subordinate, “general” or “own” – may be influenced in this way. It must be established whether other general legal principles which also apply outside the education field, are affected.

The draftsman must also consider specific **formal requirements**; for example, if the proposed legislation covers more than one topic, an interdisciplinary enquiry and drafting are often required; if certain procedures are prescribed for adoption, the same procedures are followed in drafting amendments and repeals.

3. DRAFTING A LAW

The two main ingredients in the formulation of legislation are **substance** and **form**. The substance is the language used to give meaning while the form consists of style, divisions and classification. The accurate and correct application of these requirements ensures sound **legislative drafting technique**.

- The most important element of **substance** is the legal **language**. Language must be concise but comprehensive, clear, accurate, direct and linguistically correct. The draftsman must continually strive to enrich and develop his language skills. Quite appropriately the American source (see bibliography) remarks on 90: “Bill drafting must have the accuracy of engineering, for it is law engineering; it must have the detail and consistency of architecture, for it is law architecture.”
- The **form** (structure) of legislation does not only create visual systemisation but also classification of content. Although the form in itself does not bear any legal meaning, the division of the contents into chapters, sections, subsections and paragraphs enhances the meaning of the text. A **chapter**, for example, deals with a specific topic of the legislation and is subdivided into **sections** with separate marginal headings. Each section covers a particular aspect of the topic of which the gist is reflected in the marginal note. If the particular aspect requires more elucidation, **subsections** are used for further discussion or to list the relevant points. A further division would be into **paragraphs** and **subparagraphs**. In many cases a law also consists of a **schedule** which should be read in conjunction with it. When **reference** is made to laws, the following citation is normally used: section 12(2)(b)(i) refers to section 12, subsection (2), paragraph (b) and subparagraph (i). (The sections of a **bill** are called **clauses**.)

4. THE CONTENT OF A LAW

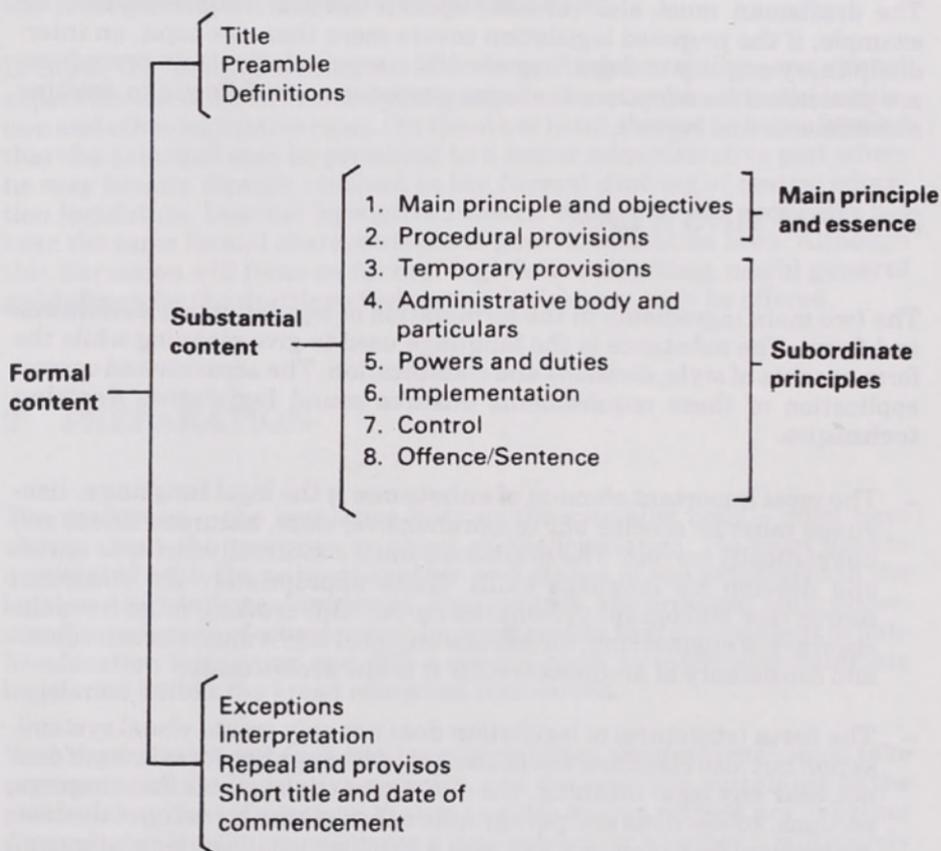


Fig. 11. *The content of a law (simplified)*

The significance of certain **formal** elements of a law, for example, title, definition clauses, repeal clauses and the short title are not discussed here. The **subject-matter** (substantial content), does however, require close examination.

Because of the wide-ranging nature and scope of legislation, no general rule can be devised in respect of its substantial content. One rule will, however, always apply, namely, that this part of the content must **evolve in a logical and systematic manner**: the main principle or rule is followed by its relevant aspects and is arranged around the core in a clear and understandable way.

The substantial content must be seen as the **heart** or core of a law and reflects the main aim or purpose and the legal principles on which it is based. This part of the enactment comes immediately after the general introductory sections and contains the following particulars:

- a. the main principles or objectives which are discussed concisely and clearly in one or more sections;
- b. procedural provisions which are dealt with in the following sections;
- c. temporary provisions (if any) which are discussed next;
- d. sections providing for the institution of an administrative body/organ or instructions to an existing body to administer the enactment. In the following sections particulars regarding service conditions, remuneration, expenses and sundry matters relevant to the administrative body, are discussed;
- e. sections dealing with the powers and duties of the administrative body/organ which are discussed fully;
- f. provisions regulating the different ways of exercising powers;
- g. sections providing for the different ways of control of administrative acts;
- h. sections providing for the identification of offences or crimes and the prescribed penalties.

The main principle and main content of the enactment is discussed under (a). If the principle has a direct bearing on individuals or groups of individuals (for example, teachers, pupils), it must be clearly stated to that effect. The topics which are discussed under (b)-(h) form the subordinate principles of this division and must be covered in a logical manner. For example, provisions which have a general application must precede restrictive provisions; provisions regulating the issuing of licences and permits must precede provisions on their refusal or withdrawal; penal provisions must follow after the powers, duties and prohibitions have been discussed.

5. HINTS FOR THE DRAFTSMAN

Emphasis has been placed throughout upon the principles of brevity, preciseness, clarity, simplicity and orderliness. Unreadable, confusing and misleading bills are condemned as fore-runners of bad laws: not only do they discredit the legislators, but also plague the courts and may cause injustice to the individual.

Up to this point the focus has been mainly on the broad **principles** of legislative drafting rather than the particulars. The following observations of good and bad practices must be borne in mind:

- Each section or subsection must be complete in itself and self-sufficient. It should not serve as a continuation of the preceding section nor as a preface to the succeeding one.
- Exceptions or provisos may cause confusion and should rather be placed either in a subsection or in a separate section.
- Legislation comes into operation at publication or at a specific date of commencement. It should therefore be drafted in the present tense: for example, "the offence is punishable" and not "the offence shall be punishable".
- Legislation usually refers to singular cases, namely, a crime, a penalty, a committee. Furthermore, a reference to the "individual" usually includes the plural, and masculine usually includes feminine. A "person" may include masculine, feminine or either; "teacher" may include a male or female teacher or all teachers; a "pupil" may be male, female or either.
- When technical legislation is drafted, ordinary or familiar technical terms should be used. If unfamiliar technical terms are used they should be explained in the definition clause.
- A law which includes the provisions of another law by reference should be avoided as this could cause confusion. Problems may also arise when the other law is repealed or amended. If a reference to another law is necessary it should be clear and concise: avoid too many particulars that may cause confusion.
- Words bearing imprecise/non-specific meanings or meanings which cannot be measured objectively, should be avoided: for example, knowingly,

serious, ample, due notice, dangerous, necessary, immediate and forthwith. If a particular meaning must be attached to these words it must be provided for in the definition clause.

- Avoid superfluous and repetitive words: for example, the full particulars of the school should not be mentioned every time since the school rules/policy applies to the particular school only; repetitive words, such as, "instruct and request" may cause confusion. The use of adjectives and adverbs in legal language must be restricted as it is often regarded as unnecessary and inappropriate.
- Correct titles must be used. Carelessness in the use of titles of public bodies, departments and officials discloses sloppiness, is confusing to the reader and may create complications in litigation.
- In the case of peremptory and directory provisions, the correct choice of words must be made. "Shall" usually denotes a command or mandatory provision while "may" has an optional connotation. Other words may also be used to denote the conferment of a discretion, for example, "in his view", "according to his opinion", "on the advice of" and "in consultation with".
- Avoid the use of "and/or" as this causes confusion and tends to conceal rather than disclose the legislator's intention. Where there is more than one requirement and the legislative intent is that all requirements should be met, the conjunctive "and" should be used. If compliance with only one requirement suffices, the conjunctive "or" is used. Where different standards have to be met, itemisation of the standards is the best practice.
- The same thing should always be expressed by identical words: for example, if "ship" is meant, do not refer to "vessel"; do not refer to "contributions" elsewhere as "payments"; "prescribed" is not "provided". Words and phrases employed carelessly must be avoided, for example, "responsible" and "liable" have specific legal meanings and must be used in that context. The concept that the deputy principal is the "right hand" of the principal, is vague and requires a better description. Furthermore, the wide-ranging meanings which could apply to concepts such as, "management", "guidance" and "planning" functions, must be examined and clarified. Generally speaking if a word or phrase means but one thing and is interpreted accordingly, the opportunities for misinterpretation or misconstruction on the part of the courts, administrators or other individuals are reduced to a minimum.

- Correct words must be used. For instance, meetings other than regular meetings are "special" but not "extra"; interest is "at the rate of six per cent" and not "at six per cent". In beginning a sentence to state a case or condition "In the event of" is preferred to "If". "One thousand five hundred rand" is preferred to "fifteen hundred rand". The "date" on which the Act takes effect is better than the "time" at which it takes effect. When fixing minimum amounts or numbers say "not less than" rather than "at least".
- The use of formulas is recommended where complicated calculations are made: for example, in the calculation of salary scales of teachers in relation to their years of service, a formula should be used which is explained in the definition clause. Other calculations such as playground duty at school and media centre duty by the pupils, may also be formulated.
- Bear in mind that practical consequences result from the application of the written language. Consequently the purpose of the legislation (intention of the legislator) must be clearly reflected in the text. Avoid words or phrases which are conducive to different deductions; apart from the fact that it signifies bad drafting techniques, it may also lead to legal uncertainty.

6. REVISION BY THE DRAFTSMAN

However skillfully and accurately the work may have been done, one must assume that it is capable of improvement and therefore, revision. Once the labour of the original composition is finished, more attention may be devoted during revision to defects or shortcomings in the law. Inconsistencies are rectified during the process of revision; illogical arguments eliminated and awkward expressions replaced.

In conclusion, a quotation from the American source (see bibliography) at 112 may serve as a final remark: "The goal of the true draftsman is to achieve perfection as nearly as possible, and the price of that goal is indeed patient toil. But it cannot be said that the goal is not worth the price, for the bill which is the object of so great and earnest effort may become a law that will endure for ages, to the credit of the statesman conceiving it, the reputation of the legislature enacting it, the advantage and enjoyment of humankind, and the satisfaction of the draftsman. The careful draftsman will not leave a bill until he has revised it, and revised it again, and again, and again."

Résumé

Although the discussion has focused mainly on formal legislative drafting, this does not mean that the principal may disregard these guidelines in drafting school policy and rules. Education does not operate in an area which is not subject to the law and, after all, internal legislative rules form part of the broad network of education legislation. The principal must be conscious of the juridical nature of school policy and rules and must observe drafting and interpretation against the background of a legal milieu.

In reality the education department provides general guidelines for the drafting of school policy. The principal and his senior personnel must define and implement school policy through the drafting of school rules. For example, the education department will provide general guidelines regarding the safety of pupils. The principal's task is to examine and analyse this particular area of interest and compile suitable rules: for example, safety at the swimming pool, playgrounds, corridors and staircases and safety measures regarding the use of gymnastic and sports apparatus.

School rules must be drafted in a clear, logical and systematic manner in order to enable pupils and teachers to understand them. The principal must endeavour to graft the purpose or object of school policy onto the particular school rules. It must be understood that, in accordance with the discussion on interpretation of statutes, the object or purpose of legislation is not necessarily found in the literal meaning of words or sentences.

School rules must be introduced to the personnel and pupils, preferably in writing so as to provide certainty on their existence and application. School rules must not "over-regulate" and must cover only the main demarcated areas in a clear and concise manner. In this respect the purpose and object of the school rules will always be the decisive factor.

There is a dearth of research in this sphere of education at present. This state of affairs causes uncertainty and shortcomings in this particular field of education. Until such time as sufficient research has been done, principals and other local legislative education bodies are called upon to comply with the proposed guidelines in order to make a positive contribution towards the ultimate achievement of uniform and objective standards.

BIBLIOGRAPHY

- Remmlein, M.K. and Ware, M.L. (ed). 1959. "An Evaluation of Existing Forms of School Laws". *Legal Problems of Education Series*. Vol. 2. Cincinnati: W.H. Anderson Co.
- Van den Bergh, N.J.C. (ed). 1987. *Aspects of Legislative Drafting*. Publication series C no 15. KwaDlangezwa: University of Zululand.

INDEX

A

actio iniuriarum 82-83

actio legis Aquiliae 82-83

addition/subtraction 105, 126

administration

– education 14, 29, 58-59

– state 6-7, 11, 21, 23-24, 46-47, 66, 74-75, 79-80

administrative act

– external operation 28-29, 31, 75

– general 18-21, 26, 40, 114

– internal operation 28-29, 31, 38, 45-46

– legal force/operation 55-56, 58

– legislative 43, 45-48, 55, 78, 114, 123, 133-134

– null and void 55, 62, 121-122

– purely 46, 50-53, 63-64, 80

– quasi-judicial 51, 63-64, 74

– validity/invalidity 54-58, 62, 66-67, 69, 76, 80, 84
(also see validity requirement)

administrative law 7-8, 17-20, 27

administrative practice

– source 20

administrator 12, 17, 20, 22, 29, 38, 49, 67, 73-77

aid to interpretation

- external 107, 112
- *contemporanea expositio* 111
 - custom/usage 111
 - dictionary 110-111
 - English source 109-110
 - preceding discussion 110
 - subsecuta observatio* 111
 - surrounding circumstance (mischief rule) 96, 106, 110, 125
- general 96-97, 124
- internal 107, 112
 - heading 109
 - long title 108
 - marginal note 109, 111
 - paragraph 109
 - preamble 108
 - schedule 109
 - text in other official language 107-108
- Interpretation Act 33 of 1957 47, 92, 107, 112, 115, 124
 - application of 113, 135
 - earlier/subsequent legislation 111
 - repeal of act 113
 - time factor 112

analogous interpretation 119-121**attention (proper)** 57, 59, 64, 67-69, 70-71, 97**audi alteram partem** 19, 64, 67**authorised/ulterior**

- procedure 20, 66
- purpose 46, 65, 67, 69

authority

- authoritative 8, 21, 23
- delegation 32-34
- forms of 33
- parental 18
- relationship 21, 36-37, 40
- structure 32-33, 36
- unequal relationship (subordination) 21

B**balance text/context** 106, 126**bill** 133, 135, 138, 141**Blacks**

- constitutional dispensation 11

- education department 17
 - education legislation 11-12
 - general education 11, 17
 - National State 11-12, 15-17
 - proclamation (education) 12
- bona fide/mala fide** 46, 64-70, 73, 76, 83, 101
- bonus paterfamilias** 81

C

- Cabinet** 73
- calendar month** 112
- case law**
- administrative 50-51
 - court decisions 19-20, 70, 74
 - source 8, 19, 45, 58, 73, 98
 - *stare decisis* 19, 68
- casus omissus** 105, 108, 119
- cessante ratione legis cessat et ipsa lex** 116
- code of conduct** (professional code) 11, 13-14, 16, 29, 114
- common law**
- computation of time 112-113
 - crime 8, 19
 - legal presumption 18-19, 67, 96, 98 *et seq*
 - review by supreme court 19, 75-76, 101
 - Roman-Dutch law 18-19
 - source 18, 27, 42, 44, 57, 61, 67
- concretisation** 26, 93, 127-128
- conflict/irreconcilable discrepancy** 108, 123
- Constitution Act**
- 1961 10-11
 - 1983 9-10, 111
- constitutional law** 6-7, 20
- dispensation 10-11, 17
- contemporanea expositio** 111
- contextual approach** (see theory of interpretation)
- contract** (see official, service contract)
- control** (also see administrative act)
- internal structure/control 46, 49, 71, 77

- judicial (also see judiciary) 29, 31, 73-76, 78-79
 - review 39, 50, 73, 92
 - statutory appeal 76, 118
- non-judicial 71, 78
 - internal 71-73, 75-76, 78, 92
 - parliamentary 72-73
- test 82

corporal punishment 32, 37

correlation 127-128

Court of Appeal 19, 29, 76
(also see judiciary)

crime 8, 19

criminal law 6, 8

culpa 19, 81

custom/use in interpretation 111-112

D

damage/loss 77-80, 82-83

decentralisation 17, 35, 37-39, 40-41, 49, 72

deconcentration 35-36, 40, 42, 44, 48, 73

definition clause (see interpretation of statutes)

delegans 37-39, 43

delegation

- *delegatus delegare non potest* 35, 48, 60
- relationship of deconcentration 35-36, 40, 42, 44, 48, 75
- relationship of decentralisation 37, 40-41, 44, 49, 72, 74
- relationship of mandate 34, 40, 42, 48
- tacit/implied/ancillary power 39, 40, 119

delegatus delegare non potest 35, 48, 60

devolution 17, 44

dictionary 110-111

discipline 18, 22, 33, 35, 37, 49, 53, 66

- corporal punishment 32, 37
- principal 18, 42, 66
- school 40, 42
- teacher 20, 22-23, 27-29, 35, 53

discretion (also see power) 32-33, 35-37, 39, 63-64, 82, 128, 139

discrimination 68, 102

- dolus* 19, 66, 81
 draftsman of legislation 133

E

education

- body/organ 14, 84, 92
- department 7-9, 12-14, 21, 24, 27, 35-39, 47, 49, 54, 58, 141
- partnership 17, 21, 30-31, 44
- policy 5, 14, 29, 39, 48, 52, 65
- provincial 8, 12
- structure 17, 21, 34-37, 45-6, 49, 65, 91
- tribunal 51, 71

eiusdem generis rule 117

English law 18-19

ex consequentibus 118-119

ex contrariis 118

executive 6-7, 9, 18-19, 65, 71-72, 109

extensive interpretation 117, 121, 126

- analogous interpretation 119
- interpretation by implication 118
 - ex accessorio eius de quo* 119
 - ex consequentibus* 118-119
 - ex contrariis* 118

external aid (see interpretation aid)

F

fair/equitable 49, 50-51, 60, 97-98, 102-103, 106

fault

- intent (*dolus*) 19, 66, 81-82
- negligence (*culpa*) 19, 81

final solution (interpretation) 127

functus officio 56-57, 74

fundamental rule of interpretation 98, 115, 126

G

grammatical meaning 104

grundnorm 98, 103

H

heading 108

House

- House of Assembly 10-11
- House of Delegates 11-12
- House of Representatives 10-12

House of Assembly (Whites) 9-11

House of Delegates (Indians) 9-11

House of Representatives (Coloureds) 9-11

I

implied/tacit/ancillary powers 32, 39-40, 45, 48-49, 53, 57, 61, 119

in fraudem legis 66-67, 118

in loco parentis 20

inspector (see superintendent)

intent (*dolus*) 19, 66, 81

intention of the legislature 25, 61-62, 65-66, 68, 94-97, 133-134, 139-140

- idea theory 95

- subjective 95

interest

- general 100-101

- public 79, 100-101

internal administrative act 28-29, 31, 45-46

internal aid (see interpretation aid)

Interpretation Act 33 of 1957 (also see interpretation aid) 35, 47, 58

interpretation by implication 118

interpretation of statutes 91

- balance text/context 106, 126

- definition clause 104, 140

- fundamental rules 98, 115, 125

- grammatical meaning 104

- intra/extra textual 96, 98-99, 125

- legal presumption (see legal presumption)

- literal rule (see literal rule)

- meaning assigned to every word 105

- no addition/subtraction 105, 126

- object (see purpose of legislation)

- ordinary meaning 104, 126

- practical application (see practical process)

- purposive activity 93-94, 96-97, 99-100

- structure 93, 96-97
- theoretical rules/norms 92-94
- intra vires/ultra vires* 17-18, 33, 46, 52, 58-61, 67-68, 80, 100
- irreconcilable discrepancy** 107-108, 123
- irregular act** (see valid act)
- judicis est ius dicere non facere* 19, 105

J

- judiciary** 8-9, 19, 50, 71, 75, 92, 109
 - act (judicial) 50, 62, 74, 124
 - control (also see control: judicial) 29, 31, 58, 62, 69, 74-77, 78
 - exclusion: jurisdiction 101
 - jurisdiction 46, 101
 - Supreme court revision 19-20, 46, 51-52, 68-69, 73, 83, 101
- jurisdiction** (court) 46, 101

L

- law of contract** 8, 26
- law of education** 5-9, 18, 20, 25, 45, 53-54, 91, 108, 133
- lawfulness/unlawfulness** 63, 76, 79-84
- legal dispute** 74-75
- legal force/operation** 55-56, 57
- legal personality** 79, 84
- legal presumption**
 - against exclusion of courts' jurisdiction 101
 - against futile (purposeless) legislation 99-100, 106, 120-121
 - against retrospective operation 103, 114, 128
 - against state being bound 84, 99, 128
 - against unreasonableness/harshness 101, 104, 108, 125
(also see fair/equitable)
 - basic guideline in interpretation 98, 103
 - existing law not changed 101
 - general 18-19, 67, 93, 96, 98, 103
 - general interest (also see interest) 100-101
 - *grundnorm* 98, 103
 - rebuttable 98, 100-101
- legal relationship**
 - administrative 20-22, 30, 32, 73
 - external operation 21-23, 26

- general (objective) 23-27, 46, 78
- individual (subjective) 23-27, 51, 55, 78, 81
- internal operation 22-23, 26, 35
- teacher/administration 26
- teacher/community 29
- unequal relationship (subordination) (see authority)

legal representation 64**legal source** (see common law, case law, legislation, administrative practice)**legal subject** (also see power) 21-23**legality**

- attention (proper) 46, 56, 59, 63, 66-67, 69-70, 98
- fair/equitable 49-50, 60, 98, 103, 106
- natural justice 63-65
- principle 40, 53, 58, 59-60, 63, 81, 84, 98

legislation (statutory law) (see power)

- abolition of 116
- content (see drafting of legislation)
- drafting (see drafting of legislation)
- formal requirement (see drafting of legislation)
- format (see drafting of legislation)
- general-affairs education 9, 10-11, 134-135
- impure (quasi) 16-17
- interpretation (see interpretation of statutes)
- legal source 8-9, 32, 40, 45, 57, 59-60, 61, 73, 91, 98, 107-108, 133
- original 15, 62
- own-affairs education 9-11, 134-135
- parliamentary (central) 9, 12, 14, 17, 47, 52, 62, 72, 102, 107, 123-124, 133
- peremptory/directory provision 62, 93, 121-123, 139
- retrospectivity (see legal presumption)
- subordinate (second and third level) 9, 11-15, 17, 47, 53-54, 62, 68, 72, 77, 97, 99-100, 102, 107-108, 112-113, 114, 134-135
- subject of 134

legislative authority

- body 12-13
- supreme authority 9, 19, 94, 109

legislative drafting 133

- content 135, 137
- formal requirements 134-135, 137, 141
- format 135
- hints 138
- object of (see purpose of legislation)
- particulars 138
- preparation 134, 141
- principles 138
- revision 140

liability

- school principal 37, 49, 57, 60, 75
- state (see state liability)
- strict based on risk 83

literal rule (interpretation) 94-95, 96-97, 120, 125, 141

locus standi 77, 78

long title 109

M

mala fide/bona fide 46, 49, 65-70, 73, 76, 81, 101

mandate (instruction) 34, 40, 42, 48

Manual for School Administration 47-50, 59, 124, 126

- internal legislative rule 52, 62, 108, 125

marginal note 109, 111

meaning assigned to every word 105

mentally handicapped pupil 23-25

minister 21-23, 28, 32, 39, 46, 49, 52, 54-55, 72, 125

Ministers' Council 72

mischief rule 110

modificative interpretation 92, 100, 105, 116-117, 119-121, 126

- *casus omissus* 105, 119-120

modifying ordinary meaning 115

N

National State 11-12, 15-17

- original legislative power 15, 17

natural justice 19-20, 27, 28-29, 50, 63-65

- *audi alteram partem* rule 19, 64, 67
- unprejudiced (impartial) 65

negligence (*culpa*) 19, 81

nemo iudex in sua causa 65

null and void act 55, 121-122

O

official (also see teacher)

- contract 26, 28

rights, duties, privileges, concessions 28, 31, 100

– status agreement (see status)

– status (also see status) 21-23, 27

official language (other) 107

ordinance 12, 23, 108, 134

ordinary meaning 104, 126

P

paragraph 108

parent/guardian 5, 18, 21-23

– association 23

– authority 18

– subject (“onderdaan”) 21

pari materia 111

Parliament : South African 6, 8-9, 15, 58, 77, 110

– control 72-75

– House 9, 73

paterfamilias 19, 81

peremptory/directive guideline 121-122, 126

power (also see delegation)

– discretion 32-33, 35-37, 39, 63-65, 82, 128, 139

– principal 42-43, 46-47, 49-56, 59-61, 63-64, 70, 72, 80-81, 119, 124-125, 127

– subject (“onderdaan”) 30

– tacit/implied ancillary 32, 39-40, 44, 48-49, 53, 57, 61-62, 119

– teacher 18, 79

practical application (interpretation) 123

– correlation 127

– final solution 127

– linking: practical situation 126

preamble 108

prerogative (see State President)

President's Council 109

presumption (see legal presumption)

prima facie proof 118

principal

– author of act 51, 57, 134

– authoritative position 40-43, 54, 72, 82

– discipline (see discipline)

- legal consciousness 43, 65, 70, 141
 - liability (see liability)
 - manager 5, 33, 45-46, 48, 55, 123, 127
 - power (see power)
 - professional leader 41, 46, 49-50, 53, 60, 72
 - status (see status)
- private law** 6, 22, 26, 74, 79, 81-82
- private school** 8, 27
- proclamation** (also see legislation: subordinate)
- provincial 12, 134
 - State President 11-12, 17, 73, 97, 108
- professional code** 11, 13-14, 16, 29, 114
- professional council** (see TFC)
- province** 12-13, 112
- council 12
 - education council 13
 - ordinance (see ordinance)
 - proclamation (see proclamation)
- public law** 6, 8, 20, 22, 27, 79
- relationship 30
- pupil** 5, 18, 21, 29
- mentally handicapped pupil 23-25
- purely administrative act** (see administrative act)
- purpose of legislation** 93-100, 102, 104, 106-110, 113, 115-116, 117-119, 121, 126-127, 132-133, 136
- linking the practical situation 127
- purposeless legislation** 99-100, 105-106, 120-121, 126
- ## Q
- quasi-judicial** (see administrative act)
- ## R
- reasonableness** (also see validity requirements: consequences) 67-68, 80, 84, 102
- test (reasonable man) 81
- regularity/irregularity** 49, 57, 64, 70-71
- regulation** (see legislation: subordinate)
- remedy**
- internal 69, 73, 76, 79

- judicial 76, 78
- interdict 77
- review 76, 78
- statutory appeal 76-7

res iudicata 19

restrictive interpretation 116, 121, 126

review (also see control, judiciary) 19, 76, 101

rights, duties, privileges (see official, power)

Roman-Dutch law 18-19

S

SATC (South African Teachers' Council) (see TFC)

schedule 109

school

- advisory body 52, 60
- clinic 37
- discipline 40, 42
- duty 30
- management council 12, 14-15, 31, 35, 39, 58, 124, 134
- policy/administration 14, 17, 40-42, 46-48, 51, 53, 57, 71, 119, 124, 141
- private 8, 27
- regional board 8, 12
- sub-structure 5, 32, 35, 37, 40, 48, 51, 60, 70, 72-73, 75

separation of powers 19, 71, 75, 94, 100, 105

- *trias politica* 105

service contract 8, 26, 82

solidarity

- in education 37, 45
- state 75

stare decisis 19, 68

state 6-7, 75, 82, 84, 99

- administration (see administration)
- bound (see legal presumption)

state liability 18, 70, 74-76, 79-80, 83-84, 88, 121

State President

- as organ 9, 108-109
- prerogative 18
- proclamation (see proclamation)
- to sign legislation 107-108, 123

status

- agreement 21, 26-27, 30-31
- official 21-23, 27, 29, 53, 81
- principal 21
- professional 26-27
- subject ("onderdaan") 21, 30
- teacher 21, 29, 53, 81

statutory appeal 76, 118

- subject** ("onderdaan") 21-23
- education partnership 30-31
 - individual 100, 108
 - parent/guardian 21, 30-32
 - private sector 30
 - representative 30-33
 - status agreement 31
 - status (see status)

subsecuta observatio 111-112

- superintendent** (inspector) 21-22, 92
- controlling body 48-50, 54, 66, 72

Supreme Court (see judiciary) 19, 29, 76

surrounding circumstances 96-97, 106, 110, 125

T**teacher**

- association 23-24, 35
- discipline (see discipline)
- official 14, 21-23, 32, 53, 81-82
- professional council (see TFC)
- registration conditions 114
- status (see status)

teleological approach (see theory of interpretation)

textual approach (see theory of interpretation)

- TFC** (Teachers' Federal Council) 8-9, 11, 13, 21-22, 29-30, 35, 38-39, 58, 72, 79, 99, 113
- disciplinary committee 22, 29-30, 33, 35, 39, 49, 72

theory of interpretation (approach)

- contextual (functional/teleological) 95-98, 104, 110, 115-116, 124, 127
- textual 94, 96-97, 104, 120, 125

trias politica 19, 105

U

- ultra vires/intra vires*** 17-18, 33, 45, 58-61, 67-68, 80-81, 100-101
- unius inclusio est alterius exclusio*** 118
- unprejudiced** (impartial) 65
- ut res magis valeat quam pereat*** 99-100

V

valid/invalid act (see administrative act)

validity requirement

- attention (proper) (see legality)
- author of act 60-62
- authorised procedure 20, 66
- authorised purpose 46, 65, 67, 69
- consequences of act 67-68, 80, 84, 102
- fair/equitable? 48, 50, 54, 57, 62-63, 65, 70, 80-81
- formal 61 *et seq*
- legal requirement 40, 54, 57-58, 67, 69-70, 74, 75-76, 121

W

wrongful act (unlawful act) (see lawfulness)

This publication, one of the first of its kind, focuses not only on the position of the education manager, but also on that of all teachers in the public-education system. Its emphasis on the role of law in administration and management, constitutes an important contribution to legal awareness within the teaching profession.



UNISA ISBN 0 86981 890 2