

“Human rights in the classroom - creating an environment conducive to teaching and learning”

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Aims of the Session

- ▶ To create a basic understanding of the foundations of education law in South Africa
- ▶ To explain the concept of human rights
- ▶ To establish the importance of human rights in the context of education law and in classroom practice as it affects the teaching and learning environment
- ▶ To create a space and provide the tools for a personal reflection on the place of human rights in creating an environment conducive to teaching and learning in individual classrooms

Agenda

- ▶ The South African legal system in a nutshell
- ▶ The concepts of equality, equity, discrimination and justice
- ▶ Defining human rights
- ▶ Looking at the elements of an environment conducive to teaching and learning
- ▶ Exploring the link between a strong rights culture in the classroom and an environment conducive to teaching and learning

Disclaimer

- ▶ The topic of human rights is often an emotive one
- ▶ Generally people find it difficult to maintain the balance between their own rights with those of others
- ▶ Building a strong human rights culture in a classroom or a school
 - ✓ will take time
 - ✓ may cause a measure of discomfort and uncertainty
 - ✓ may require some 'unlearning'
- ▶ This course / presenter does not have all the answers

The South African Legal System in a Nutshell

- ▶ South Africa is a **constitutional democracy**
- ▶ **Constitutionalism** is a form of government in which power is distributed and limited by a **system of laws** that must be obeyed by the rulers
- ▶ This means that
 - ✓ the State derives its powers from a universally agreed-upon written constitution
 - ✓ the powers of government are limited to those set out in the constitution
- ▶ South Africa is therefore subject to the **rule of law**

The Rule of Law

‘Law should govern. It is more proper that law should govern than any one of the citizens. Upon the same principle, if it is advantageous to place the supreme power in some particular person’s hands, they should be appointed to be only guardians, and the servants of the laws.’

Aristotle (384 BC – 322 BC), ‘Politics’

The Constitution

- ▶ The Constitution of the Republic of South Africa (CRSA, or The Constitution) is the supreme law of our country
- ▶ Any **law** or **conduct** inconsistent with Constitution is illegal (a.k.a. unconstitutional) - the Constitutional Court can declare a law invalid if it clashes with the Constitution
- ▶ The State must act in accordance with the principles of the **rule of law** AND comply with the **Constitution**
- ▶ Obligations imposed on the State **AND** the individual by the Constitution must be fulfilled

Functions of the Constitution

- ▶ To **entrench the values** on which our democracy is founded (s1)
 - ✓ dignity, equality and freedom
 - ✓ non-racialism and non-sexism
 - ✓ the supremacy of the Constitution and the rule of law
 - ✓ universal suffrage (vote)
 - ✓ accountability, responsiveness and openness
- ▶ To **entrench and protect the fundamental rights** contained in the Bill of Rights (BoR - Chapter 2)
- ▶ There is a **CLOSE LINK** between the values and the rights
 - **values PRESCRIBE the rights**, and the **rights in turn PROTECT and PROMOTE the values**

Sword, shield and menace...

'We live in and by the law. It makes us what we are - citizens and employees and doctors and spouses and people who own things. It is a sword, a shield, and a menace - we insist on our wages, or refuse to pay our rent, or are forced to pay penalties, or are closed up in jail, all in the name of what the law has decreed.'

Ronald Dworkin, 'Law's Empire', 1986

- ▶ The Constitution (including the BoR) and all other legislation derived from it, is our *'sword, shield and menace'*

Origins of legislation regulating education

- ▶ S7(2) of the Constitution - the State is obliged to respect, promote and fulfil all *rights*
- ▶ The State can *enforce a right* and can order organs of state to *take action* to grant or protect a right, *even if this has monetary implications for the State*
- ▶ All education legislation in South Africa stems from *Section 29 - everyone has the right to a basic education*

Education Law in South Africa

SOUTH AFRICAN SCHOOLS ACT

Act 84 OF 1996

as amended by

Education Laws Amendment Act 100 of 1997

Education Laws Amendment Act 48 of 1999

Education Laws Amendment Act 53 of 2000

Education Laws Amendment Act 57 of 2001

Education Laws Amendment Act 50 of 2002

Education Laws Amendment Act 1 of 2004

Education Laws Amendment Act 24 of 2005

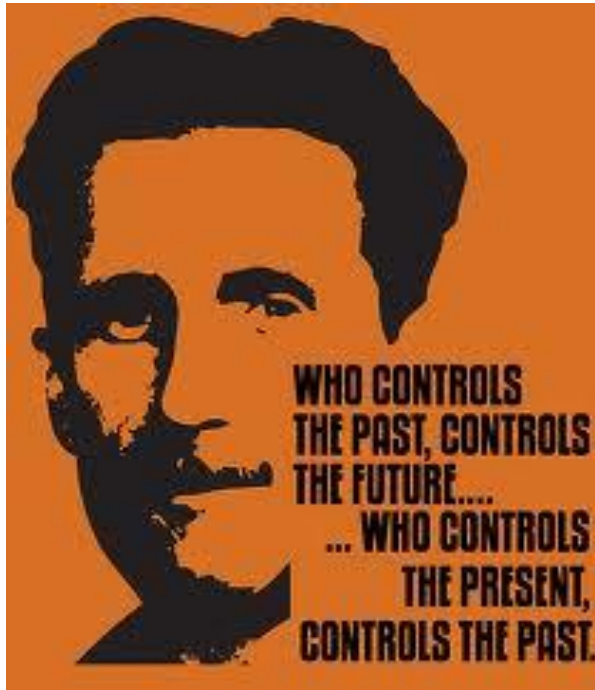
Education Laws Amendment Act 31 of 2007

Basic Education Laws Amendment Act 15 of 2011

So WHO has 'MORE' rights?

**'All animals are
equal, ...**

So WHO has 'MORE' rights?
...but some animals are more
equal than others.'



George Orwell
from the novel '*The Animal Farm*'
published in 1946

Voted by TIME magazine as one of the top 100 novels of the
20th century

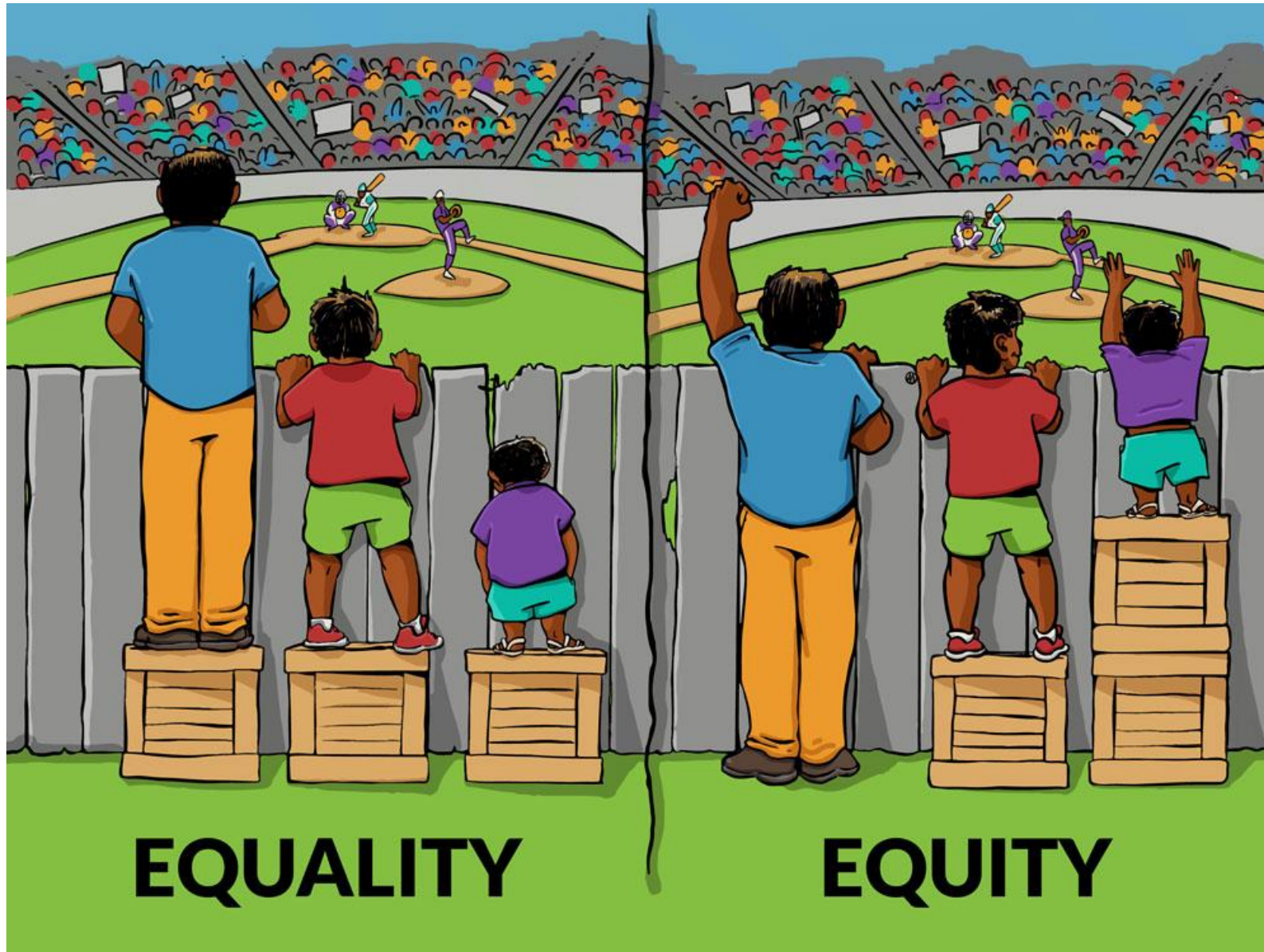
So WHO has 'MORE' rights?

- ▶ Rhetorical question - who has **MORE RIGHTS?**
- ▶ General perception - some people (children / whites / blacks / men / women and and and...) have **more rights** than others
- ▶ In terms of the law - **ALL** citizens are **equal before the law**
BUT
- ▶ In teaching there is a **perceived imbalance** between the rights of learners and the rights of teachers, which is problematic when attempting to create an environment conducive to teaching and learning
- ▶ It is also important to make a distinction between the concepts of **equality** and **sameness**
- ▶ Rhetorical question - are we **ALL EQUAL?**
- ▶ Legal answer – yes
- ▶ Rhetorical question – are we **THE SAME?**
- ▶ Logical answer - **NO!**

So is *EQUALITY* what we want?

- ▶ This suggests that equality, although an important LEGAL principle, is *not necessarily the most appropriate* or *the only way* to *deal fairly* with the great diversity that exists within the human race...
- ▶ So if not *EQUALITY*, then what?
- ▶ *Equity* recognizes that *each person has different circumstances*, and therefore looks at what resources and opportunities are needed to reach an *equal outcome*
- ▶ In short, giving each what he or she *NEEDS* rather than giving everyone *THE SAME*

Equality vs. Equity



Equality, Equity and Discrimination

- ▶ Because **discrimination** is often at the core of the infringement of teacher and learner rights, understanding the concept is important for our discussion of rights
- ▶ **Discrimination** - the **unjust** or **prejudicial** treatment of different categories of people, especially on the grounds of race, age, gender etc. (*Oxford University Press*)
- ▶ Other grounds for discrimination?
 - ✓ Sexual orientation, gender and gender choices
 - ✓ Origin and ethnicity
 - ✓ Income, property and or socio-economic status
 - ✓ Language
 - ✓ Religion
 - ✓ Health or disability

But is all discrimination UNFAIR?

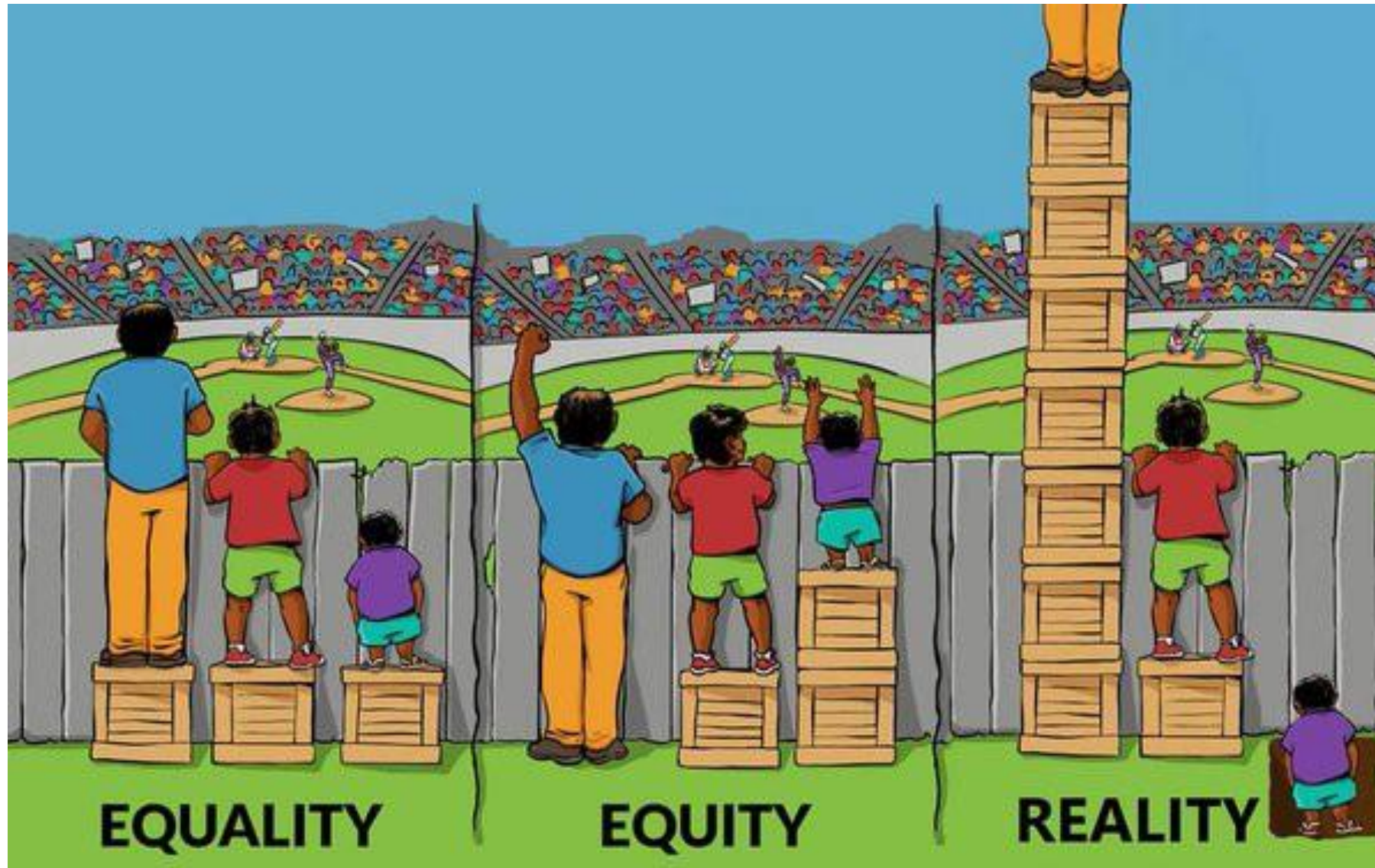
Scenario – An able-bodied man disputes a fine he received for parking in a spot reserved for differently abled persons on the basis that the allocation of parking to specific persons is discriminatory

- ▶ This **is** discrimination, based on ability, but it is **FAIR**
discrimination – the value of respect and the principle of equity (giving people what they need rather than giving everyone the same) prescribes certain special privileges and concessions for differently abled persons

Scenario - An employer fires an 60 year old employee because she wants to employ younger people

- ▶ This **is** discrimination, based on age, AND it constitutes **unfair discrimination** – the **law** recognises only 3 reasons why an employee may dismissed
 - ✓ The **conduct** of the employee
 - ✓ The **capacity** of the employee (including health)
 - ✓ The **operational requirements** of the business

Discrimination in the real world...



In the end, education should strive to reach
BEYOND equality and
BEYOND equity to...

JUSTICE

JUSTICE

Equality



The assumption is that **everyone benefits from the same supports**. This is equal treatment.

Equity



Everyone gets the supports they need (this is the concept of "affirmative action"), thus producing equity.

Justice



All 3 can see the game without supports or accommodations because **the cause(s) of the inequity was addressed**. The systemic barrier has been removed.

Sexist or not...?



Fighting discrimination

"The point of the fight against sexism is not to do away with men but to change the system that gave illegitimate power to men."

Marjorie Kelly, 'The Divine Right of Capital'

The point of the fight against discrimination is not to do away with differences and diversity but to change the system that gives illegitimate power to certain differences.

Human Rights

*“A human right is an entitlement or legal claim that you have
– by virtue of being human – against the State.”*

English and Stapleton, 1997, ***HUMAN RIGHT HANDBOOK; A
Practical Guide to Monitoring Human Rights.*** (Durban, Juta)

Human Rights

Human rights are:

- ✓ **Natural** (come from being human, not a government invention)
- ✓ **Universal** (no change from country to country)
- ✓ **Equal** (same for all humans, despite race, gender etc.)
- ✓ **Inalienable** (cannot be taken- or given away)

Characteristics of Human Rights

- ▶ Except for s10 (dignity) and s11 (life), rights are **NOT** absolute – they can be limited
- ▶ Clashes between rights should be resolved by the **good morals** of the South African society, e.g. privacy vs. loud music
- ▶ ALL rights are linked to **RESPONSIBILITIES**
- ▶ Many fundamental human rights are **highly relevant to the education sector**

Limitation of Human Rights

External limitations

- ▶ s7(3) - all rights are subject to limitation as per s36
- ▶ s36 - general limitation clause
 - ✓ Limitation must be **reasonable** and **justifiable** in an open and democratic society based on human dignity, equality and freedom
- ▶ Examples of reasonable limitations:
 - ✓ s9(5) - Fair discrimination vs unfair discrimination (disabled parking, age of employment)
 - ✓ s21 - Right to freedom of movement (**COVID CURFEW**)

Limitation of Human Rights

Internal limitations

► s16 – the right to freedom of expression

(1) Everyone has the right to freedom of expression, which includes -

- (a) freedom of the press and other media;
- (b) freedom to receive or impart information or ideas;
- (c) freedom of artistic creativity; and
- (d) academic freedom and freedom of scientific research.

(2) The right in subsection (1) **does not extend** to -

- (a) propaganda for war;
- (b) incitement of imminent violence; or
- (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

Here endeth the lesson on human rights...

A Culture of Teaching and Learning

- ▶ Research has identified **4 main areas** of importance in the creation of an **environment conducive to effective teaching and learning**:
 - **Optimising physical space** – making proper use of the available space, desk arrangements, wall decorations etc.
 - **Securing cooperation** – developing rules for conduct and behaviour in the classroom and applying them fairly and consistently
 - **Creating a communal atmosphere** - instilling a sense of community and of mutual caring among all those in the classroom
 - **Working on the classroom climate and culture** – creating a conducive atmosphere and a high quality of life in the classroom (Lynch, 2016)

Rights and a Conducive Environment

- ▶ *s9 - The right to equality*
 - ✓ Do we treat boys and girls the same?
 - ✓ Do we treat learners of different races the same?
 - ✓ Are male and female teachers treated the same?
 - ✓ Are teachers of different races treated the same?
 - ✓ What does the treatment of staff at the school teach the learners about equality?
- ▶ The words we use, the praise we give
- ▶ Afrikaans buses and English buses
- ▶ To John or not to John

Rights and a Conducive Environment

- ▶ *s10 - The right to human dignity*
 - ✓ What are the ways in which we as teachers may be infringing our learners' right to dignity?
 - ✓ Which parts or prescripts of our discipline systems (Code of Conduct / classroom rules) may be undermining the establishment of a culture of respect for human rights?
- ▶ *“You are ugly, and your mother dresses you funny...”*
- ▶ *“Right, all of you – empty your pockets!”*

Rights and a Conducive Environment

- ▶ *s12 - The right to freedom and security of the person*
 - ✓ Can we still employ corporal punishment?
 - ✓ What constitutes cruel, degrading or inhuman punishment?
 - ✓ Is all violence PHYSICAL?
- ▶ *“Let me show you an alternate use for these pigeonholes...”*
- ▶ *“You must ask your mom to book you a bed in the Marifont...”*

Rights and a Conducive Environment

- ▶ *s14 - The right to privacy*
 - ✓ May a teacher search a learner?
 - ✓ What info about a learner can we share with colleagues / parents / other learners?
 - ✓ What do we do about gender choices?
- ▶ *“Did you see poor Johnny’s work?”*
- ▶ *“Pass me that note...”*

Rights and a Conducive Environment

- ▶ *s16 - The right to freedom of expression*
 - ✓ What do we as teachers say in class in relation to gender, race, religion, politics etc.?
 - ✓ What do we allow our learners to say about gender, race, religion, politics etc.?
- ▶ Name calling and labels
- ▶ *“Them, they, you people...”*

Rights and a Conducive Environment

- ▶ *s24 - The right to a safe environment*
 - ✓ If every child has the right to be safe at school, and if we are acting *in loco parentis*, what are we:
 - ❖ Doing?
 - ❖ NOT doing?
 - ✓ Will our safety procedures in class, on the playground, during trips etc. pass the test of the reasonable man?
- ▶ *“Surely I’m can’t be liable - I wasn’t even there!”*
- ▶ The Knouwds case – showing the school the finger

Rights and a Conducive Environment

- ▶ *s32 - The right to access to information*
 - ✓ The right to privacy (and POPIA) make it every teacher's and the school's responsibility to safeguard the privacy of every learner's information BUT
 - ✓ Every learner and his / her parent(s) / guardian(s) have the right to access all information pertaining to THAT learner
 - ✓ Does every teacher need to know everything?
- ▶ *"All of this, AND your parents haven't even paid the school fees yet!"*

Rights and a Conducive Environment

- ▶ s33 - *The right to just administrative action*
 - ✓ Innocent until proven guilty
 - ✓ *Audi alteram partem*
 - ✓ Judge, jury and executioner
- ▶ Stereotypes and assumptions

I am ..., but I am not ...

- ▶ Who do we **REALLY** listen to?

In Summary...

“In a safe school, the playgrounds are filled with the healthy noise of happy children. They scuff their knees and scrape their elbows, but they are not afraid of each other, of their teachers or of intruders. The classrooms are clean. The teachers are on time, stand upright and are firm but friendly. There is glass in the window panes and there are books on the desks. Parents, educators and learners smile. There is an air of work being done and of achievement. These are the schools conducive to effective learning and teaching.”

Professor Kadar Asmal

Former Minister of Education

Safe School Workbook, June 2001

In closing...

*“Where, after all, do universal human rights begin?
In small places, close to home...”*



Eleanor Roosevelt
1884 - 1962