CONSTITUTIONAL CHALLENGES TO SCHOOL RULES*

> "One can judge how highly society values a right by seeing how far it is extended to public school students. Current American law gives ample protection to freedom of conscience and religion and freedom from invidious discrimination, especially when the exercise of those rights does not threaten the educational process" (Caplan "The Human Rights of Students in Public Schools" 32 *FALL Hum.Rts* 8 25).

1 Introduction

The following four court applications set the stage for the debate on challenges to school disciplinary rules during the past two years:

In July 2005, the mother of Sunali Pillay brought an application in the Equality Court against the principal and governing body of Durban Girls' High School. The application aimed to restrain the school from taking disciplinary action against her daughter based on the girl's refusal to remove a nose stud which was regarded by the school as a violation of the school's code of conduct. The grounds for the application were that their refusal violated her constitutional rights to equality and freedom of religion, conscience, belief and culture.

In September 2005, the Western Cape Residents' Association brought an application in the Cape High Court on behalf of the parents of Bernel Williams. The application was to ensure her attendance at the matric farewell function hosted by Parow High School. It was argued that the school's refusal to allow her to attend the function, based on her continued unacceptable behaviour, infringed her constitutional right to equality, dignity and freedom of expression.

Similarly, the Supreme Court of Canada had to determine, on 2 March 2006, whether the refusal by the school authorities to allow an orthodox Sikh student, Gurbaj Singh, to wear a *kirpan* (religious object resembling a dagger) to the school he was attending, was an infringement of his freedom of religion under section 2(a) of the Canadian Charter of Rights and Freedoms.

On 22 March 2006, the House of Lords in England decided in favour of the decision by the head-teacher and governors of Denbigh High School to exclude Shabina Begun from the school unless she conformed to the school dress code. Begun insisted on wearing a *hijab* (long coat-like garment) and not the *shalwar kameeze* she had been wearing for the previous two years

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and which, according to the evidence, satisfied the Islamic clothing requirements. She argued that her exclusion infringed *inter alia* on her right to manifest her religion under art 9 of the European Convention on Human Rights.

In all these matters the constitutional rights of the learner were weighed up against the right of the school to ensure a disciplined environment through the strict observance of the school rules. Although only two of the four applications were successful, it is encouraging that parents and learners are prepared to test decisions taken by schools – an indication that a human rights culture is taking root at secondary school level on both a national and international level.

The aim of this note is to discuss these judgments within the parameters of the rights of learners vis-à-vis the rights of other learners and the necessity for discipline and a safe schooling environment. The first section of the note is devoted to an examination of each of these judgments. Thereafter, the issues are discussed with specific reference to the South African constitutional principles and the application of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

2 *Western Cape Residents' Association v Parow High School* (CPD) 2005-09-23 unreported case number 9124/2005

> "Discipline is about positive behaviour management aimed at promoting appropriate behaviour and developing in learners self-discipline and self-control" (Squelch *Discipline* Centre for Education Law and Policy (2000) 2 as quoted by Van der Bank "Code of Conduct for Learners" in Davel (ed) *Introduction to Child Law in South Africa* (2000) 302).

The issue in this matter concerned the school's refusal to allow Bernel Williams to attend the matric farewell based on her continued unacceptable and undisciplined behaviour. Disregarding the issues of procedure and the *locus standi* of the Western Cape Residents' Association, the court nevertheless addressed the grievance itself – albeit *obiter* (1-3). The argument raised was that the learner's rights to equality, dignity and freedom of expression were infringed by the school's refusal to allow her to attend the function. Unlike most of her peers, she was not invited to the function. The school argued that all matric learners had been informed at the beginning of the school year that attendance of this function was a privilege; and that an invitation would only be extended to those whose conduct, both academic and otherwise, merited it (3). It was a privilege that could and would be forfeited if the learner's behaviour was not acceptable. The learner in question had experienced discipline problems since the beginning of her high school career and displayed an aggressive attitude towards authority figures. The year in question was no exception. In April, a number of learners, including Bernel, were informed that their conduct was such that they would not be eligible to receive an invitation. However, some students reformed their behaviour and received invitations. Others, including Bernel,

did not amend their conduct and as a result their privilege remained forfeited (4).

The court noted "that two of the important lessons that a school must teach its learners are discipline and respect for authority. The granting of a privilege as a reward for good behaviour is one tool that may be used to teach such lessons. The withholding of such privilege can therefore not be claimed as an infringement of a right to equality or to dignity" (4). The court went further and noted that the granting of a privilege in the absence of it having been earned may well constitute an infringement on the rights to equality and dignity of those learners who have merited the privilege. Furthermore, the right to freedom of expression cannot be equated to a right to be ill-disciplined or rude. The court stated that the system of reward for good behaviour permeates all walks of life and to learn it at a young age can only benefit the learner later in life. The court did not see anything of constitutional concern in the use of such a disciplinary system in schools (4-5).

3 *Pillay v KwaZulu-Natal MEC for Education, Ina Cronje* (NPD) 2006-07-05 unreported case number AR 791/05

The Equality Court refused an application by a learner and her mother to stay disciplinary proceedings against a learner who insisted on wearing a nose stud in contravention of the code of conduct of the school. The code provided that in respect of jewellery, only small earrings and a wristwatch were allowed. This court, after consideration of the facts and evidence, the provisions of the Equality Act and the educational legislation, found in favour of the school. The court stated that the complainant was fully aware of the code and the rules therein, yet ignored it prior to allowing her daughter to obtain a nose stud, which was a matter of personal cultural choice. The court noted that it was hardly feasible to expect a school to bend the rules to suit a learner's personal choice pertaining to her culture or tradition. As the school acted within the ambit of the law, it did not unfairly discriminate against the learner. It followed the correct procedures and if there was any trauma suffered, it was as a direct result of her and her mother's own actions (*Pillay v KwaZulu-Natal Minister of Education* (Durban Equality Court) 2005-09-29 unreported case number 61/2005 5-6 (*a quo* judgment)).

This judgment was overturned by the High Court in *Pillay v KwaZulu-Natal MEC for Education, Ina Cronje* ((NPD) 2006-07-05 unreported case number AR 791/05). The first question the court had to deal with was the status of a nose stud in Hindu culture and religion. Although there was some disagreement in the interpretation of the expert evidence in the court *a quo* (2 *a quo* judgment), Kondile J (with Tshabalala concurring), in the NPD judgment, accepted the cultural and religious significance of the wearing of the nose stud by Hindu women (par 4-7, 18 and 42). The High Court found that the court *a quo* merely applied the code of the school and disregarded the religious and cultural rights of the learner as read with the Constitution,

the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (Equality Act) and the South African Schools Act 84 of 1996 and Guidelines (including the KwaZulu-Natal School Education Act as read with its Regulations Relating to Government Bodies of Public Schools and the Guidelines for the Consideration of Government Bodies in adopting a Code of Conduct for Learners (*GG* 1890 of 1998-05-15)) (par 18).

The first argument by the respondents was that as the parent chose this school and accepted their code, the parent and learner should abide by the code they signed. The court disagreed and noted that it did not mean that they had waived any of their fundamental rights and freedoms (par 23). The code itself may after all not be inconsistent with the Constitution (par 31-34). The next argument by the respondents, that the aim of the code was to treat all girls the same, was also regarded as flawed by the court: "(t)he Constitution prohibits both direct and indirect discrimination, that is, practices whose purpose is to discriminate unfairly, or whose effect or impact or outcome, irrespective of the motive or intention, amounts to unfair discrimination" (par 25). Equality that insists on symmetrical treatment fails to recognise or repair or avoid entrenching deep patterns of historic group discrimination (par 26). It was noted that the ban undermined the value of religious and cultural symbols and sent learners the message that some religious beliefs and cultural practices did not merit the same protection as other rights and freedoms. Allowing the wearing thereof would demonstrate the importance our society attaches to the protection of such rights and freedoms and would show respect for its minorities (par 35). With regard to the issue of discipline the court found that there was no need to suppress individuality in order to achieve harmony and the substantive equality demanded by the Constitution (par 36-37).

The court set out what it described as the "appropriate approach" in equality-related matters, as the parties should not rely on section 9 of the Constitution directly, but use the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (hereinafter "the Equality Act") that was enacted to give effect to the rights contained in that section (par 38). As a starting point, section 13(1) of the Equality Act required the appellant to make out a *prima facie* case (par 40). The court found in this regard that the school discriminated against the appellant and that equality included recognition of difference: people who are not similarly situated should not be treated alike (par 41). The code withheld them from fully enjoying their culture and/or practising their religion – both prohibited grounds listed in section 1(xxii)(a) of the Equality Act (par 42).

Once the *prima facie* case had been made out, as it was *in casu,* it fell on the respondent to prove, in terms of section 13(2)(a) of the Equality Act that, on the facts, discrimination did not take place as alleged or that the conduct was not based on one or more of the prohibited grounds for discrimination, and thus was fair (par 43). The court concluded that the ban constituted unfair discrimination in terms of the Equality Act and thus also the Constitution (par 43-44). The conclusion was derived at within a historical societal context and the need for the recognition of cultural diversity (par 45-46). The school's approach to adopt an approach of formal equality without

taking into account the differences between the groups and the individuals, ignored the historical burden of inequality which the Constitution seeks to overcome (par 47). The court referred to all the factors set out in section 14(3) of the Equality Act. It concluded that the discrimination impaired the dignity of the appellants (par 48-52). The failure of the school to recognise the place of the group in society and the failure to allow the practising of the culture and religion amounted to a repudiation of their equal worth and respect as human beings (par 51). Regarding the impact of the discrimination, the court found that the discrimination humiliated and traumatised them as it further entrenched historical patterns of social disadvantage and harm that was not fair (par 53). The appellants were part of a socially vulnerable group that suffered in the past from patterns of discrimination and the decision by the school further marginalised their culture (par 54). With regard to the nature and extent of the discrimination, the court noted that the discrimination was deep-rooted, entrenched and systematic and that it affected a broader group in society. The discrimination negated their traditions. Tradition is included in the Constitution and the Equality Act as prohibited grounds for discrimination (par 55-56). As the code violated the rights of the learner it could not serve a legitimate purpose and was, as such, unfair in a society in transformation trying to combat all forms of unfair discrimination (par 57-58). In assessing whether and to what extent the discrimination achieved its purpose and whether there were less restrictive and less disadvantageous means to achieve the purpose, the court weighed up the relationship between the discriminatory conduct and its purpose. As the code reinforces what the Constitution attempts to eradicate, it cannot serve any legitimate purpose (par 59). The argument by the respondents, that the smooth running of the school would be affected by the wearing of the nose stud, was discarded by the court as there was no evidence to substantiate such a conclusion (par 60). As far as the understanding of other learners were concerned, the court noted that it was a duty of the school to educate the learners on the Constitution and the rights and freedoms of all learners and that this approach was a less restrictive and less disadvantageous means to achieve discipline (par 61). The court stated that unfair discrimination could not be allowed to creep in under the guise of discipline (par 62). No evidence was presented on whether and to what extent the respondents had taken reasonable steps to address the disadvantage or to accommodate diversity (par 63).

The court concluded that the respondents had failed to prove that the discrimination was fair (par 64). With regard to section 14(2)(c) of the Equality Act, whether the discrimination reasonably and justifiably differentiates or fails to differentiate between persons according to objectively determined criteria intrinsic to the activity concerned, the court found that the wearing of a very small gold stud did not in any way hinder the educational system, the smooth running of the school or the learner's performance. There was thus no objective substantiation in terms of criteria intrinsic to the educational system and as such the discrimination was arbitrary, unlawful, unreasonable and unjustifiable in an open and democratic society based on human dignity, equality and freedom (par 66-68).

The appeal was allowed and the decision, prohibiting the wearing of a nose stud in school by Hindu/Indian learners, was declared null and void (par 70).

4 *Singh-Multani v Marguerite-Bourgeoys (Commission scolaire)* 2006 SCC 6, J.E. 2006-508; 2006 CarswellQue 1368

The school authorities of the École Sainte-Catherine-Labouré School in Canada refused to allow an orthodox Sikh leaner to wear a metal *kirpan* to school because the code of conduct prohibited the wearing of weapons. A *kirpan* is a religious object resembling a dagger and is normally sewn up inside clothing. The learner (and his father) argued that this decision was an infringement of the learner's freedom of religion under section 2(a) of the Canadian Charter of Rights and Freedoms (18). The governing board refused to endorse the school board's proposal that the student keep the *kirpan* in a sheath sealed with a flap. The Council of Commissioners subsequently adopted a resolution affirming the governing board's decision and proposed that the learner wear a *kirpan* made of harmless material. This did not satisfy the learner and the matter was taken to court. The court *a quo* granted the father's request to allow his son to wear the *kirpan* under certain conditions. The school board then took the matter on review and the review committee found that the commissioner's decision was reasonable: although the decision infringed upon the student's freedom of religion, it was justifiable because allowing weapons in schools would require the school board to lower its safety standards, which could result in undue hardship (19-20). The father then turned to the Supreme Court of Canada for relief.

The Supreme Court noted that the student, as required, had established his sincere belief that his faith required him to wear a metal *kirpan* at all times and that the prohibition by the school was more than a trivial interference with his freedom of religion. This decision resulted in the learner no longer attending public school (24). The court agreed that the decision to prohibit the carrying of a *kirpan* had a rational connection with the object sought, as the *kirpan* remained a weapon that could injure. It noted, however, that the absolute prohibition on the wearing of a *kirpan* to school was disproportionate and an unreasonable measure as the decision did not minimally impair the student's rights. The court specifically noted that the student himself was not violent; that no violent incident involving a *kirpan* had ever been reported in the century that Sikhs had attended schools in Canada; and that the school contained many objects that could be used as weapons, such as scissors, pencils and baseball bats (26-27). The court found that the contention that the presence of the *kirpan* would poison the school environment was contrary to the evidence concerning its symbolic nature; was disrespectful to Sikhs; and did not take into account Canadians' values based on multiculturalism (28). The court found that the decision's deleterious effects outweighed its salutary effects and as such the decision was not justifiable under section 1 of the Charter of Rights and Freedoms in a free and democratic society and it was set aside (32).

5 *R (on the application of Begun (by her litigation friend, Rahman)) v Headteacher and Governors of Denbigh High School* (House of Lords) [2006] UKHL 15

The House of Lords were required to decide on the exclusion of a learner who insisted on wearing a *hijab* to school. The school in question had a dress code that made provision for alternative clothing that satisfied the Islamic requirements – a code which was drafted after extensive consultation with the Islamic community. Leaving aside the issues of procedure, it is sufficient for current purposes to note that the Lords found that the decision by the school, to insist that she wore the correct attire, was not an infringement of her right to manifest her belief as read with her freedom of thought, conscience and religion as set out in art 9 of the European Convention on Human Rights. The conclusion was based on the facts peculiar to the matter before the court: (1) that the family chose to send her to a school outside their own catchment area; (2) that the school went to extraordinary lengths to draft a dress code and inform their parents of the code; (3) that the applicant's sister wore the *shalwar kameeze*; and (4) that there were three other schools in the area that allowed the wearing of the *hijab* (par 2). The issues surrounding the wearing of headscarves in schools have already been discussed previously and are not repeated herein, except to reiterate that the outcome of a similar case in South Africa would probably have been decided in favour of the learner (see Carnelley and Banoobhai "The Wearing of the Headscarf – The Plight of Muslim Women: A Brief Comparative Synopsis" 2005 *Obiter* 695-709). It is merely included herein for purposes of completeness.

6 Discussion

The issue of rights and duties of learners has its basis in the Constitution of the Republic of South Africa, 1996 which entrenches certain rights and freedoms that are applicable to all, including learners. These rights include the right to equality (s 9), human dignity (s 10), and the freedom of religion, belief and opinion (s 15) and they may only be limited in terms of the limitation clause (s 36). This discussion will be limited mainly to the freedom of religion, belief and opinion. The constitutions of some other countries contain a comparable provision. For example, the Canadian Charter of Rights and Freedoms similarly guarantees the rights and freedoms, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society (s 1).

The freedom of religion and the right to manifest such religion are however, not limited to constitutions. They are repeated in many international human rights instruments, *inter alia*, the Universal Declaration of Human Rights (s 18), the International Covenant for Civil and Political Rights (art 18(1)-(3)), the European Convention of Human Rights (art 9) as well as the African Charter of Human and Political Rights (art 8). One of the aims of the Equality Act is to confirm South Africa's commitment to its

international obligations under binding treaties and customary international law in the field of human rights, which promote equality and prohibit unfair discrimination (preamble).

The right itself does not appear to be in issue. The interpretation and the boundaries of the right remain problematic, making comparative material not only interesting, but also important – especially in light of the Constitution (s 39(1)). The comments by Kondile J in the *Pillay* case, that it would be dangerous to rely on ostensibly analogous foreign material from other jurisdictions, are unfortunate (par 39): both in light of the discretion imposed by the Constitution (s 39(1)(c)) and as it denies the court the opportunity to analyse comparative material that could be relevant to the matter *in casu*. It is not argued that the foreign material should be used blindly, merely that it should be considered. Although this point has not served specifically before the Constitutional Court, it is submitted that the mere negation of foreign law by the courts out of principle would amount to making the constitutional provision *pro non scripto* and possibly unconstitutional in itself. It should further be borne in mind that the issue of discrimination based on religious grounds is also an international law issue, making the consideration of international law unavoidable (s 39(1)(b)).

The *Pillay* judgment is, however, of much greater importance on a practical level, as it is one of the first judgments that deal with the procedure to be followed in the Equality Courts. Although the court in *George v Minister of Environmental Affairs and Tourism* (2005 6 SA 297 (EqC)) made certain findings about the jurisdiction of the Equality Court, it did not deal with the substantive interpretation of an equity-related issue. In the *George* matter the court merely found that an ordinary High Court was not competent to adjudicate claims under the Equality Act and that claims under the Equality Act had to be brought before an Equality Court (par 7 and 23) as the Equality Court had a statutory duty to deal with matters of unfair discrimination (par 32). Although the Equality Court was a more informal, pro-active court, it did not mean that it was any less competent to deal with challenging issues (par 33).

The judges in *Pillay* for the first time gave certain guidelines as to the procedure to be followed when applications relating to possible discrimination are assessed – confirming the provisions of the Act. The first step is for the complainant to make out a *prima facie* case of discrimination (s 13(1)). The second step is then for the respondent to prove, on the facts before the court, that the discrimination did not take place as alleged (s 13(1)(a)) or that the conduct was not based on one or more of the prohibited grounds (s 13(1)(b)). The "prohibited grounds" are defined to include "religion, conscience, belief, culture" (s 1). Where the discrimination did take place on one of these grounds, it is regarded as unfair unless the respondent can prove that the discrimination was fair (s 13(2)(a)) in light of a list of factors (s 14(2)): (a) the context; (b) the factors referred to in s 14(3); and (c) whether the discrimination reasonably and justifiably differentiates between persons according to objectively determinable criteria, intrinsic to the activity concerned. The section 14(3) factors include the following:

"(a) Whether the discrimination impairs or is likely to impair human dignity;
(b) the impact or likely impact of the discrimination on the complainant;
(c) the position of the complainant in society and whether he or she suffers from patterns of disadvantage or belongs to a group that suffers from such patterns of disadvantage;
(d) the nature and extent of the discrimination;
(e) whether the discrimination is systemic in nature;
(f) whether the discrimination has a legitimate purpose;
(g) whether and to what extent the discrimination achieves its purpose;
(h) whether there are less restrictive and less disadvantageous means to achieve the purpose;
(i) whether and to what extent the respondent has taken such steps as being reasonable in the circumstances to (i) address the disadvantage which arises from or is related to one or more of the prohibited grounds; or (ii) accommodate diversity".

The court then proceeded to evaluate the facts in light of all these factors (see par 3 above). It should be noted that the *Pillay* judgment highlighted the procedural advantages for an application in terms of the Equality Act: firstly, the shifting of the full onus / burden of proof to the respondent once a *prima facie* case for discrimination has been made out by the applicant; and secondly, the presumption that the discrimination on a prohibited or analogous ground is unfair. In short, the respondent always bears the burden of proof in the issue of (un)fairness (see in general the discussion by Currie and De Waal *Bill of Rights Handbook* 5ed (2005) par 9.6).

Whatever the interpretation of the rights and freedoms, constructive teaching and learning and the safely of other learners and educators should not be compromised.

> "Safe schools are *sine qua non* for effective teaching and learning. Safe schools that are physically and psychological safe and that allow educators, learners and non-educators to work …" (Prinsloo "How Safe are South African Schools" 2005 25(1) *SAJE* 10).

Discipline is essential for constructive learning at schools. This is recognised in the legislation. The regulation of discipline in South African schools is founded in the South African Schools Act 84 of 1996 (s 8). The Act requires schools to draft, after broad negotiations, a code of conduct aimed at establishing a disciplined and purposeful school environment. The focus of the code is on positive discipline, the development of self-discipline and the establishment of exemplary behaviour by regulating the conduct of learners. The code must be in line with the Constitution, including the rights dealing with dignity of the learners (Van der Bank 305-306). It has been noted that discipline should focus on the inner development of learners whist developing and preparing them for integration into adult life (Joubert and Prinsloo *Education Law* (2001) 122-123). Practically the code must contain a collection of rules and principles reflecting certain moral standards and values to maintain discipline, provide legal certainty, be consistently applied bearing in mind standards of reasonableness and fairness, regulate routine activities and provide a secure environment (Joubert and Prinsloo 128-129).

Bearing in mind the importance of the Constitution, human rights, and discipline in general, the discussed judgments reiterate both the necessity for, and the obligations to, human rights and discipline in a schooling environment. These cases differentiate between the various rules applicable to diverse scenarios.

Firstly, discipline is important in schools and not all discipline issues at schools are necessarily constitutional issues. Where the issue relates to an earned privilege and where the learners were given fair notice and an opportunity to redeem themselves such as in the *Williams* matter, the necessity for discipline is foremost and there is no constitutional infringement. The court's caveat should be highlighted: the extension of the privilege to someone who did not earn the privilege might actually violate the constitutional rights of the other learners who did in fact earn the privilege.

Secondly, where the school rules, as set out in the code of conduct, prohibit certain behaviour and/or dress, and the parents and the learner accepted these rules upon entry into the school, behaviour contravening the rules should be dealt with in terms of the code, unless it infringes on the constitutional rights of the learner.

The code would infringe the rights of the learner where it is in contravention of a "central tenet" of a religion. The constitutional right to religion (and the manifesting thereof) trumps the provisions in the code of the school. Examples in point would be the Muslim hijab (see discussion by Carnelley and Banoobhai 2005 *Obiter* 709), Jewish yarmulke and Rastafarian headdress (*Antonie v Governing Body, Settlers High School* 2002 4 SA 738 (C)). This conclusion, subsequent to the *Pillay* case, would also be reached where adornments are worn that are of cultural and religious significance, such as the nose stud in the Hindu religion and culture.

These cases should further be read with the 2006 National Guidelines on School Uniforms (GN173 in *GG* 28538 of 2006-02-23) that determine that a school uniform policy or dress code should take into account religious and cultural diversity within the community served by the school. Measures should be included to accommodate learners whose religious beliefs are compromised by a uniform requirement (s 29(1)). If wearing particular attire, such as yarmulkes and headscarves, is part of the religious practice of learners or an obligation, schools should not, in terms of the Constitution, prohibit the wearing of such items. Male learners requesting to keep a beard as part of a religious practice may be required by the school to produce a letter from their religious teacher or organisation substantiating the validity of the request. The same substantiation is applicable to those who wish to wear particular attire. Schools may not, on constitutional grounds, refuse entry to learners wearing religious symbols, such as the Muslim headscarf or Jewish yarmulke (s 29(2)).

Thirdly, with regard to the *kirpan*, the issue of metal knives in schools in South Africa deserves some discussion, as the outcome in South Africa might be different from that in Canada. Unlike in Canada, violence in South

African schools is common and there have been incidences where it resulting in the death of other learners (see *inter alia* Zulu, Urbani, Van der Merwe and Van der Walt "Violence as an Impediment to a Culture of Teaching and Learning in Some South African Schools" 2004 24(2) *SAJE* 170; De Wet "Skoolveiligheid en Misdaadbekamping: Die Sieninge van 'n Groep Vrystaatse Leerders en Opvoeders" 2003 23(2) *SAJE* 85; Netshitahame and Van Vollenhoven "School Safety in Rural Schools: Are Schools as Safe as We Think They Are?" 2002 22(4) *SAJE* 313; and Prinsloo 5).

In the Regulations for Safety Measures at Public Schools (GN 1040 in *GG* 22754 of 2001-10-12), issued in terms of the South African Schools Act, all public schools are declared dangerous-object-free zones (reg 4(1)). A "dangerous object" is defined to include any article, object or instrument which may be employed to cause bodily harm to a person, or to render a person temporarily paralysed or unconscious, or to cause damage to property unless such objects are used for education purposes (reg 1(c)). No person may carry dangerous objects in public school premises (reg 4(2)(b)). Deciding whether an orthodox Sikh leaner would be allowed to wear a metal *kirpan* to school in South Africa would result in the weighing up of the religious rights of the learner against the safety rights of the other learners. The outcome of the constitutionality of these regulations remains to be seen, but it is submitted that the right to safety of learners might outweigh the religious rights of a Sikh student even though the student himself might not be violent, especially since a safer alternative is available in the form of a *kirpan* made from a harmless material as suggested by the Council of Commissioners in Canada.

All the above cases confirm that in balancing the various rights, the interests of the learners, their parents, the school and other learners all play a role in the assessment of decisions regarding discipline.

> "All the learners and other people at a school have certain fundamental human rights that must be respected by everyone else. All fundamental rights may be limited. A school's code of conduct is a lawful way of limiting fundamental rights. A learner's fundamental human rights and freedom can never justify any misconduct by such a learner" (Joubert and Prinsloo 120).

Returning to the words of Caplan at the beginning of the note, it is submitted that if the value attached to a specific right and freedom by South African society is judged by looking at its extension to public school students, it is clear that the current South African law gives ample protection to freedom of conscience and religion and freedom from invidious discrimination, especially when the exercise of those rights does not threaten the educational process.

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