

GREY COLLEGE JUDGMENT

Balance Between Control and Management

Adv Albert Lamey



The Grey College Case

- The Supreme Court of Appeal (“SCA”) considered what the professional management of a public school entails and role of the principal contrasted with the Governing body.
- The matter brought to the fore the delineation of functions and powers between professional management of a school and the governance function of a SGB.
- The SGB purported to withdraw some of the powers and functions of the principal leaving only teaching and learning activities of the school. The SGB contended that all the remaining powers were delegated to him by the SGB. The Court found this to be incorrect and upheld the judgment of the High Court which had set aside the decisions of the SGB.
- The SGB of the secondary school was also the SGB for the Grey College Primary School and after it purported to withdraw some of the functions of the principal of the secondary school, appointed the principal of the primary school as interim school manager and delegated all other functions to him previously performed by the principal of the secondary school except the teaching and learning functions (academic functions) of the secondary school.
- Several of the powers which the SGB purported to withdraw from the principal were in actual fact functions which the principal derives from the South African Schools Act (“SASA”) and were not functions of the SGB delegated to him.

Partnership Principle in Public Schools.

- It is important to start off with what the Constitutional Court had said in the Welkom High School Case:

“Given the nature of the partnership [the Act] has created, the relationship between public school governing bodies and the state should be informed by close co-operation, a co-operation which recognises the partners' distinct but interrelated functions. The relationship should therefore be characterised by consultation, co-operation in mutual trust, and good faith. The goals of providing high-quality education to all learners and developing their talents and capacities are connected to the organisation and governance of education. It is therefore essential for the effective functioning of a public school that the stakeholders respect the separation between governance and professional management, as enshrined in [the Act]”.

Important features of the decision of the Supreme Court of Appeal in the Grey College case.

- The SA Schools Act (“SASA”) does not define “governance” but places the governance in the hands of governing bodies. The court also said the following:
 - The essential governance functions are those listed in section 20(1) of SASA. [See also section 16(1)].
 - The primary function of governing body is to serve the interest of the school and its learners. [See section 20(1)(a)]
 - SASA places “ professional management” of a school in the hands of the principal but also does not define it.
 - The functions in section 16A(2)(a) read with section 16(3) of SASA are an essential part of a principal’s professional management duties.
- With reference to the Welkom High School case the court also said:

“...the professional management of a public school consists largely of the running of the daily affairs of a school by directing teachers, support staff, and the use of use of learning materials, as well as the implementation of relevant programmes, policies and laws.”

Grey College case continues:



DIE VERANDERING IN ONDERWYS
THE CHANGE IN EDUCATION

- The SGB is akin to a legislative authority responsible for the formulation of certain policies and regulations to guide the daily management of the school and to ensure an appropriate environment for the realisation of the right to education [par 66].
- A principal's authority is more executive and administrative in nature, responsible (under the authority of the HOD) for the implementation of policies (of the SGB of Minister) and the running of the school on a day to day basis.
- The Supreme Court of Appeal then held that the SGB did not distinguish between the different roles played by the governing body and the principal and the distinction between the governance/legislative function of the SGB and the managerial/executive function of the principal.

Grey College case continues:



- The Court found that the SGB wrongly held the view that the principal has no original authority and all his functions and duties derive from it.
- The professional management function of a principal is derived from SASA, the Employment of Educator's Act and the Personnel Administrative Measures (PAM). [par 68]
- The court held that the professional management function of a principal in terms of section 16(2)(a) of SASA is not exhaustive and not restricted.
- The principal is the day to day face of the school, the first port of call of parents, learners, educators other staff and community. [par 70].

Professional Management Functions of the Principal

- Section 16 (3) of SASA
- Not restricted to managing only the academic programme of the school.
- Section 16A (2) of SASA
- Section 16A (3) of SASA – Assist the SGB in the performance of its functions.
- Amplified by the core duties and responsibilities of a principal as set out in the Personnel Administrative Measures (PAM) [SCA par 57].
- Duty of principal to manage all school activities including extra – curricular or extra-mural activity [High Court – judgment para (77) and (78)].
- Policy on the Standard of Principalship



DIE VERANDERING IN ONDERWYS
THE CHANGE IN EDUCATION

Governing Body Functions



DIE VERANDERING IN ONDERWYS
THE CHANGE IN EDUCATION

- Section 16(1) – governance section
- Section 18 – constitution of SGB
- Section 20 – general functions
- Section 21 – additional allocated functions
- Section 30 – committees of SGB
- Section 36 - funding of school
- Section 37 - establishing a school fund
- Section 38 - preparation of budget
- Section 8 – Adoption of code of conduct for learners
- Section 6 – Language Policy
- Section 7 – Rules for religious observances
- Section 5(5) – Admission policy.
- Capacity determination in relation to admission.

Conclusion



- What is central message from the Grey College Case?
- SASA has designed public schools so that there is a distinction between functions of principals and governing bodies each to be respected, the one cannot usurp the function of another.
- An SGB can delegate certain of its functions to a principal but must do so clearly and expressly.
- The statutory design requires that the various roles and responsibilities be performed in symmetry and mutual cooperation and support. It is a partnership.
- Ultimately it is all about quality education and the interests of learners.
- The SCA said the following:

“We must, all of us, get down to the real and urgent business of realising the right to education, which is the pathway to the development of the full potential of our learners and communities. This will only occur if every role player understands its role and fulfils it. Put differently, the message to all the role players is simply this: Put the learners first”.

THANK YOU



DIE VERANDERING IN ONDERWYS
THE CHANGE IN EDUCATION