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THE PRIDWIN MATTER IN THE CONSTITUTIONAL COURT	DIE PRIDWIN SAAK IN DIE GRONDWETLIKE HOF
The matter relates to litigation surrounding cancellation of a "parent contract" by a private school, effectively ending the attendance at the school by their children.	Die saak hou verband met litigasie rakende die kansellering van 'n "ouerkontrak" deur 'n privaat skool, wat effektief die bywoning van die kinders by die skool gestop het.
The background facts, leading to the protracted litigation herein, paints a lamentable picture and it would certainly make the professional life of any Principal, Governors and educators much more complex. Suffice it to say that the behaviour of the parents of the learners involved led to a point where the Principal cancelled the "Parent Contract" used in many ISASA affiliated schools.	Die agtergrondfeite, wat gelei het tot die uitgerekte litigasie, skets 'n droewige prentjie en dit sal verseker die professionele lewe van enige hoof, beheerliggaam en opvoeder baie kompliseer. Dienooreenkomstig het die ouers van die tersaaklike kinders se gedrag daartoe gelei dat die hoof die "ouerkontrak" gekanselleer het, welke "ouer kontrak" deur menigte ISASA geaffilieerde skole gebruik word.
The relevant clause in the parent contract reads *"...The School also has the right to cancel this Contract at any time, for any reason, provided that it gives you a full term's notice, in writing, of its decision to terminate this Contract. At the end of the term in question you will be required to withdraw the Child from the School and..."*	Die relevante klousule in die ouerkontrak lees: *"...The School also has the right to cancel this Contract at any time, for any reason, provided that it gives you a full term's notice, in writing, of its decision to terminate this Contract. At the end of the term in question you will be required to withdraw the Child from the School and..."*
The Constitutional Court was fully seized with the matter and produced a majority (6) and minority (4) "main" decision and two further	Die Konstitusionele Hof het die saak volledig oorweeg en het 'n meerderheid (6) en 'n minderheid (4) "hoof" besluit, asook twee

and separate "decisions" (one by 2 justices and one by 6 justices), to clarify different legal aspects.	verdere en afsonderlike "besluite" (een deur 2 regters en nog een deur 6 regters) om verskillende regsaspekte op te helder, gelewer.
Our summary here is, respectfully, a humble attempt to explain a law report of 95 pages, in language easy enough for a School Principal to apply directly.	**Ons opsomming hieronder is, met respek, 'n nederige poging om die gerapporteerde saak van 95 bladsye, op so 'n manier te verduidelik dat dit direk deur 'n skoolhoof toegepas kan word.**
The matter deals with principles from the Constitution, the Children's Act and in passing the South African Schools Act.	Die saak handel met beginsels uit die Grondwet, die Kinderwet en ook die Suid-Afrikaanse Skole Wet.
The majority kept it simple and amongst other decided – *"it is declared that the decision by Pridwin Preparatory School to cancel the Parent Contract is invalid and set aside."*	Die meerderheid het dit eenvoudig gehou en het onder andere besluit – *"it is declared that the decision by Pridwin Preparatory School to cancel the Parent Contract is invalid and set aside."*
The minority was more specific- *"…It is declared that clause 9.3 of the Parent Contract between the applicants and the first respondent is unconstitutional, contrary to public policy and unenforceable to the extent that it purports to allow Pridwin to cancel the Parent Contracts without following a fair procedure;* *It is declared that a child's basic education should not be terminated without an appropriate and substantively fair procedure…"* Suffice it to say that the Constitutional Court one way or the other was of the opinion that a private school, once seized with the subject matter of (basic) education entered the Constitutional domain.	**Die minderheid** was meer spesifiek- *"…It is declared that clause 9.3 of the Parent Contract between the applicants and the first respondent is unconstitutional, contrary to public policy and unenforceable to the extent that it purports to allow Pridwin to cancel the Parent Contracts without following a fair procedure;* *It is declared that a child's basic education should not be terminated without an appropriate and substantively fair procedure…"* Dit is genoeg om te sê dat die Konstitusionele Hof van verskeie kante af van oordeel was dat sodra 'n privaatskool aktief die terrein van (basiese) onderwys betree, die skool ook die terrein van die Grondwet betree.
As it turned out the matter did not turn on the right to contract in a certain manner or what the contract says about termination, but was determined with reference to: i. That the decision, absent a fair process was not in the best interest of the learners with the school omitting to consider the (quite) separate rights of the two learners to be personally consulted about a decision that would/could influence their lives. (Based in the Constitution, International	Dit het geblyk dat die saak nie gehandel het met die reg op kontrakteervryheid, of wat die kontrak gesê het oor terminasie van die kontrak nie, maar was eerder beslis met verwysing na: i. Dat die besluit, sonder enige regverdige proses, nie in die beste belang van die leerders was nie. Dit omdat die skool nie hul (geheel en al) eie reg om persoonlik gekonsulteer te word, oor 'n besluit wat 'n moontlike effek op hul lewens sou hê, in ag te neem nie.

instruments, Children's Act and even SASA). ii. This constituted an interference with their right to a basic education in the absence of any appropriate justification.	ii. Hierdie het neergekom op 'n skending van hul reg tot basiese onderrig sonder gepaste regverdiging.
It seems as though the school, once the point was reached where the relationship with the parents could no longer be sustained, took their contract and applied clause 9.3 directly. They simply informed the parents of the result (i.e. termination), without any inter-leading process – such as (something approaching) a disciplinary or administrative hearing, and there was no interaction with the learners themselves.	Dit wil voorkom of die skool, sodra die verhouding met die ouers nie meer volhoubaar was nie, klousule 9.3 van die kontrak direk toegepas het. Die skool het eenvoudig die ouers in kennis gestel van die terminering sonder enige voorafgaande proses soos bv. iets (soortgelyk aan) 'n dissiplinêre- of administratiewe verhoor. Daar was ook geen interaksie met die leerders nie.
The Court was emphatic that there should have been some direct interaction with the learners (individually or through an intermediary), canvassing their representations. Observe the "best interests of the Child" standard, which dictates that *"…children are individual rights-bearers and not mere extensions of their parents, umbilically destined to sink or swim with them…"*	Die Hof was van mening dat daar 'n direkte interaksie met die leerders moes gewees het (individueel of deur 'n intermediêr) om hul opinie of insette aan te hoor. Sien die "beste belang van die kind" standaard, wat dikteer dat *"…children are individual rights-bearers and not mere extensions of their parents, umbilically destined to sink or swim with them…"*
The Court was not swayed by the argument that the School acted to protect the rights of all other learners and educators. The court felt that these rights could easily have been protected or noted by the submission of a representative during a fair process.	Die Hof was nie oortuig deur die argument dat die skool opgetree het om die regte van al die ander leerders en opvoeders te beskerm nie. Die Hof het gevoel dat hierdie regte maklik beskerm kon word deur die vertoë van 'n verteenwoordiger tydens 'n billike proses.
In summary: • Review your contracts! • If they contain terms as the above, purporting to allow unilateral actions,- reconsider; and • build in a method whereby the rights of the individual child is observed and respected; and • when confronted with a situation where you would want to terminate – take advice on the Constitutional issues first!	In opsomming: • Hersien u kontrakte! • Indien die kontrakte terme bevat, soos hierbo, waar dit oënskynlik toelaatbaar is om eensydige aksies te neem, moet dit heroorweeg word; en • bou 'n metode in om die individuele regte van 'n kind te identifiseer en te respekteer; en • waar u gekonfronteer word met 'n situasie waar u 'n kontrak sou wou termineer – neem eers advies ten opsigte van die konstitusionele aspekte!


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