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Pro Bono

INFORMATION ABOUT NAMIBIA'S LAW ON ...

Corporal punishment in private schools

ProBono is a monthly column by the Legal Assistance Centre designed to inform the public about Namibian law on various topics. You can request information on a specific legal topic by sending an SMS to 081-600-0098. Note that we will not be able to give advice on specific cases in this column, only general legal information.

Corporal punishment in all public schools was declared unconstitutional by the Namibian Supreme Court in 1991. The Court ruled that corporal punishment by organs of state is a violation of the right to dignity, and a form of cruel, inhuman or degrading treatment. The Court did not consider the constitutionality of corporal punishment in private schools.

The Education Act 16 of 2001 says that teachers or any other persons employed at a state school or hostel, or a private school or hostel, commit "misconduct" if they impose or administer corporal punishment to a learner in the course of their official duties. It also says that such misconduct will be grounds for disciplinary action in terms of the Labour Act.

The precise meaning of this provision arose in a court case decided last year. This case arose after teachers at a private school administered corporal punishment to a 14-year-old learner on five occasions.

The boy received six strokes on his hands with a wooden stick for getting 4 points out of 10 on a test (one stroke for each error). He was beaten again because he failed to get his mother to sign this test, receiving one stroke on the buttocks in front of the class (while wearing his trousers). Less than a month later, the learner received two strokes on his hands for getting 8 out of 10 marks on another test. The next day, he received one stroke on the buttocks for completing an assignment on a piece of paper instead of in a workbook. Ten days later, this learner was caught hiding in a toilet in an attempt to avoid punishment for forgetting to bring his physical education shirt to school with him. He and several other learners who had also forgot their shirts were given a choice as to whether they would like to be punished in the

headmaster's office or in the gym. They chose the gym, and the learner in question received two stokes. After this incident, the learner's mother took him to a doctor for a medical examination.

At this stage, the parents, who had already complained to the school about its use of corporal punishment, moved their son to another school and laid a charge of assault against the teachers who had administered the corporal punishment. All four teachers were convicted of assault in the magistrate's court and fined N\$2000 each.

The teachers appealed this conviction in the High Court. They argued, amongst other things, that parents could delegate their power to administer corporal punishment to a private school, since the constitutional ruling on corporal punishment applied only to organs of state. They also argued that this learner's parents had consented to the school policy of using corporal punishment, and that the learner himself had chosen corporal punishment over other forms of discipline which were offered as alternatives. They asserted that the relevant provision in the Education Act applied only to state-employed teachers seconded to private schools because it referred to teachers performing "official duties". They also asserted that, since their school applies Christian moral education, they have a right to use corporal punishment - which the school views as being supported by Biblical authority - as part of their constitutional freedom of religion.

The High Court found that the section of the Education Act on corporal punishment is applicable to all schools, public and private. The reference to "official duties" does not mean employment by Government, but simply refers to duties in the teacher's capacity as a teacher.

While it is true that the 1991 Supreme Court judgement did not address corporal punishment in private schools, the High Court found that the legislature had intentionally extended the prohibition on corporal punishment to private schools. The Court noted that it would be absurd for the law to be interpreted to protect learners at state schools against invasive punishment without giving similar protection to learners at private schools.

The Court also held that religious schools can reasonably be expected to observe certain secular norms, since they must prepare learners for life in a broader society. It is reasonable to expect such schools to adapt to non-discriminatory laws which impact their codes of discipline, just as they must obey laws on issues such as taxes, fair labour practices and health and safety. Neither religious rights nor parental rights are absolute, especially in light of the State's duty to protect the welfare of children. The goal of a ban on corporal punishment is to teach children to solve problems with reason rather than force, to protect children from physical and emotional abuse, and to promote respect for children's dignity and their physical and emotional integrity.

It is not possible for a learner to consent to corporal punishment because it is against public policy to allow anyone to be allowed to consent to physical injury or to something which carries a risk of physical injury (except in certain well-established circumstances such as sports or medical interventions). Furthermore, parents cannot give consent to something which is prohibited by law.

Even though the Court found that the prohibition on corporal punishment applies to teachers at private schools, it overturned the convictions of the four teachers in this case on the basis that they lacked the

necessary state of mind for a criminal conviction. They had been informed by the chairperson of the school board (who was acting on erroneous legal advice) that they had a legal right to impose corporal punishment, so they were unaware that they were behaving unlawfully.

The South African Schools Act 84 of 1996 straightforwardly prohibits corporal punishment in all schools and provides a criminal sanction for violating this rule. Namibia is now in the process of replacing the Education Act 16 of 2001 with a new Education Act. The court case discussed here shows that it will be important for the new Namibian law to include a clearly-worded provision on corporal punishment to prevent any confusion.