

Review and Update on Legislation and Cases impacting on Religious Freedom and the Autonomy of the Church:

*The legislation and cases in which FOR SA has been involved since the start of the organisation in January 2014, or may become involved as *Amicus Curiae*, are marked with a star.

Government Policies and Legislation since 2014:

Pending:

- **Proposed amendments to the Children’s Act, making it illegal for parents to spank their children***
 - The Department of Social Development (DSD) is currently in the process of preparing amendments to the Children’s Act, that will make corporal punishment in the home context illegal.
 - As a result, parents who believe that it is their God-given responsibility in terms of the Bible (Prov 13:24; Heb 12:6-7 and others) to, at times and where needed but always in love, discipline their children by spanking them, will potentially face criminal prosecution. If found guilty of the crime of spanking, they will be fined or imprisoned even where no child abuse has occurred.
 - A further option in terms of the proposed amendments, is the referral of the child to a social worker for investigation, and the referral of the parent(s) who administered the corporal punishment for evaluation and treatment in the form of parenting programmes. Parents who refuse to submit to the liberal ideology of the parenting programmes, may well find their children being removed from them and placed in foster care (as is already happening in Europe).
 - Submissions in this regard have been prepared by FOR SA but not yet handed in, as the Department of Social Development (DSD) has since advised that efforts to change the law (which would have commenced in June 2014) have been postponed to 2015/16.

- **Proposed new hate crimes legislation, including a broadening of the definition of hate speech***
 - The Department of Justice & Constitutional Development is currently in the process of finalising the policy framework for new legislation on hate crimes, hate speech

and unfair discrimination, which they hope to open up for public debate towards the end of 2015.

- According to the Deputy Minister, the proposed legislation will be highly contentious because of the hate speech provisions therein, and a fundamental issue will be the balancing of the prohibition on hate speech with the right of free speech.
 - Once the proposed legislation becomes available, FOR SA will make submissions with a view to protecting religious freedom and the autonomy of the Church.
- **Proposed changes to the Public Holidays Act (SALRC)***
 - Earlier in 2015, the SA Law Reform Commission (SALRC) proposed that the Public Holidays Act be amended to remove Christmas and Good Friday from the public holiday calendar, on the basis that *“there is an element of prejudicial treatment in that the two main Christian holidays are declared as paid public holidays and adherents of other religions who celebrate other faith-based holidays are disadvantaged in that their holidays are not declared public holidays and they do not have an automatic benefit of pay on those days.”* The SALRC accordingly suggests that either these holidays be reviewed, or that equal weight be given to holidays of other faiths.
 - FOR SA communicated this proposal with its members as a result of which several churches, including Joshua Generation Church, made submissions to the SALRC to retain these Christian holidays on the public holiday calendar.

Successfully finalized:

- **Draft Women Empowerment and Gender Equality Bill (WEGE)***
 - In its original form, this Bill obliged companies and organisations (including non-profit organisations such as churches and Christian ministries) to ensure that women make up at least 50% of their decision-making structures.
 - Had churches not been excluded from the Bill, the Bill would have effectively outlawed Scriptures such as that the husband is the head of the home (Ephesians 5:23). Churches and pastors who teach this scripture would potentially have been liable for criminal conviction, punishable by a fine of up to 10% of the church's annual income or five years' imprisonment.

- For other churches (including the Roman Catholic Church and many Protestant churches) who believe that governance of the Church is reserved for men (according to their interpretation of 1 Timothy 2:12), the Bill would have forced those churches to abandon their doctrine and to ensure that women make up at least 50% of their eldership (or governmental body) in the church. Again, failure to comply could have led to criminal charges and upon conviction, a fine or imprisonment.
 - In or about January 2014, FOR SA & others successfully made submissions for the amendment of the Bill, so as to protect religious freedom and the autonomy of the Church. As a result of these submissions, non-profit organisations were excluded from the application of the Bill.
 - The Bill was subsequently withdrawn by the Minister.
- **Draft Policy on Homeschooling (WCED)***
 - In 2014, the Western Cape Education Department (WCED) issued a proposed policy that will force homeschooling parents to include the State curriculum as a minimum requirement in their homeschooling curriculum. This effectively removes the freedom of parents to choose a curriculum that is in the best interest of their child (as contemplated by article 26 of the Universal Declaration of Human Rights).
 - What this means, is that homeschooling parents will be forced to teach and promote the secular, liberal values that permeate the entire State curriculum, for e.g. by exposing their child, through teaching and participation, to the spiritual practices of other religions. Parents will further be forced to promote early autonomy of the child over his/her sexual choices. In terms of the policy, homeschooling may not unfairly discriminate or be intolerant towards other religions, and parents will be monitored by the State to ensure compliance. Those who fail to comply, will no longer be able to homeschool.
 - The policy has since been withdrawn by the WCED, following a public outcry by homeschoolers and organisations promoting Christian-Judeo and family values. All indications are however that similar proposals will surface again – if not from provincial, then from national government.

Legal Cases:

Pending:

- **Investigation into the “commercialization” of religion and proposed regulation of religion** (CRL Rights Commission)*
 - Following reports (to the CRL Rights Commission, but also in the media) of two pastors in Pretoria who make their congregants eat grass, snakes and rats, and drink petrol, the CRL Rights Commission launched a full-scale investigation into the “commercialization” of religion and abuse of people’s beliefs, and to this end subpoenaed a number of churches across the country to appear before the Commission and bring a host of documents along. Following the investigation, the Commission intends to make recommendations to Parliament, including self-regulation by various religions in the country.
 - FOR SA, who shares the Commission’s concerns but does not believe self-regulation is the answer, has met with the Commission and will be working with them to find alternative legal solutions. FOR SA believes that unscrupulous pastors who exploit the poor and put people’s health / lives in danger under the banner of “religion”, should be caught using the existing legal machinery e.g. tax, immigration and criminal law instead.

- **H Wolmarans & M Young v Presbyterian Church** (eGoli Presbytery, Parktown)
 - In this case, a minister in Cape Town laid a complaint against two Presbyterian clergyman after they presided over four same-sex unions, contrary to Presbyterian policy which forbids church ministers to register for a civil union licence. (In this case, Wolmarans holds such a licence and has no problem performing the legal requirements of such marriages, while Young would “bless” the union).
 - The two ministers appeared before the Church’s provincial ruling body, the eGoli Presbytery in Parktown in November 2015, on charges of misconduct
 - The two ministers argue that the Church’s current rules contravene SA law that allows for same-sex marriages. (According to media reports, they have already secured the services of top constitutional lawyers to assist them in taking this matter all the way to the Constitutional Court.)

- **OGOD v Laerskool Randhart & 5 Others** (Johannesburg High Court)*
 - A secular group by the name of OGOD, has instituted legal proceedings against six public schools who hold themselves out to be “Christian schools”.
 - The schools delivered their Answering Affidavits in May 2015, and OGOD now has an opportunity to reply thereto. Once both parties have delivered their Heads of Argument (legal arguments that they will make to the Court), the matter will be enrolled for hearing.
 - In the circumstances, the matter will only be ready for hearing in a few months’ time (probably only the 2nd half of 2016). No Court date has been set for the hearing yet.
 - FOR SA will probably be joining the legal proceedings as *Amicus Curiae*.

- **HRC v Jon Qwelane** (Johannesburg Magistrate’s Court, Equality Court)*
 - In 2008, journalist Jon Qwelane wrote an article in the *Sunday Sun* under the headline “Call me names, but gay is not okay”.
 - Following numerous complaints, the Press Ombudsman ruled that “*Qwelane does not advocate hatred but merely states his views on homosexuality and is not calling for harm of gays and lesbians*”. The Ombudsman accordingly found that the article “*amounted to robust language but not hate speech*”.
 - In 2009, the HRC instituted proceedings against Media 24 (of which the *Sunday Sun* is a part) in the Johannesburg Magistrates Court (Equality Court). In March 2011, the HRC and Media 24 reached an agreement that ended the proceedings in the Equality Court.
 - Thereafter, Qwelane himself was summonsed to appear in the Equality Court. As he failed to appear in Court on the particular day, default judgment was granted against him. In terms of the Order, Qwelane had to give a conditional apology to the gay and lesbian community, and pay R100,000 damages to the HRC to promote gay and lesbian awareness.
 - Qwelane only became aware of the judgment in June 2011, and successfully applied for the rescission and setting aside of the judgment in September 2011.
 - The matter is expected to come before the Court in the 1st half of next year (2016).
 - FOR SA may well still intervene in the matter as *Amicus Curiae*.

- **Hennie Pienaar v Cinnabar Creative Studio** (George Equality Court)*
 - In October 2015, Mr Hennie Pienaar instituted proceedings against Cinnabar Creative Studio, complaining that it unfairly discriminated against him on the grounds of sexual orientation when it refused (on grounds of Christian conscience, religion and belief) to design a gay website for his business. (The court case follows an unresolved complaint before the CGE earlier this year).
 - The Court has since referred the matter for mediation.

- **Adriaan Mostert v Joshua Generation Church** (HRC)*
 - In 2013, an atheist couple laid a complaint with the HRC against the teaching that the Bible mentions spanking as one of the ways in which to shape a child's heart (for e.g. Proverbs 13:24), complaining that such teaching violates the rights of children.
 - In spite thereof that "reasonable chastisement" (in the context of the home) is lawful in SA, the HRC investigated the matter.
 - The HRC's Final Report is expected end 2015 / beginning 2016.

- **Pierre Le Roux-Dupisani v Pastor Peter Oscar Bougardt** (HRC)*
 - In 2014, the Human Rights Commission (HRC) sued Pastor Bougardt in the High Court of Cape Town (Equality Court) for R1 million damages, on the basis that he has made himself guilty of "hate speech" against homosexual people.
 - The Court referred the matter for mediation, where Pastor Bougardt apologised for any unwise statements that he had made and the matter was concluded therewith.
 - In October 2015, the Cape Times reported that a second complaint has now been lodged against Pastor Bougardt with the HRC after comments he posted on social media in support of traditional marriage and against homosexual marriage.
 - The HRC will investigate whether Pastor Bougardt has indeed breached his plea agreement, thus acting in contempt of court.

- **Mr S Neufeld v Plettenberg Bay Primary School** (HRC)
 - In June 2014, Mr Neufeld (a parent) lodged a complaint with the Plettenberg Bay Primary School, complaining that as a public school it is not allowed to classify itself as a "Christian Ethos School" and asking the Western Cape Education Department (WCED) for its assistance

- While the matter was still being dealt with by the school, Mr Neufeld laid a complaint with the HRC, who requested the school to respond to the accusations.
 - The WCED's made some recommendations and concluded the matter therewith on its part.
- **Thorne Godinho v Suné Botha (HRC)**
 - In May 2015, a complaint of hate speech was laid against this Afrikaans Gospel singer, following a comment made by her on her Facebook page that the practice of homosexuality is against God's will.
 - The matter is currently being investigated by the HRC.
(For more information, see <http://www.netwerk24.com/nuus/2015-06-01-haatspraak-klag-teen-gospelsanger-wat-s-gay-huwelike-kom-van-satan>)
- **Complainants v Church (Chapter 9 institution)***
 - Towards the end of 2014, an atheist couple laid a complaint against a large Church in Cape Town with one of the Chapter 9 institutions, complaining that certain of the Church's biblical doctrines relating to the different roles of men and women, and the issue of homosexuality, violate the Constitution. (On request of the Church, the names of the Complainants and of the Church itself, are not disclosed).
 - Following the Church's request to the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission) to intervene, the CRL Rights Commission issued a report saying that, as a voluntary association, the Church is acting completely within its rights.
 - Following the Church's written submissions to the other Chapter 9 institution attaching the CRL Rights Commission's Report, nothing more was heard.
- **J Izaaks v J Downs (HRC)***
 - The Complainant alleges that the Chairperson of the ACDP breached his right of equality, when she expressed the ACDP's (and her personal) views with regard to the practice of homosexuality during an e-TV interview on Mr Gay World in 2012.
 - Ms Downs has delivered a written response to the complaint, and is awaiting a response / the outcome from the SAHRC.

- **PJ van den Heever v New Living Way Ministry (HRC)**
 - In this case, the Office of the Family Advocate in Bloemfontein in 2013 gave instructions for a complaint to be lodged with the HRC against André Bekker, a pastor who ministers to people with unwanted same-sex attraction.
 - In this instance, the pastor (who himself struggled with homosexuality for 32 years before coming to freedom, and who is also now married) wrote to a Dutch Reformed Church and offered to help bring people caught in a lifestyle of homosexuality to freedom in Christ. The Church reported the pastor to the Office of the Family Advocate, who referred the matter to the SAHRC.
 - The SAHRC found that the pastor did not make himself guilty of hate speech, but referred the matter to the CGE & CRL Rights Commission nonetheless to investigate whether any unfair discrimination has taken place (2014).

Successfully finalised:

- **Ecclesia de Lange v Methodist Church of South Africa (Constitutional Court)***
 - De Lange was discontinued as ordained minister of the Methodist Church after she announced her intention to marry her same-sex partner.
 - Having lost her case against the Methodist Church in the High Court, she appealed to the Supreme Court of Appeal (SCA) who found that courts should not get entangled in doctrinal disputes and thus dismissed her appeal.
 - De Lange then applied to the Constitutional Court for leave to appeal, which application was heard on 28 August 2015.
 - FOR SA, on behalf of Christian leaders representing approx. 6 million people, applied for leave to join the proceedings as *Amicus Curiae*.
 - Judgment was delivered on 24 November 2015, dismissing De Lange's application for leave to appeal (largely on technical issues), and referring the matter back to internal arbitration.

- **New Living Way Ministry v dr André Bartlett, Jean Oosthuizen & Nelda Els (CGE)**
 - In July 2015, Mr André Bekker of New Living Way Ministry (a former homosexual) laid a complaint with the Commission for Gender Equality (CGE) against dr André Bartlett & two others, complaining that they made themselves guilty of hate speech against former homosexuals by accusing them on Facebook of lying about their

experience that their sexual orientation and identity had changed, and suggesting despicable methods by which they should prove that their orientation had in fact changed)

- The CGE found that Mr Bekker’s human rights were violated by the comments which “contained elements of hate speech that had a negative impact on his dignity”. The CGE thus referred the matter to the Human Rights Commission (HRC) for further action.
 - The HRC has since (in November 2015) written to Mr Bekker to say that they would assess whether the matter falls within their jurisdiction or should be referred to another body, and revert in due course.
- **Universal Church of Kingdom of God v Myeni (Labour Appeal Court)**
 - Myeni’s services as pastor was terminated by the Church after he was found guilty of misappropriation of funds.
 - Myeni referred an unfair dismissal dispute to the CCMA, who first of all had to decide whether he was indeed an “employee” of the Church
 - The CCMA and Labour Court (on review) both found that Myeni was an “employee”.
 - The Labour Appeal Court (LAC) did not however agree, and in August 2015 found that, on the facts of the particular case, Myeni was not an “employee”
 - Importantly however, the Court in para 53 commented as follows: “I think it is time that the resolution of disputes of this nature, with religious spiritual connotations or arising from internal church doctrinal governance, be left to the leadership of the church concerned, unless there is a real compelling reason for a court to get involved. In my view, the constitutional rights to the freedom of religion and of association would be better served and enhanced if that were to happen. Incidentally, recently, in *De Lange v Presiding Bishop, Methodist Church of SA*, the SCA dealt with a similar situation. The following remarks by Ponnann JA (with which I fully agree) are both persuasive and educative: ‘...[the paragraph saying that courts should refrain from getting entangled in doctrinal issues – para 39]...’
 - **New Living Way Ministry v SABC (CGE)***
 - In October 2013, Mr André Bekker of New Living Way Ministry (a former homosexual) laid a complaint with the Human Rights Commission (HRC) on the basis that over the last three years, the South African Broadcasting Corporation (SABC)

has broadcasted several programs about the LGBTI community, but has not allocated an equitable amount of time to raising awareness about and respect for former homosexuals.

- The HRC decided that the complaint should be referred to the Broadcasting Complaints Commission of South Africa (BCCSA) instead.
 - Mr Bekker subsequently referred the matter to the BCCSA but also the Commission for Gender Equality (CGE), who in January 2014 *“call[ed] for the SABC to adhere Complainant’s request to have their programmes aired through SABC channels to raise awareness to them, calling for their respect and existence ...”*
 - In October 2015, the SABC advised that Mr Bekker would be allocated a slot later that month to air his program.
- **UCT Queer Revolution v Zizipho Pae (University of Cape Town)***
 - In June 2015 and following the decision by the US Supreme Court to legalise same-sex marriage in all US States, Zizipho Pae (then Vice-President of the Student Representative Council (SRC) at the University of Cape Town (UCT)), posted on her personal Facebook page that *“we are institutionalizing and normalising sin. May God have mercy on us”*.
 - As a result of her post (which the SRC considered as “homophobic” and “hate speech” towards the LGBTIQ community), the SRC suspended and ultimately expelled Zizi from the SRC. Zizi’s post also evoked a barrage of abusive and hateful comments from fellow students, the public and even from DA MP Marius Redelinghuys. In one incident, some LGBTIQ students trashed her office, tore down the Bible scriptures posted on her wall and replaced them with threatening messages.
 - With the help of FOR SA, Zizi successfully appealed to the UCT Vice-Chancellor to set the decision aside and reinstate Zizi on the SRC. (Pursuant to her reinstatement however, Zizi was ‘reshuffled’ to a different portfolio).
 - The Vice-Chancellor further advised that the University had dismissed the UCT Queer Revolution’s complaint against Zizi, since there is *“no basis for bringing a charge against [her] for [her] Facebook posting”*.
 - As a result of FOR SA’s intervention also, DA MP Marius Redelinghuys publicly apologised to Zizi for the comments he had made towards her.

- The media reported that the UCT Queer Revolution had also laid a complaint against Zizi with the HRC. To date however, Zizi has not received such complaint.

- **NJ Coulson v S & M Neethling** (Bellville Equality Court)*
 - In 2014, a homosexual couple sued the Christian owners of a guesthouse in Wolseley, for unfair discrimination on the basis of sexual orientation.
 - FOR SA, acting as *Amicus Curiae*, successfully asked the Court to refer the matter for mediation.
 - At mediation in April 2015, the parties concluded a settlement agreement in terms whereof the parties agreed to respect each other's beliefs. This agreement was made an Order of Court.
(For more information, see <http://forsa.org.za/press-release-same-sex-couple-and-christian-guesthouse-owners-to-respect-each-others-beliefs/>)

- **J Vijoen v Sha-Mani** (Alberton Equality Court)*
 - In 2014, a homosexual couple sued this wedding venue for unfair discrimination on the basis of sexual orientation. (This is the 2nd time that this wedding venue has been sued by a homosexual couple).
 - In May 2015, the owners of Sha-Mani advised FOR SA that the couple is no longer proceeding with the case against them.

- **HRC v Rev OP Bougardt** (Cape High Court sitting as Equality Court)*
 - In 2014, the HRC instituted a R1 million claim for damages against pastor Bougardt, alleging discriminatory / hate speech against persons practicing homosexuality.
 - The Court referred the matter for mediation, where pastor Bougardt apologised for any unwise statements that he had made and the matter concluded therewith.

- **L Brown-Watson v Kilcairn, Riebeek Valley** (HCR)*
 - In 2014, a complaint of unfair discrimination on the basis of sexual orientation, was laid against this wedding venue who refused (on grounds of religion) to host a same-sex wedding ceremony at the venue.
 - The complaint was subsequently withdrawn, and the case dropped by the HRC.

- **S Raymond v Oakfield Farm, Roodepoort (CGE)***
 - In 2014, a complaint of unfair discrimination on the basis of sexual orientation, was laid against this wedding venue who refused (on grounds of religion) to host a same-sex wedding ceremony.
 - After the owner of Oakfield Farm wrote to the CGE to explain that the chapel belongs to the Reformed Evangelical Church of SA, he never heard from the CGE again.
 - In a recent news article (on a different matter), the CGE is reported to have said that a formal investigation in this matter never went ahead.

Lost:

- **MyCiti v Jerome Rose (City of Cape Town)**
 - In November 2015, a passenger on the MyCiti bus in Cape Town laid a complaint against Jerome Rose, a bus driver, for praying for a safe journey on the bus.
 - Mr Rose was suspended and then dismissed by the City of Cape Town.
 - The media has since reported that COSATU has come to Mr Rose's assistance / that he has a lawyer who is prepared to take on his case.

Threats of legal cases:

- **Complainants v Pastor, Mpumalanga***
 - In September 2015, a Mpumalanga pastor received a request from a homosexual couple to marry them.
 - The pastor feared that there was more to this than meets the eye as his church had just recently touched on the subject in a sermon. Further, the internet server used to send the email, was from a local University whose Centre for Human Rights is known for bringing "test cases".
 - FOR SA advised that the law, as it currently stands, allows pastors to refuse to conduct same-sex marriages on grounds of Christian conscience, religion and belief (and in fact, do not permit them to conduct such marriages or civil unions without permission from the Department of Home Affairs).

- **S Hydes v Oakfield Farm, Roodepoort***
 - At the beginning of 2015, a homosexual couple threatened to lay a complaint of unfair discrimination on the basis of sexual orientation, against this wedding venue who refused (on grounds of their Christian conscience, religion and belief) to host a same-sex marriage at the venue.
 - The matter was widely publicized in the media, but no formal complaint was laid.
 - (A formal complaint of unfair discrimination on the basis of sexual orientation, was however laid against this venue by a different homosexual couple in 2014. In that case, the Commission for Gender Equality (CGE) ceased its investigation after Oakfield delivered a written response in relation to the complaint).

- **J de Villiers v Rosebank Union Church**
 - In March 2015, a homosexual person complained of unfair discrimination on the basis of sexual orientation, after Rosebank Union Church refused to make their chapel available for a same-sex marriage. (See <http://www.mambaonline.com/2015/03/12/will-end-wedding-venues-continue-snob-gay-couples/>)
 - The matter was resolved between the parties, and no formal complaint was lodged against the Church.

- **Zambezi Point, Pretoria***
 - In 2014, this wedding venue was threatened because of its refusal, on the grounds of Christian conscience, religion and belief, to host a same-sex marriage ceremony.

- **R Medina v Beloftebos, Stanford***
 - In 2014, this wedding venue was threatened because of its refusal, on the grounds of Christian conscience, religion and belief, to host a same-sex marriage ceremony.

Pre-2014 (starting with most recent):

- **R v R (Pretoria High Court) (2014)**
 - In this divorce case, the husband was a Seventh Day Adventist and traditionalist (African culture) who regarded it as wife's duty to obey him
 - The Court confirmed that in terms of the Matrimonial Property Act, the husband is no longer the "head of the home" but that husband and wife are equal partners.

- **E Butler v Diemerskraal, Paarl (HRC)(2013)**
 - A complaint of unfair discrimination on the basis of sexual orientation, was laid against this wedding venue who refused (on grounds of religion) to host a same-sex wedding ceremony at the venue
 - The complaint was subsequently withdrawn, and the case dropped by the SAHRC.

- **Deputy Minister of Justice & Constitutional Development v Creare Training Centre, Bloemfontein (HRC)(2013)**
 - As a school that trains and equips students for Christian ministry, Creare subscribes to a biblical view of homosexuality.
 - In this case, the HRC found that while Creare's view of homosexuality was a biblical one, it did not accept the viewpoint itself and regarded it as a violation of human rights.
 - The SAHRC directed that Creare undergoes Sensitisation Training. (To date, it has not undergone such training).

- **F& L Buitendag v Sha-Mani (Albertyn Magistrate's Court, sitting as Equality Court)(2012)**
 - A complaint of unfair discrimination on the basis of sexual orientation, was laid against this wedding venue (who refused, on grounds of religion, to host a same-sex ceremony at the venue).
 - The matter was settled when Sha-Mani agreed to pay R20,000 to OUT, a NGO working towards gay and lesbian rights.

- **Strydom v NG Gemeente, Moreletapark (Pretoria Equality Court) (2009)**
 - In this case, the Church terminated the contract of a teacher who, it later emerged, was practicing homosexuality.
 - The Court found that the church was in the wrong and ordered the church to pay compensation in a total amount of almost R100,000!
 - It did not matter to the Court that the practising of homosexuality was contrary to the church's doctrine. Nor did it matter that the teacher failed initially to disclose his homosexual lifestyle to the church.

- **MEC for Education, KwaZulu Natal v Pillay** (Constitutional Court)(2008)
 - This case concerned a Hindu learner's wearing of a nose stud to school as an expression of her faith.
 - The Constitutional Court found that it was irrelevant whether the practice was a central or mandatory tenet of her faith, or whether it was worn voluntarily – both are protected.
 - The issue of whether something is a “central tenet” of the faith, is one of the factors to consider, but the question even then is a subjective one rather than an objective one.
 - In this case, the school could reasonably accommodate the practice without undue hardship, and thus was ordered to do so.

- **Minister of Home Affairs v Fourie** (Constitutional Court)(2006)
 - In this case, the Constitutional Court found that the common-law definition of marriage was unconstitutional because it excluded same-sex couples from enjoying the status and benefits accrued to heterosexual couples.
 - Following this ruling, the Civil Union Act 17 of 2006 was passed by Parliament, providing both for “marriage” and “civil unions” by same-sex couples, having exactly the same consequences as marriage in terms of the Marriage Act.

- **Taylor v Kurtstag** (Witwatersrand High Court)(2005)
 - This case concerned a divorced couple's dispute before a Beth Din (Jewish Ecclesiastical Court).
 - The Court found that freedom of religion included freedom of autonomy in the setting of guidelines for the admission of members to organisations and the appointment of employees. That implies the further right to discipline members in order to enforce conformity and encourage conduct in harmony with religious precepts and teaching.

- **Salvation Army (SA Territory) v Minister of Labour** (Labour Court) (2004)
 - On the facts, the Labour Court found that it was not the intention of either the Salvation Army or its ordained ministers (called “officers”) that they stand in an employment relationship to one another
 - The officers are therefore not “employees”

- **Hay v B** (Witwatersrand High Court)(2003)
 - In this case, the Court granted an application to administer a life-saving blood transfusion to an infant, against the wishes and contrary to the religious beliefs of the child's parents.

- **Kotze v Kotze** (Pretoria High Court) (2003)
 - In this case, the Court refused to uphold a settlement agreement in a divorce action that provided that a child would be educated "in the Apostolic Church and ... fully participate in all the religious activities of the Apostolic Church".

- **Prince v President, Cape Law Society** (Constitutional Court)(2002)
 - The Law Society refused to register a Rastafarian's contract of articles, on the basis that he was not a "fit and proper person" – he had two previous convictions for possession of dagga and made it clear that he intended using the drug in future.
 - The applicant challenged the legislation criminalizing the smoking of cannabis, on the basis that it was a central tenet of his religion as a Rastafarian.
 - The Constitutional Court held that the general statutory prohibition of possession of dagga was a violation of (the practical aspect of) religious freedom – the right to manifest one's belief.
 - The Court found, under s 36, that an exception (for religious use) was not feasible since it would be difficult to police and would undermine the general prohibition.

- **Nkosi v Buhrmann** (SCA)(2002)
 - The applicant's beliefs were that existing graves constitute a spiritual home for her ancestors and therefore the site where subsequent family dead should be buried.
 - The Court found that the right to religious freedom has internal limits, and does not confer the right to choose or take a grave site without the consent of the land owner.
 - The Court found that the applicant could consecrate a new burial site, as her family had done before on occasions where it proved difficult to use the existing site.

- **Church of the Province of SA, Diocese of Cape Town v CCMA (Labour Court)(2002?)**
 - The Labour Court held that there was no intention either on the part of the Anglican Church or an ordained priest of the Anglican Church, that they stand in an employment relationship with each other.
 - In this case, the Court also referred to and relied on GG Paxton v The Church of the Province of Southern Africa , Diocese of Port Elizabeth (unreported case no.NH 11/2/1985 (PE) where the Industrial Court faced with an identical point *in limine* and dealing with another Diocese of the Applicant church , examined the relevant provisions of the constitution of the church and the canons and concluded as follows : *“The picture which emerges both from a study of the relevant provisions of the constitution and canons , the acts, and ,the actual features of the relationship between the parties , is not one of employment. Rather , it is a picture of a spiritual relationship , commencing in formal terms with the applicant taking an oath of canonical obedience to the Bishop , being invested with the spiritual office of a priest , being licenced to officiate as a priest and authorized to administer the sacraments and perform various other ministrations and duties in accordance with the canons of the church. Certainly the applicant was subject to the authority and discipline of the respondent , but such authority and discipline are derived not from any employment relationship between the parties , but from the ecclesiastical authority of the Respondent , as exercised by its institutions and office-bearers in positions of ecclesiastical superiority in relation to the Applicant”.*

- **Christian Education SA v Minister of Education (Constitutional Court)(2000)**
 - In this case regarding the constitutionality of corporal punishment in school, the Constitutional Court showed deference to Christian parents’ beliefs by holding that, in the view of the affected parents, the impact of the prohibition on their religious and parental practices was far from trivial.
 - The Court found that corporal punishment in school violated right to human dignity, and protection against cruel, inhuman and degrading treatment or punishment.

- **National Coalition for Gay and Lesbian Equality v Minister of Justice (Constitutional Court)(1998)**
 - In this case, the Constitutional Court declared the common-law defence of sodomy to be unconstitutional.

- In a concurring judgment, Sachs J held that “those persons who for reasons of religious belief disagree with or condemn homosexual conduct are free to hold and articulate such beliefs” (para 137).
- **Wittman v Deutscher Schulverein, Pretoria** (Pretoria High Court) (1998)
 - In this case, which was decided under the INTERIM CONSTITUTION (where religious freedom didn’t have direct horizontal application), a German-medium private school required its pupils to attend religious instruction classes which were academic in nature, motivated by the school’s conviction that “knowledge of the cultural background inclusive of religion was vital for the comprehension of the German language, literature and history.” The mother of a pupil objected that this was a violation of freedom of religion.
 - The Court held that there was no violation, because the school was not an organ of state and therefore not bound by the Bill of Rights. In any event, the right to religious freedom had been waived because she submitted to the school’s constitution and rules (which included the religious instruction requirement) when she enrolled. Waiver of the exercise of the right to religious freedom was constitutionally acceptable in respect of a private educational institution.
 - The Court held that a religious observance is an act of religious character, a rite. Religious observance is to be distinguished from religious education (which can be of a confessional nature, or informative general nature), and section S 15(2) only applies to a narrow category of religious practices.
- **S v Lawrence** (Constitutional Court)(1997)
 - This case concerned provisions of the Liquor Act which prohibited the sale of liquor on “closed days” (Sundays, Christmas Day and Good Friday), and is an important case for the definition / scope of the right to religious freedom.
 - The INTERIM CONSTITUTION did not include an “establishment clause”, thus strict separation between religious institutions and the State was not required.
- **Mohamed v Jassiem** (Appeal Court)(1996)
 - Members of the Ahmadiya movement were treated as apostates by orthodox Muslims, may not enter mosques, may not marry a Muslim, may not be buried in Muslim cemeteries or have any association with Muslims.

- The Court found that, in terms of s 31, members of the faith have the right to protect the integrity of their common bond by disciplining those who do not conform.

Pre-Constitution:

- **Theron v Ring van Wellington van die NG Sendingkerk in SA** (Appeal Court) (1976)
- **Simonlanga v Masinga** (Witwatersrand High Court) (1976):
 - Common law relating to freedom of religion: Overturning of expulsion of Jehovah's witnesses from school for refusing to close their eyes during prayer