

THE CONSTITUTIONAL RIGHT TO FREEDOM OF RELIGION IN SOUTH AFRICAN PRIMARY SCHOOLS

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Although over 60% of its people claim allegiance to Christianity, South Africa embraces a variety of religions such as Hinduism, Islam, Judaism, and indigenous African traditions. Section 15 of the Bill of Rights as enshrined in the Constitution (SA, 1996a) provides everyone the right to freedom of conscience, religion, thought, belief and opinion. Furthermore, religious observances may be conducted at state or state-aided institutions provided that it follows rules made by the appropriate public authorities; that they are conducted on an equitable basis and attendance is free and voluntary. In 2003 the National Ministry developed a policy on Religion and Education which required primary schools to develop an understanding of religion among pupils, rather than teaching a belief or religion. The policy seeks to impose certain restrictions on the constitutional right to conduct religious observances in public schools. There are many educational institutions and religious organisations that do not favour this policy. Some school governing bodies accuse the Minister of Education of encroaching on their terrain because they have been delegated the power to regulate the conduct of religious observance. The policy is interpreted as being hostile towards single-faith religious observances and is opposed to a single religion or a particular religious ethos, irrespective of whether the school may be religiously homogeneous. This article determines the constitutionality of schools implementing the policy on 'Religion and Education'.

I INTRODUCTION

During the apartheid regime considerable disparity existed between the segregated departments of education on issues of religion.¹ The *Christian Education Policy Act* of 1967 required all schools to have a Christian character, founded on the Bible and enhanced by religious instruction as a compulsory, non-examinable subject. Christian National Education² favoured a single-tradition approach to religious education and discriminated against non-Christian religions.³ However, in schools under the jurisdiction of certain education departments, religion was either not taught at all or Biblical Studies was offered as an optional subject. The advancement of the Christian Education Policy prevented non-Christian learners from becoming properly informed about their own religions.

The traditionally central place of the Christian religion is being challenged in the post-apartheid democratic and pluralistic culture where the human rights of all are protected. Bray⁴ states that with the adoption of the *Constitution*,⁵ South Africa has made a fundamental and irreversible change from apartheid to democracy. Since 1994 South Africa has changed from a 'Christian' state to a neutral one⁶ and all religions are treated equitably. This country embraces the major religions of the world. It is rooted in the primary traditional spirituality from the

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beginnings of human community and flourishes in the African indigenous spirituality which is rapidly spreading. Each of these religions is itself a diverse category, encompassing many different understanding and practices. Although over 60% claim allegiance to Christianity⁷ there are a variety of religious traditions, including indigenous African, Hinduism, Islam, Buddhism, Rastafarianism,⁸ Bahai and Judaism.⁹ The educational policy should therefore be responsive to the rich religious diversity of the country.¹⁰

The Manifesto on Values, Education and Democracy¹¹ encourages schools to expose their pupils to the diversity of religions as a dimension of human experience. According to the Norms and Standards for Educators¹² teachers are required to show an appreciation of, and respect for, people of different values, beliefs, practices and cultures. In addition, teachers are to acquire knowledge of the principles and practices of the main religions of South Africa. In 2003 the national Ministry of Education developed a policy on *Religion and Education*¹³ which included teaching and learning about the religions of the world, with particular attention to the religions of South Africa, as well as worldviews, and placing adequate emphasis on values and moral education. The policy seeks to impose certain restrictions on the constitutional right to conduct religious observances in public schools. Furthermore, the Minister of Education appears to be encroaching on the terrain of school governing bodies that have the power to regulate the conduct of religious observance; the policy is interpreted as being hostile towards single-faith religious observances and is opposed to a single religion or a particular religious ethos, irrespective of whether the school may be religiously homogeneous. This article determines the constitutionality of schools implementing the policy on 'Religion and Education'.

II THE CONSTITUTIONAL RIGHTS TO FREEDOM OF RELIGION

There is no doubt that the adoption of the *Constitution* which enshrines the *Bill of Rights*¹⁴ is a milestone in the constitutional history of South Africa. The *Constitution* is the supreme law of the country and the *Bill of Rights* is regarded as the cornerstone of democracy which applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.¹⁵ The policy for the role of religion in education flows directly from the constitutional values of citizenship, human rights, equality, freedom from discrimination, and freedom of conscience, religion, thought, belief and opinion.¹⁶ By enshrining these values, the *Constitution* provides the framework for determining the relationship between religion and education in a democratic society. Coertzen¹⁷ asserts that further institutional guarantees for the application of the freedom of religion are therefore necessary.

South Africa, as in many other countries such as New Zealand, the United Kingdom and Canada gives everyone the right to freedom of conscience, religion, thought, belief and opinion.¹⁸ Section 20 of the New Zealand *Bill of Rights* provides specific rights to minorities for them to enjoy their own culture, to profess and practise their own religion, or to use the language of their choice. All South African citizens are free to exercise their basic right to religious conviction,¹⁹ expression,²⁰ and association.²¹

Religious freedom means the right to express one's religious belief or philosophical convictions, both in private and in public, individually or jointly with others, freely in the form of teaching, practice, worship and observances. The right to freedom of religion includes the right to receive religious teaching, training and instruction on a voluntary basis. It also includes the right to produce religious publications and other materials and to disseminate them. This is a civil right and, therefore, the state should not advance nor inhibit religion but rather assume a position

of fairness. It is hoped that this positive neutrality carries a profound appreciation of spirituality and religion in its many manifestations, as reflected by the deference to God in the preamble to the *Constitution*.

Freedom of religion is a complex issue, as noted in some judgments.²² In *S v Lawrence*²³ heard in the Constitutional Court of South Africa, freedom of religion has been described as ‘the right to entertain such religious beliefs as a person chooses the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest belief by worship and practice or by teaching and dissemination’. Kearney²⁴ argues that religious freedom means the right to express one’s religious belief, both in private and in public, freely in the form of teaching, practice, worship and observance.

In *S v Solberg*, the *Constitutional Court* had to consider whether certain provisions of the *Liquor Act 27 of 1989*, which prohibits the sale of liquor on Sundays, were unconstitutional in terms of the *Constitution*. It was argued on behalf of Solberg that the purpose of the prohibition to sell liquor on Sundays was to ‘induce submission to a sectarian Christian conception of the proper observance to the Christian Sabbath and Christian holidays’. The Court found that such a purpose is inconsistent with the right to freedom of religion and was therefore unconstitutional. In *S v Lawrence* the judgment dealt with the right to freedom of religion in the *Constitution*. The Constitutional Court held that the requirement of free and voluntary attendance at religious ceremonies is an explicit recognition of the deep personal commitment that participation in religious ceremonies reflects. It also recognised that the freedom of religion requires that the state may never require such attendance to be compulsory. It protects the rights to conscience both of believers and non-believers and those whose religious beliefs differ from the beliefs which are being observed at the public institution.

We can therefore conclude that in South Africa, the concern about the undue favouring by the state of one religion over other religions is adequately covered by the equality clause in the *Bill of Rights*. The *Bill of Rights* enshrines the rights of all people and affirms the democratic values of human dignity, equality and freedom.²⁵ The vertical application of the *Bill of Rights* thus protects the individual against the abuse of state powers: ‘The state must respect, protect, promote and fulfil the rights in the *Bill of Rights*’.²⁶ Everyone is equal before the law and has the right to equal protection and benefit of the law. The state may not unfairly discriminate directly or indirectly against anyone on, amongst others, race, ethnic or social origin, colour, religion, conscience, belief, and culture.²⁷

South Africans are protected from any discriminatory practices based on religion, and are free from any coercion that might be implied by the state. Freedom can primarily be characterised by the absence of coercion or constraint. In the *S v Solberg*²⁸ heard in the Constitutional Court, Judge Chaskalson in his deliberations quoted *R. v Big M Drug Mart Ltd*.²⁹ The judge remarked that if ‘a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free ... Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain or sanction, ... indirect forms of control which determine or limit alternative courses of conduct ... Freedom in a broad sense embraces both the absence of coercion and constraint, and the freedom to manifest beliefs and practices ... Equally protected ... are expressions and manifestations of religious non-belief and refusals to participate in religious practice’.³⁰

The right of a religious group to practise their religion or a cultural group to enjoy their culture³¹ must be consistent with the provisions of the *Bill of Rights* and this implies that other

rights may infringe on the right to freedom of religion and culture. In the case between *Christian Education SA v Minister of Education*³² the appellant argued that its member schools operated within an active Christian ethos and that corporal punishment was an important part of that ethos. The court found that s 10 of the *South African Schools Act*³³ did limit the appellant's right to freedom of religion but that the limitation was justified. It held that corporal punishment, which was the religious belief of the appellant, violated the right to human dignity and the right to security of the person as embraced in the *Bill of Rights*.³⁴

The Constitutional Court grappled with the use of cannabis as part of the Rastafarian religious practices in *Prince v President of the Law Society of the Cape of Good Hope*.³⁵ In the course of these judgments, the Court made a vital contribution to the definition and application of the right to religious freedom in the South African context. It is significant to note that in this case the Constitutional Court acknowledged the limitation with the prohibition in the use of cannabis imposed on the religious freedom of the appellant, a Rastafarian, and eventually dismissed the exemption sought by the appellant only on the ground that it would impair the state's ability to fight drug abuse effectively and would be difficult to administer. It can be concluded that the Constitutional Court approaches matters relating to religious freedom with sensitivity and understanding.

It is against this background that the policy on Religion and Education is examined.

III POLICY ON RELIGION AND EDUCATION

The policy³⁶ works from the premise that the public school has an educational responsibility for teaching and learning about religions, and for promoting these. It is not intended to be prescriptive but provides a framework for schools to determine policies and for parents and communities to be better informed of their rights and responsibilities in regard to religion and education. According to Roux³⁷ the aims of religion education should include fostering a better understanding among pupils of their communities and of diversity within communities. Schools should develop an understanding of religion among pupils, rather than teaching a belief or religion and should steer clear of promoting dogma.

Section 15 of the policy³⁸ differentiates the different fields of study in religion and education, namely, Religion Education, Religious Instruction, Religious Studies and Religious Observance.

Religious instruction is understood to include instruction in a particular faith or belief with a view to the inculcation of adherence to that faith or belief.³⁹ It is primarily the responsibility of the home, the family, and the religious community and is usually provided by clergy or other persons accredited by the faith communities to do so. Although schools are encouraged to allow the use of their facilities for such programmes, Religious Instruction cannot be part of the formal school programme.

There are various religious organisations that interpret the policy on religious instruction as a ban on the freedom of association and therefore consider it unconstitutional.⁴⁰ Very few public schools can be described as homogeneous and this is a limiting factor for the Department of Education to implement religious instruction in schools. Furthermore, the heavy workload of teachers, the times allocated to different mainstream subjects, financial and other logistical implications, and qualifications of teachers in religion are barriers to introducing religious instruction in schools. Perhaps, the educational authorities could revise the school times to accommodate parents who want their children to receive religious instruction in state schools.

For example, s 78 of *New Zealand's Education Act 1964* authorises primary schools to 'close' for up to one hour a week for the purpose of religious exercises and instruction.

Religion Studies, a fully-fledged optional subject for matriculation purposes (Grade 10-12), is the study of religion as a universal human phenomenon, and of religions found in a variety of cultures. Religions are studied without favouring any or discriminating against any, whether in theory or practice, and without promoting adherence to any, particular religion. Religious Studies leads to the recognition, understanding and appreciation of a variety of religions with a common humanity, in the context of civic understanding of religion, with a view to developing religious literacy.⁴¹ As an examinable subject Religious Studies is offered in all secondary school years, but it will also be optional in the sense that a 'conscience clause' will permit pupils to withdraw from participation.⁴²

Since Religious Studies is not a compulsory subject offered in primary schools and Religious Instruction falls outside the scope of the school curriculum, this article will only focus on the constitutionality of Religion Education and Religious Observances.

A Religion Education

This is a compulsory curriculum programme with clear educational outcomes for teaching and learning about religion, religions and religious diversity in South Africa and the world.⁴³ Religion Education, also referred to multi-religious education is a non-confessional, inclusive and informative study of religions. According to Mayson⁴⁴ there are three basic features of religion education:

1. The educational knowledge should expose pupils to the richness and variety of religion in a well prepared and respectful manner.
2. Education is about diversity, in an environment which encourages the sense of acceptance and security for all, whatever their race or creed. It means that people should appreciate, and feel emotionally secure, in the field of religion.
3. Education should uphold traditional values which include the question of moral regeneration to which all religious and non-religious citizens adhere.

It is the responsibility of the school to teach about the different religions as well as worldviews with adequate emphasis on values and moral education. Section 17 of the Religion and Education policy⁴⁵ and the Revised National Curriculum Statement policy⁴⁶ elevates Religion Education to an educational programme with clearly defined and transferable skills, values and attitudes as outcomes. It is justified by its contribution to the promotion of social justice, and respect for the environment, that can be served by this field of study within the school curriculum. Religion Education should enable pupils to engage with a variety of religious traditions in a way that encourages them to grow in their inner spiritual and moral dimensions.⁴⁷

The Outcome-based Education (OBE)⁴⁸ curriculum includes Life Orientation as a subject and programmes such as Life Skills, Religion Education and Social Responsibility, is well positioned to impact on the ethical and moral dimensions of learner development. Section 21 of the Religion and Education policy⁴⁹ contends that if teachers provide pupils with educationally sound programmes, they will gain a deeper and broader understanding of the life orientations, worldviews, cultural practices, and ethical resources of humanity. Religion Education has a civic duty rather than a religious function, and promotes civic rights and responsibilities. In the context of the *Constitution*, Religion Education contributes to the wider framework of education by developing in every learner the knowledge, values, attitudes and skills necessary for diverse

religions to co-exist in a multi-religious society.⁵⁰ In Religion Education, as well as the entire school curriculum, religions should be protected from being misrepresented or denigrated.⁵¹ Furthermore, confessional or sectarian forms of religious instruction in public schools are inappropriate for a religiously diverse and democratic society. As institutions with a mandate to serve the entire society, public schools must avoid adopting a particular religion, or a limited set of religion, that advances sectarian or particular interests.

While the Department of Education assumes the position of neutrality in respect of religion education the following arguments are made to establish the constitutionality of the policy.

Various religious organisations claim that the policy violates the right to freedom of religion.⁵² If the policy encourages schools to study religion and matters of faith from a so-called objective or neutral stance, then it in fact makes a choice to look at matters of faith from a particular viewpoint. That is not a neutral stance. According to Malherbe,⁵³ Religion Education is supposed to 'distil' from the various religions, and other worldviews, those values that would benefit society. The objective of this neutral approach is in fact to impose on pupils a particular view about matters of faith that is determined by the state. Pupils will be encouraged, or rather compelled to analyse religions critically, including their own, from the point of view of its contribution to the realisation of the values the state pursues, and not for the purposes of their personal salvation. This is not a neutral or impartial approach. Neutrality by public school officials toward religion is a desirable value, but does such neutrality become hostility if public school pupils and teachers are denied the opportunity to display religious practices that they value?⁵⁴

There is a strong objection to a multi-faith approach advocated in the policy. Nicolson⁵⁵ claims that the majority of South Africans are Christians and religion education should therefore reflect this. A multi-faith religious education is likely to confuse children who cannot absorb so many value systems. They will lose faith of the value system they originally held. A descriptive, non-judgmental account of religions may weaken the critical judgment of pupils towards religious beliefs, encouraging a toleration, which implies neutrality or religious relativity.

Unlike a single-faith approach to religious education, which provides religious instruction in one religion, and unlike a multiple single-faith approach, which provides parallel programmes in religious instruction for an approved set of religions, a multi-tradition approach to the study of religion education does not promote any particular religion. The Department of Education argues that s 26 of the Religion Education policy will create a context in which pupils can increase their understanding of themselves and others, to deepen their capacity for empathy and develop powers of critical reflection in thinking through problems of religious and moral concern. Teachers teaching Religion Education should ensure that the pupils demonstrate an understanding of and commitment to constitutional rights and responsibilities, and for them to show an understanding of diverse cultures and religions. It is assumed that pupils having knowledge of diverse religions may contribute to them having non-discriminatory attitudes that will counter and prevent prejudices.

B *Religious Observance*

In accordance with the *Constitution*⁵⁶ and the *South African Schools Act*⁵⁷ public schools may make their facilities available for religious observances⁵⁸ such as worship, prayer, religious singing, the observance of holy days, the observance of dress codes within school hours and devotional scripture reading, in the context of free and voluntary association, and provided that facilities are made available on an equitable basis to all who apply for the use of these facilities.

In the *Bill of Rights* two types of religious observance⁵⁹ are implied:

- Public occasions, which make use of school facilities
- Occasions when the school community (teachers and pupils) gather for a religious observance.

Although such religious observances take place on the school property, they are not part of the school's programme. It is useful to compare the approach adopted by the United States (US). The US interpretation has a more hard line approach to religious observances. The Supreme Court respects religious values provided that they are manifested *off* public school premises.⁶⁰

Time allocation for religious observances for teachers and pupils may be determined by the school governing body, and may be part of the school assembly. Where religious observance is organised as an integral part of the school day, it should acknowledge and reflect the multi-religious nature of South African society in an appropriate manner. School governing bodies would be required to determine the nature and content of such religious observation and that coherence and alignment with this policy is ensured.⁶¹ However, the policy is vague and no specific direction is given on where and when religious observances will fit into the school's programme. For example, if insufficient time during formal school hours is allocated or the school day is defined to the exclusion of any realistic opportunity for religious observances, or the curriculum does not cater for religious observances, then s 15(2) cannot be implemented effectively thereby making the policy unconstitutional.

The use of a universal prayer and selected readings from various religious texts could be considered an appropriate and equitable means of acknowledging the multi-religious nature of South Africa. The Court's reasoning on s 15(2) is important:

Compulsory attendance at school prayers would infringe freedom of religion. In the context of a school community and the pervasive peer pressure that is often present in such communities, voluntary school prayer could also amount to the coercion of pupils to participate in the prayers of the favoured religion. To guard against this, and at the same time to permit school prayers, section 15(2) (previously 14(2)) makes clear that there should be no such coercion. It is in this context that it requires the regulation of school prayers to be carried out on an equitable basis. I doubt whether this means that a school must make provision for prayers for as many denominations as there may be within the pupil body; rather it seems to me to require education authorities to allow schools to offer the prayers that may be most appropriate for a particular school, to have that decision taken in an equitable manner applicable to all schools, and to oblige them to do so in a way which does not give rise to indirect coercion of the 'non-believers'.⁶²

However, it has been reported that school assemblies are still being used by some denominations to criticise other religions, while excluding pupils from different beliefs and denominations.⁶³ A group called Crossroads International in the pretext of discussing moral values were accused of propagating Christianity to children of diverse religions during school hours.⁶⁴ The Uniting African Church⁶⁵ is of the opinion that all religious activities should be banned during assemblies. This view may be consistent with the United States courts' stance towards prayer in schools. In the first case on prayer, *Engel v Vitale*⁶⁶ the Supreme Court consistently prohibited school sponsored prayer and religious activities in public schools. According to Russo⁶⁷ the Court recognising that religious speech is a subset of free speech, has softened its restrictions, notably, in terms of student led activities and granting access to school facilities by outside groups. There are other

options such as the rotation of various religious groups or to have topic-related presentations with quotes from different religions.

In *Lemon and Kutzman*⁶⁸ the Supreme Court after considering the constitutionality of programmes from Rhodes Island and Pennsylvania that aided religiously affiliated non-public schools, declared these programmes invalid. There are different schools of thought regarding religious observances. In the first United States public school-related establishment clause case, the Supreme Court invalidated a school board's practice of permitting clergy to use school facilities to present religious lessons to students during regular school hours.⁶⁹ There are two schools of thought in respect of religious observances. There are religious organisations who believe that there should be free and voluntary single-faith religious observances in schools and the state therefore, has no right to restrict such observances. There are others who contend that schools that conduct single-faith religious observances will marginalise pupils who belong to other faiths. Most of the public schools in South Africa are diverse and implementing single-faith observances may create an unhealthy ethos because a particular faith is favoured over other faiths. The Religion and Education Policy do not advocate such a practice. However, in religious private schools single-faith observances pose no problems.

In *Wittmann v Deutscher Schulverein*⁷⁰ the court had to decide, *inter alia*, whether the freedom of religion clause afforded parents a right to exclude a pupil from attendance at religious instruction classes and observances at this private school. The court found that s 15(2) of the *Constitution* did not apply to the relationship between the parent and the school, as the latter is not a state-aided institution or an organ of state. The court argued that religious observance is an act of religious character, for example, the daily opening of a school by prayer whilst religious education is not. The *Constitution* grants the rights to conduct religious observances at state and state-aided institutions and that right cannot be nullified by those who have the right to abstain from them but chose not to. The religious instruction classes and religious observances at the school were therefore not unconstitutional. However, the right to religious instruction classes is voluntary. Also of interest, and from a cultural perspective, is that the parents acted on behalf of their child and its religious affiliation. The assumption is that the child *ipso facto* 'belongs' to the same religious community as the parents.⁷¹

C Powers of Governing Bodies

Section 7 of the *South African Schools Act*⁷² gives powers to the school governing bodies to determine rules to conduct religious observances at public schools if such observances are conducted on an equitable basis and attendance is free and voluntary. It may therefore be argued that the Minister does not have the power to make policy regarding religious observances. It is *ultra vires* and therefore invalid because it encroaches on the powers of governing bodies. The policy document was published in terms of the *National Education Policy Act*.⁷³ Since s 3(4) is general and concerns managerial, organisational and curriculum matters, it cannot be used to support a contention that the Minister's general powers override this express power of governing bodies stipulated in s 7 of the *South African Schools Act*⁷⁴ to regulate religious observances in schools. The policy is not binding and enforceable on public schools, because policy made by the Minister in terms of the *National Education Policy Act*⁷⁵ does not create binding obligations on the governing bodies of public schools.

IV CONCLUSION

The educational policy sets out guidelines for Religion Education which is defined as teaching and learning about the different religions, and respect for religious diversity in South Africa. The policy establishes a framework for schools in regard to voluntary Religious Instruction outside of the school curriculum, and for Religious Observances during school hours. While the policy for the role of religion in education flows directly from the Constitutional values of citizenship, human rights, equality, freedom from discrimination and religion there are a number of issues that makes the policy unconstitutional. The meaning of s 15(2) of the *Constitution*⁷⁶ concerning religious observances; the problems of single-faith observances; and the dis-empowerment of school governing bodies in relation to the policy violates the right to freedom of religion of individuals.

Keywords: freedom; religion; religious observances; Religion Education; religion policy.

ENDNOTES

1. There were 18 distinct departments of education, each serving different racially defined groups of students. Separate departments operated schools for each of the four main racial groups, namely, Whites, Indians, Africans and Coloureds, while additional departments operated for Africans in each of the homelands. For most of the apartheid period, students in each of the four socially constructed racial groups were restricted to attending schools operated by the relevant department of education.
2. In 1948 the South African National party formulated what subsequently came to be known as the Christian National Education (CNE) policy, which was designed to justify apartheid and separate development ideology. A major political consequence of the CNE policy was the design of a segregated educational system with separate schools for different cultural, ethnic, tribal, and linguistic groups, ultimately culminating in the infamous *Bantu Education Policy Act of 1953*. The justification for separate schools was contained in ten principles, each dealing with specific aspects of society. One of the principles advocated the creation of separate schools for the different races, specifically because each race had a distinct culture, ethnicity, language, history and religion.
3. G Dickinson and W van Vollenhoven, 'Religion in Public Schools: Comparative Images of Canada and South Africa' (2002) 20(3) *Perspectives in Education* 1. (Please check author's name)
4. W Bray, *Human Rights in Education* (2000), 1.
5. *The Constitution of the Republic of South Africa*, Act 108, 1996. Government Gazette No. 17678 Vol. 378.
6. C W Du Toit and J S Kruger, *Multireligious Education in South Africa: Problems and Prospects in a Pluralistic Society* (1998) vii.
7. South Africa, *National Policy on Religion and Education*, Government Gazette No. 25459, Vol 459, 12 September 2003.
8. The concept 'religion' is not defined either in the *Constitution* or the National Religion and Education Policy. However, the American courts ruled that religion, for the purposes of the First Amendment, is distinct from a *way of life* even if that *way of life* is inspired by philosophical beliefs or other secular concerns. A religion need not be based on a belief in the existence of a supreme being nor must it be mainstream faith. Thus in *Kaufman v McCaughtry* the court concluded that atheism is equivalent to religion for the purpose of the First Amendment (D. Davis, 'Is Atheism a Religion? Recent Judicial Perspectives on the Constitutional Meaning of "Religion"' (2005) 47 *Journal of Church and State* 707, 707). However, South African Courts have not fully clarified the concept. The Judge (in *Wittmann v Deutscher Schulverein Pretoria and others*) explains that the concept 'religion' in terms of s 15 of the *Constitution* refers to a particular system of faith and worship. It is the human recognition of super human controlling power and especially of a personal God or gods entitled to obedience and worship (quoted from the Concise Oxford Dictionary). The atheist and agnostic are the antithesis of religion

and are offered the protection under the section on freedom of thought, belief and opinion. In the case *Prince v President of the Law Society, Cape of Good Hope* the judges alluded to Rastafarian as a religion. Therefore, in this article Rastafarian will be considered as a religion. This inference is supported by the dictionary definitions. Although religion is normally associated with the existence of a God or gods to whom some form of worship and obedience is due, other definitions require only a devotion to some or other principle and the exercise or practice of rites and observances (Murray, *The Oxford Dictionary* (Vol. VIII) 410 'religion').

9. P Coertzen, 'Freedom of Religion and Religious Education in a Pluralistic society' (2002) 43 *Dutch Reformed Theological Journal* 185.
10. D Chidester, G Mitchell, A R Omar and I A Phiri, *Religion in Public Education* (1994) 151.
11. South Africa, *Manifesto on Values, Education and Democracy*, (2001) 44.
12. South Africa, *Norms and Standards for Educators* (1998).
13. South Africa, *National Policy on Religion and Education*, Government Gazette No. 25459, Vol 459, 12 September 2003, 13.
14. The *Bill of Rights* is entrenched in Chapter 2 of the South African *Constitution*.
15. Section 239 of the Constitution defines 'Organ of state' as (a) any department or administration in the national, provincial or local sphere of government; or (b) any other functionary or institution – (i) exercising a power or performing a function in terms of the Constitution or provincial constitution; or (ii) exercising a public power or performing a public function in terms of any legislation.
16. South Africa, *National Policy on Religion and Education*, Government Gazette No. 25459, Vol 459, 12 September 2003, 10.
17. Coertzen, above n 9, 191.
18. Section 15(1) of the *Bill of Rights*. Religion is the belief in a superhuman controlling power, especially in a personal God or gods entitled to obedience and worship. Conscience is a sense of right and wrong and thought is the process of thinking. Belief refers to a firm opinion in things and opinion is what one thinks about something.
19. Section 15 (1) of the *Bill of Rights*.
20. Section 16 (1) of the *Bill of Rights*.
21. Section 18 of the *Bill of Rights*.
22. See above n 9, 190.
23. *S v Lawrence; S v Negal; S v Solberg* 1997 10 BCLR 1348 (CC) [100]-[102]; [116]-[118].
24. M Robertson (ed), *Human Rights for South Africa* (1990) 123.
25. Section 7(1) of the *Bill of Rights*.
26. Section 7(2) of the *Bill of Rights*: This section deals with the vertical application of the *Bill of Rights*, thus protecting the individual against the abuse of state powers.
27. Section 9(1) of the *Bill of Rights*: 'Everyone is equal before the law and has the right to equal protection and benefit of the law'. Section 9(3) 'The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social orientation, age, disability, religion, conscience, belief, culture, language and birth'.
28. See above n 23.
29. *R v Big M Drug Mart Ltd.*, [1985] 1 SCR 713 (SCC).
30. *Ibid.*
31. Section 15(3) read with s 31(2) of the *Bill of Rights*.
32. *Christian Education SA v Minister of Education* 2000 4 BCLR 757 (CC). See also the judgment in the court *a quo*, *Christian Education SA v Minister of Education* 1999 9 BCLR 951 (SE).
33. *The South African Schools Act*, No. 84 of 1996.
34. N Smith, 'Freedom of Religion in the Constitutional Court' (2001) 118 *The South African Law Journal*, 1.
35. *Prince v President of the Law Society, Cape of Good Hope* 2003 3 BCLR 231 (CC). See also *Prince v President of the Law Society, Cape of Good Hope* 1998 8 BCLR 976 (C).
36. South Africa, *National Policy on Religion and Education*, Government Gazette No. 25459, Vol 459, 12 September 2003.

37. Du Toit and Kruger, above n 6, 158.
38. South Africa, *National Policy on Religion and Education*, Government Gazette No. 25459, Vol 459, 12 September 2003.
39. R Ferguson R and C Roux C, 'Mediation in the Context of Teaching and Learning about Tertiary Education' (2003) 23 *South African Journal of Education*, 292.
40. L Van Oostrum, *Comments on the Final Draft Policy on Religion in Education* (2001) <<http://pestalozzi.org/legislation/CommentsOnFinalDraft/Draft.htm>> at 6 June 2005.
41. South Africa Department of Education, *Religion Studies. Learning Programme Guidelines. National Curriculum Statement for Grades 10-12 (General)* (2004).
42. Chidester, Mitchell, Omar and Phiri, above n 10, 155.
43. South Africa, *National Policy on Religion and Education*, Government Gazette No. 25459, Vol 459, 12 September 2003.
44. C Mayson <<http://www.anc.org.za/ancdocs/pubs/umrabo19/teaching.html>> at 31 March 2006.
45. South Africa, *National Policy on Religion and Education*, Government Gazette No. 25459, Vol 459, 12 September 2003.
46. South Africa Department of Education, *Revised National Curriculum Statement Grades R-9 (Schools)* (2002).
47. South Africa, *National Policy on Religion and Education*, Government Gazette No. 25459, Vol 459, 12 September 2003.
48. Since South Africa's first national democratic elections in 1994, the Government of National Unity has issued several curriculum-related reforms intended to democratise education and eliminate inequalities in the post-apartheid education system. The most comprehensive of these reforms has been labeled Outcomes-based education (OBE), an approach to education which underpins the new Curriculum 2005. Integral to C2005 is an outcomes-based educational philosophy. Outcomes as mentioned in the South African *Constitution* defines the kind of citizen that the education system should produce and, in so doing, the kind of citizen a post-apartheid society would be created. The ultimate goal of education was seen as outcomes having to shape teaching and learning in the curriculum.
49. South Africa, *National Policy on Religion and Education*, Government Gazette No. 25459, Vol 459, 12 September 2003.
50. South Africa, *National Policy on Religion and Education*, Government Gazette No. 25459, Vol 459, 12 September 2003.
51. Chidester, Mitchell, Omar and Phiri, above n 10, 152.
52. Van Oostrum, above n 40.
53. R Malherbe, 'The Right to Freedom of Religion in South African schools: Recent Disturbing Developments' (2004) 1-2 *International Journal for Education Law and Policy* 248.
54. R Mawdsley and C Russo, 'Values Orientation in American Schools' 2004 (22) *Perspectives in Education* 49.
55. R Nicolson 'Religious Education in State Schools in a Future South Africa' (2003) 14 *South African Journal of Education* (2003) 43, 46.
56. *The Constitution of the Republic of South Africa*, Act 108, 1996. Government Gazette No. 17678 Vol. 378.
57. *The South African Schools Act*, No. 84 of 1996.
58. Section 15(2) of the *Bill of Rights*
59. Section 15(2) of the *Bill of Rights* and Section of the *South African Schools Act*.
60. In its first public school-related establishment clause case, the Court invalidated a school board's practice of allowing clergy to use school facilities to present religious lessons to students during regular school hours. See *McCullum v Board of Education of Champaign-Urbana*, 333 US 203 (1948). For a similar case, see *Doe v Beaumont Independent School District*, 173 F 3d 274 (5th Cir. 1999).
61. South Africa, *National Policy on Religion and Education*, Government Gazette No. 25459, Vol 459, 12 September 2003, s 61.
62. *S v Solberg* 1997 10 BCLR 1348 [103].
63. 'Pro-Christian Talk Outrage Parents', *Sunday Tribune Herald News* (South Africa) (19 June 2005), 1.

64. Ibid.
65. 'Religion in School Assemblies under Scrutiny' *Natal Witness* (Natal) (18 September 2002), 3.
66. 370 U.S. 421, 422 (1962).
67. C J Russo, 'Prayer and Religious Activity in American Public Schools' (2005) *International Journal for Education Law and Policy* 34.
68. 403 U.S. 602 (1971).
69. See above n 60.
70. 1999 (1) BCLR 92 (T).
71. C Rautenbach, F J Van Rensburg and G Pienaar, 'Culture (and Religion) in Constitutional Adjudication' (Paper delivered at the 5th Colloquium on Constitution and Law, Johannesburg, 2002).
72. *The South African Schools Act*, No. 84 of 1996.
73. *National Education Policy Act*. Act 27 of 1996.
74. *The South African Schools Act*, No. 84 of 1996.
75. *National Education Policy Act*. Act 27 of 1996.
76. *The Constitution of the Republic of South Africa*, Act 108, 1996. Government Gazette No. 17678 Vol. 378.