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Undercurrents

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Storm in a teacup or something more?

- The vetting of employees at schools by a commercial company in KZN recently, reportedly resulted in one out of every four schools vetting dismissing an employee;
- SACE records and the National Child Protection Register appear to be way out-of-date;
- The Children's Act requires the manager or owner of a school to check whether a person's name appears on the Register before employing such person—not doing so means you are at fault;
- It is a huge administrative task to comply with the law. So what now?

HOW WIDESPREAD IS THE EMPLOYMENT OF UNSUITABLE CANDIDATES BY SCHOOLS?

The KwaZulu-Natal schools community has just been rocked back on its heels by reports that a convicted paedophile has been plying his trade in some of our top schools in that province - and this is the second such report in less than a year.

THE CONTEXT

Last October we reported on the fact that a convicted murderer was teaching in Durban. At the time we put out a detailed exposition in an edition of Undercurrents, explaining what was expected of schools so that they could avoid, or at least limit, the possibility of potentially dangerous or harmful appointments.

Some schools followed our advice, but it appears that many didn't. For your information we are attaching a copy of the relevant edition of Undercurrents, and offer you the following expanded and updated information.

THE STRICT LEGALITIES

Clearly, schools would not be acting unlawfully if they approach SACE to run a check, and SACE reports that there is no problem with the prospective employee's registration or eligibility for appointment. SACE is the body that is obliged to do these checks and schools should be able to assume that if an educator is registered with SACE, then they have passed the checks. In this regard, then, it may be argued that schools which do not have the manpower or money to do additional checks should not be held responsible should it be found that such a person had slipped through the net.

The rub lies in the fact that it is clear that schools cannot actually rely on the SACE register. In the very case at issue here, SACE has admitted that the teacher is still on the roll, with no negative notations against his name – even though he was convicted of sexual assault in 2003. It is accepted that this is not necessarily an isolated case.

As a consequence, we would suggest that schools which take themselves and their responsibilities seriously, and really want to ensure that their children are protected as far as possible (and we hope and believe that our member schools are such schools) should make every effort to take further action which will reduce the risks.

SO WHAT SHOULD OR COULD THIS FURTHER SUGGESTED ACTION ENTAIL?

National Child Protection Register

In terms of the law, the Department of Social Development had to open and must maintain a register called the National Child Protection Register. This register has two parts. Part A records all instances of child abuse and the circumstances surrounding such abuse. Part B is a list of people deemed unsuitable to work with children as a result of previous incidents. It includes names of people found guilty of crimes against children, **but also those found not guilty of a crime, but still declared by the court to be "unsuitable to work with children."**

If you are aware or become aware of any action by a person or people which would warrant their name being on the register, you are required to inform the authorities accordingly. Your responsibility to the child in this regard overrides any responsibility you may feel to the school, the parents or the perpetrator.

The particular responsibilities of school principals

The Children's Act is clear in respect of the responsibilities of schools when it comes to the employment of staff: in section 126 it states quite categorically:

"Before a person is allowed to work with or have access to children at ... [a] school, the person managing or operating the school ... must establish whether or not that person's name appears in Part B of the Register."

This follows the equally clear injunction (in section 123 (1) (b) if you want to look it up) that:

"No person whose name appears in Part B of the Register may ... work with or have access to children ... either as an employee, volunteer or in any other capacity".

The requirements apply to teachers, obviously, but ***equally to people such as general workers, coaches, drama directors, tuckshop and catering staff – the whole lot.*** The law would even apply to outside service providers you contract, such as site management companies and their staff, pool services, outside cleaning services and the like – though we believe that in their case, the onus would be on the employer to do the admin. Just get the service providers to confirm that they have done so.

Recommendations

We suggested at the time – and repeat now – the possible measures that schools could put in place to safeguard themselves and their children:

- ⇒ Get all current staff members to sign a declaration that they have not been convicted of any offence in terms of the Children's Act;
- ⇒ Require all new members of staff to provide a Police Clearance Certificate when they are appointed;
- ⇒ Check with SACE that the person concerned (in the case of teachers only, unfortunately) is registered to teach and has no bars to his or her employment;
- ⇒ Have the Department of Social Development check the Register for you.

SOME PROCESSES AND PROCEDURES

- ⇒ We have drawn up and attached a form that you may like to use to get the requisite declaration from your staff;
- ⇒ There is also a sample form that you could use to get the requisite confirmation of eligibility from SACE and the Department of Social Development;
- ⇒ In respect of the police clearance certificate, staff will have to do the legwork themselves, which should become obvious from what follows.

THE LOGISTICS OF OBTAINING A POLICE CLEARANCE CERTIFICATE

- ⇒ Nobody can apply for a clearance certificate on behalf of someone else - individuals must apply in person and on behalf of themselves;
- ⇒ The cost of the exercise is R59-00 at present;
- ⇒ The applicant must present him/herself to the police station and
 - * Fill in the requisite forms to make the application;
 - * Have his or her fingerprints taken;
 - * Take the documents plus the receipt for R59 and post these to Pretoria, where a thorough check is made against criminal records.
- ⇒ The clearance certificate is then mailed back to the applicant: there are apparently differences in the efficiencies of the sections that finalize the certificates, as the KZN police tell us that the process takes about six weeks from application to receipt of the certificate, while in the Western Cape they assure us that it takes only about two weeks.

LOOPHOLES IN THE SYSTEM

- ⇒ An unfortunate loophole in the police clearance scheme is that it records only ***criminal*** convictions, whereas it is possible that the name of a person ***without*** a criminal conviction may well be on the Register. This is because, while a ruling that a person is "unsuitable to work with children" ***is obligatory*** if he is found guilty of crimes against a child, ***such a ruling is not dependent on a finding of guilt***: a person found ***not*** guilty of the particular crime can, given certain circumstances, ***also*** be ruled unsuitable to work with children.
- ⇒ A loophole in the listing of people on the Register also exists: in criminal proceedings ***it is obligatory that a person be found unsuitable to work with children*** if convicted of the crimes such as murder or attempted murder; rape or attempted rape; and indecent assault or assault with intent to do grievous bodily harm ***against a child***. Yet the same obligation ***does not apply if the crimes were committed against an adult. It is quite possible, then, that the murderer of an adult is not declared unfit to work with children!***
- ⇒ The third loophole or shortcoming is that information given to us suggests that neither the Register nor the SACE records are anywhere near complete, accurate or up-to-date.

AN EASIER WAY OUT

Recognising the already heavy administrative demands and responsibilities faced by schools, we are willing to give you an easier – but not cheap – way out. A specialist service provider is offering to do all the hard work on your behalf for a fee. We are wary of endorsing someone else's products, for obvious reasons, but some schools have reported their satisfaction with the company concerned, and on that basis we are comfortable about putting its name into the public domain for you to consider. The company concerned is:



The Guardian
Office: 031 001 0107
Cell: 078 683 7165
Website: www.theguardian.co.za

COSTS

Costs for their services vary from about R130-00 to R190-00 per staff member for the basic service, depending how far your school is from one of their permanent offices, and how many staff there are (the more staff, the lower the cost per person). There are more extensive—and expensive—options available, so check carefully what you will pay and what you will get. Any deal you do would be between you and the company, of course – we as the GBF are not involved.

CONCLUDING COMMENTS

The latest issue has again underlined that the official records are in serious disarray – the person involved in this case is still registered as a member in good standing on the roll at SACE and reports suggest that the National Register is anything but up to date. It will take a lot of PT from schools to get anywhere on this – but, in the end, can we ever suggest that trying to ensure the safety of our children is "too much PT"? Also recognize that the initial task is huge, but that as long as the admin person who deals with appointments has a checklist which includes "Get Police Clearance Certificate" and "Vetting by SACE and Child Protection Register", on-going implementation will be relatively painless. We would suggest that the least you do is to follow what is suggested above, and we hope that the documentation provided (see attachments) makes things just a little less onerous. **And—sadly—you may feel the need to do it for your state staff as well while you are about it, because the Departments are not doing so.**