

The constitutional right to freedom of expression: How enforceable are school dress codes?

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The constitutional changes in South Africa over the past decade have had far-reaching consequences on society. As organs of state, schools have been directly affected by the need to ensure that their operations and rules are constitutionally and legislatively compatible. Human rights do not exist purely as an ideal but must be promoted and enforced within the school sphere. One such right is the right to freedom of expression, and expression in the form of dress is a critical element of such expression within the school context. The issue of school dress codes in South Africa is examined with reference to the experiences of four other countries, in order to determine the constitutionality of such dress codes, and whether dress codes are an impermissible limitation of learners' freedom of expression, couched in permissible sounding language.

Introduction

The radical reshaping of so much of South African life by the introduction of the Interim Constitution (RSA, 1993) and the final Constitution (RSA, 1996a) and the consequent change to a constitutional democracy, has had and is destined to continue to have a profound effect on schools in this country. Prior to 1993, school principals were *de facto* if not *de jure* almost untouchable. Their powers and that of their staff were vast. The rights of learners were not even a topic of discussion. Overnight schools, constitutionally, became organs of state in terms of section 239 of the Constitution (RSA, 1996a) and, therefore, in terms of section 8 of the Constitution, subject to and bound by the provisions of the Constitution with all its implications.

Section 16(1) of the Constitution (RSA 1996a) states, "Everyone has the right to freedom of expression which includes ... freedom of the press and other media; freedom to receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research".

These items in section 16 do not form an all-inclusive list. In attempting to spell out some of the implications for the South African school communities, paragraph 4.5.1 of the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners (RSA, 1998), hereafter referred to as the Guidelines, states, "Freedom of expression is more than freedom of speech. Freedom of expression *includes* (italics added) the rights to seek, hear, read and wear. Freedom of expression is extended to forms of outward expression as seen in *clothing selection* (italics added) and hairstyles ...

It is important to note that this right is for everyone without reference to age or any other limiting criteria. That is not to imply a clause without any possible limitations.

Statement of the problem

That dress is an expression of self and makes a statement of who one is, is probably not in doubt (Alston, 2002:162). As Wellman (1995: 92-97) points out, the right may be innocuous but it is often not respected. Students forced to wear school uniforms or be subjected to a rigid dress code would seem to have their fundamental rights invaded, and would appear to be arbitrarily coerced for no good reason. Wellman further states that it is one's right to choose to dress as one wishes but there should be only two 'limitations' on dressing as one pleases, namely not to dress in a way which provokes immoral behaviour and, secondly, not to deliberately offend those with whom one associates.

Beyond these restrictions, the right of individuals to dress as they please is, according to Wellman (1995:93), 'morally innocent', meaning that other people have no moral justification for compelling any person to refrain from dressing as they please but, rather, a moral duty to refrain from compelling others not to dress as he/she chooses.

Such compulsion is meddling and intrusive in the private life of another and thereby devalues an individual's very self and freedom. Since compulsion is made on arbitrary and often trivial grounds, the very triviality of the compulsion sends a message to the individual that he counts for very little. This intrusion on and trivialising of the learner's right to dress as s/he chooses and the demand for unquestioning conformity, invades the individual learner's right to individuality and personal dignity (RSA, 1996a). This demonstrates not only a lack of respect for an individual's feelings but for that person's autonomy or self-realisation, one of the three often cited core values or purposes of freedom of expression (Redish, 1982:591).

The question that arises from this is: Can a school teach the importance of learners' obeying the law and the school rules while at the same time flouting the Constitution by denying learners' constitutional rights to dignity and freedom of expression?

Purpose and method of research

The purpose of this article is to examine the school dress code issues in an international and South African context from a legal perspective. Further the purpose is to analyse the possible implications of the South African learners' right to freedom of expression, specifically in the form of clothing selection in the context of school dress codes. In attempting to assess what has occurred since 1996 in regard to freedom of expression, and specifically dress codes in the schools, the lack of case law necessitates that reliance must be on other sources of information including newspaper reports, interviews and responses to previous research, apart from the literature from other countries.

The foreign study includes school dress issues in the United States, Canada, Great Britain and New Zealand. Each of these four countries has a freedom of speech/expression clause. The first two countries have such clauses included in their entrenched Constitutions (United States, 1787 as amended; Canada, 1982). Great Britain, with no Constitution, has such a clause in its Human Rights Act (Great Britain, 1998a) and applies the European Convention on Human Rights (1950) in its Courts. New Zealand has no constitution but has an unentrenched Bill of Rights Act (New Zealand, 1990) with such a clause. The strongly federal nature of both the United States and Canada and the jealous guarding of local control of education in each of these two countries have resulted in different legal decisions in different areas. An important variation between these four countries is their experience of a Bill of Rights, the United States with over 200 years experience and Canada, with just 20 years experience second on the list.

A comparative international overview of the effect of the right to freedom of expression on school dress codes

The United States

Jones v Day (1921) 127 Miss. 136, 89 So. 906, 18 A.L.R. 645, is described by Edwards (1971:569) as the only one school uniform case to

have ever reached an American court. However, McCarthy (1998:24) has suggested that "... some further controversies will likely focus on the increasing number of school boards that are specifying uniforms for students". This view is supported by the vigorous internet debate currently raging on the issue in the United States [see "school dress codes", www.google.com]. The recent surge in the demands for uniforms comes, in part, from the belief that it will eliminate gang-related clothing and thereby reduce violence and improve the school climate. Opponents of uniforms see such a move by school boards as compromising the First Amendment rights of students to express themselves through what they wear.

The dress issue goes beyond school uniforms and focuses rather on what may or may not be worn by students at school. Henkin (1968:63), in his article, *On drawing lines*, refers to the need to also ask whether in issues of limitations where to draw the line or whether any lines need to be drawn at all. While McCarthy (1998:23) refers to a ban on the wearing of jeans having been overturned in two cases (*Murphy v Pacatelle*, and *Bannister v Parades*), courts have upheld School Board decisions to impose bans on other clothing seen to be offensive. Wording or pictures on T-shirts have been two of the reasons cited for such bannings [*Gano v School District* (1987) 674 F.Supp. 796 (D.Idaho), and *Broussard v School Board of Norfolk* (1991) 801 F.Supp. 1526 (E.D.Va.)].

Furtwengler and Konnert (1982:201) suggest two questions to be asked in developing rules and/or deciding on whether particular behaviour (or dress) needs to be limited or acted against.

1. Will/Have the actions of the student(s) cause(d) substantial disruption to the educational process and/or normal operation of the school?
2. Will/Has the freedom of expression of the student(s) be(en) an invasion of the rights of others?

Provided the rules are not vague and open to wide interpretation, the above questions provide a base from which to begin making sound decisions about dress in the educational context of the school.

New Zealand

In terms of section 72 of the Education Act (New Zealand, 1989), each school's Board of Governors may make any by-laws or rules they think necessary, provided such rules conform to New Zealand law. Like any other rules, dress rules must be made known and have legal certainty. Certain dress restrictions can be imposed for safety reasons (Trainor, 2000:229).

In terms of the Bill of Rights Act (New Zealand, 1990) and its successor, the Human Rights Act (New Zealand, 1993), everyone has the right to freedom of expression, while discrimination on various grounds, including sex, age, religion and ethnicity, are forbidden.

After 1990 the *status quo* in respect of school uniforms was disturbed by young people, including primary school children, launching challenges to uniform and other dress code regulations, with a fair deal of success. Cases involving human rights are first heard by the New Zealand Human Rights Commission. In a case brought by Haley Burnett (13) and Tamzin Reeves (12) Ludbrook, the girls' lawyer, stated that "a requirement that you wear exactly the same thing every day is a breach of freedom of expression under the Bill of Rights Act". The Commission ruled in favour of the girls' right not to have to wear skirts, and agreed that boys being allowed to wear shorts but denying the same right to girls was sex discrimination (Walsh, 1997:56). In another case, where the school insisted on their uniform being strictly adhered to, regardless of their pupils racial, cultural, economic or social backgrounds, the Commission ruled that not allowing a Moslem child to dress in accordance with religious requirements to wear long pants, was unacceptable discrimination against the boy concerned (Walsh, 1997:58).

Allen, a school principal, (pers. e-mail comm., 5 June 2000) stated that almost all New Zealand secondary schools have compulsory school uniforms. However, it is suggested that this does not imply that they are enforceable. Rather, New Zealand case law suggests that challenges to such uniforms may be upheld.

Great Britain

In government schools in England, the wearing of school uniforms cannot be enforced. However, a head-teacher could, at least up to the time of the Human Rights Act (Great Britain, 1998a) coming into force in October 2000, ban the wearing of almost any item of clothing or jewellery, including jeans, leather jackets, high-heeled boots and even trousers for girls (Ireland, 1984:45; Adams, 1992:122).

The oft quoted case of *Spiers v Warrington Corporation* (1954) 1 QB 61 highlights the previous powers of head teachers. The headmistress banned 13-year old Eva Spiers from wearing slacks to school. Eva suffered several attacks of rheumatic fever and the wearing of slacks was seemingly justifiable for health reasons. Every time Eva went to school in slacks she was sent home. The Court ruled in favour of the school.

With the European Convention now adopted into English law, it seems doubtful that the headmistress would find support for her actions today.

Some writers on the topic of school apparel adopted a strongly pro-administration attitude. Ireland (1984:46) states that parents who did not like the idea of school uniform could send their children to a school which do not have a uniform. However, he believes that if parents are given a list of school rules, including uniform rules before enrolling their child, then the parent has accepted the rules by accepting a place at the school.

Such a view may sound reasonable where rules do not have to meet criteria established by a Convention on Human Rights. However, under human rights based legislation, such an attitude is far less likely to be tolerated.

Jeffs (1986:62-63) was severely critical of the lack of freedom of expression in English schools. He describes a school's power to impose rules upon its students as immense. Many of the rules relate to, amongst other things, dress and appearance which, in their application, can go as far as invasion of privacy by marching girls into changing rooms to check that they are wearing regulation underwear. This seemingly almost unlimited power appear retained in the School Standards and Framework Act (Great Britain, 1998b).

Parker-Jenkins (1999:153-154) states that the right to "freedom in personal appearance" has direct relevance for schools. She states that the majority of secondary schools stipulate requirements on school dress. She suggests that school policy on this issue would need to incorporate rules which are equitable and based on gender, cultural and religious factors. The request to parents to sign an undertaking that their children will wear school uniform, she believes, is a mild form of blackmail on parents and may be invalid.

English case law on the subject of school dress is limited. However, the multi-cultural nature of the inner city English schools, together with the new Human Rights Act is a recipe for a potential conflict where legal involvement may prove difficult to avoid.

Under the new Human Rights Act (Great Britain, 1998a) which incorporates the European Convention, Articles 9 and 10 of that Convention are particularly relevant. Article 9 provides for "the right to freedom of thought, conscience and religion" and Article 10 refers to the right to "freedom of expression". A guide paper for schools entitled "Human Rights Act 1998 — a brief introduction" states that, Article 10, dealing with the right to "freedom of expression" could feature in challenges around uniforms and dress codes.

Article 10(2) states that "... freedoms ... may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ..." Given the very limited case law on school dress codes from the European Court of Human Rights, and the fact that section 12 of the Human Rights Act of 1998 (the 'freedom of expression' clause) provides no specifics on the issue, early legal challenges will be the only sure way to see how the right to freedom of expression will be applied to British schools and, in this case, particularly with respect to dress codes.

Time alone will tell how far English pupils and parents will challenge such dress codes, and how far the English courts will go in supporting meaningful human rights for English pupils.

Canada

Any reference to dress codes and the Charter of Rights must keep in mind both section 1 of the Charter (the limitations) and section 2 (the section on rights). There are few cases to draw on. In *Devereux v Lambton County (R.C. Separate School Board)* quoted by Black-Branch (1997:59) school dress was at issue. The Court rejected the claim that the dress code violated Devereux's freedom of expression (s. 2 of the Charter), his liberty (s.7) and his equality (s.15). The Court ruled that the School Board had the power to institute a policy regarding "school attire" and any violation of the Charter would be saved by section 1 of the Charter. The Court added, "... to hold otherwise would be to trivialise those rights". The deference to school authorities seems to be a major reason for the decision. What "trivialising" a right means is not clear, nor is it clear what aspects of freedom of expression are not trivial. It raises the question of whether upholding the right would mean it was being trivialised or whether, in not upholding the right, the person claiming the right was being trivialised.

The Devereux case had all the signs of putting an end to all challenges to school dress codes. However, in the same year as Devereux, 1988, the dress code was again the issue in *Sehdev v Bayview Glen Junior Schools Ltd.* A Sikh student claimed that the school dress code violated his rights under the Charter. The Court ruled in the student's favour stating that the schools dress code discriminated against Sikh religious dress requirements, and ordered the school to adjust its dress code.

The case above serves as an example of the powerful influence of religious issues in dress code challenges.

Canadian case law on dress appears limited but the above cases suggest that religious issues be seen as an acceptable reason for insisting on dress code variation in Canada.

In the Ontario Provincial Code of Conduct for Schools (Canada, 2000:1-4), the only reference to dress is found under the heading 'Parents' and they are required to "help their child to be neat, appropriately dressed and prepared for school". No reference is made to uniforms.

The Constitutional right to freedom of expression: implications for South African schools

Prior to the introduction of the 1993 (interim) and 1996 (final) Constitutions, principals and governing bodies in many schools used their powers to draft a dress code and demand it be adhered to (Alston, 1998:89-95). Did they have such powers? Could they have refused entry to the school to a child who refused to conform?

This is a debatable issue, but without a test case it remains an open question. If the Guidelines (RSA, 1998) are to be taken seriously, and specifically the *right to wear* as an aspect of freedom of expression, then there is an implication that a learner may dress as he/she pleases when attending school (within the bounds of 'modesty', and 'common decency', however those two terms may be defined).

The exercise of the right in such a way has the potential for confrontation. This raises critical questions. Are school uniforms either compulsory and/or enforceable? Is a school entitled to enforce a dress code? What action can a school take against the non-conforming learner? Can a school refuse to admit a learner whose parents refuse to sign acceptance of the school's dress code? Responses to these questions form part of the discussion below.

The issue of dress is further complicated when learners (or their parents) insist on the right to wear strict religious dress or traditional cultural dress. A further complication arises when poverty plays a role in a parent's inability to pay for the often very expensive school uniform. Can the poor be denied access to specific schools for such a reason?

In South Africa, with its wide socio-economic discrepancies, there is possibly a strong case to be made for school uniforms. The uniform, it can be argued, tends to minimise or cover those differences. However, the argument only has validity when uniforms are kept affordably simple.

The following cases illustrate something of the complexity of the issues.

In East London a Grade 4 learner was turned away from his new school because he did not have shoes. The single mother asked for time, until she was paid at the end of the month, to purchase the shoes (Daily Dispatch, 24 January 2001). Following bad press coverage the school relented and purchased a pair of shoes for the child concerned. The argument forwarded by the school that their uniform included the wearing of shoes and that no exception could be made, might be seen as blatant discrimination on socio-economic grounds. Section 9(3) of the Constitution (RSA, 1996a) forbids the state [and organs of state] to "unfairly discriminate directly or indirectly against anyone on one or more grounds, including ...". The list of grounds, whilst not including socio-economics, can be read as including socio-economics as a forbidden basis for discrimination. Section 7(1) of the Constitution (RSA, 1996a) is especially relevant here, stating that [t]he Bill of Rights is a cornerstone of democracy in our country and affirms the democratic values of human dignity, equality and freedom".

When socio-economic degeneration prevents a parent from sending a child to school because of the cost of a uniform, then there is clear discrimination, and an offending of the dignity of both the parents and the learner, and an emphasis on equality. Section 7(2) of the Constitution adds to this that "[t]he state [and organs of state] must respect, protect, promote and fulfil the rights in the Bill of Rights".

An incident of this kind places the school in a dilemma of trying to maintain standards and satisfy the broader parent body whose children are conforming to the dress code. At the same time poverty is a harsh reality and one may ask whether shoes are essential for education.

The second case involved cultural dress. Following Xhosa initiation rites, initiates are required to wear particular dress at all times for some weeks. A secondary school learner approached his principal with his problem (Terblanche, pers. comm., 24 May 2000). An agreement was reached whereby the learner would wear required Xhosa dress to and from school but would change into school uniform once inside the building and change out of uniform at the end of the school day. During breaks he was permitted to remain within the buildings. This amicable agreement avoided a serious cultural confrontation and met the needs of both the school and the learner. Peer or initiate pressure is very powerful and one of the reasons for wearing the required initiate's clothes was the learner's fear of victimisation, ridicule or attack if he were seen by other initiates to be in the 'wrong' clothes, e.g. school uniform.

The amicable solution may have been impossible to reach if more than one initiate had attended the school at the same time. What right would the school have had to insist on such an arrangement if learners insisted on attending school all day in the required initiate dress? The potential for confrontation would be enormous. To refuse permission to the initiates to attend in their required initiate clothes could be interpreted as disrespect of Xhosa culture and the specific learner's pride in his cultural heritage. Further, given that the initiation practice is the Xhosa boy's entry into manhood, a negative action on the part of the school would be seen as insulting a Xhosa man.

Again, the school's dilemma is that of being both culturally sensitive and maintaining standards expected by the majority of its community.

The third case revolves around religious dress. While the case concerns a KwaZulu Natal secondary school, the issue has been repeated in several other schools and is likely to occur in many more.

The specific case is described by Liversage (1998:1-8) and further clarified by two personal communications (Liversage, 10 February 1999 and 21 June 2001). The school concerned, a former Model-C school, had a clearly laid down dress code, approved by the parent body and with strong support from the learner body. In 1997 a girl was enrolled by her father to start in Grade 8 in January 1998. The parent signed an undertaking which included, "I will ensure that my child attends school regularly and complies with the rules and regulations of the school, which I endorse". On the first day of the 1998 school

year the learner arrived at school in Moslem dress. She was intercepted and the father was asked to fetch her. She could return to school when dressed in the prescribed uniform. So began a yearlong battle involving heavy legal costs.

The father began action against the school via the KwaZulu Natal Education Department. The school was informed that it could not refuse the girl admission to the school. While the school engaged legal counsel, the girl attended school in Moslem dress. When, at the end of 1998 the same parent enrolled a second daughter, to start in Grade 8 in 1999, he signed the Code of Conduct but crossed out references to the dress code. His second daughter was refused admission to the school. Finally the principal was given an ultimatum by the Department of Education to accept the child and to accept that Moslem dress had to be permitted, or face removal from his post. The Governing Body relented and a negotiated settlement was reached. The basis of the settlement is that Moslem girls may wear either Moslem dress or school uniform but not in combination. In 2001 there were seven girls attending the school in Moslem dress. The school has become a tranquil place. The seven girls are quiet, dedicated, hard-working learners.

This case raises a number of questions. The father signed the Code of Conduct but the daughter's dress was in defiance of the code the father had signed. The case has a similar ring to the case of *Mfolo and others v Minister of Education, Bophuthatswana 1994 (1) BCLR 136 (B)*. In the latter case the students had signed a code of conduct which included agreeing to a statement that any student who became pregnant would have to leave. When Mfolo and others fell pregnant they were asked to leave. Their court challenge was upheld. One of the key points in the judgment revolved around the signing of rules, which were not in line with the Constitution. The court, for that reason, refused to bind the students to what they had signed.

In the case of the Moslem learners, the will of the majority of parents and learners was not upheld but rather the counter-majoritarian dilemma played itself here in this situation. Thus one learner was allowed to exercise her freedom of expression and freedom of religion in terms of the Constitution, against the majority view.

The case never went to court. A number of questions thus remain. Will demands for variations in school dress based on religion enjoy more support than demands based on freedom of expression? If the answer is 'yes' then one will be forced to ask, "Why?" Secondly, will all religions enjoy such protection? What if an exclusive group considers itself so bound by the biblical injunction to "be separate" (Bible N.I.V., 1978:2 Corinthians 6, verse 17) and believes they can best comply with their interpretation of Scripture by refusing to allow their children to conform to uniform requirements?

But the issue goes beyond religious dress to the heart of the right to freedom of expression. Can schools enforce school uniforms? Is it merely maintained by tradition and learners need to conform to their peers? Is there a case for a more standardised and cheaper uniform for the country, with minor variations for each school?

One of the dilemmas, which may yet face schools, is their use of "civvies days" for fund raising. The very act of allowing learners to come to school in 'civvies' at all may be construed as acceptance that the school can survive without an enforced uniform (Van Staden & Alston, 2000:113).

The support of Education Departments for school uniforms ranges from non-existent to ambiguous (Liversage, 1998:1-8). The start of an enquiry into uniforms and wider dress codes, announced by the Gauteng Education Department (SABC PM Live, 14 October 2002), indicates that uniforms are coming under close scrutiny. However, the Gauteng Education Department's spokesperson's view that Governing Bodies are currently empowered to decide on school uniforms, presumably based on section 20(1)(d) of the Schools Act (RSA, 1996b) failed to note that the Guidelines for a Code of Conduct (RSA, 1998) states that "freedom of expression is extended to forms of outward expression as seen in clothing selection and hairstyles", thus imposing a limit on Governing Bodies' powers over uniforms and dress codes. All of this leaves school governing bodies in a dilemma and there are

questions which need answers. At face value, freedom of expression appears to outweigh any claim to a right to enforce the wearing of school uniforms.

The issues of uniforms is complicated by a further less obvious pressure brought to bear on learners wearing uniforms, namely that "those who wear our uniform must be a good advert for the school" implying that all the other "prescriptions" such as hairstyles and a "no jewellery" rule, go with wearing the uniform. The issue then becomes muddled.

The educational advantages of a uniform, outside of conformity, are hard to find. The suggestion that it promotes discipline and/or improves academic performance is negated by evidence of extremely well-disciplined and/or very high performing schools without uniforms. The confused perception is illustrated by an incident where a Grade 3 learner wore brown shoes to school instead of uniform black shoes, and the mother refused to buy new black shoes as her daughter had lost the previous pair. The school argued that allowing her to continue to wear brown shoes would undermine school discipline (pers. comm., 17 May 2002). Discipline, which depends on the colour of shoes, is simply unsubstantiated.

No right is unlimited. But can schools impose limitations on learners in the form of a rigid dress code? Section 36 of the Constitution (RSA, 1996a) makes it clear that limitations must be

... reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including the nature of the right; the importance of the purpose of the limitation; the nature and extent of the limitation; the relation between the limitation and its purpose; and less restrictive means to achieve the purpose.

A critical examination of the limitation clause suggests that schools will be very hard pressed to prove a justifiable reason for limiting learners' dress to that set out in a rigid dress code.

The real problem of uniform and related issues probably lies more in deeply ingrained traditions and attempts to resist or restrict changes. According to Meyerson (1997:41), it is important to check that the reasons for limitations (to what learners may wear to school) are not for an "impermissible purpose behind permissible-sounding language".

Findings on issues of dress and dress codes

How young people dress and what they wear to school has been a long-standing issue in many countries. The first divide is between having compulsory school uniforms or not, and the second is how much freedom the non-school uniform student has in his/her choice of clothes.

The wearing of uniforms or not has not been a major issue in the United States, while in Great Britain uniforms cannot be enforced in government schools but the powers of principals to exclude almost anything can result in "a uniform by exclusion of all else". Whilst it is not possible to enforce school uniforms, a school uniform may end up being "prescriptive" by peer pressure to conform. If enough parents fall in line with a proposed uniform it creates pressure on all others. The European Commission rejected the only case contesting uniform regulations in a British school as an infringement of a child's rights. Whether this ruling will serve as a precedent for British courts as they apply the European Convention in Britain remains to be seen.

A Canadian court ruling stated that the wearing of the school uniform did not violate the applicant's freedom of expression. However, in the same year, the court provided a contradictory decision involving religious dress, by stating those school uniform violated Sikh religious dress requirements. Thus issues of religion and culture impact on school dress.

When the Bill of Rights Act of 1990 came into force in New Zealand there were challenges by students against school dress regulations, particularly in respect of such compulsory school uniforms being an infringement of freedom of expression. The Human Rights Commission rulings went in favour of certain students on grounds of

freedom of expression, sex discrimination and religion.

Examining the experiences of the United States, Canada, Britain and New Zealand, it may have been expected that uniforms might be the subject of an early challenge in South Africa after the Interim Constitution (RSA, 1993) came into force. However, school uniform was a tradition rather than being enforceable by law. Up to the present there is no report of a court challenge to uniforms. In former white schools there are deep traditions which are used to enforce dress codes. For how long those traditions will be a source of persuasion is hard to estimate.

In the overall South African context, it is probable that many learners do not wear uniforms, particularly in rural black schools, for reasons of poverty, lack of access to suppliers and a lack of a tradition of wearing uniforms. There is evidence of a shift towards uniforms in urban black schools and schools on the outer fringes of towns, but that these uniforms are not rigidly enforced. The Guidelines (RSA, 1998) point to freedom of expression as including "clothing selection"; a statement learners could use as a strong argument for dressing in other than school uniform.

The issue of poverty and uniform could be used by the poor to make a strong case that schools who insist on a compulsory uniform are engaging in unfair discrimination. A recent incident of a learner threatened with exclusion from school unless he had a uniform by the next week (Maree, pers. comm., 5 October 2002) may be an isolated case, or it may be the tip of an iceberg. Whilst *poverty* is not contained in the list in section 9(3) of the Constitution (RSA, 1996a), the word 'including' indicates that the list of grounds of unfair discrimination is not exclusive. The Promotion of Equality and Prevention of Unfair Discrimination Act (RSA, 2000) does not refer specifically to poverty as an issue of discrimination. However, in section 4(2), the guiding principles of the Act, reference is made to "systemic discrimination and inequalities" and "the need to take all measures at all levels to eliminate such discrimination and inequalities".

Currently, South African school uniform issues rest with School Governing bodies and the parents who elect them. However, an unconstitutional decision of a governing body can be challenged, as illustrated in the case of the KwaZulu Natal Secondary School.

Conclusions

The five countries do not present a common approach to dress codes. They do, however, together illustrate that dress codes are not only a legal issue but an issue strongly touched by culture, religion, traditions and socio-economic factors.

Appearance in the form of school dress can and has given rise to conflicts between pupils and staff in countries far apart and very different from one another. The issue relates to more than outward appearance, but relates also to an expression of individual personality, religious or cultural identity, or an attempt to send a message of "this is who I am". Thus, focusing on the external alone can portray a lack of concern for the individual's personality and his/her dignity, thus infringing the learners' right to both freedom of expression and dignity.

The uniform issues will not go away. While it is impossible to predict what changes will be forthcoming in South African schools, it seems unlikely that the status quo on dress codes will remain unchallenged for long.

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