53 We submit that the criticism by the SCA of the reviewing parties in *Phambili Fisheries* applies equally to the Applicants contentions:

> *"During the course of the argument for Phambili we were frequently told that something that the Chief Director had done was 'wrong'. This is the language of appeal, not review. I do not think that the word was misused, because time and again it appears that what is really under attack is the substances of the decision, not the procedure by means of which it was arrived at. That is not our job. I agree with what is said by Hoexter (op cit at 185):*
>
> > "The important thing is that Judges should not use the opportunity of scrutiny to prefer their own views as to the correctness of the decision, and thus obliterate the distinction between review and appeal."[40]

54 It has been frequently recognised that *"[t]he executive has a wide discretion in selecting the means to achieve its constitutionally permissible objectives. Courts may not interfere with the means selected simply because they do not like them, or because there are other more appropriate means that could have been selected. But, where the decision is challenged on the grounds of rationality, courts*

---

[40] ***Minister of Environmental Affairs and Tourism and Others v Phambili Fisheries (Pty) Ltd*** 2003 (6) SA 407 (SCA) at para 52. See Also: ***Minister of Defence and Military Veterans v Motau and Others*** 2014 (5) SA 69 (CC), par 69.

are obliged to examine the means selected to determine whether they are rationally related to the objective sought to be achieved"[41]

55 It is therefore submitted that the above Honourable Court cannot find that Regulation 4(5)(a) is not rationally connected to the purpose for which the power is conferred upon the Minister to make the regulation.[42]

56 It is therefore submitted that declaratory order sought by the Applicants cannot be granted.

57 Applicants also contends that Regulation 4(5)(a) is an unjustified limitation on the right to a basic education.

58 This approach is simply not correct. The Constitutional Court has explained that it is perfectly permissible for law-makers to enact legislation intended to address legitimate concerns without having to show empirical proof on this score. This is so even in the context of a section 36 limitations analysis where a limitation of rights has been shown:

> *"A legislative choice is not always subject to courtroom fact-finding and may be based on reasonable inferences unsupported by empirical data. When policy is in issue it may*

---

[41] ***Albutt v Centre for the Study of Violence and Reconciliation and Others*** 2010 (3) SA 293 (CC), para 51

[42] AA, para 149.3

not be possible to prove that a policy directed to a particular concern will be effective. It does not necessarily follow from this, however, that the policy is not reasonable and justifiable. If the concerns are of sufficient importance, the risks associated with them sufficiently high, and there is sufficient connection between means and ends, that may be enough to justify action taken to address them".[43]

59 The Minister contends that common sense dictates that the provision of school infrastructure will be subject to the resources and co-operation of government agencies and that the Applicants have not identified what the limitation is and what it entails. It would have been irresponsible of the Minister to promulgate norms and standards that are not subject to the availability of resources and co-operation of government agencies.[44]

60 There is still a deep inequality in the distribution of public school resources along racial lines. The better-endowed public schools tend to be located in white communities and serve white interest while the worst-endowed public schools tend to be located in back communities and serve black interests.

---

[43] ***Minister of Home Affairs v NICRO*** 2005 (3) SA 280 (CC) para 35
[44] Answering Affidavit (AA), para 144-147

61 The Constitutional Court emphasized the extent of this remaining inequality.

62 In *Hoërskool Ermelo*, the Constitutional Court referred to the *"continuing deep inequality in our educational system, a painful legacy of our apartheid history" and stressed that "an unequal access to education entrenches historical inequity since it perpetuates socio-economic disadvantage."* [45]

63 In *Rivonia Primary*, the Constitutional Court held that *"in reality, a radically unequal distribution of resources – related to a history of systematic discrimination – still makes this constitutional guarantee [of a right to a basic education] inaccessible for large numbers of South Africans"*.[46] The court added that "*The question we face as a society is not whether, but how, to address this problem of uneven access to education.*" [47]

64 There is accordingly no basis for any suggestion that Regulation 4(5)(a) is an unjustified limitation on the right to a basic education.

65 Applicants also contend that Regulation 4(5)(a) offends the constitutional value of accountability, because it qualifies the state's obligation to provide adequate school infrastructure in such a way as

---

[45] ***Head of Department, Mpumalanga Department of Education v Hoerskool Ermelo*** 2010 (2) SA 415 (CC) para 2.

[46] ***MEC for Education in Gauteng Province and Other v Governing Body of Rivonia Primary School and Others*** 2013 (6) SA 582 (CC) para 1

[47] Rivonia para 2

to prevent the public from being able to hold the government accountable for failures in this regard.

66 We submit, however, that this argument is unfounded for the following reasons:

66.1 First, it is admitted that where there is a failure to provide adequate infrastructure, the relevant government department or organ of government should be held accountable and should be called upon to give an explanation.[48]

66.2 Second, it is submitted that in terms of our democracy, the Applicants have ways of holding the government accountable for failures.[49]

67 Applicants also complains that Regulation 4(5)(a) subverts the constitutional requirement of co-operative governance.

68 Applicants plead and admit that co-operation within state organs is necessary and it is legislated. But the Applicants go on to aver that regulation 4(5)(a) is invalid and it imposes an impermissible limitation, when in fact this regulation gives effect to the co-operation that is both provided for in the Constitution and the Framework Act.[50]

---

[48] AA, para 151.2
[49] AA, para 151.3
[50] AA, para 152.3

69 We submit that Regulation 4(5)(a) promotes the spirit that spheres of government are interdependent and interrelated and therefore should cooperate and work with each other in harmony.[51]

70 The challenge to regulation 4(5)(a) must therefore fail.

D. ALTERNATIVE RELIEF: PRAYER 2 OF THE NOTICE OF MOTION

71 In the alternative to declaratory sought by the Applicants under paragraph 1, the applicant are asking that regulation 4(5)(a) of the Regulations stand to be reviewed and set aside. The relief sought by the Applicants has no basis and no reasons are advanced for that relief.

72 It is submitted that the first Respondent when promulgating regulation 4(5) (a) was within her constitutional obligation, having lawful authority for her decision under SASA and as such her decision was rational.

73 In ***Prinsloo v Van der Linde***[52] the Court held that:

> *"... a person seeking to impugn the constitutionality of a legislative classification cannot simply rely on the fact that the State objective could have been achieved in a better way. As long as there is a rational relationship between the method and*

---

51 AA, para 153.2
52 1997 (3) SA 1012 (CC) at para 36

object it is irrelevant that the object could have been achieved in a different way."

74 In ***Bel Porto School Governing Body and Others v Premier of the Western Cape Province and Another***[53] the Court held that:

"The fact that there may be more than one rational way of dealing with a particular problem does not make the choice of one rather than the others an irrational decision. The making of such choice is within the domain of the executive. Courts cannot interfere with rational decision of the executive that have been made lawfully, on the grounds that they consider that a different decision would have been preferable."

E. DECLARATORY ORDER: PRAYER 3 OF THE NOTICE OF MOTION

75 The Applicants further sought for relief declaring that regulation 4(3)(a) read with regulation (4)(1)(b)(i) of the Regulations requires that all schools and classrooms build substantially from mud as well as those schools built from materials such as asbestos, metal and woods, must within a period of three(3) years from the date of publication of the Regulations, be replaced by structures which accord with the Regulations, the National Building Regulations, SANS 10-400 and the Occupational Health and Safety Act 85 of 1993.

---

[53] 2002 (3) SA 265 at para 45

76 Regulation 4 (3) (a) provides that as far as schools contemplated in regulation (1) (b) are concerned:

76.1 And for the purposes of sub-regulation 1(b)(i), all schools built entirely from mud as well as those schools built entirely from materials such as asbestos, metal and wood must be prioritized.

76.2 Regulation 4(1) (b) (i) provides that, notwithstanding the provisions of these regulations, the norms and standards contained in the regulations.

77 As far as schools are concerned which exist when this regulation are published must, subject to sub-regulation (5), and as far as reasonably practical:

77.1 With reference to the norms and standards mentioned in sub-regulation (3) (a) and (b), be complied with within a period of three (3) years from the date of publication of this regulation.

77.2 It is submitted that regulation 4(3)(a) read with regulation 4(1)(b)(i) of the Regulations makes it clear that schools built entirely from mud or materials such as asbestos, metal and wood need to be given priority. The relief sought by the Applicants has no basis and is incompetent.

78 It is further submitted that in terms of regulation 4(1)(b)(i) the schools which exist when the Regulations were published are to be brought into the ambit of the Regulations under sub-regulations 4(1)(b)(i) to (iv) and should be consistent with the National Building Regulations and Building Standard Act 103 of 1977, SANS 10-400 and Occupational Health and Safety Act 85 of 1993.

79 In ***Soobramoney v Minister of Health (KwaZulu-Natal)***[54] the Court held that:

> *"The provincial administration which is responsible for health services in KwaZulu-Natal has to make decisions about the funding that should be made available for health care and how such funds should be spent. These choices involve difficult decisions to be taken at the political level in fixing the health budget, and at the functional level in deciding upon the priorities to be met. A court will be slow to interfere with rational decisions taken in good faith by the political organs and medical authorities whose responsibility it is to deal with such matters."*

F. 1998 (1) SA 765 (CC) at para 29DECLARATORY ORDER: PRAYER 4 OF THE NOTICE OF MOTION

54

80 The Applicants further seeks an order where the word "*entirely*" should be struck out whenever it appears in Regulation 4(3)(a) and alternatively striking out the phrase "*schools built entirely*" whenever it appears in regulation 4(3)(a) and replacing it with words " *classrooms built entirely or substantially*".

81 The relief sought by the Applicants is without basis and have ignored the fact that the Regulations in its preamble have recognized the painful legacy and injustices caused by apartheid in South African basic education fraternity.

82 The Applicants also lost sight of the fact that there are schools which are in a dilapidated state of disrepair, which schools needs to be prioritized and attended to as soon as possible.

83 It is submitted that regulation 4(3) (a) deals specifically with that category of schools that need to be prioritized and it would not be practical for the first Respondent to prioritize the supply of new schools and refurbishment of old schools without categorizing those that need urgent attention due to their terms of the condition and the state of their disrepair.

84 It submitted that this Court is enjoined by the judgment of the Constitutional Court in ***Head of Department: Mpumalanga Department of Education and Another v Hoerskool Ermelo and***

Another[55] to consider the particular impact that the legacy of apartheid education had in most black communities. The Constitutional Court held in para 46 that:

> *"It is so that white public schools were hugely better resourced than black schools. They were lavishly treated by the apartheid government. It is also true that they served and were shored up by relatively affluent white communities. On the other hand, formerly black public schools have been and by and by large remain scantily resourced. They were deliberately funded stingily by the apartheid government. Also, they served in the main and were supported by relatively deprived black communities. That is why perhaps the most abiding and debilitating legacy of our past is an unequal distribution of skills and competencies acquired through education"*

85 This Court is also enjoined by the judgment of the Constitutional Court in ***Governing Body of the Juma Musjid Primary School and Others v Essay N.O. and Others***[56] where the Court held that:

> *"The significance of education, in particular basic education for individual and societal development in our democratic dispensation in the light of the legacy of apartheid, cannot be overlooked. The inadequacy of schooling facilities, particularly*

---

55 2010 (2) SA 415 (CC)
56 2011 (8) BCLR 761 at para 42

for many blacks was entrenched by the formal institution of apartheid, after 1948, when segregation even in education and schools in South Africa was codified. Today, the lasting effects of the educational segregation of apartheid are discernible in the systemic problems of inadequate facilities and the discrepancy in the level of basic education for the majority of learners."

G. DECLARATORY ORDER: PRAYER 5 OF THE NOTICE OF MOTION

86 The Applicants seeks a prayer that regulation 4(3)(b) read with regulation 4(1)(b)(i) of the Regulations to be read as requiring that all schools that do not have access to any form of power supply, water supply or sanitation, must within a period of three (3) years from the date of publication of the Regulations, comply with the Norms and Standards described in regulations 10, 11 and 12 of the Regulations.

87 Regulation 4(3)(b) provides that:

"And for the purposes of subregulation 1 (b)(i), all those schools that do not have access to any form of power supply, water supply or sanitation must be prioritized."

88 Regulation 4(1)(b)(i) provides that:

"(b) As far as schools are concerned which exist when these regulations are published, must, subject to subregulation (5), and as far as reasonably practicable-

(b) With reference to the norms and standards mentioned in subregulation (3)(a) and (b) be complied with within a period of three (3) years from the date of publication of these regulations."

89 Regulation 10 provides that:

"(1) All schools must have some form of power supply which complies with all relevant laws.

(2) The choice of an appropriate power supply must be sufficient to serve the power requirements of each particular school and must be based on the most appropriate source of power supply available for that particular school.

(3) Forms of power supply could include one or more of the following:

(a) grid electrical reticulation;

(b) generator;

(c) solar power energy; or

(d) wind powered energy sources."

90 Regulation 11 provides that:

"(1) All schools must have a sufficient water supply which complies with all relevant laws and which is available at all times for drinking, personal hygiene and, where appropriate, for food preparation.

(2) Sufficient water-collection points and water-use facilities must be available at all schools to allow convenient access to, and use of, water for drinking, personal hygiene and, where appropriate, or food preparation.

(3) The choice of an appropriate water technology must be based on an assessment conducted on the most suitable water supply technology for each particular school and must be maintained in good working order.

(4) Sources of water supply could include one or more of the following:

(a) *A municipal reticulation network;*

(b) *Rain water harvesting and, when so required, tanker supply from municipalities;*

(c) *Mobile tankers;*

(d) *Boreholes and, when so required tanker supply from municipalities; or*

(e) Local reservoirs and dams

91 Regulation 12 provides that:

"(1) All schools must have a sufficient number of sanitation facilities, as contained in Annexure G that are easily accessible to all learners and educators, provide privacy and security, promote health and hygiene standards, comply with all relevant laws and are maintained in good working order.

(2) The choice of an appropriate sanitation technology must be based on an assessment conducted on the most suitable sanitation technology for each particular school.

(3) Sanitation facilities could include one or more of the following:

(a) Water borne sanitation;

(b) Mall bore sewer reticulation;

(c) Septic or conservancy tank systems;

(d) Ventilated improved pit latrines; or

(e) Composting toilets.

(4) Plain pit and bucket latrines are not allowed at schools.

92 It is submitted that the mere fact that the above provisions of the Regulations required the supply of water, sanitation and electricity need to be prioritized, it must be borne in mind that those services are not within the competence of the first Respondent.

93 Co-operative government and intergovernmental relations as referred above in paras 4.1.4, 4.1.5 and 4.1.9 must exist between the first Respondent and other Ministers in other government departments to ensure that there is access to power supply, water supply and sanitation in all schools.

94 Since other government departments among others, the Department of Energy, the Department of Water and Sanitation, the Department of Finance and all other relevant departments including Department of Public Works which is responsible for immovable property of the State, will be affected by the relief sought by the Applicants it is submitted that it will not be competent for the above Honourable Court to grant the relief that will bind other departments who are not party to this proceedings.

95 It is submitted that this Court, is enjoined by the judgment of the Constitutional Court in ***National Treasury and Others v Opposition***

to Urban Tolling Alliance and Others[57] where the Court reiterated how careful the judiciary must be not to made orders that would trench inappropriately on the domains that the constitution has allocated to other organs of state.[58]

96 Describing the position and role of the courts in the state's governmental framework the Constitutional Court in ***International Trade Administration Commission v SCAW South Africa (Pty) Ltd***[59] at para 95 noted as follows:

> *"Where the constitution or valid legislation has entrusted specific powers and functions to a particular branch of government, courts may not usurp that power or function by making decision of their preference. That would frustrate the balance of power implied in the principle of separation of powers. The primary responsibility of a court is not to make decisions reserved for a within the domain of other branches of government, but rather to ensure that the concerned branches of government exercise their authority within the bounds of the Constitution. This would especially be so where the decision in issue is policy –laden as well as polycentric."*

---

57 2012 (6) SA 223 (CC)
58 supra, Para 44.
59 2012 (4) SA 618 (CC)

97 It is submitted that the relief sought by the Applicants cannot be granted since it has impact on other departments who are not party to the proceedings.

98 In ***Oudekraal Estates (Pty) Ltd v City of Cape Town & Others***[60], the Court held that it is generally inappropriate for a court to make declarations in a vacuum.

H. DECLARATORY ORDER: PRAYER 6 OF THE NOTICE OF MOTION

99 The Applicants seek a declaratory order that regulation 4(2)(b) of the Regulations be implemented in a manner which is consistent with the Regulations, and that all future planning and prioritization in respect of these schools must be consistent with the Regulations.

100 Regulation 4(2) (b) provides that 'the plans and prioritizations of the schools contemplated in paragraph (a) must, where possible and reasonable practicable, be revised and brought in line with these Regulations.'

101 The declaratory order sought by the Applicants has no basis. Furthermore, there is no material evidence or allegation of non-compliance with the Regulations and there is no evidence of deviation from the Regulations by the first Respondent.

---

[60] 2004 (6) SA 222 (SCA) at para 45

I. DECLARATORY ORDER: PRAYER 7 OF THE NOTICE OF MOTION

102 The Applicants seek a declaratory order that regulations 4(6)(a) and 4(7) are invalid to the extent that they do not provide for the plans and reports to be made available to the public.

103 Regulation 4(6)(a) provides that a Member of Executive Council must, within a period of 12 months after the publication of the regulations and thereafter annually on a date and in the manner determined by the Minister, provided the Minister with detailed plans on the manner in which the norms and standards are to be implemented as far as schools referred to in sub regulation (1) are concerned.

104 Regulation 4(7) provides that in addition to the requirements contained in section 58C of the Act, a Member of Executive Council must, in the manner determined by the Minister, report annually to the Minister on the implementation of the plans required in terms of subregulation (6).

105 It must be understood that regulations 4(6) (a) and 4(7) are as a results of section 58C of SASA. Section 58C does not requires that the plans and reports prepared by the Member of Executive Council to be made available to the public bearing in mind the role of the school governing body responsible for school governance.

106 It is submitted that this Court, is enjoined by the judgment of the Constitutional Court In ***Federation of Governing Bodies for South***

African Schools (FEDSAS) v Member of the Executive Council for Education, Gauteng and Another[61]) where the Court consider the important role of the School Governing Bodies at educational governance and noted that it remains important to recognize that School Governing Bodies are a vital lifeblood to proper and fulsome learning and teaching. The School Governing Bodies are made up in a democratic and participatory manner and ordinarily would advance the legitimate interest of learners at a school.

107 It is further submitted that the relief sought by the Applicants do not attack the validity of section 58C of SASA by they purport to do so by attacking regulations 4(6) (a) and 4(7). It is submitted that if the Applicants are not satisfied with the provision of section 58C and would like to challenge its constitutionality, they should do so by following appropriate procedures.

108 The Court is enjoined by the judgment of the Constitutional Court in In ***Mazibuko and Other v City of Johannesburg and Others[62]*** where the Court held that where legislation has been enacted to give effect to a right, a litigant should rely on that legislation in order to give effect to the right or alternatively challenge the legislation as being inconsistent with the Constitution.

---

[61] 2016 (4) SA 546 (CC) at para 44
[62] 2010 (4) SA 1 (CC) at para 73

109 In ***Shaik v Minister of Justice and Constitutional Development and Others***[63] the Court held that it is a fundamental principle of constitutional litigation to require accuracy in the identification of the provision of legislation that is challenged on the basis that it is inconsistent with the Constitution.

110 It is also submitted that making available the plans to the public in terms of regulations 4(6)(a) and 4(7) would have ripple effect in that it will extent the periods as provided for in section 4(1)(b)(i) to (iv) of the Regulations.

111 The relief sought by the Applicants in therefore ill-deceived and the above Honourable Court should not grant it.

J. AN APPROPRIATE REMEDY

112 We submit that the application should be dismissed in its entirely.

113 However, were this court to uphold any of the challenges, we submit that it should both direct that the declaration of invalidity does not have retrospective effect and suspend the order to allow the defect to be cured.

114 There is no need or basis for an order of retrospective invalidity. Such an order would imperil the many thousands of school infrastructure

---

63 2004 (3) SA 599 (CC) at para 25

plans/decisions made by the Provincial, National Departments and schools at the beginning of the school years from 29th November 2013 to current and outer MTEF period would cause considerable confusion and adverse consequences.

115 Moreover, going forward, any order of invalidity should be suspended for a period of at least a year to allow the Minister, the national assembly and possibly other organs of state to resolve the problem. As the Constitutional Court has explained, suspension is not an exceptional remedy:

> *"Suspension is not an exceptional remedy. It is an obvious use of this Court's remedial power under the Constitution to ensure that just and equitable constitutional relief is afforded to litigants, while ensuring that there is no disruption of the regulatory a provision that is invalidated.*[64]

116 The regulations have been in force since 29th November 2013. An order of invalidity that takes immediate effect "*will be disruptive and leave a vacuum*".[65] A suspension would avoid this disruption. There are moreover multiple ways in which any constitutional defect could be cured.[66]

---

64 ***Estate Agency Affairs Board v Auction Alliance (Pty) Ltd and Others*** 2014 (3)
65 ***Doctors for life Intl v Speaker of the National Assembly*** 2006 (6) SA 416 (CC) para 214
66 **Minister of Home Affairs and Another v Fourie and Another** 2006 (1) SA 524 (CC) para 139

117 A suspension for one year is appropriate having regard to the fact that the new regulations, once drafted, would have to be subjected to a public consultation process.

K. CONCLUSION

118 For the reasons set out above:

118.1 The Applicants' application is bad in law; and

118.2 In any event, the Applicants have failed to make out any case for the declaratory relief that they now seek.

119 The Respondents pray the above Honourable Court to dismiss the application with costs, inclusive of costs of three counsel.

M C ERASMUS SC
E M BALOYI-MERE
First Respondents' Counsel
Circle Chambers
BROOKLYN
27 February 2018

IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, BHISHO

Case No: 276/16

In the matter between:

EQUAL EDUCATION	1st Applicant
AMATOLAVILLE PRIMARY SCHOOL	2nd Applicant

and

MINISTER OF BASIC EDUCATION	1st Respondent
MEC FOR EDUCATION: LIMPOPO	2nd Respondent
MEC FOR EDUCATION: EASTERN CAPE	3rd Respondent
MEC FOR EDUCATION: FREE STATE	4th Respondent
MEC FOR EDUCATION: GAUTENG	5th Respondent
MEC FOR EDUCATION: KWAZULU-NATAL	6th Respondent
MEC FOR EDUCATION: MPUMALANGA	7th Respondent
MEC FOR EDUCATION: NORTHERN CAPE	8th Respondent
MEC FOR EDUCATION: NORTH WEST	9th Respondent
MEC FOR EDUCATION: WESTERN CAPE	10th Respondent

RESPONDENT'S LIST OF AUTHORITIES

CASE LAW

- ***President of the Republic of South Africa and Others v South African Rugby Football Union and Others (SARFU)*** 2000 (1) SA 1 (CC) at para 142
- ***Minister of Health v New Clicks SA (Pty) Ltd and Others*** 2006 (2) SA 311 at para 128
- ***Gqwetha v Transkei Development Corporation Ltd and Others*** 2006 (2) SA 603 (SCA)
- ***Miller JA in Wolgroeiers Afslaers (Edms) Bpk v Munisipaliteit van Kaapstad*** 1978 (1) SA 13 (A) at 41E-F
- ***Judicial Service Commission v Cape Bar Council*** 2013 (1) SA 170 (SCA) at para 7
- ***Judicial Service Commission v Cape Bar Council*** 2013(1) SA 170 (SCA) at para 7
- ***Amalgamated Engineering Union v Minister of Labour*** 1949 (3) SA 637 (A)
- ***Gordon v Department of Health, KwaZulu-Natal*** 2008 (6) SA 522 (SCA)
- ***Burger v Rand Water Board*** 2007(1) SA 30 (SCA) at para 7
- ***Independent Electoral Commission v Langeberg Municipality*** 2001 (3) SA 925 (CC) at para [26]
- ***Government of the Republic of South Africa and Others v Grootboom and Others*** 2001 (1) SA 46 (CC) at paras 39-40
- ***Eke v Parsons*** 2016 (3) SA 37 (CC) at para 31

- *City of Tshwane Metropolitan Municipality v Cable City (Pty) Ltd* 2010 (3) SA 589 (SCA)
- *Law Society of South Africa and Other v Minister for Transport and Another* 2011 (1)SA 400 (CC)
- *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* 2004 (4) SA 490 (CC)
- *R v Chief Constable of Sussex, Ex parte International Trader's Ferry Ltd* [1999] 1 All ER 129 (HL)
- *the Road Freight Industry and Another 2010 (5) SA 457 (SCA) at paras 58-59*
- *MEC for Environmental Affairs and Development Planning v Clairiston's* CC 2013 (6) SA 235 (SCA)
- *Minister of Environmental Affairs and Tourism and Others v Phambili Fisheries (Pty)* Ltd 2003 (6) SA 407 (SCA)
- *Minister of Defence and Military Veterans v Motau and Others* 2014 (5) SA 69 (CC)
- *Albutt v Centre for the Study of Violence and Reconciliation and Others* 2010 (3) SA 293 (CC)
- *Minister of Home Affairs v NICRO* 2005 (3) SA 280 (CC)
- *Head of Department, Mpumalanga Department of Education v Hoerskool Ermelo* 2010 (2) SA 415 (CC)
- *MEC for Education in Gauteng Province and Other v Governing Body of Rivonia Primary School and Others* 2013 (6) SA 582 (CC)
- *Prinsloo v Van der Linde* 1997 (3) SA 1012 (CC)

- ***Bel Porto School Governing Body and Others v Premier of the Western Cape Province and Another*** 2002 (3) SA 265 at para 45
- ***Soobramoney v Minister of Health (KwaZulu-Natal)*** 1998 (1) SA 765 (CC) at para 29
- ***Head of Department: Mpumalanga Department of Education and Another v Hoerskool Ermelo and Another*** 2010 (2) SA 415 (CC)
- ***Governing Body of the Juma Musjid Primary School and Others v Essay N.O. and Others*** 2011 (8) BCLR 761 at para 42
- ***National Treasury and Others v Opposition to Urban Tolling Alliance and Others*** 2012 (6) SA 223 (CC)
- ***International Trade Administration Commission v SCAW South Africa (Pty) Ltd*** 2012 (4) SA 618 (CC)
- ***Oudekraal Estates (Pty) Ltd v City of Cape Town & Others*** 2004 (6) SA 222 (SCA)
- ***Mazibuko and Other v City of Johannesburg and Others*** 2016 (4) SA 546 (CC)
- ***Shaik v Minister of Justice and Constitutional Development and Others*** 2004 (3) SA 599 (CC)
- ***Doctors for life Intl v Speaker of the National Assembly*** 2006 (6) SA 416 (CC
- ***Minister of Home Affairs and Another v Fourie and Another*** 2006 (1) SA 524 (CC)

LEGISLATION

- **South African Schools Act, 84 of 1996 ("*SASA*""SASA")**

- Occupational Health and Safety Act 85 of 1993
- Promotion of Administrative Justice Act, 3 of 2000 (*"PAJA"*)
- Intergovernmental Framework Act 2005, 13 of 2005
- National Building Regulations and Building Standard Act, 103 of 1977

M C ERASMUS SC
E M BALOYI-MERE
J MERABE
First Respondent's Counsel
Circle Chambers
BROOKLYN
27 February 2018