

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

CASE NO: 18904/13

In the matter between:

<b>EVELYN WILHELMINA PEASE</b>	First Applicant
<b>PROGRESSIVE PRINCIPALS ASSOCIATION</b>	Second Applicant

and

<b>GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA</b>	First Respondent
<b>MINISTER OF BASIC EDUCATION</b>	Second Respondent
<b>MEC FOR EDUCATION: EASTERN CAPE</b>	Third Respondent
<b>MEC FOR EDUCATION: FREE STATE</b>	Fourth Respondent
<b>MEC FOR EDUCATION: GAUTENG</b>	Fifth Respondent
<b>MEC FOR EDUCATION: KWAZULU-NATAL</b>	Sixth Respondent
<b>MEC FOR EDUCATION: LIMPOPO</b>	Seventh Respondent
<b>MEC FOR EDUCATION: MPUMALANGA</b>	Eighth Respondent
<b>MEC FOR EDUCATION: NORTHERN CAPE</b>	Ninth Respondent
<b>MEC FOR EDUCATION: NORTH WEST</b>	Tenth Respondent
<b>MEC FOR EDUCATION: WESTERN CAPE</b>	Eleventh Respondent
<b>NATIONAL MINISTER OF FINANCE</b>	Twelfth Respondent
<b>NATIONAL MINISTER OF SOCIAL DEVELOPMENT</b>	Thirteenth Respondent
<b>PUBLIC PROTECTOR</b>	Fourteenth Respondent
<b>SOUTH AFRICAN HUMAN RIGHTS COMMISSION</b>	Fifteenth Respondent
<b>AUDITOR-GENERAL</b>	Sixteenth Respondent

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**APPLICANTS' GUIDE TO READING THE RECORD**

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1. A great deal of material has been placed on record by the parties. It is appropriate that the court should be given as much relevant matter as possible, given the public interest nature of the relief claimed in the notice of motion, the millions of children directly and indirectly affected by the way in which the issues are finally determined, and the importance of the case to the trajectory of transformation in the basic education system in particular and concomitantly in society in general. The final outcome of this case will have great bearing on both of those trajectories.
  
2. The purpose of this note is to afford the members of the court a “roadmap” to reading the record in a manner that is well-ordered, logical and sequential, so that it is easier to come to grips with the essence of the case. It is but a suggestion and is intended to facilitate the marshalling of the large amount of factual and opinion evidence that has been placed on record.
  
3. The notice of motion itself is the starting point as it identifies the four main themes of the case: the promotion of early childhood development (ECD), the enhancement of mother-tongue education in the foundation phase at public schools, the professionalisation of teachers and the provision of learning and teaching support material (LTSM) in all classes, all subjects, always timeously, in the right quantities and languages [Record page 2 *et seq.*].

4. As a basis for acquainting itself with the legal landscape that may inform its approach to the record, the court may consider reading the learned articles by the McConnachies and by the co-authors Kent Roach and Geoff Budlender as a general introduction to the right to basic education and the granting of structural interdicts, as well as other legal relief in matters of this nature. Both are attached to this guide for ease of reference. [Annexure “**G1**” – C McConnachie & C McConnachie “Concretising the right to a basic education.” (2012) 129 *SALJ* 554; and Annexure “**G2**” – K Roach & G Budlender “Mandatory relief and supervisory jurisdiction: when is it appropriate, just and equitable?” (2005) 122 *SALJ* 325].
  
5. Further general assistance is to be found in Du Plessis et al, *Constitutional Litigation* (2013), especially at paragraph 1.2 (pages 3 to 7) and, as regards structural interdicts, paragraph 7.5 (pages 124 to 125) and the cases referred to by the learned authors, especially those that relate to the rights of children. Patricia Martin’s recently published work on children’s rights to basic education in South Africa sets out the general legal and policy framework in convenient and logical form [Record “**PM1**” pages 2926 to 2987].
  
6. In order to acquaint itself with the state of development of basic education in general and, in particular, in relation to the four themes identified by the applicants, the court may next wish to have regard to the following documents:

- 6.1 The extracts from the SAIRR Surveys on education for the last three years [Record “**EP8**” pages 120 to 194; “**EP9**” pages 195 to 276; and “**EP10**” pages 277 to 341];
  - 6.2 The UCT Child Gauges extracts for the last three years [Record “**EP12**” pages 345 to 355; “**EP13**” pages 356 to 360; and “**EP14**” pages 361 to 366]; and
  - 6.3 The ANA results filed of record with the founding and the supplementary affidavits of the Applicants [Record “**EP22**” pages 499 to 535; “**EP23**” pages 536 to 602; and “**RN(S)4**” pages 900 to 989].
7. Next it is appropriate to have regard to the views of the experts who have provided their opinion evidence, all of which is uncontroverted, to assist the court in the determination of the issues:
- 7.1 On ECD the following experts have provided their opinions: Ashley-Cooper and Atmore [Record “**EP17**” pages 405 to 415];
  - 7.2 On mother tongue education: Alexander [Record “**EP28**” pages 725 to 730; “**EP29**” pages 731 to 782]; October [Record “**EP27**” pages 682 to 724]; Owen-Smith Loffell [Record “**EP31**” pages 791 to 796 and 797 to 804]; Bloch [Record “**EP26**” pages 660 to 675]; and Edwards [Record “**EP32**” pages 813 to 859].

- 7.3 On professionalization of teachers: Wright [Record “**EP19**” pages 452 to 473], Spaul [Record “**EP25**” pages 633 to 655], Joseph and Ramani [Record “**EP18**” pages 425 to 432] and Long [Record “**EP24**” pages 617 to 628]; in reply: Rice [Record “**EWP3**” 2988 to 2993] and Scott [Record “**EWP4**” pages 2994 to 3000], Dunne [Record “**EWP5**” page 3026], as well as Simkins [Record “**EWP12**” pages 3257 to 3292].
- 7.4 While no expert testimony exclusively on provision of LTSM is filed, the report of the Public Protector on the situation in the Eastern Cape “Learning without Books” of 5 December 2013 [Record “**RN(S)12**” pages 1018 to 1075] is instructive, even though it is contested. Judicial precedents concerning the school books crises in Limpopo will best assist this court in coming to a decision on this aspect.
8. Next, a perusal of the ninth chapter of the National Development Plan [Record “**EP16**” pages 383 to 404] as it pertains to the issues in this case is indicated.
9. Thereafter, the founding and supplementary affidavits [Record pages 9 to 91 and 871 to 891] can be read, followed by the answering affidavit of the Second Respondent [Record pages 1107 to 1254] and the reply by First Applicant [Record pages 2790 to 2915].

10. Before turning to the heads of argument filed by both sides, it is instructive to read the broad demand made by several civil society organisations that blazed the trail for the Applicants [Record “**EWP15**” pages 3306 to 3308] on 21 June 2012 and the more modest demand made on Applicants’ behalf [Record “**EP15**” pages 367 to 382] on 30 August 2013. No substantive response has been received to either demand.

11. Finally, the heads of argument filed on both sides are obviously necessary reading. A list of abbreviations used accompanies this guide for the convenience of the Court.

**Adv. Paul Hoffman**

**Adv. Natalie Lawrenson**

Counsel for the Applicants

Chambers

23 April 2014

**LIST OF ABBREVIATIONS TO APPLICANTS' HEADS OF ARGUMENT**

ANA	- Annual National Assessments
CAPS	- Curriculum Assessment Policy Statements
CC	- Constitutional Court
Constitution	- Constitution of Republic of South Africa Act 108 of 1996
C29 (e.g.)	- "C" refers to a particular section in the Constitution
DBE	- Department of Basic Education
DSD	- Department of Social Development
ECD	- Early Childhood Development
LTSM	- Learner Teacher Support Material
MEC	- Member of the Executive Council
NDP	- National Development Plan
SASA	- South African Schools Act 84 of 1996
SAHRC	- South African Human Rights Commission
SAIRR	-South African International Race Relations surveys