

# Sexual Grooming of Children in Teaching as a Trust Profession in South Africa

SA Coetzee\*

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## Author

Susan A Coetzee

## Affiliation

University of South Africa

## Email

Coetzsa1@unisa.ac.za

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## Abstract

The aim with this article is to put the sexual grooming of children in teaching as a trust profession in perspective. Because sexual grooming frequently precedes other sexual offences, targeting it can help prevent such offences. However, the author contends it should not be targeted as a preparatory offence but as an independent offence and form of sexual misconduct. This argument is supported by the fact that the institutional context and distinguishing features of schools make them unique hunting grounds for sexual groomers looking to sexually groom children. This risk is heightened by instances in which a school's institutional values, culture, traditions and practices facilitate sexual grooming. Furthermore, sexual grooming causes severe harm to a child, especially when it occurs within a trust relationship. Following a brief conceptual analysis of the offence of sexual grooming of children as set out in section 18 of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007* and some reflection on dilemmas in this regard, the author deliberates on the harmfulness of sexual grooming, focussing on teaching as a trust profession. The author then addresses schools as breeding grounds for sexual grooming before discussing the institutional facilitation of sexual grooming. The author concludes with recommendations on how sexual grooming in schools could be approached.

## Keywords

*Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007*; educator sexual misconduct; institutional grooming; sexual grooming of children; trust profession.

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## 1 Introduction

Referring to South African school sports, Luke Lamprecht, Head of Advocacy: Women and Men Against Child Abuse, argued that although it is difficult to determine the true extent of sexual grooming, it can be said to be "widespread" and "endemic".<sup>1</sup> Court and arbitration cases dealing with educator-on-learner sexual abuse where sexual grooming was present, such as *Le Roux v S*,<sup>2</sup> *S v RC*,<sup>3</sup> *SADTU obo Sobantu Maxwell July and Northern Cape Department of Education*,<sup>4</sup> *Gauteng Department of Education and FD Modiba*,<sup>5</sup> and *SADTU obo V Ramphal and Gauteng Department of Education*<sup>6</sup> suggest that the sexual grooming of learners is a noticeable problem in South African schools in general and not only in sports. There is positive movement towards acknowledging the role sexual grooming plays in educator-learner sexual relationships. In *Gauteng Department of Education and S Rasekhula*,<sup>7</sup> for example, the arbitrator dismissed the educator, relying on section 17(1)(c) of the *Employment of Educators Act 76 of 1998*, for having a sexual relationship with a learner and determined that the learner was groomed for the relationship. The focus fell completely on sexual grooming in *LJ Davids and Western Cape Department of Education*,<sup>8</sup> when the educator was dismissed in terms of section 18(1)(dd) of the *Employment of Educators Act 76 of 1998* for having committed the statutory offence of sexual grooming of children.

Sexual grooming (either online, offline or in an online-offline combination) is arguably a constituent of a great number of sexual acts against children.<sup>9</sup>

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\* Susan A Coetzee. BA Ed BEd MEd DEd (UNISA) Certificate Programme in Law LLB Advanced Short Course in Outcomes-based Assessment in Higher Education and Distance Learning. Professor, Department of Educational Leadership and Management, University of South Africa. ORCID: <https://orcid.org/0000-0002-4503-1367>. E-mail: [coetzsa1@unisa.ac.za](mailto:coetzsa1@unisa.ac.za).

<sup>1</sup> Cited in Mamacos 2021 <https://www.news24.com/parent/family/parenting/schools-sports-and-grooming-why-is-this-such-a-widespread-issue-20211012>.

<sup>2</sup> *Le Roux v S* (A & R 25/2018) [2021] ZAECGHC 57 (13 May 2021) (hereafter the *Le Roux case*).

<sup>3</sup> *S v RC* 2016 1 SACR 34 (KZP) (hereafter the *RC case*).

<sup>4</sup> *SADTU obo Sobantu Maxwell July and Northern Cape Department of Education* PSES 610-18/19 NC (14 May 2019) (hereafter *July arbitration*).

<sup>5</sup> *Gauteng Department of Education and FD Modiba* PSES720-19/20GP (24 February 2020) (hereafter *Modiba arbitration*).

<sup>6</sup> *SADTU obo V Ramphal and Gauteng Department of Education* PSES442-17/18GP (10 May 2019).

<sup>7</sup> *Gauteng Department of Education and S Rasekhula* ELRC 990-21/22GP (25 April 2022) (hereafter *Rasekhula arbitration*) paras 15, 16, 19.

<sup>8</sup> *LJ Davids and Western Cape Department of Education* ELRC767-21/22WC (6 May 2022) (hereafter *Davids arbitration*) paras 18, 63.

<sup>9</sup> See Aucamp *et al* 2012 *CARSA* 3; Randhawa and Jacobs 2013 <https://www.childwise.org.au/page/78/publications> 6; Ost *Child Pornography and Sexual Grooming* 136; Victoria Family and Community Development Committee

This fact is apparent in the above-mentioned cases and was also brought to the fore by the Canadian Centre for Child Protection's<sup>10</sup> country-wide survey to determine the prevalence of sexual misconduct by personnel working in K-12 schools over 20 years (1997-2017). It found that sexual grooming was used in 70% of the 389 non-contact sexual offence cases and 73% of the 321 contact sexual offence cases. In this context one can agree with Ost<sup>11</sup> that criminalising sexual grooming as a separate offence, as many countries have done,<sup>12</sup> could significantly expand the protection of children against sexual abuse. Extending the preceding argument to sexual grooming as a type of educator sexual misconduct, one can argue that targeting and combatting sexual grooming could provide a layer of protection between educator sexual predators and children, prevent offences such as rape and sexual assault, act as a deterrent for potential educator sexual predators, and ultimately reduce educator sexual misconduct in general.<sup>13</sup>

This introduction is followed by a conceptual clarification of the offence of sexual grooming and a reflection on some dilemmas in this regard. Then the author considers the harmfulness of sexual grooming with reference to case law, elaborating on its harmfulness particularly in teaching as a trust profession, before going into detail on why schools are unique breeding grounds for educator sexual predators looking to sexually groom learners.

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[https://www.parliament.vic.gov.au/file\\_uploads/Inquiry\\_into\\_Handling\\_of\\_Abuse\\_Volume\\_2\\_FINAL\\_web\\_y78t3Wpb.pdf](https://www.parliament.vic.gov.au/file_uploads/Inquiry_into_Handling_of_Abuse_Volume_2_FINAL_web_y78t3Wpb.pdf) 467 footnote 17.

<sup>10</sup> Canadian Centre for Child Protection 2019 *Journal of Child Sexual Abuse* 55.

<sup>11</sup> Ost 2004 *JSWFL* 147.

<sup>12</sup> Section 15 of the *United Kingdom Sexual Offences Act*, 2003 ch 42 provides for the offence of "meeting a child following sexual grooming". Ost 2004 *JSWFL* 149 correctly argues that while this section is described as covering the offence of sexual grooming, it "does not criminalise an act of sexual grooming per se". S 15A of this Act criminalises sexual communication with a child where the adult draws a child into such communication for his or her own sexual gratification and involves the child in sexual communication. Ss 272.14 and 272.15A of the *Australian Criminal Code Act* 12 of 1995 prohibit both the grooming of a child as well as the grooming of a third party with the intent to make it easier to engage in a sexual activity with a child. In 2014 the offence of "Grooming for sexual conduct with a child under the age of 16 years" was introduced in Victoria through s 49M of the *Crimes Amendment (Grooming) Act* 7 of 2014. The *Malaysian Sexual Offences Against Children Act* 792 of 2017 creates three grooming or grooming-related offences: sexual communication with a child or encouraging a child to sexually communicate (s 11); if the communication is performed with the intention to commit or facilitate a sexual offence, it constitutes child grooming (s 12); lastly, following on grooming, travelling with the intention to meet the child to commit or facilitate a sexual offence is criminalised in s 13.

<sup>13</sup> Randhawa and Jacobs 2013 <https://www.childwise.org.au/page/78/publications> 15; McAlinden 2006 *Social & Legal Studies* 339, 341, 355; Sorell 2017 *Criminal Law and Philosophy* 706.

Thereafter the author considers the institutional facilitation of sexual grooming before concluding and making recommendations.

## 2 Conceptual clarification

McAlinden<sup>14</sup> defines sexual grooming as "the preparatory stages of abuse where abusers gain the trust of the child or significant others to both facilitate abuse and subsequently avoid discovery or disclosure." This definition illustrates the first dilemma, namely that sexual grooming is seen as only "preparatory" to an offence or to a sexual act and not as an offence or a sexual act in itself. It is not denied that sexual grooming is commonly used as a preparatory phase to sexual offences against children, but one can also agree with Lanning's<sup>15</sup> reasoning that in at least some cases grooming is not a means to a sexual activity but *is* the sexual activity. This is true particularly when one considers section 18 of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007* (hereafter *Sexual Offences Amendment Act*). Two offences are set out in section 18, namely promoting sexual grooming (section 18(1)) and sexual grooming as such (section 18(2)).

Promoting sexual grooming entails: (1) possessing, manufacturing, facilitating manufacturing or distributing any article with the sole intent of facilitating or promoting the commission of a sexual act with or by a child; (2) possessing, manufacturing, facilitating manufacturing or distributing any article with the intent for it to be used in the promotion or commission of a sexual act with or by a child; (3) supplying or showing of, or exposing a third person to an article, pornography, child pornography or a film with the intent of enabling, inspiring, or convincing that person to engage in a sexual act with a child; (4) facilitating or arranging a meeting or communication between a third party and a child with the intention that the third party will perform a sexual act with the child.

Sexual grooming of a child is defined as

- (1) giving, showing of, or exposing a child to an article, pornography, child pornography or a film with the intention to encourage, enable, educate or convince the child to perform a sexual act;
- (2) committing any act with or in the presence of a child with the intent to encourage or convince the child to: (a) perform a sexual act with the person himself or herself or with a third person; (b) engage in self-masturbation in front of or while the person himself or herself or a third

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<sup>14</sup> McAlinden 2013 *Sexual Offender Treatment* 1.

<sup>15</sup> Lanning cited in Raine and Kent 2019 *Aggression and Violent Behavior* 182.

person is watching; (c) observe or be present when an adult or a third party engages in self-masturbation or any other sexual act; (d) look at pornographic or child pornographic material; (e) be used or assist in the creation, making, or production of child pornography; (f) expose his or her body or a portion thereof to the person or a third party in a manner or under circumstance that violates his or her sexual integrity or dignity. This provision covers section 18(2)(b), which was interpreted by Olsen J with Henriques J and Naidoo AJ concurring in the *RC* case,<sup>16</sup> as encompassing both conduct intended to encourage or persuade a child to perform a sexual act and conduct intended to diminish or reduce any resistance or unwillingness on the part of the child to engage in a sexual act;

- (3) arranging or facilitating communication with the child, during which the commission of a sexual act is discussed, explained, or described to the child or any image, publication, depiction, description, or sequence of child pornography of himself or herself or any other person is communicated to the child with the intention to commit a sexual act with the child;
- (4) arranging or facilitating a meeting with the child with the intention of committing a sexual act with the child;
- (5) arranging or facilitating travel for the child or intentionally travelling to meet with the child with the intention of committing a sexual act with the child.

That sexual grooming includes sexual activity or conduct was confirmed in the *RC* case.<sup>17</sup> The appellant claimed the duplication of charges and appealed against his conviction for both sexual grooming and sexual assault. The court *a quo* regarded inappropriate touching as a separate offence. On appeal, the court found that the inappropriate touching formed part of the appellant's intention to groom and it was thus not a separate offence.

The fact that sexual grooming is a sexual offence and cannot be described as a preparatory offence preceding a "sexual offence" in terms of section 18 highlights another dilemma; namely that of finding a suitable concept to describe the "offence" in which sexual grooming can culminate. Although the author followed the *Sexual Offences Amendment Act* and *RC* case and used the phrase "sexual act", it is clear that this is not a suitable concept.

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<sup>16</sup> *RC* case paras 2, 55.

<sup>17</sup> *RC* case headnote.

As already mentioned, at least parts of the sexual grooming process could also constitute a sexual act in the form of a sexual violation. The term "sexual act" refers to "an act of sexual penetration or sexual violation".<sup>18</sup> Touching the child's genital organs, anus or female breasts, kissing a child, and masturbating a child are typical grooming behaviour that constitute sexual violations.<sup>19</sup> In fact, in the *RC* case<sup>20</sup> the judges questioned whether the legislature erred in section 18(2)(b) of the *Sexual Offences Amendment Act* by criminalising the intentional description of "any act", instead of "any sexual act", to diminish or reduce a child's resistance to engage in a sexual act. Perhaps it should be "a sexual act" that culminates in "a penetrative sexual act". This suggestion needs more investigation though.

Another dilemma is the link between sexual grooming and sexual exploitation. Some regard sexual grooming as a type of sexual exploitation, while others directly equate it with sexual exploitation.<sup>21</sup> The link between sexual grooming and exploitation may be traced back to the initial introduction of sexual grooming as part of the fight against online sexual exploitation. Since 1990 several initiatives in the international human rights arena, including three World Congresses against the Sexual Exploitation of Children (Stockholm in 1996, Yokohama in 2001, and Rio in November 2008) have addressed sexual exploitation. After the Rio Congress the *Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents* was issued, wherein the call was made for focussed action to prevent the use of online technologies to groom children sexually.<sup>22</sup> Regional instruments followed suit and the Council of Europe's *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)* is regarded as the Convention most relevant to child sexual grooming.<sup>23</sup> Article 23 of this Convention deals with the "solicitation of children for sexual purposes".

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<sup>18</sup> Section 1 of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act* 32 of 2007 (the *Sexual Offences Amendment Act*).

<sup>19</sup> See, for example the following cases: *Modiba* arbitration para 26; *S v Kock* (670/02) [2003] ZASCA 1 (14 February 2003) paras 11, 13; *MG v S* (A158/2019) [2020] ZAWCHC 42 (25 May 2020) para 3; *July* arbitration para 7; *Shole TTS and Gauteng Department of Education PSES665-19/20GP* (14 July 2020) para 6; *Sogoni M and Western Cape Education Department PSES407-19/20WC* (17 February 2020) para 9; *Steyn v S* (A278/13) [2014] ZAGPJHC 268 (16 October 2014) para 10 (hereafter the *Steyn* case); *Tyrone Venter v The State* (945/2018) [2020] ZASCA 14 (24 March 2020) para 7.

<sup>20</sup> *RC* case para 3.

<sup>21</sup> See Aitken, Gaskell and Hodkinson 2018 *Deviant Behavior* 1170; CEOP *Out of Mind, Out of Sight* 13; *Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents* (2008).

<sup>22</sup> Article 5 of the *Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents* (2008).

<sup>23</sup> Article 23 of the *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (2007).

Although this article is considered as dealing with sexual grooming<sup>24</sup> and was included to address the trend of children being sexually harmed when meeting adults who have contacted them via internet chat rooms or game sites,<sup>25</sup> it does not cover actual grooming activities.<sup>26</sup> This trend was then also followed in the adoption of sexual grooming offences in many countries.<sup>27</sup> However, its inclusion in the Convention has advocacy value in that it draws attention to the dangers of online solicitation and stimulates the adoption of laws on sexual grooming.

Another reason for regarding sexual grooming as a form of or equating it with sexual exploitation is that exploitation is at the heart of sexual grooming.<sup>28</sup> Even though the *Sexual Offences Amendment Act*<sup>29</sup> provides for the sexual exploitation and sexual grooming of children as two separate offences, reference is made in the preamble to new "offences relating to sexual exploitation or grooming", implying that the one is an alternative to the other. In his definition of sexual grooming Collings<sup>30</sup> indicates sexual exploitation as a goal of sexual grooming and the author contends that such an interpretation is correct. Only time will tell how the courts will distinguish between these two offences, but it is evident that a person can in terms of section 17(1) be found guilty of sexual exploitation "in addition to" sexual grooming. If sexual exploitation cannot be proven, a guilty verdict of sexual grooming could attract section 56A(2) of the *Sexual Offences Amendment Act* in terms of which the intention of the groomer to exploit the child for personal benefit, favour or advantage, which is always present in sexual grooming cases, can be regarded as an aggravating factor at sentencing.

Another dilemma is whether sexual grooming should be classified as a contact or non-contact offence. Aucamp *et al*<sup>31</sup> and even this author at a stage<sup>32</sup> classified sexual grooming as a non-contact offence, but classifying sexual grooming as a non-contact offence makes sense in the online world only, since offline sexual grooming does not completely fall into the category of non-contact sexual abuse. As was argued above, inappropriate touching

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<sup>24</sup> Lanzarote Committee 2015 <https://edoc.coe.int/en/children-s-rights/7064-lanzarote-committee-opinion-on-article-23-of-the-lanzarote-convention-and-its-explanatory-note.html> items 6 and 155.

<sup>25</sup> Secretariat of the Lanzarote Committee 2020 <https://rm.coe.int/information-note-the-council-of-europe-convention-on-the-protection-of/16807962a7>.

<sup>26</sup> Lanzarote Committee 2015 <https://edoc.coe.int/en/children-s-rights/7064-lanzarote-committee-opinion-on-article-23-of-the-lanzarote-convention-and-its-explanatory-note.html> items 1, 4, 11.

<sup>27</sup> See fn. 12 above.

<sup>28</sup> Shakeshaft 2013 *Kappan* 10, 12.

<sup>29</sup> Sections 17 and 18 of the *Sexual Offences Amendment Act*.

<sup>30</sup> Collings 2020 *CARSA* 2-3.

<sup>31</sup> Aucamp *et al* 2012 *CARSA* 3.

<sup>32</sup> Coetzee 2015 *PELJ* 2121.

can be part of the sexual desensitisation process.<sup>33</sup> That sexual grooming can take both contact and non-contact forms was confirmed by Commissioner Buitendag in the  *Davids*  arbitration.<sup>34</sup> He explained that "[G]rooming behaviour[s] are not uniform and can take physical, psychological, material and emotional forms, or a combination of these".

### 3 Harmfulness of sexual grooming

Sorell<sup>35</sup> asserts that grooming is harmful in and of itself. Rose LJ alluded to this in the New Zealand Criminal Appeal case in  *Re Attorney General's Reference* ,<sup>36</sup> stating

The gravity lay not so much in the nature of the sexual activity in itself but in the grooming of this vulnerable and handicapped boy, over a period of time and the giving of money and other gifts.

Van Zyl<sup>37</sup> points out that South African criminal case law illustrates a development from failing to appreciate the effects of sexual grooming on a child in the majority judgment of  *Marx v S* <sup>38</sup> to following the minority judgment of Cameron J in  *Marx v S*  and acknowledging the harmful effects of the grooming process in  *S v Muller* .<sup>39</sup> The Supreme Court of Appeal built on these two cases in  *S v Mugridge* <sup>40</sup> and incorporated sexual grooming into the jurisprudence.<sup>41</sup> Van Zyl,<sup>42</sup> referring to  *S v Van Rooyen* ,<sup>43</sup> concluded that the court made promising changes in recognising the harmfulness of sexual grooming, such as recognising that an adult's physical strength as well as the power provided by the adult's status can negate the lack of physical violence as a mitigating factor. However, in  *MJM v S* ,<sup>44</sup> despite acknowledging that the offender took advantage of the child's vulnerability to break her resistance down and foster compliance, Mushasha J used the child's "compliant actions" resulting from the grooming as a mitigating factor during sentencing.

The declaration of section 18(f) of the  *Criminal Procedure Act*  51 of 1997 as unconstitutional will impact on how courts and tribunals will view the harmfulness of sexual grooming. The court  *a quo* 's view in the  *Le Roux*

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<sup>33</sup> See Aucamp  *et al*  2012  *CARSA*  4.

<sup>34</sup>  *Davids*  arbitration para 59.

<sup>35</sup> Sorell 2017  *Criminal Law and Philosophy*  705.

<sup>36</sup>  *Re Attorney General's Reference*  (No 41 of 2000) [2001] 1 Cr App R (S) 372 para 20.

<sup>37</sup> See Van Zyl 2017  *Agenda*  44-53; Van Zyl 2018  *SA Crime Quarterly*  43-53.

<sup>38</sup>  *Marx v S*  2005 4 All SA 267 (SCA).

<sup>39</sup>  *S v Muller*  2007 JOL 19407 (W).

<sup>40</sup>  *S v Mugridge*  2013 JDR 0658 (SCA).

<sup>41</sup> See Van Zyl 2017  *Agenda*  44-53; Van Zyl 2018  *SA Crime Quarterly*  43-53.

<sup>42</sup> See Van Zyl 2017  *Agenda*  51.

<sup>43</sup>  *S v Van Rooyen*  2011 JOL 28016 (ECM).

<sup>44</sup>  *MJM v S*  2014 JDR 1525 (GP) paras 21, 23 and 25.

case<sup>45</sup> that the psychological damage caused by grooming is equal and comparable to that experienced by rape victims was rejected on appeal when the court held that, while the harm caused by sexual grooming is serious enough to justify a prison sentence, it cannot be equated with rape. However, in *L v Franke*<sup>46</sup> the common notion that penetrative sexual offences are necessarily more serious than non-penetrative offences to decide on the extent of a victim's trauma was challenged as unconstitutional because it belittles the harmfulness of non-penetrative sexual offences against children. Hartford AJ declared section 18(f) of the *Criminal Procedure Act* 51 of 1997 which excludes only penetrative sexual offences from the 20-year prescription period, unconstitutional, irrational and arbitrary.<sup>47</sup>

The Victoria Family and Community Development Committee asserts that treating sexual grooming merely as an aggravating factor during sentencing or when deciding on a sanction does not adequately recognise the harm it causes.<sup>48</sup> Randhawa and Jacobs<sup>49</sup> observed that a child may experience trauma because of grooming, irrespective of whether it is followed by sexual abuse or not. In the *RC* case<sup>50</sup> Olsen J with Henriques J and Naidoo AJ concurring, held that

[m]anipulation of a child's sexual psyche by an adult for his or her own amusement or sexual diversion is harmful conduct which may have far-reaching (sic) consequences for the child, even if the adult has no intention of ultimately performing any overt sexual act with the child.

A similar conclusion can be reached regarding the harm caused by educator-on-learner sexual grooming. In fact, one could argue that the harm caused by sexual grooming in trust professions is even more severe than sexual grooming in general.

#### **4 Harmfulness of sexual grooming in teaching as a trust profession**

Teaching is a trust profession, and as such, a fertile ground for sexual grooming wherein trust is a prerequisite and the abuse thereof an integral part.<sup>51</sup> Three characteristics of what makes sexual offences "abuse of trust

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<sup>45</sup> *Le Roux* case para 21.

<sup>46</sup> *L v Frankel* (29573/2016) [2017] ZAGPJHC 140 (15 June 2017) paras 54.1-54.4, 59 (hereafter the *Frankel* case).

<sup>47</sup> *Frankel* case paras 51, 63, 79.

<sup>48</sup> Victoria Family and Community Development Committee 2013 [https://www.parliament.vic.gov.au/file\\_uploads/Inquiry\\_into\\_Handling\\_of\\_Abuse\\_Volume\\_2\\_FINAL\\_web\\_y78t3Wpb.pdf](https://www.parliament.vic.gov.au/file_uploads/Inquiry_into_Handling_of_Abuse_Volume_2_FINAL_web_y78t3Wpb.pdf) 465.

<sup>49</sup> Randhawa and Jacobs 2013 <https://www.childwise.org.au/page/78/publications> 16.

<sup>50</sup> *RC* case para 55.

<sup>51</sup> CEOP *Out of Mind, Out of Sight* 17; Colton, Roberts and Vanstone 2012 *Howard J Crim Just* 86; McAlinden 2006 *Social & Legal Studies* 340, 345.

offences" in faith settings, namely that victims are young and vulnerable, that the location creates the opportunity and that the adult has a special influence over the child, are equally applicable to schools.<sup>52</sup>

Scholars such as Smit and Du Plessis,<sup>53</sup> judges in cases such as *Gora v Kingswood College*,<sup>54</sup> *Hawekwa Youth Camp v Byrne*<sup>55</sup> and *Mageni v Minister of Education of the Western Cape Education Department*,<sup>56</sup> and arbitrators in cases such as *Lindani Ncakeni and Gauteng Department of Education*<sup>57</sup> and *TV Waterson and Gauteng Department of Education*<sup>58</sup> describe the educator-learner relationship as an *in loco parentis* relationship. They attribute educators' duty of care, the standard of such care and trust relationship to the fact that educators act *in loco parentis*. On the other hand, scholars such as Coetzee,<sup>59</sup> Neethling and Potgieter,<sup>60</sup> Potgieter<sup>61</sup> and Stuart<sup>62</sup> argue that educators' responsibilities, duties, positions of trust and standard of care should not be defined in terms of *in loco parentis* because those are professionally defined, derived from legislation and the fact that teaching is a profession with public interest at heart.<sup>63</sup> Teaching is a public trust profession and educators are persons with professional qualifications who are bound by a professional code and entrusted with public power to provide a service in public interest. The public has a legitimate expectation that educators will perform the specific professional functions entrusted to them in a lawful, ethical manner and with devotion and care.<sup>64</sup> Arbitrator Boyce in the *Rasekhula* arbitration<sup>65</sup> commented that educators are different from other employees because society relies on them to mould future leaders and exemplary citizens. The

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<sup>52</sup> All-Party Parliamentary Group on Safeguarding in Faith Settings *Positions of Trust* 17.

<sup>53</sup> Smit and Du Plessis 2011 *PELJ* 173, 179-180.

<sup>54</sup> *Gora v Kingswood College* (5517/2015) [2019] ZAECGHC 24 (15 March 2019) paras 16, 25, 27.

<sup>55</sup> *Hawekwa Youth Camp v Byrne* (615/2009) [2009] ZASCA 156 (27 November 2009) paras 19, 39.

<sup>56</sup> *Mageni v Minister of Education of the Western Cape Education Department* (16843/15) [2021] ZAWCHC 79 (28 April 2021) para 42.

<sup>57</sup> *Lindani Ncakeni and Gauteng Department of Education* PSES 58-13/14 GP (23 April 2014) para 109 (hereafter the *Ncakeni* arbitration).

<sup>58</sup> *TV Waterson and Gauteng Department of Education* PSES345-12/13 19 November 2013 para 4.10 (hereafter *Waterson* arbitration).

<sup>59</sup> Coetzee 2015 *PELJ* 2126.

<sup>60</sup> Neethling and Potgieter 2011 *De Jure*.

<sup>61</sup> Potgieter 2004 *Perspectives in Education* 153, 155-156.

<sup>62</sup> Stuart 2010 *U Cin L Rev*.

<sup>63</sup> Coetzee 2015 *PELJ* 2126; Neethling and Potgieter 2011 *De Jure*; Potgieter 2004 *Perspectives in Education* 155-156.

<sup>64</sup> Dubiel-Zielińska 2016 *Ethics & Bioethics* 20-21.

<sup>65</sup> *Rasekhula* arbitration para 13.

arbitrator describes the uniqueness of teaching as a trust profession as follows:

[p]arents and society at large place their trust on educators and expect of educators to, at all times, act in a manner befitting the position of trust that they are placed in. Educators are accordingly held to higher standards than other professions. As such, even the slightest of betrayal of this trust should not only be frowned upon but should be harshly dealt with.

Betrayal of trust is a key element of sexual grooming,<sup>66</sup> since it includes a process of psychological manipulation of a child to disempower, betray and make the child feel compliant.<sup>67</sup> It is this betrayal that, according to Colton, Roberts and Vanstone, makes the ramifications of sexual grooming for learner victims immeasurable.<sup>68</sup> Likewise, the Victoria Family and Community Development Committee in its report on *Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations* remarked that it is the fact that grooming involves a breach of trust that makes it "particularly abhorrent".<sup>69</sup> In *Queensland Teachers' Union v State of Queensland* the court explains that sexual grooming is a dismissible offence because it involves breaking the trust relationship between the educator and learner.<sup>70</sup>

Betrayal of trust causes trauma,<sup>71</sup> which can have a lasting effect on the child.<sup>72</sup> Honourable Sydney L Robins, a former judge of the Court of Appeal for Ontario, remarked that even a seemingly trivial incident of sexual touching by a trusted adult can have a significant and enduring impact.<sup>73</sup> Betrayal is intensified if the child is not believed,<sup>74</sup> which is where sexual grooming is involved, rather a probability because tactics used to prevent the learner from being believed on disclosure are to groom the school, parents and community as well and to isolate the child.<sup>75</sup>

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<sup>66</sup> McAlinden 2006 *Social & Legal Studies* 344, 356.

<sup>67</sup> Collings 2020 *CARSA* 2-3; Victoria Family and Community Development Committee 2013 [https://www.parliament.vic.gov.au/file\\_uploads/Inquiry\\_into\\_Handling\\_of\\_Abuse\\_Volume\\_2\\_FINAL\\_web\\_y78t3Wpb.pdf](https://www.parliament.vic.gov.au/file_uploads/Inquiry_into_Handling_of_Abuse_Volume_2_FINAL_web_y78t3Wpb.pdf) 466.

<sup>68</sup> Colton, Roberts, and Vanstone 2012 *Howard J Crim Just* 80.

<sup>69</sup> Victoria Family and Community Development Committee 2013 [https://www.parliament.vic.gov.au/file\\_uploads/Inquiry\\_into\\_Handling\\_of\\_Abuse\\_Volume\\_2\\_FINAL\\_web\\_y78t3Wpb.pdf](https://www.parliament.vic.gov.au/file_uploads/Inquiry_into_Handling_of_Abuse_Volume_2_FINAL_web_y78t3Wpb.pdf) 466.

<sup>70</sup> *Queensland Teachers' Union v State of Queensland acting through Department of Education, Training and the Arts* (TD/2009/150) para 119.

<sup>71</sup> Finkelhor and Browne 1985 *American Journal for Orthopsychiatry* 531.

<sup>72</sup> Canadian Centre for Child Protection 2019 *Journal of Child Sexual Abuse* 61.

<sup>73</sup> Robins *Protecting Our Students*.

<sup>74</sup> Finkelhor and Browne 1985 *American Journal for Orthopsychiatry* 533.

<sup>75</sup> McAlinden "Organisational Sex Offenders and 'Institutional Grooming'" 72-73.

Since the trust relationship between educators and learners plays a crucial role in shaping children's worldview and how they form relationships,<sup>76</sup> the betrayal thereof harms children's ability to relate to others and to form meaningful social bonds.<sup>77</sup> The victims in *Strydom v S*,<sup>78</sup> for example, indicated that they experience difficulties with interpersonal relationships because of being groomed by their sports coach. The clinical psychologist's account in the *Steyn* case<sup>79</sup> that his client developed "paranoid ideation and hyper vigilance (sic)", which made him feel threatened, persecuted or conspired against and caused him to constantly question the intentions of others, provides a feasible explanation of why sexual grooming victims struggle to build relationships.

Another trauma-causing factor that a victim of sexual grooming can experience is stigmatisation. Perhaps it should rather be "self-stigmatisation" because it entails self-blame and the development of low self-esteem.<sup>80</sup> This traumatic factor is associated with the grooming behaviour used to establish an apparent consensual relationship,<sup>81</sup> to create the impression that the child was actively involved in decision-making.<sup>82</sup> Desensitisation to sex contributes to the child feeling guilty and believing that he or she has consented.<sup>83</sup> In an attempt to prevent the child from disclosing a groomer will convince the child that his or her body's reaction to sexual stimulation indicates that he or she enjoyed the sexual touching and "wanted it". The child will then feel at fault, start to self-blame, and become convinced that nobody will believe him or her. Spilg J described this in *H v S*<sup>84</sup> as having

... engendered in her a sense of fear and self-loathing by playing on her vulnerability by suggesting that she may be taken from her mother and by holding her responsible for what she was forced to endure.

That sexual grooming results in self-blame was evident in the case *DP v S*,<sup>85</sup> where the victim, a 10-year-old boy, indicated that he failed to report

<sup>76</sup> Canadian Centre for Child Protection 2019 *Journal of Child Sexual Abuse* 61.

<sup>77</sup> Canadian Centre for Child Protection 2019 *Journal of Child Sexual Abuse* 61; Randhawa and Jacobs 2013 <https://www.childwise.org.au/page/78/publications> 16; Hui, Xin and Khader 2015 *International Journal of Police Science & Management* 43.

<sup>78</sup> *Strydom v S* (A463/2014) [2015] ZAGPPHC 272 (5 February 2015) (the *Strydom* case) para 9.

<sup>79</sup> *Steyn* case para 20.

<sup>80</sup> Finkelhor and Browne 1985 *American Journal for Orthopsychiatry* 532-533; Webb and Mitchell 2019 <https://childluresprevention.com/resources/molester-profile/>.

<sup>81</sup> Williams and Hudson 2013 *Journal of Sexual Aggression* 219.

<sup>82</sup> Van de Vijver and Harvey 2019 *Journal of Family Therapy* 456.

<sup>83</sup> Raine and Kent 2019 *Aggression and Violent Behavior* 182.

<sup>84</sup> *H v S* (A400/2012) [2014] ZAGPJHC 214 (16 September 2014) para 67.

<sup>85</sup> *DP v S* [2018] JOL 39835 (FB) paras 9-13.

the many grooming behaviours because he felt ashamed and was not sure whether he was in some way at fault.

Spilg J again emphasised, in *S v Radebe*,<sup>86</sup> the need to consider the emotional and psychological damage to the victim such as personality disorders that incline victims to have inflexible and destructive thoughts. The personality disorders engender or exacerbate self-hate, guilt and feelings of inadequacy, which can culminate in suicidal tendencies.

The invasion of a child's environment, personal space and body creates a sense of powerlessness,<sup>87</sup> which is even worse when the sexual groomer is a trusted authority figure such as an educator.<sup>88</sup> The fact that groomers manipulate their victims to prevent disclosure contributes to the sense of powerlessness. Feeling disempowered intensifies the long-term harm to the child.<sup>89</sup>

Because exploitation is a large part of sexual grooming, it impacts on the child's physical and mental health, emotional and psychological development, and education.<sup>90</sup> Groomers aim to make the child emotionally, financially or academically dependent on them.<sup>91</sup> Because the child's needs are met, he or she may go along with the abuse out of misplaced loyalty or indebtedness to the groomer.<sup>92</sup> In an interview with McElvaney,<sup>93</sup> a 52-year-old man confessed that although he knew that his abuser harmed and manipulated him, he nevertheless considered him his "benefactor", "substitute parent" and essential to his survival. According to McElvaney,<sup>94</sup> because children are manipulated to want to be with the person who is abusing them, "traumatic bonding" is an important aspect of grooming relationships. Traumatic bonding explains why children who were sexually groomed continue to have positive and even protective feelings toward the abuser. These feelings exacerbate self-stigmatisation.

Sexual groomers ultimately aim to lower the child's sexual inhibitions and normalise adult-child sexual relations, which leads to victims experiencing

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<sup>86</sup> *S v Radebe* 2019 JDR 1257 (GP) para 47.

<sup>87</sup> Finkelhor and Browne 1985 *American Journal for Orthopsychiatry* 532.

<sup>88</sup> Finkelhor and Browne 1985 *American Journal for Orthopsychiatry* 532.

<sup>89</sup> Randhawa and Jacobs 2013 <https://www.childwise.org.au/page/78/publications> 16.

<sup>90</sup> Kaufman and Erooga *Risk Profiles for Institutional Child Sexual Abuse* 56; SACE 2017 [https://www.sace.org.za/assets/documents/uploads/sace\\_79756-2017-12-06-FACTORS%20FACILITATING%20SEXUAL-RELATED%20MISDEMEANOUR%20BETWEEN%20TEACHERS%20AND%20LEARNERS%20-%20CPTD.pdf](https://www.sace.org.za/assets/documents/uploads/sace_79756-2017-12-06-FACTORS%20FACILITATING%20SEXUAL-RELATED%20MISDEMEANOUR%20BETWEEN%20TEACHERS%20AND%20LEARNERS%20-%20CPTD.pdf) 11.

<sup>91</sup> Palmer *Role of Organisational Culture in Child Sexual Abuse* 25.

<sup>92</sup> Victoria Department of Education 2016 <https://www.childabuseroyalcommission.gov.au/sites/default/files/VIC.3001.002.0257.pdf>.

<sup>93</sup> McElvaney 2019 *Journal of Child Sexual Abuse* 613, 618.

<sup>94</sup> Wolf 1985 cited in McElvaney 2019 *Journal of Child Sexual Abuse* 617.

a sense of having lost their childhood.<sup>95</sup> Indeed, shaping a child's sexuality in a manner that is age and socially inappropriate is identified by Finkelhor and Browne<sup>96</sup> as a trauma-causing factor. Coetzee's<sup>97</sup> argument that exposing or causing the exposure of a child to child-to-child pornography or pornography distorts the development of the child's sexual identity because the child is not emotionally ready for the experience and creates false perceptions of how sex and sexual relations should be, is equally applicable to sexual grooming. If a child is desensitised to sex, the rate of the child's sexual development will be affected, leaving the child vulnerable to becoming sexually active too early or to remaining sexually active,<sup>98</sup> to misunderstanding where sex fits into affectional relationships or to believing that affection can be obtained only through sex.<sup>99</sup> The victim could also develop a negative connotation to sex, as the victim in the Steyn case<sup>100</sup> describes it: "Die mooi van seks het vir my lelik geword, want dit herinner my aan pyn en hartseer" (The beauty of sex became ugly to me because it reminds me of pain and sadness).

Over and above the harm caused by sexual grooming, sexual abuse in whatever form will always be a violation of the child's human rights.<sup>101</sup> Coetzee<sup>102</sup> argues that any educator-on-learner sexual abuse violates section 28(2) of the South African Constitution because being sexually abused can never be in the best interests of the child. Furthermore, educator-on-learner sexual misconduct will always infringe on the learners' right to be free from degrading and abusive treatment.<sup>103</sup> Wallis JA has described the impact of sexual abuse on children's rights eloquently in *Director of Public Prosecutions, Western Cape v Prins*<sup>104</sup> as

... sexual violence ... deprives ... children [of] the right to be children; to grow up in innocence and, as they grow older, to awaken to the maturity and joy of

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<sup>95</sup> Canadian Centre for Child Protection 2019 *Journal of Child Sexual Abuse* 61. Also see SACE 2017 [https://www.sace.org.za/assets/documents/uploads/sace\\_79756-2017-12-06-FACTORS%20FACILITATING%20SEXUAL-RELATED%20MISDEMEANOUR%20BETWEEN%20TEACHERS%20AND%20LEARNERS%20-%20CPTD.pdf](https://www.sace.org.za/assets/documents/uploads/sace_79756-2017-12-06-FACTORS%20FACILITATING%20SEXUAL-RELATED%20MISDEMEANOUR%20BETWEEN%20TEACHERS%20AND%20LEARNERS%20-%20CPTD.pdf) 11.

<sup>96</sup> Finkelhor and Browne 1985 *American Journal for Orthopsychiatry* 530-531.

<sup>97</sup> Coetzee 2015 *PELJ* 2122.

<sup>98</sup> Randhawa and Jacobs 2013 <https://www.childwise.org.au/page/78/publications> 16; Hui, Xin and Khader 2015 *International Journal of Police Science & Management* 43.

<sup>99</sup> Finkelhor and Browne 1985 *American Journal for Orthopsychiatry* 534.

<sup>100</sup> *Steyn* case para 20.

<sup>101</sup> Hanson "Impact of Online Sexual Abuse" 97.

<sup>102</sup> Coetzee 2018 *CARSA* 35.

<sup>103</sup> *Le Roux* case para 38.

<sup>104</sup> *Director of Public Prosecutions, Western Cape v Prins* (369/12) [2012] ZASCA 106 (15 June 2012).

full humanity. The rights to dignity and bodily integrity are fundamental to our humanity and should be respected for that reason alone.

That sexual grooming is grounds for dismissal was confirmed in the *Ncakeni* arbitration,<sup>105</sup> the *Dauids* arbitration<sup>106</sup> and the *Rasekhula* arbitration.<sup>107</sup>

## 5 Schools as breeding grounds for sexual grooming

McAlinden<sup>108</sup> defines institutional grooming as occurring in the context of a specific institutional environment when unique features of the environment are used for grooming. O'Leary, Koh and Dare<sup>109</sup> list the relationship between the groomer and the victim, the power dynamics in the relationship and the purpose of the institution as common institutional features that groomers would look to utilise. Groomers in school settings further exploit the amount of time that learners spend at school, the inherently hierarchical relationship between school staff and learners<sup>110</sup> and the near-constant access or opportunities to unsupervised access that educators have to learners.<sup>111</sup> Arbitrator Phalane<sup>112</sup> emphasised:

By the nature of their work, educators already have access to children and the grooming, or manipulation of children, or parents and or staff by gaining their trust is easily achievable.

Educator sexual predators use these features of schools and match their grooming behaviours to resemble typical innocent learner-educator interactions to evade suspicion and detection.<sup>113</sup> Jimenez<sup>114</sup> refers to an example of a learner whose grooming started with a call from the educator across the parking lot praising the learner for his performance during band practice to illustrate how easy grooming behaviours can be seen as exemplary teaching. In this case, the victim recalled how special this praise made him feel and how, as a result, he did not recognise the subsequent

<sup>105</sup> *Ncakeni* arbitration paras 113, 123.

<sup>106</sup> *Dauids* arbitration paras 18, 63.

<sup>107</sup> *Rasekhula* arbitration para 15.

<sup>108</sup> McAlinden 2006 *Social & Legal Studies* 353; McAlinden 2013 *Sexual Offender Treatment* 7.

<sup>109</sup> O'Leary, Koh and Dare *Grooming and Child Sexual Abuse* 11.

<sup>110</sup> Royal Commission into Institutional Responses to Child Sexual Abuse *Final Report: Schools* 30.

<sup>111</sup> Colton, Roberts, and Vanstone 2012 *Howard J Crim Just* 80; Jimenez 2019 <https://www.voiceofsandiego.org/topics/education/grooming-is-a-gateway-to-sexual-abuse-but-schools-are-virtually-powerless-to-stop-it/>.

<sup>112</sup> *Mpumalanga Department of Education and Makhubela M* ELRC 841-19/20 MP (31 March 2022) para 1.116.

<sup>113</sup> Bennett and O'Donohue 2014 *Journal of Child Sexual Abuse* 963; O'Leary, Koh and Dare *Grooming and Child Sexual Abuse* 2; Winters and Jeglic 2017 *Deviant Behavior* 724-725.

<sup>114</sup> Jimenez 2019 <https://www.voiceofsandiego.org/topics/education/grooming-is-a-gateway-to-sexual-abuse-but-schools-are-virtually-powerless-to-stop-it/>.

grooming behaviours, such as being preferred for an appointment to a senior position in the band and a celebratory lunch and movie as a reward for good grades, for what they truly were. Again, he professed that "I felt like I had a friend for the rest of my life; I felt like this person has my back." It was this groomer's intent that made his behaviour deviant.<sup>115</sup>

Tanner and Brake<sup>116</sup> claim that sexual offenders from trust professions use proximity as a selection tool before using vulnerability to select a victim from the identified pool of potential victims. Class educators can misuse their ready access to children's personal information to determine vulnerability. Class educators in South African schools must compile learner profiles to identify and address barriers to teaching and learning.<sup>117</sup> This information makes it easy for an educator sexual predator to identify a vulnerable child, to pinpoint the child's needs and to groom the child by preying on those needs. In the *Strydom* case<sup>118</sup> the sports coach acknowledged that he deliberately targeted children with emotional problems, financial needs, unsupportive or uninvolved parents, or that had experienced a traumatic loss. The educator sexual predator with grooming intentions can misuse the information to increase the power imbalance, increase vulnerability and ensure secrecy during the grooming process.<sup>119</sup>

Where other groomers have to work on building a relationship and gaining control over the victim, educators are already in a relationship of trust, care and authority that can further be fostered and there is already a power imbalance based on the adult-child and educator-learner equations.<sup>120</sup> The nature of the educator's profession and the related status provide a ready vehicle for the deception that sexual grooming requires.<sup>121</sup> The expectations associated with the roles of educators and learners enable sexual grooming.<sup>122</sup> Educators are trusted persons who not only have a duty of care towards learners but are also expected to work closely and build professional relationships with learners.<sup>123</sup> Learners, on the other hand, are expected to be respectful, to be submissive and to follow educators' orders. Educators who intend to groom learners rely on the fact that their

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<sup>115</sup> See McAlinden 2006 *Social & Legal Studies* 343, 344; Winters, Jeglic and Kaylor 2020 *Journal of Child Sexual Abuse* 868.

<sup>116</sup> Tanner and Brake 2013 [http://kbsolutions.com/Grooming.pdf\\_10](http://kbsolutions.com/Grooming.pdf_10).

<sup>117</sup> Department of Basic Education *Policy on Screening, Identification, Assessment and Support* 24.

<sup>118</sup> *Strydom* case para 9.

<sup>119</sup> Wescott 1991 cited in Erooga 2009 <https://library.nspcc.org.uk/HeritageScripts/Hapidll/search2?searchTerm0=C2843> 6.

<sup>120</sup> Queensland College of Teachers *Professional Boundaries* 3.

<sup>121</sup> McAlinden 2006 *Social & Legal Studies* 345.

<sup>122</sup> Colton, Roberts, and Vanstone 2012 *Howard J Crim Just* 88, 89.

<sup>123</sup> Pollack and Reiser 2020 *Children & Schools* 140.

professional status encourages an instinctive willingness amongst adults to dismiss allegations.<sup>124</sup>

Educator sexual predators use the authority derived from their professional status as a base to legitimise carefully created identities, reputations and relationships.<sup>125</sup> It is trite that sexual groomers take great care to conceal their motives and create the appearance of innocence and normalcy<sup>126</sup> by presenting themselves as caring, charismatic and always ready to lend a hand and go the extra mile.<sup>127</sup> The goal is to reduce possible detection and the probability that the child will be believed when he or she discloses.<sup>128</sup> They will offer help with schoolwork, extra classes, music lessons, individual support, motivational sessions after school hours or transport.<sup>129</sup> According to an educator who participated in a study by Colton, Roberts and Vanstone of abusers' accounts of how they groomed their victims, his victims were recommended to him by colleagues and parents because he had established himself as a person who could handle difficult children.<sup>130</sup> Also Tanner and Brake<sup>131</sup> explained how a carefully created reputation as a sports coach can result in the coach becoming so valued and sought-after that parents will compete to get their children enrolled under his tutelage. This was illustrated in the *Strydom* case,<sup>132</sup> where the high school sports director groomed the boys, their families and the school. He gained everyone's trust by providing the boys with highly sought-after sports bursaries and had motivational sessions in his office, which were extended to visits to his house for braais and movie watching. His actions were never called into question.

The emphasis on parent involvement is another factor that makes schools a breeding ground for sexual grooming. Educators are expected to recognise parents as partners in education and build hospitable, conducive relationships with them. In fact, South African educators will be in violation of the *South African Council for Educators Code of Professional Ethics* if they fail to do so.<sup>133</sup> The sexual grooming of learners commonly includes

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<sup>124</sup> Knoll 2010 *Journal of Child Sexual Abuse* 373.

<sup>125</sup> Roberts and Vanstone 2014 *Journal of Child Sexual Abuse* 746.

<sup>126</sup> Williams and Hudson 2013 *Journal of Sexual Aggression* 219-220.

<sup>127</sup> Knoll 2010 *Journal of Child Sexual Abuse* 373; Winters and Jeglic 2017 *Deviant Behavior* 724.

<sup>128</sup> Pollack and MacIver 2015 *ABA Child Law Practice* 161.

<sup>129</sup> O'Leary, Koh and Dare *Grooming and Child Sexual Abuse* 12.

<sup>130</sup> Colton, Roberts, and Vanstone 2012 *Howard J Crim Just* 85.

<sup>131</sup> Tanner and Brake 2013 <http://kbsolutions.com/Grooming.pdf> 2.

<sup>132</sup> *Strydom* case para 3.

<sup>133</sup> SACE 2016 [https://www.sace.org.za/assets/documents/uploads/sace\\_12998-2020-09-09-SACE%20Booklet%20Yellow.pdf](https://www.sace.org.za/assets/documents/uploads/sace_12998-2020-09-09-SACE%20Booklet%20Yellow.pdf) para 4.1.

befriending or establishing an emotional connection with parents.<sup>134</sup> An educator sexual predator could thus easily disguise the forming of friendships with parents as fulfilling his or her professional duties.

## 6 Institutional facilitation of sexual grooming

The author believes that a distinction should be made between situations where the sexual groomer uses the unique features of schools as a type of institution to groom the institutional environment; for example, parents, friends, co-workers (discussed above), and instances where the institutional values, culture, traditions and practices of a specific school in itself facilitate the sexual grooming of learners.<sup>135</sup> Voster<sup>136</sup> alludes to this when, while applauding the harsh sentence handed down to the Parktown Boys' educator, Collan Rex, received for sexually abusing 23 learners, she expressed concern about the role the school and its traditions played in enabling the sexual abuse. In the same article she mentions Lamprecht's (also mentioned above) view that boys schools' purpose, culture, structures and "practices of initiation, institutional rigidity and the culture of secrecy" tacitly condone and facilitate sexual abuse.

Self-protective, closed institutions where public embarrassment is avoided at all costs<sup>137</sup> are prone to facilitate child sexual abuse. Rumours appear to be less credible when the institution has an impeccable reputation and is highly regarded.<sup>138</sup> Principals at these schools tend to be more concerned about the school's reputation and financial interests. McAlinden<sup>139</sup> refers to a "conspiracy of silence". She found in her investigation into allegations of institutional child sexual abuse that it was common for institutions to conspire to keep allegations quiet to protect the institution's reputation.<sup>140</sup> In the final report of the Australian Royal Commission into Institutional Responses to Child Sexual Abuse, the commission alluded to the fact that one of the factors that contribute to sexual abuse in schools is the unhealthy

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<sup>134</sup> Jimenez 2019 <https://www.voiceofsandiego.org/topics/education/grooming-is-a-gateway-to-sexual-abuse-but-schools-are-virtually-powerless-to-stop-it/>; Victoria Department of Education 2016 <https://www.childabuseroyalcommission.gov.au/sites/default/files/VIC.3001.002.0257.pdf>.

<sup>135</sup> See Colton, Roberts, and Vanstone 2012 *Howard J Crim Just* 86; Staller 2012 *Cultural Studies - Critical Methodologies* 278.

<sup>136</sup> Voster 2019 <https://www.dailymaverick.co.za/opinionista/2019-01-07-secrecy-initiation-grooming-and-the-parktown-boys-way>.

<sup>137</sup> McAlinden 2013 *Sexual Offender Treatment* 7; Royal Commission into Institutional Responses to Child Sexual Abuse *Final Report: Schools* 14; Wonnacott 2020 [https://kingstonandrighmond safeguarding children partnership.org.uk/media/upload/ck/file/RSCB%20Serious%20Case%20Review%20St%20Paul's%20School%20Report%20for%20publication%2013\\_01\\_2020.pdf](https://kingstonandrighmond safeguarding children partnership.org.uk/media/upload/ck/file/RSCB%20Serious%20Case%20Review%20St%20Paul's%20School%20Report%20for%20publication%2013_01_2020.pdf) 30.

<sup>138</sup> O'Leary, Koh and Dare *Grooming and Child Sexual Abuse* 17.

<sup>139</sup> McAlinden 2013 *Sexual Offender Treatment* 7.

<sup>140</sup> McAlinden "Organisational Sex Offenders and 'Institutional Grooming'" 74.

culture of prioritising protecting the reputation and financial interests of the school over the safety of the children.<sup>141</sup> Staller<sup>142</sup> discusses the Sandusky case (the case of a football coach at the prestigious Penn State School) where parents, educators, a graduate assistant and janitor reported the coach, but each time the complaints were minimised to protect the school from public embarrassment. Similar practices that facilitate continued educator sexual misconduct have been reported in South African schools, such as schools that do not provide the necessary support to learners who make allegations, or that bribe or pay victims not to testify or cooperate during investigations, or to drop the case altogether.<sup>143</sup>

Learners in prestigious schools may be reluctant to disclose because they will want to cling to the sense of being part of a superior and privileged institution. One of the Horace Mann Bronx School survivors commented that because the school was seen as the "golden ticket" that would ensure that those lucky enough to get in would be set for life, learners had a golden future to lose if they disclosed.<sup>144</sup> Former learners of Colet Court, the junior school of St Paul's in London, similarly refer to a culture where widespread physical and sexual violence were accepted as part of the "rite of passage".<sup>145</sup> During the investigation into the sexual abuse at St Paul's, it transpired that victims were reluctant to disclose because they did not want to disappoint their parents, who had made financial sacrifices to send them to St Paul's, and were proud that their child could attend such a prestigious school.<sup>146</sup>

This type of school places a high value on fostering intense loyalty to the school. Educators and learners are expected to adhere to codes of silence and to be willing to trade their own interests and wellbeing to protect institutional traditions and practices.<sup>147</sup> Raine and Kent's<sup>148</sup> argument about the social-psychological dynamics of group allegiance in religious institutions rings equally true regarding prestigious schools, namely that

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<sup>141</sup> Royal Commission into Institutional Responses to Child Sexual Abuse *Final Report: Schools* 13, 14, 135-136.

<sup>142</sup> Staller 2012 *Cultural Studies - Critical Methodologies* 276-277.

<sup>143</sup> SACE 2017 [https://www.sace.org.za/assets/documents/uploads/sace\\_79756-2017-12-06-FACTORS%20FACILITATING%20SEXUAL-RELATED%20MISDEMEANOUR%20BETWEEN%20TEACHERS%20AND%20LEARNERS%20-%20CPTD.pdf](https://www.sace.org.za/assets/documents/uploads/sace_79756-2017-12-06-FACTORS%20FACILITATING%20SEXUAL-RELATED%20MISDEMEANOUR%20BETWEEN%20TEACHERS%20AND%20LEARNERS%20-%20CPTD.pdf) 28, 33.

<sup>144</sup> Cotliar 2014 *People Magazine* 66.

<sup>145</sup> Wonnacott 2020 [https://kingstonandrichmondsafeguardingchildrenpartnership.org.uk/media/upload/fck/file/RSCB%20Serious%20Case%20Review%20St%20Paul's%20School%20Report%20for%20publication%2013\\_01\\_2020.pdf](https://kingstonandrichmondsafeguardingchildrenpartnership.org.uk/media/upload/fck/file/RSCB%20Serious%20Case%20Review%20St%20Paul's%20School%20Report%20for%20publication%2013_01_2020.pdf) 17.

<sup>146</sup> Wonnacott 2020 [https://kingstonandrichmondsafeguardingchildrenpartnership.org.uk/media/upload/fck/file/RSCB%20Serious%20Case%20Review%20St%20Paul's%20School%20Report%20for%20publication%2013\\_01\\_2020.pdf](https://kingstonandrichmondsafeguardingchildrenpartnership.org.uk/media/upload/fck/file/RSCB%20Serious%20Case%20Review%20St%20Paul's%20School%20Report%20for%20publication%2013_01_2020.pdf) 18.

<sup>147</sup> Staller 2012 *Cultural Studies - Critical Methodologies* 275.

<sup>148</sup> Raine and Kent 2019 *Aggression and Violent Behavior* 188.

because members' social identities are shaped by their devotion to the institution, they will be more loyal to the institution than to the abused victim. Such allegiance makes it easier for them to denounce victims' claims.<sup>149</sup>

Strong institutional cultures and traditions supporting inappropriate conduct condone or contribute to the sexual grooming of learners.<sup>150</sup> Staller<sup>151</sup> aptly describes this as "institutional cultures that permit secrets to be buried and abuses to flourish." Such cultures include a strong adult-focussed culture of obedience and authority, a culture of achievement at all costs, a hyper-masculine and hierarchical culture, a culture to prefer former learners for employment, a culture of vigorous initiation practices and a culture of long-serving principals.<sup>152</sup>

It is evident that various of these cultures were present at the Tebogo Kgobokoe Arts Academy, which was accused of allowing sexual grooming to take place at the school.<sup>153</sup> Carte Blanche, the television programme focussing on investigative journalism, investigated and reported on these allegations. In a follow-up radio interview with 702, an educator who had previously worked at the school stated that she believed the learners' allegations because "Uncle Lulu" had also kissed her without permission, she saw him grope a learner, she heard him comment on how beautiful a learner was and make inappropriate comments about what he wanted to do to the girl. Learners who had been suspended told her that they had planned their suspension because they had been told that they were the next in line to "satisfy" the boys.

The educator and learners gave evidence of what Palmer<sup>154</sup> refers to as "macho cultures" which allow abusers to engage in sexually abusive behaviours while encouraging the victims to endure it. Some of the practices at the school included (1) taking the older girls, when at camp, to the hall, blindfolding them, telling them to lie down and switching off the lights where after the boys touched their bodies and kissed them; (2) taking the learners to Uncle Lulu's house where they were made to play a game that was supposed to teach them to "become adults". The "game" was for a girl to

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<sup>149</sup> Raine and Kent 2019 *Aggression and Violent Behavior* 188.

<sup>150</sup> Royal Commission into Institutional Responses to Child Sexual Abuse *Final Report: Schools* 14.

<sup>151</sup> Staller 2012 *Cultural Studies - Critical Methodologies* 275.

<sup>152</sup> Royal Commission into Institutional Responses to Child Sexual Abuse *Final Report: Schools* 14, 16; Wonnacott 2020 [https://kingstonandrichmondsafeguardingchildrenpartnership.org.uk/media/upload/fck/file/RSCB%20Serious%20Case%20Review%20St%20Paul's%20School%20Report%20for%20publication%2013\\_01\\_2020.pdf](https://kingstonandrichmondsafeguardingchildrenpartnership.org.uk/media/upload/fck/file/RSCB%20Serious%20Case%20Review%20St%20Paul's%20School%20Report%20for%20publication%2013_01_2020.pdf) 17, 25.

<sup>153</sup> Sehloho 2019 <http://www.702.co.za/articles/363494/claims-of-sexual-grooming-they-were-being-made-to-sleep-with-boys-at-school>.

<sup>154</sup> Palmer *Role of Organisational Culture in Child Sexual Abuse* 9.

write down her and a boy's names and the paired boy and girl then had to perform sexual acts while the educators were present in the home; (3) giving the girls pills to end their pregnancies if they stopped menstruating after the "game".<sup>155</sup> The educator also mentioned that she was told that the school was "a hugging school" and physical contact between educators and learners was "very normal".<sup>156</sup>

Palmer<sup>157</sup> argues that allowing close personal relationships, physical contact and intimate personal conversations between educators and learners creates a culture in which such conduct is misconstrued as exemplary performance and essential to effective teaching. It then becomes impossible to recognise physical contact that is part of sexual grooming.<sup>158</sup> In the arbitration case of *David Diholo and Gauteng Department of Education*,<sup>159</sup> the educator argued in his defence that it was standard practice for educators to give the learners hugs and high fives. This was confirmed by a learner who testified that hugging between educators and learners was not prohibited in the school. Also, in the *Waterson* arbitration<sup>160</sup> the fact that the school endorsed the practice of educators taking learners to lunch with the principal's permission "to motivate them" was offered as a defence. Condoning educators' offering transport to learners in their private vehicles is another practice that puts learners in a vulnerable position. This danger was evident in *Mokotjo T and Free State Department of Education*,<sup>161</sup> where the educator whispered sexual innuendos to a learner who had caught a lift with him because it rained. In a recorded conversation the educator told the learner that they would drive in his car, drink alcohol and kiss each other. In one of the cases that Jimenez<sup>162</sup> reported on, the boy likewise stated that the physical interactions started when the educator began to give him rides home.

Human resource practices can create a school where learners will be vulnerable to sexual predators. The Australian Royal Commission<sup>163</sup>

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<sup>155</sup> Sehloho 2019 <http://www.702.co.za/articles/363494/claims-of-sexual-grooming-they-were-being-made-to-sleep-with-boys-at-school>.

<sup>156</sup> Sehloho 2019 <http://www.702.co.za/articles/363494/claims-of-sexual-grooming-they-were-being-made-to-sleep-with-boys-at-school>.

<sup>157</sup> Palmer *Role of Organisational Culture in Child Sexual Abuse* 81.

<sup>158</sup> O'Leary, Koh and Dare *Grooming and Child Sexual Abuse* 12.

<sup>159</sup> *David Diholo and Gauteng Department of Education* PSES933-18/19 GP (9 May 2019) para 27.

<sup>160</sup> *Waterson* arbitration para 4.12.

<sup>161</sup> *Mokotjo T and Free State Department of Education* ELRC18-21/22 (22 September 2021) para 16. Unfortunately, the sexual grooming evident in this case was not addressed as such.

<sup>162</sup> Jimenez 2019 <https://www.voiceofsandiego.org/topics/education/grooming-is-a-gateway-to-sexual-abuse-but-schools-are-virtually-powerless-to-stop-it/>.

<sup>163</sup> Royal Commission into Institutional Responses to Child Sexual Abuse *Final Report: Schools* 14.

asserts that school boards that comprise mostly of alumni will be inclined to protect traditions (even unhealthy ones) because they have a personal interest in preserving the school's reputation. The Australian Royal Commission further identified poor human resource management practices such as not being vigilant and failing to implement sound recruitment practices as practices that create a school where learners will be vulnerable to sexual predators.<sup>164</sup> In South Africa these could include a failure to check whether applicants are included in the Sex Offender's Register and prohibited from working close to children and whether teacher-applicants are registered with the South African Council for Educators.<sup>165</sup> Other human resource practices that may facilitate sexual abuse include allowing an accused educator to resign, transferring him or her to another school, or providing positive references that leave the possibility of another teaching job open.<sup>166</sup>

Schools where learner safety and supervision are not prioritised on an organisational level and where policies, attitudes and reporting procedures are relaxed or absent create circumstances conducive to sexual grooming.<sup>167</sup> The study of Sullivan and Beech<sup>168</sup> brought to the fore that professional perpetrators prefer to get children away from the normal work environment into abnormal environments such as on educational and recreational trips and summer camps, where supervision is either absent or relaxed. As McAlinden<sup>169</sup> emphasises, schools with a reactive instead of a proactive culture to school safety leave learners unprotected.

O'Leary, Koh and Dare<sup>170</sup> suggest that schools' physical environment can facilitate sexual grooming. Schools should eliminate locations that are isolated, difficult to supervise or have limited access.<sup>171</sup> Kaufman and Erooga<sup>172</sup> include in their examples of such locations: classrooms without windows, toilets, bathrooms, hallways, offices, buses, cars, the private homes of educators and isolated outdoor locations. Other spaces such as locked classrooms, storerooms, counselling rooms, secluded music rooms,

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<sup>164</sup> Royal Commission into Institutional Responses to Child Sexual Abuse *Final Report: Schools* 16.

<sup>165</sup> Section 21 of the *South African Council for Educators Act* 31 of 2000, s 45(1)(a) of the *Sexual Offences Amendment Act*.

<sup>166</sup> Royal Commission into Institutional Responses to Child Sexual Abuse *Final Report: Schools* 16.

<sup>167</sup> O'Leary, Koh and Dare *Grooming and Child Sexual Abuse* 17; Shakeshaft 2013 *Kappan* 10.

<sup>168</sup> Sullivan and Beech 2004 *Journal of Sexual Aggression* 47-48.

<sup>169</sup> McAlinden "Organisational Sex Offenders and "Institutional Grooming" 72.

<sup>170</sup> O'Leary, Koh and Dare *Grooming and Child Sexual Abuse* 12.

<sup>171</sup> O'Leary, Koh and Dare *Grooming and Child Sexual Abuse* 17.

<sup>172</sup> Kaufman and Erooga *Risk Profiles for Institutional Child Sexual Abuse* 44, 58.

boarding houses and dormitories on school grounds can make it easier for potential perpetrators to get a learner alone without being seen.<sup>173</sup>

The author contends that institutional grooming (as addressed in section 5 above) will be covered by section 18(2)(b) of the *Sexual Offences Amendment Act* (see section 2 above) while the instance where institutional values, culture, traditions and practices promote sexual grooming will be covered by section 18(1), namely the offence of promoting sexual grooming. Where the school itself facilitated sexual grooming, the victims can institute action against the school in terms of section 18(1) of this Act. Furthermore, victims should be able to hold the Department of Basic Education to book, depending on the facts of the case, as the employer indirectly (vicariously) liable or as an organ of state directly liable for the omission of its constitutional and statutory duties.<sup>174</sup>

## 7 Conclusion

Considering that sexual grooming has been foregrounded during the international human rights arena's attempts to address sexual exploitation and the role of technology in such exploitation, the link between and in some cases the equation of sexual exploitation with online sexual grooming is understandable. Fighting sexual grooming in schools requires it to be regarded as an independent offence and not as a form of sexual exploitation, a less serious, non-contact, preparatory offence that will have to culminate into a "real sexual offence" to become serious. Law and policy makers must consider that sexual grooming may not always begin online or include technology. Although schools should address the dangers that technology could hold and how it can be used to groom learners, the focus should not solely be on that; offline grooming dangers should also be addressed.

Where sexual grooming can be proven, *LJ Davids and Western Cape Department of Education* should be followed and the educator should be charged with having committed the statutory offence of sexual grooming of children.<sup>175</sup> Even though dismissal is not mandatory for section 18-misconduct, sexual grooming is regarded as serious enough to merit a prison sentence and as a form of misconduct to draw dismissal. It is understandable why educator-on-learner sexual grooming will draw dismissal because in addition to its constituting a violation of several of the learner's human rights, it also results in the loss of childhood innocence. Furthermore, because teaching is a trust profession, sexual grooming

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<sup>173</sup> Royal Commission into Institutional Responses to Child Sexual Abuse *Final Report: Schools* 18.

<sup>174</sup> See Coetzee 2018 *CARSA* 30-44.

<sup>175</sup> Section 18(1)(dd) of the *Employment of Educators Act* 76 of 1998.

results in victims experiencing betrayal, developing an inability to form meaningful social bonds, experiencing a sense of powerlessness and, in the worst cases, developing paranoid ideation, self-stigmatisation and personality disorders.

The following characteristics of schools make them unique breeding grounds for educator predators looking to groom a learner sexually: educators' professional status, the trust relationship between educators and learners, the power dynamics in this relationship, compulsory school attendance and the amount of time that learners spend at school, educators' near-constant access or opportunities for unsupervised access to learners, educators' access to learners' personal information and their access to and obligation to form relationships with parents. Because schools are unique breeding grounds for predators on the prowl to groom learners sexually, they should minimise the opportunities they present for this to take place. Focussing on sexual grooming as part of the sexual predator's journey to committing serious sexual acts adds an extra layer of protection between educator sexual predators and children.

South African schools must accept the responsibility to create safe school environments and prevent sexual abuse or they could open themselves up to be charged with promoting the sexual grooming of children in terms of the *Sexual Offences Amendment Act*. When sexual abuse occurs, schools should not only investigate the individual incident but also look at which cultures and practices at the school could have facilitated sexual grooming. To avoid being held directly or vicariously liable, the Department of Basic Education should compile guidelines on what institutional values, cultures, traditions and practices could facilitate sexual grooming and should be avoided. The South African Council for Educators should redefine educators *in loco parentis* role and emphasise educators' role in teaching as a trust profession.

A study into the prevalence of sexual grooming in all educator-on-learner sexual misconduct cases similar to the study of the Canadian Centre for Child Protection would be a most valuable study.

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### List of abbreviations

ABA	American Bar Association
CARSA	Child Abuse Research South Africa
CEOP	Child Exploitation and Online Protection Centre
Howard J Crim Just	Howard Journal of Criminal Justice
JSWFL	Journal of Social Welfare and Family Law
PELJ	Potchefstroom Electronic Law Journal
SACE	South African Council for Educators
SA Crime Quarterly	South African Crime Quarterly
SADTU	South African Democratic Teachers Union
U Cin L Rev	University of Cincinnati Law Review
UNICEF	United Nations Children's Fund