



**Legal aspects of school governance and
management in the security of the educator-
coach: a sport law perspective**

Daniël JJ Jacobs



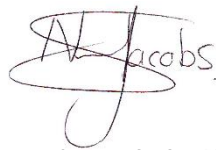
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Dissertation accepted in fulfilment of the requirements
for the degree *Master of Education in Education Law*
at the North West University

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DECLARATION / VERKLARING

I, the undersigned, hereby declare that the work contained in this dissertation is my own original work and that I have not previously in its entirety or in part submitted it at any university for a degree.

A handwritten signature in black ink, appearing to read 'A. Jacobs', with a large, stylized 'J' and a horizontal line crossing through it.

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Based on approval by the **Ethics Committee of the Faculty of Education Sciences (ESREC)** on **23/08/2018**, the North-West University Research Ethics Regulatory Committee (NWU-RERC) hereby **approves** your study as indicated below. This implies that the NWU-RERC grants its permission that, provided the special conditions specified below are met and pending any other authorisation that may be necessary, the study may be initiated, using the ethics number below.

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Project team: DJJ Jacobs															
Ethics number:	N	W	U	-	0	0	5	1	9	-	1	8	-	A	2
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The ESREC would like to remain at your service as scientist and researcher, and wishes you well with your project. Please do not hesitate to contact the NWU-RERC or ESREC for any further enquiries or requests for assistance.

Yours sincerely

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Chair NWU Education Sciences Research Ethics Committee

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EDITING

15 November 2019

To whom it may concern

This letter serves to confirm that the following dissertation was edited:

"Legal aspects of school governance and management in the security of the educator-coach: a sport law perspective"

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SUMMARY

Sport participation at school level has always been accepted as part of the South African school setup. Many educators are expected to participate in school sport by fulfilling different roles, such as being a coach, organiser, referee or official. As part of the developing democracy, South Africans have become more aware of their fundamental rights and are more prone to consider taking legal action for damage suffered. In education, more focus is put on the legal imperatives of educator-coaches, while these coaches are not knowledgeable of the legal imperatives associated with their coaching. This compromises their security because they can be held delictually liable in cases of injuries or other types of damage to children. The focus of this study was on enhancing the security of the educator-coach from a public school management and governance point of view.

This study was conducted within the field of Education Law and the educator-coach's security was discussed from a legal perspective. Legal determinants consulted included the Constitution, applicable education and children's legislation, relevant case law, and common law. Delictual liability as legal determinant was a focal point in the common law discussion.

This was a qualitative study with an empirical investigation during which interviews were conducted with a variety of participants involved in school sport coaching. Four categories emerged from the data and the findings were discussed.

One main finding is that most of the participants were relatively uninformed about the legal determinants and legal imperatives that regulate sports coaching. For most participants, including management and governance, it is an uncertain field which, if they could become more knowledgeable, could contribute to the enhancement of the security of the educator-coach as well as the children. Role players in school sport need to be more conscious of the legal framework they find themselves in. Management and governance

should ensure that a comprehensive sport policy is formulated for and implemented at their school in order to enhance the security of educator-coaches. Educator-coaches also need to fulfil their duty by not only being aware of applicable laws and policies but also being able to deal with possible legal risks by applying the policies decisively.

Keywords: school sports, educator-coach, law, security, legal imperative, legal framework, delictual liability, management and governance

OPSOMMING

Sportdeelname op skoolvlak is nog altyd aanvaar as deel van die Suid-Afrikaanse skoolopset. Daar word van baie onderwysers verwag om aan skolesport deel te neem deur verskillende rolle soos afrigter, organiseerder, skeidsregter of sportbeampste te vervul. As deel van die ontwikkelende demokrasie het Suid-Afrikaners meer bewus begin word van hulle fundamentele regte en is hulle meer geneig om regstappe in te stel teen skade wat gely is. In die onderwys word meer fokus op die regsverpligtinge van onderwyser-afrigters geplaas, terwyl afrigters nie noodwendig kennis dra van die regsvoorskrifte wat met hulle afrigting verband hou nie. Dit bring hulle sekuriteit as afrigter in die gedrang omdat hulle deliktueel aanspreeklik gehou kan word in die geval van beserings of ander skade aan kinders. Die fokus van hierdie studie was op die verbetering van die sekuriteit van die onderwyser-afrigter vanuit 'n openbare skoolbestuurs- en -beheeroogpunt.

Hierdie studie is binne die veld van Onderwysreg uitgevoer en die sekuriteit van die onderwyser-afrigter is vanuit 'n regsperspektief bespreek. Regsbronne wat geraadpleeg is, sluit in die Grondwet, toepaslike onderwys- en kindernetwetgewing, toepaslike regspraak, en die gemene reg. Deliktuele aanspreeklikheid as regsdeterminant was 'n fokuspunt in die bespreking oor die gemene reg.

Hierdie kwalitatiewe studie het bestaan uit 'n empiriese ondersoek waar onderhoude gevoer is met 'n verskeidenheid van deelnemers wat by skolesportafrigting betrokke was. Vier kategorieë het vanuit die data na vore gekom en die bevindings is bespreek.

Een van die hoofbevindings is dat die meeste deelnemers in 'n groot mate oningelig was oor die regsdeterminante wat sportafrigting reguleer, en die regsimplikasies daarvan. Vir die meeste deelnemers, wat persone betrokke by bestuur en beheer insluit, is dit 'n onsekere veld. Indien hulle meer kundig sou word, kan hulle bydra tot die verbetering van die sekuriteit van sowel die onderwyser-afrigter as die kinders. Rolspelers in skolesport moet meer bewus wees van die regsraamwerk waarbinne hulle hulself bevind.

Persone in bestuursposisies en lede van die beheerliggaam moet toesien dat 'n omvattende sportbeleid vir hulle skool geformuleer en geïmplementeer word ten einde die sekuriteit van onderwyser-afrigters te verhoog. Onderwyser-afrigters moet ook hulle pligte nakom deur nie net bewus te wees van toepaslike wette en beleide nie, maar om ook moontlike regsrisiko's te hanteer deur die beleide beslissend toe te pas.

Sleutelwoorde: skolesport, onderwyser-afrigter, die reg, sekuriteit, regsvoorskrif, regsraamwerk, deliktuele aanspreeklikheid, bestuur en beheer

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Chapter 1: Problem statement and research design

1.1 Problem statement

In a recent study that was conducted to determine sport-specific training of a teacher-coach, Van der Merwe (2012:16) expressed the observation that the South African Qualifications Authority (SAQA) does not indicate training to coach a sport activity as part of being trained as a teacher. In their strategic plan, however, Sport and Recreation South Africa (SRSA) states ensuring the availability of school sports at all schools in the country as one of the organisation's aims (SRSA, 2015). As it is common practice in most South African public schools that educators also act as coaches or sport managers, they become key role-players in making sport available at schools.

Educators are primarily appointed to teach academic subjects, which is an educational service rendered at an education institution, as referred to by the National Education Policy Act (27 of 1996). Minne (2015:76) notes that educators are, however, also involved in other school-related activities such as curriculum development, learner support and wellbeing, community affairs, and coaching sport after school. Sport, for the purpose of this study, can be regarded as an umbrella term for all types of individual- or team-orientated physical activities that are referred to throughout the study.

The research results of a school sport study that was conducted in Gauteng (Vosloo, 2010:16) indicated that a schoolteacher also needed to be the sport coach or manager for almost all the sports the participating schools offered. More than 25 000 schools provide "optimal channels" for over 12 million learners to access sport (SRSA, 2016), which clearly puts a heavy load on educators, apart from being appointed to teach formal subjects. What aggravates the situation for educators is that a shortage of coaches occurs due to an increase in the number of children who want to participate in sport and a larger variety of sport codes that are offered by schools (Fung, 2003:21), resulting in the school governing bodies (hereafter SGBs) and principals expecting more educators to act as voluntary coaches. Coaching a sport is a significant addition to the educator's

workload, as it involves long hours of planning and practising during and after school as well as “demanding regulations by the Department of Education with regard to sporting events” (Phooko, 2008:54). Literature implies that many educators in South African public schools must endure unreasonable workloads with insufficient support from the Department of Education as well as undeserved pressure from parents and learners (Rossouw & Mong, 2018:118).

At the same time, the interaction of sport and law has become increasingly significant across a number of legal fields (Greenfield, Karstens, Osborn & Rossouw, 2015:2183). The term “sport law” is explained by Rossouw (2017:32) as a vast array of legal determinants and disciplines that is developing into one of the focal points in the field of law. He depicts education, law and sport as follows (Rossouw, 2008a:vii).

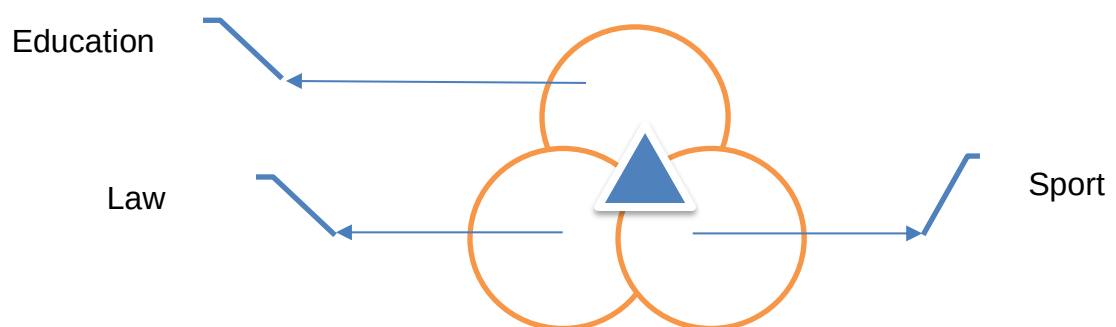


Figure 1.1: Fields of study in sport law in education

The circles as indicated in Figure 1.1 represent the three spheres that define sport law in education as the implementation of legal and educational principles in the context of movement development. This study the specific focus is on school sport participation and the integrated legal and educational duties of the educator-coach's (triangle) everyday life (Rossouw, 2017:33).

Rossouw (2008a:32) avers that legal accountability based on damage suffered during participation in sport has become more common and, according to Jurgens (2012:209), educator-coaches are not always aware of their legal liability and accountability towards learners while coaching and being governed by specific statutes and policies. Rossouw (2017:32) states that the law has an

impact on all aspects of educator-coaches' work and that lack of knowledge in this area can have disastrous results for the school as an institution as well as for the educator-coach. While principals are wise to consider every managerial task as a source of potential litigation (Mbatha, Grobler & Looock, 2006:4), the whole endeavour of offering sport as part of the school's extramural activities is one example of such a managerial task of a principal.

The Constitution, as stated in section 1 (SA, 1996a), is the supreme law of the Republic of South Africa. Chapter 2 of the Constitution (SA, 1996a), the Bill of Rights, determines that the fundamental rights of all persons in the country must be respected. By implication, Rossouw (2004:28) states that "all people" include every citizen, foreigner, state department, school, sport federation, as well as the Parliament of South Africa. This constitutional duty to respect others' rights has a specific implication for the educator-coach as sport participant due to the fact that people are currently, as part of the developing democracy, more aware of their fundamental rights and more prone to sue others. Participants in school sport activities can refer to all active participants, such as players, athletes, coaches, learners, referees, sport managers, officials, SGBs, and parents (Rossouw, 2017:35). As participants, the governance and management structures of public schools must pay more attention to "the liability of educator-coaches in the fulfilment of their different roles as coach, organiser, referee and official" (Rossouw & Keet, 2011:13). Public school governance as well as every management task are, like all aspects of the school, "inextricably bound to legislation and policies made on national level" (Jurgens, 2012:3). According to section 3.11 of the South African Council for Educators Code of Professional Ethics (SACE, 2016), educators must take reasonable steps to ensure the safety of all learners. Increasing numbers of formal and less formal legal actions point to the need for both educator-coaches and schools to place a stronger focus on the professional conduct of the educator-coach. According to Botha and Oosthuizen (2003:52) a coach should keep in mind that his or her actions, or lack thereof, will be judged by the standard set by the reasonable coach similar to the one that might be accused of being negligent. In the case of *Mukheiber v Raath* (1999) 262/97 [1999] ZASCA, the Supreme Court of Appeal determined negligence by using the "reasonable person test", where this specific person was

expected to know *more* about a specific situation than the “man on the street”, as would be the case with educator-coaches who are expected to know more about the sport they coach. The accountability of the educator-coach does not change, but the circumstances in which forms of injury or damage can occur does indeed change (Singh, 2006:189). The school accepts, through its educators, parents’ duty of care when they send their children to school, and this acceptance of care also extends to the sport fields where the educator-coach acts *in loco parentis* with regard to the physical protection of a learner (Jurgens, 2012:42). According to Oosthuizen and Rossouw (2008:113), the existence of *in loco parentis* does not replace the parent with the educator-coach, but rather places the educator temporarily in the position of the parent.

Various statements from the paragraphs above make it abundantly clear that coaching a sport is not just fun and games anymore, but that a new approach is needed when governance and managerial structures of public schools draft, adopt and implement policies with regard to assigning educators as coaches for the different sport activities that the schools offer. The South African Schools Act (84 of 1996) (SA, 1996c) (hereinafter SASA) states that the SGB of a school determines the extracurricular activities – for example, what sport activities the school will offer. The latter does not necessarily imply that the SGB also appoints a specific educator-coach to a specific team or sport, as this is mostly done by the school management team (SMT). The SGB, however, still must consider the workload of educators as well as the legal aspects pertaining to liability for injuries when drafting policies, as should the SMT when implementing them. A duty of care, for instance, exists within a number of sporting relationships that would include the participants, organisers, match officials, SMTs, and SGBs. A duty of care, as per a briefing paper of the Child Protection in Sport Unit as mentioned by Greenfield *et al.* (2015), implies that a sport governing body, which has a public function in provincial sport structures comparable to that of the SGB at a school, needs to “take measures, reasonable to the circumstances to ensure an individual’s safety while participating in an activity to which they are invited or is permitted” (Greenfield *et al.*, 2015:2201).

The risk of liability increases drastically when coaches coach above their abilities, experience and qualifications (Rossouw, 2004:28). In a study that involved South African public schools, Van der Merwe (2012) found that some participating schools' educator-coaches were under-qualified to coach, as it was revealed that the majority of the participants had had their last sport-specific training more than five years before that point in time. Moreover, the educator-coaches were generally reluctant to improve their own coaching skills. This study by Van der Merwe confirmed that school governance and management expect of educators to coach school sports as after-school activities, and Vosloo (2010:84) added that "they (educators) are not necessarily trained or qualified in, nor motivated to pursue (school sports as after-school activities) in their free time".

It is evident that there is a dilemma regarding the subject-appointed educator who is also expected to coach a sport and the role that the governance and managerial structures of the school should play in ensuring the security of educator-coaches. A few studies have been done in the field of school sport and law: Van der Merwe (2012) focussed on the state of the educator-coach's training in priority sports and identified the desperate need for sport-specific training and support of educator-coaches; Herselman (2006) conducted a study to determine the duty of care that rests on the shoulders of the educator in general; Jurgens (2012) investigated legal risk-management aspects in school sports; Doubell (2012) researched the safety and security of the sport coach; and Marx (2013) studied the legal liability of educator-coaches in school rugby. All of these researchers confirmed the existence of legal implications for the educator-coach, whether in the classroom or on the sport field. Each study referred to in this paragraph also expressed in some way that educator-coaches are uncertain and, in some cases, even ignorant when it comes to the legal aspects of their profession and that they generally do not have sufficient legal knowledge to comply with the requirements set out by law. As regards the involvement of the SGB, some studies briefly touched upon the aspect of school governance and sport. Jurgens (2012) found that some educator-coaches had the perception that SGBs did not play big enough roles in protecting them, while participating educator-coaches of specifically rugby, in the study of Marx (2013), felt that their SGB only laid down rules. These rugby educator-coaches rather wanted to be

sure that the SGB was truly on their side to ensure their security as educator-coaches. Not one of these studies elaborated or focussed specifically on the role of the governance and managerial structures of the public school with regard to the security of the educator-coach.

A gap in the theory has thus been identified and this study attempted to address it by offering a sport law perspective on the role of school governance and management towards ensuring the security of educator-coaches. It was necessary to determine how SGBs and SMTs operate with regard to the drafting and implementation of policies in general; however, for the purpose of this study, the focus was primarily on sport policy. Of specific importance was how governance and management influence the security of the educator-coach from a sport law perspective.

1.2 Conceptual Framework

The conceptual framework is a map that shows the territory being investigated by the researcher as well as the selected concepts and principles identified from literature (Joubert, Hartell & Lombard, 2016:36). The most salient concepts for the purpose of this study are discussed next.

1.2.1 Governance

The Oxford Advanced Learner's Dictionary (Deuter, Bradbery & Turnbull, 2015) defines "governance" as the action or manner of governing a state or an organisation. In the South African public school context, governance entails specific roles and functions that need to be fulfilled, as stated in SASA (SA, 1996c). Governance in the public school context can be defined "as an act of determining policy and rules/by which a school is to be organised and controlled" (Maile, 2002:326). However, it should be noted that there are different structures in the South African schooling system that govern education. These different structures include the National Ministry and provincial Departments of Education, who are responsible for national and provincial policy development, and the SGB, who assists in implementing these policies at school level (Xaba, 2011:207). SASA (SA, 1996c) stipulates that the SGB is responsible for drafting

and implementing certain school policies. Public school governance is therefore an act of drafting school policies and rules from national and provincial policies by which a public school is to be organised, “providing the school with a strategic direction while acting as a critical friend that holds the school to account” (Smit & Oosthuizen, 2011:69). The governance mandate, as stated in section 20(a) of SASA (SA, 1996c), requires the SGB to “promote the best interest of the school and strive to ensure its development through the provision of quality education for all learners at the school”. Section 23 of this Act (84 of 1996) provides for the participation of various parties who have an interest in education to form part of the SGB. The SGB comprises parents, educators, elected learners from the learner representative council of secondary schools, support staff, co-opted members, and the principal. The principal acts in the capacity of an ex-officio member, which means that he or she represents the Head of Department of Basic Education (HoD). All public SGBs are required to and must perform section 20 functions, while section 21 functions are allocated to specific SGBs as per the discretion of the HoD in SASA (SA, 1996c). Section 21 schools are named after section 21 of SASA (SA, 1996c) and are allocated more functions, such as to control their own budgets, whereas such functions are not allocated to section-20 schools. Serero (2016:83) describes school governance as follows:

The process of governing the school by a mandated group or team of people whose governance responsibility is to provide a framework for taking and implementing decisions in pursuance of the school’s goals in such a way that lines of control and accountability are clear.

Section 20(2) of SASA (SA, 1996c) determines that “the governing body of a public school must support the principal, educators and other staff of the school in the performance of their professional duties”. This kind of support proves to be more effective when the SGB is divided into certain committees, of which one is normally dedicated to sport provision, with one of its tasks being to draw up and implement the school sport policy. The SGB, together with the sport committee, should work in close relation with the SMT, who is acting on school level, looking at the operational element of such a policy.

1.2.2 Management

Public schools have different levels of governance and management. The public school is not only an especially complex organisation with changing demands, as stated by Deenanath (2013:92), but it also increasingly requires professional leaders and managers who are well prepared for the challenges of leading schools today. Management is the act or manner of control that is used to reach the goals of the institution (Minne, 2015:24). The SMT comprises the principal, deputy principal and HoDs. An agreement is reached for certain educators to be co-opted to serve on the SMT in cases where the public school is very small and the principal occupies the only senior position. According to Sister (2004:87), educators occupy senior positions due to the experience they have in educational matters as well as in administration and management. This is confirmed by the Department of Basic Education (DOE, 2000:18) where it is clearly stated that the SMT is responsible for the management and administration of the school. Data sets from a study by Mescht and Tyala (2008:231) indicate that the SMT enables principals to spread the workload of managing schools while creating a platform of participative management in allocated portfolios. These portfolios that are assigned to the SMT members are, in most cases, consistent with the committees of the SGB and just as there is a governing body committee for sport, one would also find the sport portfolio assigned to a specific SMT member. The focus of this study is on coaching of school sport and the security of the educator-coach. The interaction between the SMT and SGB is of great importance and there should be good collaboration between them, since the SMT implements the policies, as developed by the SGB, that have impact on the educator-coach and the learners as participants in sport. Good collaboration does not mean that the SMT and SGB is one collaborating structure, but rather two co-ordinating entities with specific functions and boundaries that should not be overstepped.

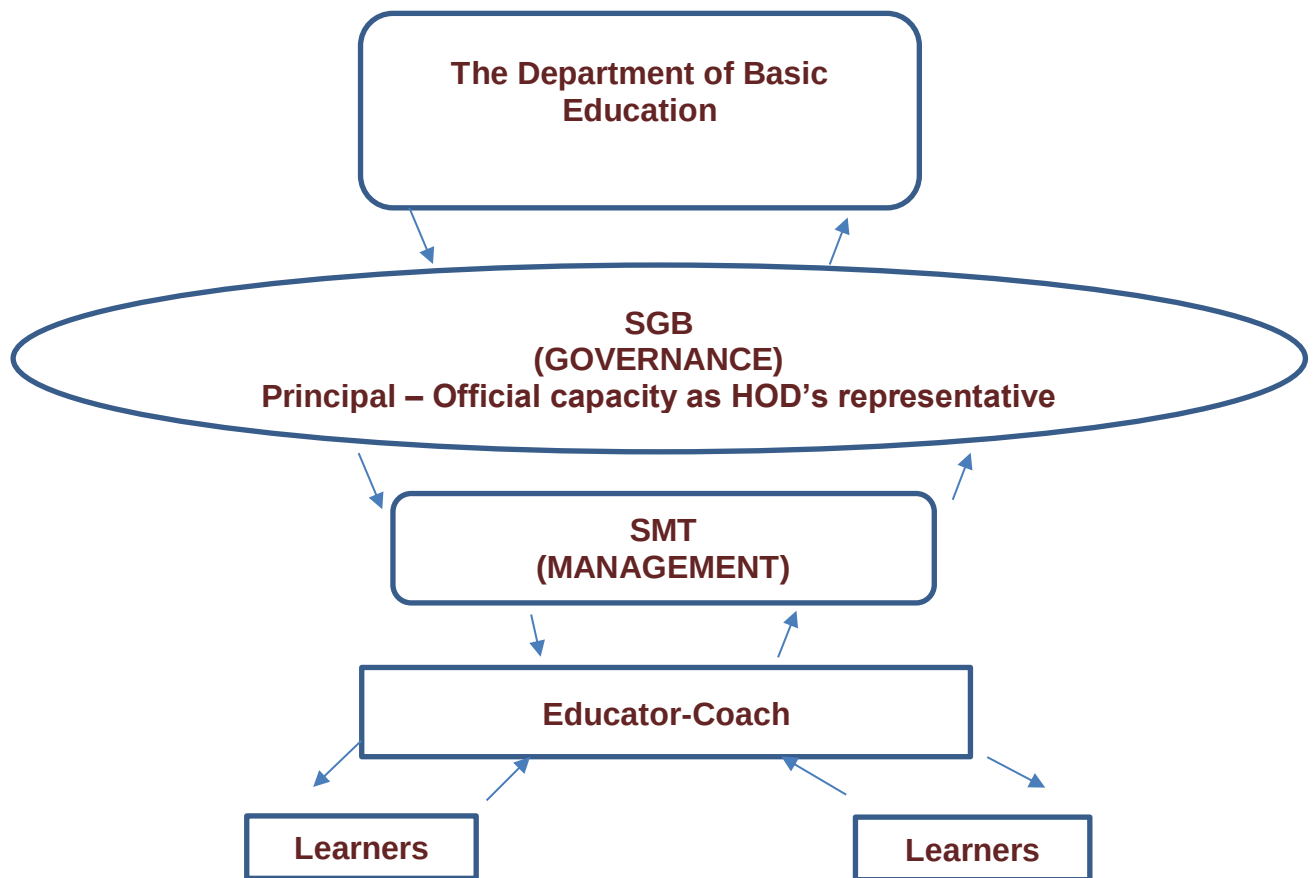


Figure 1.2: Co-ordinating entities of a school to ensure collaboration

Managing the South African public school involves different structures at different levels, as indicated in Figure 1.2. The Department of Basic Education employs the principal, deputy principal, departmental heads, educators, administrative staff and general workers. When deemed necessary the SGB may also employ more educators, office based staff and general workers as provided for in section 20(7) of SASA (SA, 1996c). The professional management of a public school must however be done by the principal under the authority of the Head of Department as stated by section 16(3) of SASA (SA, 1996c), This means that the principal is responsible to oversee all professional tasks being done by educators (Both Departmental end SGB appointed educators). While the principal also manages all the other staff members employed by the department, the SGB manages the non-educator staff that it employs. This managerial task is however normally also given to the principal as he or she must serve on the SGB as stated by section 23(1)(b) of SASA (SA, 1996c),

In a recent developing case that helps distinguish the fine boundaries of coordination between the SMT and SGB, it was discovered that the security guard at AB Xuma Primary school in Soweto had reportedly sexually abused 83 learners while the principal and SMT were aware of the matter for several months. The Gauteng Department of Education removed the principal and her SMT members with immediate effect and said that it would investigate whether the SGB should also be dissolved (Macupe, 2017). The Department did not act against the SGB at that stage because it first had to determine if the SGB was aware of the matter and therefore also liable. Thus, a clear boundary – in this case, the safety and security of learners and the delictual liability at governance and management level respectively – is evident.

1.2.3 Educator-coach

As was previously mentioned, according to Vosloo (2010:16), a public school educator is, in most cases, also the sport coach or manager in almost all the sport that schools offer due to the increase of sport participation at school level (Fung, 2003:13). This results in a shortage of coaches. These educator-coaches are, in most cases, responsible for the development of children's sport potential at school level (SASCOC, 2011). By accepting to coach, the educator-coaches accept certain responsibilities, simply due to the fact that they are, according to Rossouw and Keet (2011:29), in authoritative positions in relation to the learners whom they are coaching. Saffici (2015:698) adds that an expert educator does not always have the necessary skills and attributes to be an equally successful coach, which could have a direct impact on the security of such an educator-coach as well as the school.

1.2.4 Security

The essence of education law is security (Oosthuizen, Botha, Roos, Rossouw & Smit, 2015:3). Oosthuizen *et al.* (2015:3) continues by stating that security "is the institution of a secure environment for the individual and the group within which all interested parties can participate in a harmonious way in the educational task". Not only does the security of the educator-coach need to be considered on the grounds of liability but also that of the participant on the grounds of participating

in the activity. Due to the inherent characteristics of especially contact sports, “participation at school level includes a high risk factor and can be seen as a security issue for a variety of role players” (Rossouw & Keet, 2011:29).

In the court case of *Minister of Education v Wynkwardt NO* 2004 (3) SA 577 (C), the court found that, where a learner is not under the constant watch of an educator, it does not automatically indicate non-compliance concerning duty of care and, indirectly, non-compliance concerning security. In the sport context, this means that educator-coaches do not have to safeguard a learner from every possible risk, but “need to ensure that the learner understands the possible risks arising when partaking in the sport” (Rossouw & Keet, 2011:30). It is clear that it is the primary role of the SGB to develop a sport policy that, as Jurgens (2012:204) puts it, “describes procedures with regard to safety and security”.

1.2.5 The law of delict

The prime area of legal intervention at junior (school) level relates to injuries and the application of negligence and delict, as younger participants rely on a higher standard of care from those supervising the activity. The law of delict is the established legal instrument in cases of personal damage (Greenfield *et al.*, 2015:2184). Any intentional or negligent act or omission that gives rise to a legal obligation between parties due to an injury, is called a delict (Daniel & Greytak, 2014:121). Ignorance or incompetence on the part of the educator-coach, for example, will most likely not automatically imply negligence. However, in some instances, negligence can be proven if the educator-coach committed an action “knowing that he or she is not capable, qualified or experienced enough to perform an action” (Neethling & Potgieter, 2010:34). There are three categories of delict in South African law as adapted from Neethling & Potgieter (2010):

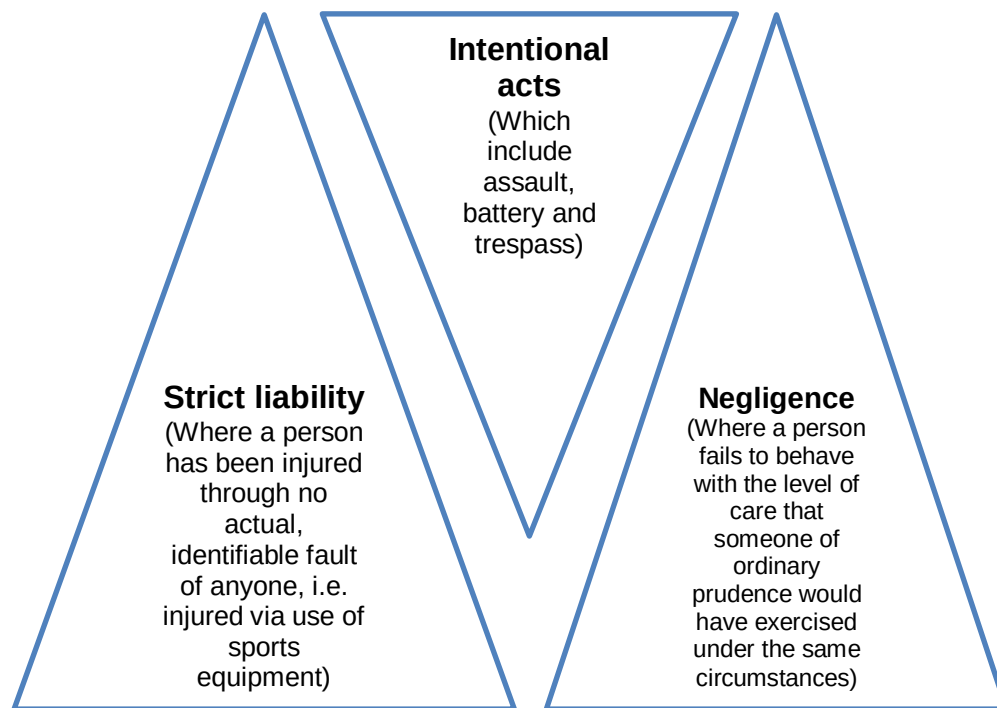


Figure 1.3: Categories of delict

A delict consists of five elements that need to be present before a person can be found delictually liable, namely: conduct; wrongfulness; fault (in the form of intent, alternatively negligence); causation; and damage (Neethling & Potgieter, 2010:35). Protecting the learner's fundamental rights as they are stipulated in section 28(2) and section 12 of the Constitution places a clear obligation on persons directly involved with the coaching of public school sport or learners who are participating in a public school sport "to foresee and prevent sport injuries to a reasonable extent" (Rossouw & Keet, 2011:30).

1.2.6 Training versus Coaching

Training and coaching leads to confusion as these are often used reciprocally. Literature suggests that training is about transferring specific knowledge and skills and can be a one-time event, whereas coaching is about enhancing it as part of a whole. Viljoen (2016:3) describes coaching as the collaboration between individuals (educator-coach and learner) to develop a set of skills and enhance performance by using a systematic approach while also focussing on the power of possibility as motivation. Although the educator-coach would use training as part of coaching, they are essentially coaching the learners to become better at

a sport. According to Lynch and Mallett (as cited by Van der Merwe, Malan & Willemse, 2015:2), it seems that coaching skills are improved when a coach obtains direct practical coaching experience, engages in formal coach training, and is introduced to mentorship – all of which are encompassed by the term *support* in this study.

1.2.7 Research questions

The central research question for this study was:

What is the nature of public school governance and management towards enhanced security of the educator-coach?

The research was guided by the following subquestions:

- What does the SA legal framework provide with regard to the effective drafting and implementation of school sport policies towards educator-coach security at public school level?
- How do SGBs and SMTs of public schools understand and implement the legal imperatives regulating school sport policies towards enhanced security of the educator-coach?
- Which aspects regarding qualifications, experience and the ongoing development of educator-coaches influence and/or inform the drafting of a sport policy by an SGB towards improved security of the educator-coach?
- How can the implementation of school sport policies by the SMT improve the security of educator-coaches?

1.3 Research aim and objectives

In view of the above research questions, the central aim of the research was to determine the nature of effective public school governance and management towards enhanced security of the educator-coach. In order to reach this central aim, the following objectives were formulated:

- to explore the South African legal framework that regulates the drafting and implementation of school sport policies towards educator-coach security at public school level;
- to determine how SGBs and SMTs of public schools understand and implement the legal imperatives regulating school sport policies;
- to investigate which aspects regarding qualifications, experience and the ongoing development of educator-coaches influence and/or inform the drafting of a sport policy by an SGB towards improved security of the educator-coach;
- to determine how the implementation of school sport policies by management teams improve the security of educator-coaches.

1.4 Research design and methodology

The research design is the structure that outlines which theories, methods, sources and instruments the study will be based upon (Joubert *et al.*, 2016:33), while the methodology is the reasoned and planned procedure used by the researcher to collect and analyse data for a specific study (Joubert *et al.*, 2016:5). These aspects, as they apply to this study, are discussed next.

1.4.1 Literature review

Maree (2011:33) states that a literature review provides a knowledge platform for the research to be conducted and, according to Athanasou *et al.* (2012:42), enables the researcher to understand the research problem and field of study better. A literature study was conducted by using primary and secondary resources to identify aspects that make up, among others, a legally sound, well-drafted public school sport policy towards enhancing the security of the educator-coach. To find relevant literature, applicable computer searches of databases – including Sabinet, Juta Law Reports and EBSCOhost – were done, and recent national as well as international journal sections, textbooks, dissertations and legislation were utilised to determine the nature of effective public school governance and management towards improved security of the educator-coach. The selection of literature focussed on sources that included discussions about the educator-coach and the SGB and the SMT as active role players towards

improving the security of the educator-coach. Part of the literature review also included school sport policies obtained from schools that contributed towards understanding and determining how governance and management of public schools contribute towards the security of the educator-coach.

The following key words were used: *sport policy, school governance, safety in sport, educator/teacher duty of care, educator-coach security, public schools, sport law, educator-coach, liability, common law, manager, legal duty*

1.4.2 Qualitative research

Creswell (2013:14) explains that there are, in general, three different types of research designs, namely qualitative, quantitative and mixed-methods designs. Creswell's distinction between qualitative and quantitative research indicates that the difference between these two types is often framed in terms of using words (qualitative) rather than numbers (quantitative), or using close-ended questions (quantitative hypotheses) rather than open-ended questions (qualitative interview questions) (Creswell, 2013:36). Qualitative research entails an in-depth investigation into a set phenomenon (Joubert *et al.*, 2016:110). As described by Creswell (2003), *qualitative research* is an umbrella term used to refer to several strategies that share certain characteristics (Creswell, 2003:42). The qualitative researcher accepts people's thoughts and experiences as the product of a system of social meaning (Joubert *et al.*, 2016:61). This means that qualitative researchers study things "in their natural settings, attempting to make sense of or interpret a phenomenon in terms of the people meaning people bring to them" (Denzin & Lincoln, 2011:63). Creswell (2007:36) states that qualitative research normally starts off with people's assumptions, a worldview, the possible use of a theoretical lens, and studying a social problem which becomes the research problem that explores the meaning of individual persons or groups.

A phenomenological study "describes the meaning of the lived experiences of a phenomenon or concept for several individuals" (Creswell, 2007:38). The product of such research is a careful description of the conscious, everyday experiences and social action of subjects. I (the researcher) studied the phenomenon of school governance and management and how it affects the security of the

educator-coach, while also interpreting the perceptions of participants regarding this phenomenon. The interpretive phenomenological study design allowed me to achieve this. I was convinced that interviews would be the best research method to provide answers to the research question, because interviews – by tapping into the participants' perceptions and lived experiences – would allow me to understand whether and how educator-coaches experience school governance and management that contribute towards improved security of the educator-coach.

1.4.3 Study population and sample

Creswell (2013:51) mentions that the idea behind qualitative research is to purposefully select participants that would best help the researcher understand the problem and answer the research question.

The study population consisted of participants with different interests regarding the security of the educator-coach, which ensured a variety of views, eventually towards a better understanding of the phenomenon. The population consisted of principals, heads of sport, sport organisers and educator-coaches from eight public primary schools where educators coach a sport. Two of these primary schools were rural schools, two quintile 3 and four quintile 5 schools in Mpumalanga. The reason for this selection was to enable me to obtain a holistic view on the phenomenon of governance and management and how it contributes towards the security of the educator-coach regardless of the financial resources or quintile of the school.

1.4.4 Instrumentation and data collection technique

The researcher is the primary instrument when identifying a gap in literature as well as when collecting data during qualitative research (Joubert *et al.*, 2016:68). According to Creswell (2013:47), the data collection steps include setting the boundaries for the study by collecting data through unstructured or semi-structured interviews and establishing the protocol for recording information. The collection procedures in qualitative research involve four basic types, namely observations, interviews, documents, and audio-visual materials. According to

Joubert *et al.* (2016:64), an interview(s) is the most prominent data collection technique to determine persons' perception, their definition of a specific situation, as well as construction of their reality. In qualitative interviews, the researcher conducts face-to-face individual interviews with the participants. Some of the interviews were conducted via the telephone or Skype in cases where participants cannot be reached for a personal interview. The interviews are generally unstructured and open-ended (Creswell, 2013:48).

In this study, I made use of semi-structured interviews as the interview questions were set beforehand, but I also had opportunities to ask questions on the reply of the participant based on the set questions, which ensured that I understood the participant's answer as it was intended. The interview questions were also formulated according to the legal imperatives as identified and analysed in the legal framework of the literature chapter. The questions in the interview schedule were prepared in advance based on my (the interviewer's) prior knowledge, which were then probed and clarified afterwards, as explained in Athanasou *et al.* (2012:44). Part of the collection technique was to make use of a voice recorder. This was only done with the permission of the participant. By recording the interview, I was afforded the opportunity to pay close attention to the participant instead of trying to note everything down on paper. This was also essential for the verbatim transcription where every spoken word during interviews was transcribed afterwards and used for analysis. The completion of data collection blends into formal data analysis and provides meaningful ways to present the data (McMillan & Schumacher, 2014:56).

1.4.5 Data analysis and interpretation

Textual analysis is used when conducting qualitative research (Joubert *et al.*, 2016:117). The transcriptions of interviews in this study formed part of the texts that were analysed. The process of data analysis involves making sense of textual data (Creswell, 2009:54). Creswell further notes that it involves preparing the data for analysis, conducting different analyses, and moving deeper into understanding the data. Qualitative researchers, according to (Creswell, 2009:52), also bring themselves closer to the research phenomenon by regularly writing about their own experiences while conducting the research. Joubert *et al.*

(2016:117) warn that the researcher should not stop at the symptoms found in the data that can be described as the simplified analysis, but should dig deeper between the visible and invisible layers of data and determine a nexus.

Creswell (2009:36) identified six steps when analysing qualitative data, which were applied in this study:

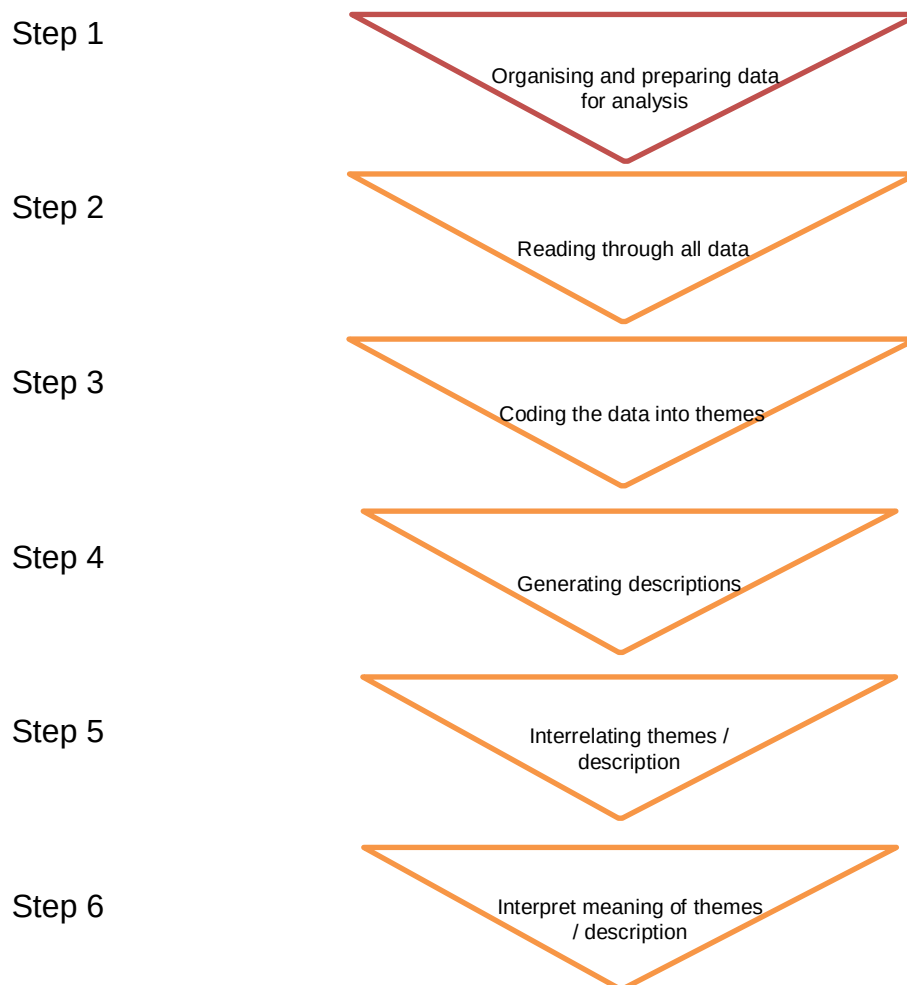


Figure 1.4: Steps in qualitative data analysis

All the interviews were recorded and transcribed verbatim. The transcriptions were analysed together with the literature. Content analysis was done, and the data were then classified into categories and sub-categories as identified while analysing the said data. Content analysis is an objective and systematic approach to identify the content or properties of a message (Joubert *et al.*, 2016:118). This inductive process was used to find similarities and differences in the text that contributed towards understanding the phenomenon.

1.4.6 Validity and reliability

McMillan and Schumacher (2014:57) describe validity of the qualitative research design as the degree to which the interpretations have mutual meanings between the participants and the researcher. In this study, the six steps above allowed for validation to occur in the process (Creswell, 2009:36). This statement is supported by Gibbs who states, “qualitative validity means that the researcher checks for accuracy of the findings by employing certain procedures” (Gibbs, 2007:61).

Qualitative reliability is whether a particular research technique, applied repeatedly to the same object, would have the same result each time (Babbie & Mouton, 2006:63). To achieve this, one should document as many steps of the procedure followed as possible (Creswell, 2009:44). Gibbs (2007:61) suggests the following procedures:

- Check transcripts for obvious mistakes during transcription.
- Ensure there is no change or shift in meaning of codes during the process of coding.
- Cross-check codes developed by different researchers by comparing results that are independently derived.

In order to enhance credibility in this study, participants were provided with the transcripts of the interviews and given the opportunity to “correct errors of fact” (Maree, 2011:113).

1.5 Ethical considerations

According to Athanasou *et al.* (2012:38), “[t]he various ethical issues relating to human participants should be discussed with reference to the strategies put in place to deal with challenges relating to confidentiality, anonymity, and right of privacy, voluntary participation, and protection from harm and trust”.

In this study, the following ethical issues were attended to:

“Permission to conduct the research should be obtained from the institution registered for the course of the study” (Athanasou *et al.*, 2012:51). I applied for

ethical clearance from the appropriate ethics committee of the faculty. After permission was granted by the ethics committee (see Ethics approval), written consent from the Mpumalanga Department of Basic Education (see Addendum B) as well as the principal of each participating school was acquired. The request for consent was in the form of a letter of request, clarifying the need for their educators to be included as participants in this study. In the case of this study, invitations for interviews were e-mailed to principals, sport organisers and educator-coaches based on their post level and experience from various public schools within the Mpumalanga province.

Before signing a consent form, all participants were aware of the confidentiality of their interviews and that they were allowed to withdraw at any stage of the study or choose not to answer specific questions. The consent form (see Addendum C) served as evidence that the participant was properly informed of the purpose of the study as well as what was expected of him or her. By agreeing to go ahead after the mentioned explanation, the participant gave me permission to use his or her input, as obtained from the interview, for the purpose of this study. All the data gathered during the interviews were treated as highly confidential. This was also the case whilst doing the required analyses. No information or interpretation of any participant was identifiable to outsiders. Interviews were conducted in English, although participants were welcome to reply in Afrikaans, as most participants taught in one of the two languages. Interviews were scheduled after school hours to prevent any disruption of participants' duties, as well as causing unnecessary distractions during official school hours. Interviews were conducted in a calm and safe environment, such as the school's office, classroom, or staffroom.

Confidentiality forms an integral part of the ethical process (Cohen, Manion & Morrison, 2018:56). The participant who supplies informed consent has the right to confidentiality and non-disclosure of his or her identity. The researcher can make a connection between the data gathered and a specific participant, but may not make it public (Cohen *et al.*, 2018:55). All the participants in this study were assured that all identifiable information would be kept confidential throughout and

after the research. No confidential information was divulged, irrespective of position of authority of the person who may have request it.

According to Creswell (2012:621), informed consent is an acknowledgement that has to be signed by each participant. This acknowledgement describes the purpose of the research and the legal protection the participant has during and after the study. Each participant consents to participate and agrees that his or her knowledge and perceptions may be used in the study. Informed consent also determines that participants' right to stay unidentified will be honoured once the acknowledgement is signed (Creswell, 2012:622). In this study, an informed consent form that acknowledges that the participant's rights will be protected during data collection was drawn up (see Addendum C) and voluntarily signed by each participant (Creswell, 2009:43). This consent form (see Addendum C) included and adhered to the following (Creswell, 2009:43):

- my (the researcher's) identification;
- identification of the research institution;
- an explanation on how participants were selected;
- the purpose of the study;
- benefits of participating, as well as the level of involvement;
- informed the participants of risks associated with participating, if any;
- guaranteed confidentiality;
- assured that the participant could withdraw at any time;
- provided contact details should participants have had any questions.

As the researcher, I ensured that all the participants in my study would enjoy strict anonymity. All the data gathered during this process have been treated as confidential. Participation remained voluntary throughout, participants were not bound to meet any specific expectations and were free to withdraw from the study at any stage, no questions asked. All the participants were notified that only the study supervisor and I would have access to the data for analysis purposes. All the raw data, transcriptions and recordings, were stored in a safe place as determined by the study supervisor. Electronic data are protected by means of a strong password.

This study had a low level of risk for participants, as no questions of a sensitive nature were asked during interviews. The interview questions focussed on matters that are experienced daily and were not of a personal nature. There was no need for participants to share sensitive or personal information. No traumatic reaction occurred because of the interviews. However, appropriate counselling was arranged as precautionary method.

1.6 Chapter division

Chapter 1: Orientation to the study

Chapter 2: Legal determinants for school governance and management
regarding the security of the educator-coach

Chapter 3: Research design and methodology

Chapter 4: Data analysis and interpretation

Chapter 5: Findings, conclusion and recommendations

1.7 Contribution of the study

The study aimed at making a contribution to education practice, more specifically with regard to the much-needed support of school governance and management and the realisation towards the enhancement of educator-coaches' security, and making a contribution at scholarly level. The term "support", as used in this study, generally refers to formal training opportunities for coaches; access to and advice from mentors; proper provision and maintenance of facilities; a fair distribution of coaching tasks; and preventing excessive pressure on coaches for performance and achievement of players. All of these have an impact on the security of the educator-coach. The need to ensure the holistic development of learners includes sport participation. This development is of importance for both coaches and participants of sport, regardless of the type of sport. In order to eventually facilitate such educational aims, the contribution was primarily made to SGBs' drafting of sport policies and SMTs' implementation of the policies in an attempt to enhance the security of educator-coaches.

The study falls within the scope of education law as a research focus, and more specifically, the application of sport law in the education context. This research aims at contributing towards the body of scholarship in these fields. As is the case with most of the research in Education Law in the Faculty of Education of the North-West University (NWU), this research project forms part of the subarea *Legal Perspectives in Education*, which operates within the Edu-HRight Research Unit of the faculty. The research unit works towards the realisation of human rights in diverse educational settings, and this study focusses on human rights, particularly the right to security, of educators in the sport coaching context.

Chapter 2: Legal determinants for school governance and management regarding the security of the educator-coach

2.1 Introduction

As discussed in chapter 1, previous research confirms the existence of legal implications for educator-coaches and their uncertainty regarding the legal aspects of their profession. The legal implications that educator-coaches face are directly linked to the governance and management structures of a school as co-ordinating entities. A gap in theory has been identified: studies focussing specifically on the role of the governance and managerial structures of public schools with regard to the security of educator-coaches seem to be lacking. Singh (2005:83) is of the opinion that the correct guidance and supporting aids should be available and in place to support coaches at schools with the relevant aspects of the law. One of the aims of this study was to determine the legal framework regulating sport policies and how it is being implemented by the management structures within schools. According to Nieuwenhuis (2007:84), a legal framework indicates the actions or policies deemed acceptable or unacceptable before the law in that specific area. To reach this aim, this chapter focusses on the statutory determinants of the South African legal system that regulate and influence the duty of management and governance of schools with regard to ensuring a safe environment for the educator-coach.

2.2 South African law

Roman-Dutch law, which is a blend of indigenous Dutch customary law and Roman law, is the foundation of South African law. According to Kleyn and Viljoen (2010:38), the Roman-Dutch law in South Africa was adapted and developed over time where English law also played a significant role.

The applicable legislation and statutory determinants, as selected and discussed in the paragraphs that follow, are not only important for the creation of a safe legal environment for educator-coaches, but also for the actualisation of the duty that rests with the management and governance structures of the school to establish and maintain such an environment. Legislation presupposes a society, and the law is there to regulate and maintain peace within this society (Kleyn & Viljoen, 2010:1). When referring to the education sector, the importance of educational law as a non-negotiable necessity is implied. Next, each of the applicable legal determinants are dealt with separately, and the legal rules that originate in a specific legal source are discussed as part of such a legal source or section.

2.2.1 The Constitution

The Constitution of the Republic of South Africa 1996 (SA, 1996a) took effect on 04 February 1997 and replaced the interim Constitution of 1993. Section 2 confirms the superiority of the Constitution: “This Constitution is the supreme law of the Republic: law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.” The Constitution enshrines a variety of rights for all citizens and describes the founding values that signify the spirit and intent of all South African legislation. The Constitution has a direct influence on the country’s legislation formulation as no legislation may oppose it and will be declared invalid if found in contradiction of the Constitution (Kleyn & Viljoen, 2010:41).

The above-mentioned statement by Kleyn and Viljoen signifies the following characteristics of the Constitution, which are important for this study:

- The Constitution is superior and regarded as the highest law of the Republic of South Africa; no other legislation or legal source enjoys the same legal status as the Constitution (SA, 1996a). Should any law or legal regulation be in contradiction to the Constitution, it is deemed invalid.
- The Constitution also includes the Bill of Rights, which is regarded by section 7(1) to be the cornerstone of South Africa’s democracy as

it entrenches the rights of all the people in the country. The Bill of Rights can be applied vertically (between state and individuals) as well as horizontally (individuals in respect of each other) (Currie & De Waal, 2013:41; Kleyne & Viljoen, 2010:249). This Bill therefore firstly protects the fundamental rights of every individual against the state, as well as the right of the individual with regard to each other. Section 7(2) furthermore determines that the state must respect, protect, promote and fulfil the rights in the Bill of Rights (SA, 1996a).

- Section 8(1) of the Constitution (SA, 1996a) reiterates the supremacy of the Bill of Rights with regard to legislature, executive and judicial authorities and all organs of state and also determines that the Bill applies to all law. Currie and De Waal (2013:42) confirm that all legislative organs (parliament, provincial legislatures, and local governments) are subject to the provisions of the Bill and that the subordination of the executive authority to the Constitution means that all organs of state that apply and enforce the law (for example, public schools) must do so in accordance with the Bill. The judiciary responsible for guarding the application of the Bill is also bound to act in accordance with the provisions of the Bill even though they are not organs of state (Currie & De Waal, 2013:43).

The above-mentioned characteristics are important for this study as they confirm that national, provincial, municipal, departmental, or school regulations may not contradict the Bill of Rights. In addition to these mentioned characteristics of the Constitution, the Bill of Rights also contains provisions applicable to the security of the educator-coach, since the Bill of Rights protects the rights of everyone in the country (Rossouw, 2004:15). All educator-coaches are therefore protected but also bound by the provisions of the Constitution as well as basic human rights as stipulated in the Bill of Rights. As confirmed by Rossouw (2017:34), educators should respect, uphold and apply constitutional principles in their relationships with all sport participants, parents and fellow coaches.

2.2.1.1 Section 9: Equality

Section 9(1) states that everyone is equal before the law and has the right to benefit equally from the law. This, according to Bray (2008:45), is one of the most fundamental human rights. Currie and De Waal (2013:210) describe *equality* as “a difficult and deeply controversial social idea”, while Rossouw (2017:35) refers to section 9 as an essential component of fairness that can be regarded as one of the basic principles of sport participation.

A link exists between equality and discrimination: Currie and De Waal (2013:218) state that the right to equality does not imply that no classification or differentiation may be made, as it does not require that all persons should always be treated the same, but rather that people in the same position, from a moral point of view, should be treated the same. Thus, the principle of equality can lead to differentiation, but there is a difference between the legitimate “mere differentiation” and unfair discrimination – a particular form of differentiation on illegitimate grounds (Currie & De Waal, 2013:222). Currie and De Waal (2013:223) explain the determining factor of illegitimate (unfair) discrimination as the effect it has on its victims that is classified as harmful or degrading, impairing their fundamental dignity as human beings. In the case of *Harksen v Lane* (1998), the Constitutional Court held that the following factors must be considered objectively and cumulatively in determining whether discrimination has an unfair impact:

- (1) The position of the complainants in society and whether they have been victims of past patterns of discrimination. Differential treatment that burdens people in a disadvantaged position is more likely to be unfair than burdens placed on those who are relatively well off.*
- (2) The nature of the discriminating law or action and the purpose sought to be achieved by it. An important consideration would be whether the primary purpose of the law or action is to achieve a worthy and important societal goal.*

(3) The extent to which the rights of the complainant have been impaired and whether there has been an impairment of his or her fundamental dignity.

The relevance of this citation for this study is as follows: should the educator-coach's actions be inconsistent with these determining factors, he or she discriminated unfairly and by doing so, jeopardised his or her security. Knowledge of these factors beforehand would enhance the security of the educator-coach.

Legitimate (fair) discrimination can be explained by looking at the case of *President of the Republic of South Africa v Hugo* (1997) where then president Nelson Mandela exonerated sentences of all imprisoned mothers who had children under the age of 12. A father who also had a child of under 12 years of age argued that the President unfairly discriminated against him on the basis of gender. According to Currie and De Waal (2013:224), the court found that the President's decision discriminated on listed grounds as found in section 9(3) of the Bill of Rights, which meant that the President's act had to be considered unfair discrimination unless the opposite could be proved. The court accepted the generalisation that mothers are primarily responsible for raising children in South African households, which inflicts a burden upon women and contributes to inequality of women in South African communities; the court held that the discrimination was done on legitimate (fair) grounds against a class of individuals who had not been disadvantaged in the past (Currie & De Waal, 2013:225).

To further understand equality, one must distinguish between formal and substantive equality. Currie and De Waal (2005:232-234) distinguish between these concepts as follows: formal equality means that individuals in comparable positions should be treated alike, while substantive equality takes into account the actual circumstances in which individuals find themselves (Currie & De Waal, 2005:230). The implication of applying formal equality is that educator-coaches of all sorts of sport should be regarded as being in equally important positions and should be provided with similar quality of training and receive the same support to fulfil their job as educator-coach. However, the educator-coach who coaches a sport that poses higher risks – such as, rugby, hockey, or pole vault –

will have different training and support needs as compared to the educator-coach who trains track athletes or tennis players. Although a degree of risk exists in each sport type, not all include an equal likelihood of harm and therefore not all educator-coaches would require the same intense support pertaining to the risks of a sport. To ensure fairness here, substantive equality principles should be applied.

Educator-coaches who train the opposite gender will also have different focus areas and challenges that need to be thoroughly addressed to ensure equality and correct procedures when working with such learners. Although learners are more aware of their rights (Singh, 2003:2), cases involving sexual abuse, such as *Hewitt v The State* (2016) are reported, where the tennis icon and renowned coach's leave to appeal was dismissed after he had been found guilty on two counts of rape of two girls aged 12 and 13 years at the time of the incidents and one count of indecent assault of a 17-year-old girl. The rape offences were committed in the early 1980s, whilst the offence in relation to indecent assault was committed in 1994. Although it is important to understand the risk associated when working with the opposite gender, one needs to take into account that abuse can also occur between persons of the same gender. A current ongoing case at the school level involves a 22-year-old male Parktown Boys High School water polo assistant coach who is accused of sexually assaulting a minimum of 20 learners (Sekhotho, 2017). Rossouw (2017:50) defines sexual abuse as a criminal offense that may include non-contact acts, such as utterances or suggestions of a sexual nature, showing sexual material, or acts where unwanted physical contact is made. He continues by saying that sexual abuse can be established in inappropriate behaviour, such as making unwelcome physical contact for long periods and by justifying this action as a hands-on coaching technique (Rossouw, 2017:50). Abuse comes in different forms. Therefore, it is of utmost importance to have educator-coaches understand that all participants are to be treated equally.

The age of learners also attributes to what is expected from the educator-coach, as the development level and physical ability of participants vary. Younger learners will need to be taught basic skills and knowledge of the sport, taking into

consideration that they might not be able to identify risky behaviour and the consequences of impulsive behaviour in a specific sport. Senior primary school and high school learners, on the other hand, will be coached on a higher and more intense level, where it is accepted that the learners are old enough to understand the risks associated with the sport; thus, the level of coaching differs, again with its own typical challenges. An example of such a case is *Lubbe v Jacobs* (2003), where the court argued that a 12-year-old hockey player, who actively participated in the sport, was expected to have matured enough to be able to make a proper judgement regarding her own safety around the hockey field and that the educator-coach could not be held liable for the incident in which the ball deflected from a hockey stick, travelling through the air, striking and injuring the girl.

When considering the conditions and upkeep of the different sport facilities and equipment at a school, one needs to consider the level of participation and difference in usage of the facilities and equipment, while ensuring that all facilities and equipment are safe to use. For example, a school that offers rugby and netball as sport in which 80% of the learners participate, should require more intense facility and equipment upkeep due to increased usage. In contrast, if tennis is played by only 5% of the learners, for example, less upkeep is needed, keeping in mind that, regardless of the frequency of usage, all facilities and equipment must be safe to use. It is important to have standard facilities and equipment, as improvised or non-standard equipment could lead to an increased risk of injury and should preferably not be resorted to. However, when considering public schools in rural areas, one can understand that improvised facilities and equipment might be the only way to offer certain types of sport. When looking at equality at a broader level, the same substantive equality approach should apply, as it cannot be expected from these SGBs and educator-coaches to uphold the exact same safety standards or standards of coaching as, for example, quintile 5 schools in wealthier areas.

The above-mentioned contexts of equality reiterate that, by only taking formal equality into consideration in these instances, would not be the right approach, and one would rather consider substantive equality. By using substantive

equality, the educator-coach or management of the school should not unfairly discriminate against anyone, as this is inconsistent with the Bill of Rights and therefore unlawful. To ensure substantive equality, one needs to take into account the actual circumstances in which the individual finds himself or herself as that would ensure equality to a greater extent (Currie & De Waal, 2005:230). Rossouw (2017:47) mentions that “equality and the absence of discrimination do not necessarily mean that all participants are treated in the same way”. The educator-coach should carefully differentiate between the participants’ needs in order to be fair. The different needs between the educator-coach of each sport are also recognised, and they should be treated differently but without being unfairly discriminated against. School management structures (SGBs, principals, and SMTs) therefore have an obligation to ensure that the democratic right of equality regarding sport and coaching in public schools as state organs also applies in full to the educator-coach and, in turn, to learners and parents.

2.2.1.2 Section 10: Human Dignity

Section 10 describes human dignity as follows: “Everyone has inherent dignity and the right to have their dignity respected and protected” (SA, 1996a). Humans are clearly distinguished from objects in section 10 of the Bill of Rights (SA, 1996a). Reyneke (2010:75-80) is of the opinion that human dignity cannot be awarded, earned or lost, and that it is also linked to the possibility of self-actualisation. Wentzel (2008:131) states that a human being’s dignity is violated when he or she is humiliated by being treated in a degrading or “sub-human” way. Human dignity is the basis on which the other fundamental human rights are built, and when these rights are violated, so is human dignity (Malherbe, 2004:887). According to Oosthuizen, Rossouw and De Wet (2016:50), human dignity and right to life (section 11) must be the most fundamental rights, as many other rights cannot exist in the absence thereof.

With human dignity explained, it is easy to understand its close relationship with other rights. When governance and management structures of a school do not take working conditions – including proper training and preparing educator-coaches – seriously, educator-coaches may see it as an indication of the level of respect shown by governing structures towards them or the group of learners

they are coaching, which, in turn, can violate their dignity and professional security in the workplace.

Educator-coaches need to be aware that they need to treat participants with dignity while coaching and by doing so, help the participants reach the point of self-actualisation which will lead to an improved quality of life.

2.2.1.3 Section 29: Education

Malherbe (2000:54) mentions that the contents of section 29 of the Bill of Rights was finalised right at the end, just before the Constitution was adopted and that it is indicative of the importance of education to all. In terms of section 29(1)(a) of the Constitution, everyone has the right to a basic education (Oosthuizen *et al.*, 2015:6). Oosthuizen also notes the fact that, although this right does not guarantee free education, a learner may not be refused access where self-finance is unavailable (Oosthuizen *et al.*, 2016:64). In the context of this study, with participation in a sport as a school activity, one can accept that it also needs to be accessible to all as part of free education and should enjoy the same attention with regard to provision, safety and support.

Although the state is responsible to provide education, as set out in section 29, this responsibility includes making sure that schools are functional and educators are properly trained and supported (Bray, 2008:83). The SGB is also subject to the requirements of the Constitution – which includes the right to education that does not only refer to academic or curriculum activities.

The right to a basic education cannot be seen in isolation, as all the rights in the Bill of Rights are deeply interconnected. For example, if a school is next to a busy road and learners struggle to get to school due to the extreme high volume of and unsafe, congested traffic, one can argue that the learners are being denied safe access to the school – a place where they can only get a basic education if they can access the school without the risk of death or injury. Not only are the learners' right to education limited, but their right to freedom and security of the person (discussed hereafter) are threatened, as they are at risk of being injured or killed.

The same can be argued about the support the State, SGB and SMT make available to educator-coaches, whether in class or on the sport field. No adequate support – such as subject training, proper teaching material and equipment made available for all educator-coaches to teach – could lead to the limitation of learners' right to a basic education. The same applies to the sport field, where the educator-coach must be supported by the State, SGB and SMT by providing, for example, training opportunities and a safe environment with proper equipment – without these, there could be an increased risk of injury to both learners and educator-coach on the sport field, which directly threatens the freedom and security of the person and indirectly the right to education, since sport participation is seen as part of basic education as a whole. The unreported case of *Muntingh v Gautengse Departement van Onderwys en die Hoërskool Vereeniging* (1997) is one example of how important it is to have adequately trained educator-coaches supervising school activities. A learner of the school was left a quadriplegic after diving into the school's swimming pool during a physical education period. This happened while the supervising educator, who was not trained to teach physical education, was the only educator at the pool. The case was settled outside of court after the learner's parents argued that the school was negligent as the educator was unqualified to supervise the learners at the swimming pool.

2.2.1.4 Section 12: Freedom and security of the person

As used in the example above, freedom and security of the person entails, amongst others, the following, which is applicable to this study, as set out in the Bill of Rights (SA: 1996a):

12 (1) Everyone has the right to freedom and security of the person, which includes the right –

(c) to be free from all forms of violence from either public or private sources;

(d) not be tortured in any way; and

(e) not to be treated or punished in a cruel, inhumane or degrading way.

The right to bodily integrity should be respected, protected and promoted. The coach is responsible to promote the safety and bodily integrity of the child. Therefore, training of educators with regard to extramural activities, such as coaching a sport, remains a responsibility that falls under both the state and the SGB. *Koffman v Garnett* 574 S.E.2d 258 (Va. 2003) occurred in the USA, but the legal principles are also relevant for the South African educator-coach. It demonstrates the negative ramifications of a negative coaching approach, that can be prevented by good coaches' training. In this case an emotion driven coach, Garnett, was upset by his players' performance during their previous football game. He weighed 120 kilograms and demonstrated a defending technique by throwing the one player, Andy Koffman, who weighed only 70 kilograms, to the ground without any warning. This led to the child's arm being fractured. Although the court had ruled that the player had to know that the sport held potential risks, the court of appeal ruled that the risks of a sport could not include the coach's emotionally driven actions resulting in injuring a player without any warning. In a South African case reported by Pelser (2009), an educator-coach at a primary school in Mpumalanga put a learner over his shoulder while instructing his team mates to "bakoond" him as a joke, because he apparently threw a stone. This was done after the educator-coach also applied corporal punishment to the learner. The actions of the coach were inconsistent with the above-mentioned right to freedom and security of the person. Oosthuizen *et al.* (2016:53) state that, whether a single learner or team is punished, the educator-coach should always respect the dignity and bodily integrity of all parties involved.

2.2.1.5 Section 28: The best interests of the child

This section, especially 28 (1)(d), determines that every child has the right "to be protected from maltreatment, neglect, abuse or degradation", and 28(2) determines that the child's "best interests are of paramount importance in every matter concerning the child" (SA, 1996a).

This is applicable to this study, not just because educator-coaches work with children on a daily basis, but also because they can be tempted to take a chance with learners by pushing learners beyond their capabilities in order to win a game or have a successful practice session. According to Rossouw (2004:115), the educator-coach's regular contact with learners on the sport field while being in the position of power towards the learners could lead to mental or physical abuse. This is not necessarily done intentionally, but merely by having learners do harmful exercises due to the educator-coach's lack of training could be perceived as abuse. Educator-coaches should always remember to put learners' interest before their own when making any decision or taking any form of action on the sport field.

2.2.1.6 Section 23: Labour Relations

The South African Constitution is unique as it features labour rights specifically aimed at the employer-employee relationship. According to Currie and De Waal (2013:473), this was done to ensure that the various labour legislation statutes be interpreted analogously with the Constitution. It is important to determine in which way this section ensures educator-coaches' security.

As set out in the Bill of Rights (SA, 1996a), section 23(1) states that "everyone has the right to fair labour practices". As foundation for all labour-related legislation, this section makes it clear that every employee has the right to be working under fair practice. Going on the following sections, it stipulates the rights of the employer and employee with regard to trade unions who assist in unfair labour practice. To expect employees to do something that they have not been trained for and dismissing them because they could not carry out or complete the task properly, is an example of unfair labour practice. In the case where the educator-coach is not provided with the necessary support, such as proper training and adequate apparatus to coach, it can be seen as a violation of the educator-coach's right to fair labour practice, as stipulated in section 23 of the Bill of Rights (SA, 1996a).

2.2.2 The South African Schools Act 84 of 1996

SASA (SA, 1996c) was promulgated on 01 January 1997 (SA, 1996c). This act promotes a uniform system of approach towards the organisation and management of schools (Doubell, 2012:32).

2.2.2.1 The SGB and the educator-coach's safety

Although SASA (SA, 1996c) does not specifically mention the educator-coach, it stands central in the governance context to this study and implies educator-coach when we take section 8(1) into account, which empowers the SGB to:

adopt a code of conduct for the learners after consulting with the learners, parents and educators as well as section 8 (2) which determines that the code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process (SA, 1996c)

Jurgens (2012:54) states that learners' participation in sport, which forms part of the learning process, is also implicated by this section as the disciplined and purposeful school environment that must be created is obviously also referring to learners' safety on the sport field where the teacher-coach would also be found coaching the learners.

The duty of the SGB to ensure the safety of learners and educator-coaches can also be derived from section 20(1)(a), which states that the SGB's function is also to: *promote the best interest of the school and strive to ensure its development through the provision of quality education for all learners at the school*. This statement also has implications for extramural activities, since section 21(1)(b) allocates the function *to determine the extra-mural curriculum of the school* to the SGB (SA, 1996c). Furthermore, section 20(1)(e) of SASA (SA, 1996c) determines that the SGB must support the principal and educators in their professional functions while also prescribing ongoing legal criteria according to which the SGB should function.

There needs to be enough safety and security structures in place to properly support the educator-coach to coach a sport to the best of his or her ability. These structures should be created by the SGB in accordance with SASA (SA, 1996c). Burger and Goslin (2005:1) mention how complex sport management has become and reiterate that SGBs should create proper guidelines, including required training and rules by virtue of codes of conduct to protect learners as well as educator-coaches. An increased degree of risk exists by having untrained or poorly trained educator-coaches on the field, which leads to the next important section of SASA (SA, 1996c).

2.2.2.2 Liability of the SGB and therefore the State

Section 15 of SASA (SA, 1996c) determines that *every public school is a juristic person, with legal capacity to perform its functions in terms of the act* (SA, 1996c). This means that the public school's management structures can be held liable for the wrongful cause of damages. However, section 60(1) of SASA (SA, 1996c) determines that:

The State is liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public school and for which such public school would have been liable but for the provisions of this section.

This implies that the State accepts responsibility in the case where an educator-coach is held liable for damages incurred due to negligence. In the case of *Louw and another v Lid van die Uitvoerende Raad, Vrystaat, Onderwys en Kultuur en ander* (2004), a young boy nearly drowned and sustained brain damage in the process. The parents sued the educator, who was employed by the SGB at the public school. The State referred to section 20(10) of SASA (SA, 1996c) and argued that they could not be held liable if the educator in question was not employed by the State. The Court, however, found that the State must accept responsibility in terms of section 60 (SA, 1996c). The MEC's appeal in the case of *MEC for Education & Culture, Free State v Louw* (2005) was not successful. Squelch (2001:147) states that, although the State is liable for wrongful damage that occurs at a public school, the upkeep of the school grounds and facilities

remains the duty of the SGB and educators, ensuring it is safe. In the case of *Hattingh v Roux NO and Others* (2011), an under 19 rugby player sustained a serious neck injury which the court found was due to the intentional actions of one of the players of the opposing team. Although the coach of the opposing team denied knowing anything about the code word that was used and had led to the injury of the player, the court found that it was highly improbable for the coach to never have heard the word or seen the move being done during matches and at training.

The judge held that, despite the fact that when a person decides to play a game such as rugby, he consents to the risk of certain injuries. Nevertheless, the conduct of the opposite team's player in question was of such a nature that the injured player did not voluntarily accept the risk of that form of harm. The court ruled that the defendant (Roux) and his son had to pay the plaintiff (Hattingh) and his injured son for damages incurred. Despite the fact that he was not held liable, the coach of this u/19 team should have taken the time to ensure that his players were aware of the risks of the game, but more importantly, the risk of liability when flagrantly disregarding the rules of the sport. In the case that the coach is found not to have properly informed the players in this regard, the coach and school could be implicated as liable.

2.2.2.3 Regulations for Safety Measures at Public Schools

Section 61 of SASA (SA, 1996c) dictates that new regulations can be drafted and implemented under this act as subordinate legislation to ensure that the act is carried out as intended. This power is given to the Minister of Education. The Regulations for Safety Measures at Public Schools (SA, 1996d) is one such set of regulations that was drafted by the Minister and has a definite impact on the educator-coach with regard to ensuring the safety of the learner.

In an unreported case that was settled outside of court, *De Kock v Hoërskool Oosterland en Cronje* (1997), the mother of a learner claimed inadequate supervision and negligence after a piece of broken tile, that was found on the school ground, was thrown at her son. The incident caused her son to lose his eye. Regulation 8A(2)(a) and (b) of the Regulations for Safety Measures at Public

Schools (SA, 1996d), however, determines very clearly that all measures possible must be taken to ensure the safety of learners during any school activity and that supervision should at all times be the highest priority. Regulation 8B(1–4) determines the duty of care expected from the educator-coach when organising a school activity and contains extensive information regarding what information the organiser needs to obtain and communicate. The legal guardian or parent of the learner also needs to give consent before the learner may partake in a school activity, as stated in regulation 8C(1–2). In the case of a learner needing medical attention, regulation 8A(7)(a–e) indicates what the educator-coach must do to ensure that his or her duty of care is sufficient.

This was not the case with the Muntingh incident discussed in § 2.2.1.3 where the learner became a quadriplegic after diving into the shallow end of the pool. There was no first-aid equipment available at the pool, and medical services were not requested immediately after the incident, while the educator allowed bystanders to move around the injured learner. As was stated earlier, the school and Department settled financially out of court as they were both held liable.

2.2.3 Employment of Educators Act 76 of 1998

The Employment of Educators Act 76 of 1998 (SA, 1998) is regarded as the main statutory labour law regulator of the teaching profession and applies to all public school educators (Smith, Rossouw & Malherbe, 2009:192). The educator-coach might not be sure if coaching a sport is compulsory in the case where he or she is not adequately trained. Coaching is widely accepted as an extracurricular activity in South African schools, although it is not the main professional function of the educator. Even though it might not be the main function, the SGB may reasonably expect the educator to also coach a sport. In order for the expectation to be reasonable, the SGB should ensure that the educator undergoes proper training in order for him or her to be well equipped with knowledge of rules and dangers of the specific sport, and is psychologically ready to coach. Rossouw (2017:32) reiterates the importance for schools to have educator-coaches who are thoroughly educated in all aspects of their tasks. Section 11(1)(d) stipulates that an employee may be dismissed from duty due to incapacity or inability to fulfil duties as reasonably expected (SA, 1998). In the case where coaching

forms part of the educator's expected duties, the educator-coach must comply and become competent to coach, as non-compliance may give rise to section 18(1)(e), which is misconduct due to the non-fulfilment of duties where the employee is putting his or her own life or that of another in danger by ignoring safety regulations and rules, such as sport-specific dangers and risks.

2.2.3.1 Personnel Administration Measures (PAM)

The Personnel Administration Measures (hereinafter PAM) (SA, 2016) is subordinate legislation that should be interpreted with the regulations set out in the Employment of Educators Act 76 of 1998 (SA, 1998). This act specifically focusses on the educator (educator-coach) appointed by the state but remains applicable to all educators.

The PAM defines the employer's expectations, and educator-coach can measure his or her performance against the standards as set out in this act. Paragraphs A.4 and A.5 contain details pertaining to the educator-coach's everyday task, which include all expected administration, teaching, extracurricular (activities not directly linked to the academic programme or curriculum, such as coaching a sport) and extramural activities (extension of the academic/curriculum programme, such as cluster meetings). As was mentioned in § 2.2.3, the educator-coach is expected to obtain and master the skills necessary to teach and coach. Paragraph B.10 of the PAM (SA, 2016) highlights lifelong learning, improving one's relative education qualification value (REQV) and how the evaluation and appraisal of the individual's development should be conducted. Cushion *et al.* (as cited by Van der Merwe, 2012:22) support lifelong learning by stating that knowledge development is not absolute and that a person can never be all-knowing, but that knowledge development is a constant and ongoing process. The governance and management structures of the school should therefore ensure that enough support is made available for this development and that development appraisal is treated as a high priority.

As was previously mentioned, support from the governance and management structures should include not pressuring the educator-coach to achieve unrealistic goals and should ensure fair distribution of workload among the staff

at different levels. Paragraphs A.4 and A.5 of the PAM (SA, 2016) details how the workload is to be distributed by the principal and ensures fairness. Paragraph A.4 (item 4.1.4) specifically states that “[t]here should be an equitable distribution of workload between the various post levels and within a post level to ensure that educators on a particular level or an individual educator is not overburdened” (SA, 2016). The PAM thus highlights the importance of this duty that ultimately rests with the principal and therefore the governance and management structures of the school.

2.2.4 Children’s Act 38 of 2005

Although this act is not specifically directed at education law, it is regarded as an important act that educator-coaches need to be familiar with as it contains legislation that has an indirect impact on the educator-coach. Section 8(2) makes it abundantly clear that this act is applicable to the educator coach and reads as follows:

All organs of state in any sphere of government and all officials, employees and representatives of an organ of state must respect, protect and promote the rights of children contained in this Act.

To respect, protect and promote children’s rights imply that the educator-coach needs to be familiar with the rights of the learners he or she is coaching and what the Act expects when the educator-coach engages the learners. Section 9 of the Act states:

Best interests of child paramount. –In all matters concerning the care, protection and well-being of a child the standard that the child’s best interest is of paramount importance, must be applied.

With regard to child participation, Section 10 of the Act reads that:

Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.

This section is especially applicable to children, who are of such an age and stage of development that they have the ability to express their views. They can also give due consideration, such as telling the educator-coach that a specific movement is dangerous or that they do not feel safe when doing something that the educator-coach is expecting of them. cThis Act gives a broad description of what needs to be taken into account when ohenworking with children, but this should be narrowed down to sport-specific occurrences, which can be communicated at accredited sport-specific training sessions.

2.2.5 South African Council for Educators Act 31 of 2000

The South African Council for Educators – established by Government Notice 16037 in the Government Gazette of 17 October 1994 – is a statutory body, which, in terms of sections 3 and 21 (SA, 2000a), applies to and binds all educators in the country, whether employed by the State or the SGB. The primary aim of the South African Council for Educators Act 31 of 2000, as also seen in section 5 (SA, 2000a), is to enhance the image of the educator on all terrains. Section 5(c)(1) also determines that the South African Council for Educators (SACE) must draw up a code of conduct for registered educators and implement it. This code of conduct – known as the South African Council for Educators Code of Professional Ethics (SA, 2000a) – is also referred to in Greenfield *et al.* (2011:95) regarding the safety of junior sport participants. The following, as stated in section 3 of the Code of Professional Ethics, is applicable to this study:

An educator:

- *takes reasonable steps to ensure the safety of the learner.*
- *is not negligent or indolent in the performance of his or her professional duties.*

Both the SGB and educator-coach must be aware of the South African Council for Educators Act (SA, 2000a) so as to ensure that everyone is protected when working with learners. This is confirmed by Rossouw (2008b:28) when he states that this Act has been put in place so that the educator knows what is expected of him or her. The South African Council for Educators Code of Professional Ethics (SA, 2000a), which serves as an annexure of the South African Council

for Educators Act (SA, 2000a), contains the provisions that are applicable to delictual liability of the educator-coach (Rossouw & Keet, 2011:22), as items 13 and 15 of the section on *Conduct: The educator and the learner* state that an educator takes reasonable steps to ensure the safety of the learner and is not negligent or indolent in the performance of his or her professional duties (SA, 2000a). Jurgens (2012:59) states that the educator-coach must be aware that the sport field is a potentially dangerous environment and that the care and vigilance of the educator-coach is measured at a high standard.

2.2.6 Common Law

Common law was not promulgated by a legislature but is seen as the accumulation of historic legal provisions (Wentzel, 2008:137). Roman-Dutch law contributed greatly to the common law we know today and, although uncoded, sections 8 and 39(2) of the Constitution (SA, 1996a) determine it has to be taken into consideration in each court ruling (Oosthuizen *et al.*, 2016:24). Rossouw (2010:34) states that section 33 of the Constitution (SA, 1996a) as well as the Promotion of Administrative Justice Act 3 of 2000 (SA, 2000b) can be accepted as codified principles derived from common law.

The constitutional principles found in the South African common law are used as interpretation mechanisms when dealing with the execution of public power (Oosthuizen *et al.*, 2016:128). These principles can be developed, but the “spirit, purport and objects” of the Bill of Rights must be promoted, as obligated by section 39(2) of the Constitution (SA, 1996a). In the case of *Johannesburg Municipality v Cohen’s Trustees* 1909 TS 811 823, as cited by Botha (2005:45), the judge made the following remark regarding the inherent respect for our common law and how amendments thereof should not be unnecessary:

It is a sound rule to construe a statute in conformity with the common law rather than against it, except where and so far as the statute is plainly intended to alter the course of the common law.

Bray (2008:59) mentions that common law must be accepted as a great contributor to the development of educational law, as it consists of ample rules

that can be applied to the field of education. The legal duties of public schools and the departments of education towards learners, educators (and coaches) will, if not already, be determined by referring to recognised common law and the relevant provisions of the Constitution (Oosthuizen *et al.*, 2016:130). According to Rossouw (2008a:22), common law principles are used to resolve issues in sport and education after other legislation has been applied. There are specific common law principles that are used to determine the educator-coach's duty towards the safety and security of the learner as well as that of the governance and management structures towards the first mentioned. Should it be determined that the SGB, SMT or educator-coach failed to keep the learners from harm on the sport field, they will be held liable (individually or collectively) by the court.

The following common law principles are of importance for this study:

- *Ultra vires* doctrine – literally means “beyond the legal duty” and refers in broad to the requirements for an administrative act to be valid (Oosthuizen *et al.*, 2016:131). This can be, for example, when the SGB, SMT or educator-coach give orders or take actions that are regarded as “overreaching” their power as stipulated in valid legislation.
- *Intra vires* – To act “within one’s power and ability”.
- *Audi alteram partem* – “to hear the other side”, which requires that all parties are given an opportunity to present their side of the story (Oosthuizen *et al.*, 2016:134). This principle should always be adhered to by all participants at school level, especially disciplinary or enquiry committees, so as to ensure procedural fairness. An educator-coach cannot, for example, be removed from a team due to a complaint before the side of the educator-coach has also been heard.
- *In loco parentis* – “in the place of the parent” does not substitute the parent as primary untrained “educator” and his or her duty of spontaneous and intuitive education at home; rather, the educator-coach acts as trained and professional secondary educator who teaches or coaches a specific subject or sport in which he or she has

undergone adequate and specialised training (Oosthuizen *et al.*, 2016:148).

- *Actio legis Aquiliae* – relates to delictual liability due to actions that can lead to patrimonial loss (*damnum iniuria datum*) in special circumstances and where one claims for financial loss or damage suffered which could lead to financial loss (Neethling & Potgieter, 2015:8).
- *Actio iniuriarum* – Delictual liability claims after physical injury or defamation seeking to protect an individual's dignity, reputation, as well as his or her physical integrity (Neethling & Potgieter, 2015:276). The *actio legis Aquiliae* and *actio iniuriarum* can be used in conjunction where, for example, a learner suffered an injury during practise due to negligence of the educator-coach and now has medical expenses. The learner would have to implement *actio iniuriarum* for the reparation of injuries occurred as well as *actio legis Aquiliae* for compensation (Neethling & Potgieter, 2015:277).
- *Volenti non fit iniuria* – “voluntary assumption of risk”, where the doer is not held liable when the participant (disadvantaged person) consents to the risk involved. Neethling and Potgieter (2015:113) clarify that consent can have two manifestations, which is to give consent to being put in a disadvantaged position, or consenting to the risk thereof – for example, a rugby player accepts the risk involved with participating in the sport and that he or she might get injured even though all rules of the game are adhered to (Neethling & Potgieter, 2015:113). In the case of *Hattingh v Roux NO and Others* (2011) discussed in § 2.2.2.2, the judge found that, although *volenti non fit iniuria* was applicable to rugby, the injured party did not consent to being purposefully injured the way he was and that the accused was liable for his actions that had led to the injuries.
- *Boni mores* – described as the “legal convictions of the community” and is used as objective measurement tool where the judge takes the law and all legal aspects into consideration, accompanied by the

community's convictions and the circumstantial aspects of a case to resolve a matter (Neethling & Potgieter, 2015:45).

The above-mentioned principles are used in the next discussions on common law and, more specifically, the law of delict.

2.2.7 Defining the law of delict

The law of delict was touched upon in § 1.2.5 of this study. However, more in-depth detail is necessary, since this study focusses mainly on sport, education, and law.

One of the most basic legal principles determine that damage rests where it falls and that the person who suffers the damage also carries the cost thereof (*res perit domino*) (Oosthuizen *et al.*, 2016:118). Neethling and Potgieter (2015:3) explain that this is not always the case and that there are legitimate grounds, found in private law, on which one can shift the cause of damage to another and hold them responsible for the damages incurred. A delict is an act where a person causes damage to another in a wrongful, blameworthy way and is one such a legitimate ground where one can shift the responsibility for damage suffered, thus the law of delict (Neethling & Potgieter, 2010:4).

Rossouw (2004:49) explains that the law of delict functions within private law. According to Oosthuizen *et al.* (2016:119), private law is when one takes legal action against another in one's private capacity, whereas public law covers criminal law where the state prosecutes. Private and public law can also be applicable at the same time should damage be caused wrongfully and culpably and be a criminal offense. The law of delict, however, mainly deals with the circumstances in which one person can claim compensation from another for damages suffered (Loubser *et al.*, 2010:4). Loubser *et al.* (2010:8) mention that the functions of the law of delict are to compensate for damage suffered, protect one's interests, promote social cohesion values, provide acceptable settlement options between conflicting moral views while discouraging the wrongdoer from doing the same in the future and distributing damage suffered. To be found

delictually liable, there are five requirements against which the actions leading to the damage suffered need to be measured, as discussed hereinafter.

2.2.8 The fundamental elements for delictual liability

Oosthuizen *et al.* (2016:121) explain that the specific actions that caused damage must be measured, one by one, against the following five elements, of which all five must be present in order to prove delictual liability.

2.2.8.1 An act

The act as defined by the law of delict can be either an act of “*commissio*” or “*omissio*”, where an *omissio* is when something was supposed to be done but it was not and resulted in someone suffering damage or loss (Oosthuizen *et al.*, 2016:122). Loubser *et al.* (2010:67) describe *commissio* as a positive deed, whereas an *omissio* is the failure to act. Rossouw (2004:50) explains that, in the case of negligence, the action must have been voluntary and that acts of God cannot cause one to be delictually liable, as it had to be a human act. An action can, according to chapter 7–35 of Mawdsley (2003:33), be categorised as “malfeasance”, where an act occurred but was not supposed to, or “misfeasance”, where the act occurred legally but was “nonfeasance”, where the act was supposed to occur but did not. A previously discussed case that can be used as an example of malfeasance (see § 2.2.2.2) is that of *Hattingh v Roux*.

2.2.8.2 Wrongfulness

Oosthuizen *et al.* (2016:123) describe wrongfulness as an act that is wrongful and unlawful according to the interpretation of a particular community. According to Neethling and Potgieter (2015:35), the act of delict, as discussed above, cannot by itself determine delictual liability and must first be proven to have been wrongful. They continue by adding that wrongfulness need to be investigated in twofold by, firstly, determining whether the person’s legally protected interest has been affected, as well as whether it had a negative and disadvantageous effect on the person’s interest, and secondly, by virtue of legal norms if the interest was unreasonably affected (Neethling & Potgieter, 2015:36). The *boni mores* measurement tool, as discussed above, is one test that can be used to determine

wrongfulness according to which the act of a person is tested against the standards and convictions of the community (Neethling & Potgieter, 2015:45). Rossouw (2004:52) is of the opinion that sport-related liability should be tested in context of the type of sport and that this would also indicate whether the educator-coach acted wrongfully.

When the educator-coach is busy coaching, he or she must be mindful not to cause harm to property or the person, as there are guidelines such as *in loco parentis* that must be adhered to at all times (Oosthuizen *et al.*, 2016:123). The case of *Smoldon v Whitworth* (1997) that occurred in England is applicable here, as a referee of an u/19 rugby match as well as a player of the opposite team were sued for spinal injuries caused to a player. The claims against the player of the opposite team were dismissed, but the court ruled that the referee was liable, since he was warned numerous times during the match that the scrums were not properly managed and that someone might get hurt. The referee's actions were wrongful as he did not adhere to warnings from the side-line referees and as a result caused serious bodily harm to a person. Neethling and Potgieter (2010:54) underscore the importance of establishing a duty of care before wrongfulness can be proven. According to this principle, the actions of teachers (educator-coaches), who always have a legal duty towards the learners in their care (based on their professional capacity), can be found wrongful.

2.2.8.3 Damage

Damage can be classified as either patrimonial or non-patrimonial (Oosthuizen *et al.*, 2016:124). Patrimonial loss can be described as damage to one's property (Oosthuizen *et al.*, 2016:124) – for example, considerable damage to sport facilities. It can also be medical expenses due to physical injury that happened at a school activity, or even loss of income due to injuries sustained at a school activity. The underlying legal principle applicable to injury or damage to property, as discussed in § 2.3.1, is that “the damage rests where it falls”. This implies that a person typically carries the damage and cost associated himself or herself and cannot accuse another for his or her losses (Rossouw, 2017:37). One example where patrimonial loss was a prominent element is the case of *Williams v MEC Gauteng Department of Education and others* (2004), where the SGB and

Department was sued after a boy was hit in the eye with a golf ball. The boy who sustained the serious eye injury eventually lost the use of the said eye and had to repeat the school year. The parents of the learner held that the teachers were negligent in their duties as there was not enough supervision when the dangerous activities took place.

Non-patrimonial loss is also known as injury to personality, such as dignity, reputation, or physical integrity (Oosthuizen *et al.*, 2016:125). Non-patrimonial loss has objective (where defamation causes a lowered reputation in the community) as well as subjective (existing in the mind of a person, such as unhappiness) components (Neethling & Potgieter, 2010:239). Physical pain due to unhappiness is also applicable. A comparative method is used to establish non-patrimonial loss (Neethling & Potgieter, 2010:239). According to Oosthuizen *et al.* (2016:125), the following sections are cited when claiming for non-patrimonial loss:

- Pain and suffering
- Disfigurement
- Loss of general health
- Amenities (enjoyment of life is limited)
- Shortened life expectancy
- Emotional shock

In the case of *Le Roux and others v Dey* (2011), defamation as one form of non-patrimonial loss came to the fore. The Constitutional Court ruled that a schoolboy prank where the boys pasted pictures of a principal and deputy principal on an image of two gay bodybuilders was a defamatory action which warranted compensation. The boys were sued for damages due to defamation and injury to the feelings of the deputy principal. The case turned at the Constitutional Court where the majority of the Court upheld the finding of the majority of the Supreme Court of Appeal, which had found that the image was defamatory and had a detrimental impact on the deputy principal's dignity, causing a lowered reputation within the community.

2.2.8.4 Causation

A causal link between the wrongful act and the resulting damage suffered must be established to prove delictual liability (Oosthuizen *et al.*, 2016:125). The law differentiates between factual causation and juridical causation (Neethling & Potgieter, 2010:186).

1.1.1.1.1 Factual causation

Factual causation occurs when a specific act caused actual damage. The question is: should the act not have occurred, would the damage also cease to exist? (Oosthuizen *et al.*, 2016:125). *Conditio sine qua non*, also known as the “but for” theory, is commonly accepted to establish factual causation and can be applied in school sports where the educator-coach failed to prevent an accident (Rossouw & Keet, 2011:14). The question will be asked whether the accident would have happened if the educator did not commit an omission. One such court case – which was already discussed in §§ 2.2.1.3 and 2.2.2.3 as an example of factual causation – is *Muntingh v Gautengse Departement van Onderwys en die Hoërskool Vereeniging* (1997). The supervising educator allowed learners to move around the boy who was lying next to the pool after he had dived into the pool, injuring his neck. Doctors confirmed that the movement of all the curious learners around the boy might have worsened the neck injury. If the supervising educator did not allow the learners to stand next to and move around the boy, his injuries might not have been so severe. The educator’s specific omission to protect the injured child from the attention was therefore the cause of the resulting damage that the learner suffered, proving causation.

1.1.1.1.2 Juridical causation

Juridical causation refers to when it is unjustifiable to hold one indefinitely liable for damage caused by his or her act (Oosthuizen *et al.*, 2016:126). This happens when, for example, the ambulance driver who is taking the above-mentioned injured swimmer to hospital drives recklessly and causes an accident that further injures the learner. Only the first injury can be assigned to the initial omission of

the educator. The supervising educator cannot be held liable for the rest of the injuries suffered where she was not present.

2.2.8.5 Fault

Neethling and Potgieter (2010:123) state that fault (*culpa*) in the broad sense is “a general requirement for delictual liability”. Fault can only exist if a person acted unlawfully (Neethling & Potgieter, 2010:123). Fault can be ascribed to whether the damage was intentional or due to negligence. One of the two should be present to establish fault (Rossouw, 2017:42). Oosthuizen *et al.* (2016:218) aver that fault refers to the state of mind of the one causing damage or loss at the time of the wrongful action and agree that there are two forms of fault.

1.1.1.1.3 Intent

If a person’s will is preconceived – in other words, he or she understands that his or her actions will cause damage or loss – then his or her actions are done with intent (*dolus*) (Oosthuizen *et al.*, 2016:126). Neethling and Potgieter (2010:126) describe intent as when a person, who can be held liable, acts intentionally while knowing that his or her actions are wrong. Rossouw and Keet (2011:14) hold that intent consists of two elements:

- direction of the will – that is, the manner in which the will is directed and that the wrongdoer knows what his or her actions will cause, but despite this, still continues with the action; and
- consciousness of wrongfulness, which has for quite some time been understood to be an element of intention. However, in *Le Roux v Dey* (2010), the Supreme Court of Appeal stated that consciousness of wrongfulness does not, in general, form part of *animus iniuriandi* (when both requirements, direction of will and knowledge of wrongfulness, are satisfied) in South African law. Although there is still much discussion before consciousness of wrongfulness gets reconsidered as an element of intention, it seems worth mentioning it, since the statement was made by a Supreme Court of the country.

1.1.1.1.4 Negligence

A specific strategy should be followed to determine negligence, known as the “reasonable person test” (Oosthuizen *et al.*, 2016:126). Oosthuizen *et al.* explain that the purpose of the test is to ask, “[h]ow would a reasonable person have acted under the same circumstances?” Two elements related to the reasonable person test are discussed.

- The element of foreseeability

To determine foreseeability, it is enquired whether the possible damage could have been foreseen. In the case of a sport coach, a question will be asked whether the reasonable coach would have been able to foresee the damage or injury. In case of a delict, the action of the coach will be measured against the standard of a fictitious reasonable coach with similar experience and qualifications (Rossouw, 2017:43). If the coach falls short of the standard, negligence has been established.

- The element of preventability

Should it be that the damage or loss caused was reasonably foreseeable by a reasonable coach, the argument arises as to whether the damage or loss was preventable. Four factors, as described by Neethling and Potgieter (2015:157), must be considered:

- The nature and extent of the risk – Little prevention will be undertaken if insignificant damage or loss was foreseen.
- The seriousness of the potential damage – A reasonable person who foresees extensive damage or loss would use extensive preventative measures, whereas, if he or she foresees only a slight possibility of damage or loss, less measures will be considered.
- The relative importance and objectives – The actions taken by the wrongdoer to stop extensive damage or loss by causing damage on a smaller scale will not be interpreted as damage caused.
- The cost and difficulty – To prevent damage or loss, the reasonable person would take the relatively easy steps, but when it becomes

expensive and difficult, like installing high fences around dangerous sport equipment at a financially struggling school, then preventability cannot be expected, although foreseen.

The test is concluded by asking the question as to whether the reasonable coach would have been able to prevent the damage that he or she was able to foresee. If the coach falls short of the standard, negligence has been established.

2.3 Concluding comment

This chapter offers a legal framework for school governance and management regarding the security of the educator-coach. An overview of the legal position of educator-coaches was presented. The applicable South African education legal determinants followed and included SASA (SA, 1996c), Employment of Educators Act (SA, 1998), the Children's Act (SA, 2005), and the South African Council for Educators Act (SA, 2000a). References to relevant court cases were also included. It is evident that there are ample statutory provisions regulating and protecting the South African education system and its role players.

The South African legislation also provides for common law principles that, as was discussed, provides specific guidelines for delictual liability and the duty of care of the educator-coach, as well as certain rights for learners. The security of all the education role players would be enhanced if they make it a priority to obtain sufficient legal knowledge. This literature review formed the basis for the empirical study.

Chapter 3: Research design and methodology

3.1 Introduction

The aim and objectives of the research were identified in chapter 1 (§ 1.3). The overarching aim of the study was to investigate, from a legal perspective, the security of the educator-coach offered by the governance and management structures, with reference to applicable legislation, school policies and the application thereof. In chapter 2, the focus was on the legal determinants for school governance and management regarding the security of the educator-coach.

In this chapter, the research design and paradigm are discussed. The strategies used to conduct the empirical inquiry are also explained. The objectives of the study, as formulated in chapter 1 (§ 1.3), guided the selection of the research design. The following were stated as objectives:

- to explore the South African legal framework that regulates the drafting and implementation of school sport policies towards educator-coach security at public school level;
- to determine how SGBs and SMTs of public schools understand and implement the legal imperatives regulating school sport policies;
- to investigate which aspects regarding qualifications, experience and the ongoing development of educator-coaches influence and/or inform the drafting of a sport policy by a SGB towards improved security of the educator-coach;
- to determine how the implementation of school sport policies by management teams improve the security of educator-coaches.

While the first objective was reached in chapter 2, the other three objectives were reached by means of the empirical research this chapter focuses on.

3.2 Research paradigm

According to Joubert *et al.* (2016:8), there are many reasons why research is conducted; the two main reasons, however, is to predict or to understand. The study's research question and objectives (goals) largely determine the point of view from which the study will be conducted and thus the selection of a paradigm (Joubert *et al.*, 2016:8).

Hammersley (as cited in Cohen *et al.*, 2018:8) states that paradigms are not mere methodologies, but ways of looking at the world and its contrasting assumptions about what the world is like and how we can figure it out or know about it. Creswell (2007:19) mentions that every individual has a paradigm or model according to which he or she performs an act. There are two mainstream paradigms – positivism and interpretivism – and as stated by Joubert *et al.* (2016:8), the researcher should determine the reaction to certain fundamental questions when determining from which paradigm the study will be approached. According to Joubert *et al.* (2016:9), these fundamental questions are as follows: What is the nature of reality (ontological question)?; What is known about reality (epistemological question)?; How can knowledge of reality be obtained (methodological question)?

Cohen *et al.* (2018:3) note that axiology are the values and beliefs held by individuals that move research methods beyond a technical exercise of being concerned with understanding our world (ontology or epistemology), as it (axiology) informs the technical exercise (ontology and epistemology) as to how we view our world and what we deem to be valuable. It is important that the researcher approaches the study from a specific perspective, as it would help the readers to associate themselves with the perceptions of the researcher and consequently understand the research process better. There are three categories that can form from a paradigm, namely ontology, epistemology and methodology, which are discussed next.

3.2.1 Ontology

Cohen *et al.* (2018:3) and Joubert *et al.* (2016:9) describe ontology as the assumptions on the nature of reality and the nature of things without external influences or social interaction trying to change it. From a positivist point of view, reality is seen as something that is what it is without much control that can be exercised over it, whereas the interpretivist view regards reality as a result of social, historical, political, or economic synergy.

I did not decide what should be regarded as knowledge of today's school governance and management regarding the security, training, support and legal responsibility of the educator-coach, as well as the indirect or direct legal liability of each; instead, I interpreted, analysed and reconstructed the participants' views in order to create a better understanding. I also accepted that there were mutual interactions – such as social, historical, political and cultural contexts, as referred to above – within which the participants experienced safety and the law. The meaning they attached to the phenomenon was understood by interpreting the information provided during the interviews. Thus, the interpretivist paradigm seemed suitable for this study.

3.2.2 Epistemology

Epistemology is the ways of researching and probing into the nature of reality (ontology) and the nature of things (Cohen *et al.*, 2018:3). The positivist paradigm would follow the approach that reality need to be (objectively) verified and tested in order to predict, while interpretivism would regard reality as understanding the mutual interactions (subjectively) within specific social contexts (Joubert *et al.*, 2016:9). The latter is exactly what I wanted to do and reiterates why the interpretivist approach had to be used.

3.2.3 Methodology

The methodological approach allows the interpretivist paradigm to obtain knowledge of reality by the setting of hypotheses and experimentation; this research is approached quantitatively and deductive reasoning is followed where the focus moves from general to specific (Joubert *et al.*, 2016:9). With the

interpretivist paradigm, knowledge is generally obtained by communicating with reality (Joubert *et al.*, 2016:9). The interpretation of reality is what is deemed important while using a qualitative approach and inductive reasoning by studying different cases with the aim of attempting to better grasp and interpret the perceptions of participants on a phenomenon (Joubert *et al.*, 2016:9). As explained earlier, this was exactly what I wanted to accomplish with the research and thus an interpretative phenomenological approach was used.

3.3 Research design

The research design is the plan or strategy followed to organise the research, making it practicable in order for the research questions to be answered based on evidence and warrants. The research design is governed by “fitness for purpose” (Cohen *et al.*, 2018:173), indicating that the design is dependent on and should serve the purpose or aim of the study. According to Creswell (2009:3), the selected research design depends on the nature of the research problem, the researcher’s perspicacity and the audience involved in the study. Joubert *et al.* (2016:33) concur with Creswell’s (2014:94) description of research designs as types of investigations within qualitative, quantitative and mixed-methods approaches that provide specific guidelines for the progress of procedures in a study. The research question formulated for this study focussed on an in-depth understanding of the perceptions of educator-coaches’, as well as insight into governance and management of a school regarding the safety, training, support and legal responsibility of the educator-coach and the indirect or direct legal liability thereof. Therefore, as discussed in chapter 1, a qualitative approach was followed to ensure such a deeper understanding.

Cohen *et al.* (2018:178) recognise Maxwell’s interactive research design model for qualitative research, which has the following five main areas that interplay as the research unfolds:

Table 3.1: The phases of the research design

Phase	Goals – Identifying perceived	Done in
1	problems and goals.	chapter 1

Phase 2	<i>Conceptual framework</i> – Informed by personal experience, existing theory and prior research. Formulating the problem statement.	Completed in chapter 1
Phase 3	<i>Research questions</i> – Informed by the concerns of participants and research design.	Formulated in chapters 1 and 2
Phase 4	<i>Methods</i> – Informed by the research paradigm and the researcher's preferred research style.	Described in chapter 3
Phase 5	<i>Credibility</i> – Interpreting data as informed by the research paradigm, data analysis and conclusions.	Ensured in chapters 4 and 5

As described in the table above (adapted from Cohen *et al.*, 2018:178), the chapters of this qualitative study are linked to the five main areas as set out by Maxwell. This chapter falls under phases 4 and 5.

3.3.1 Qualitative research approach

There are different types of approaches in research, with qualitative approaches being the least prescriptive of all approaches (Leedy & Ormrod, 2015:253). Cohen *et al.* (2018: 292) identify the following five commonly used qualitative research approaches: narrative research; grounded theory; ethnography; case studies; and phenomenological research. As mentioned in chapter 1, the researcher describes lived experiences (perceptions) of people regarding a certain phenomenon (meaning of an event) and studies the experiences of the participants and this phenomenon in detail. This approach was based on the perspective that what we know of the world is entrenched in our current experiences. To understand experiences from the participants' point of view, interviews were conducted. In the light of the central research aim – namely to determine the nature of public school governance and management towards enhanced security of the educator-coach – the interviews generated data that enabled me to reach this aim.

3.3.2 The qualitative research approach for this study

As previously stated, the aim of this study was to determine the awareness of today's school governance and management regarding the safety, training, support and legal responsibility of the educator-coach, as well as the indirect or direct legal liability of these structures. The research focussed on an in-depth understanding of this awareness or lack thereof.

Understanding a phenomenon like awareness of security and legal responsibility is related to the current everyday life context in which it is experienced at a school. Therefore, a phenomenological research approach was preferred as it allowed me to interpret and describe the core of the real experience and awareness (McMillan & Schumacher, 2010:346) of educator-coaches with regard to the nature of effective public school governance and management towards enhanced security of the educator-coach. This approach (§ 3.3.1) ensured that a proper description of each situation, as understood by the participants, was formulated (Cohen *et al.*, 2018:301).

According to Leedy and Ormrod (2015:147), phenomenological researchers almost always rely on unstructured interviews with purposefully selected participants. I made use of interviews and studied applicable school policies to collect data, identify similarities and arrive at the heart of the matter, while separating irrelevant information (Creswell, 2012:176).

3.4 The researcher as instrument

Qualitative researchers collect data themselves by examining documents, observing or conducting interviews and are thus the key instruments as they do not use instruments developed by others (Creswell, 2014:185). Joubert *et al.* (2016:112) also describe the researcher as the primary instrument with regard to identifying and collecting data. McMillan and Schumacher (2010:335) state that researchers' social relationship with their participants needs to be described and that they usually disclose their personal or professional experiences. This enables them to empathise with participants or understand what they mean much

better than inexperienced researchers would (McMillan & Schumacher, 2010:335).

I am a qualified Intermediate- and Senior Phase educator with experience in the public school setup, including coaching sport. I am also part of the middle management of a public school and serve on the SGB. These aspects of my professional life were brought together in this study. I have also had the experience of not always being sure whether I am safe as an educator-coach, whether I am truly addressing the needs and insecurities of the educator-coach working under my leadership, and whether I am effectively contributing towards the SGB's task of managing certain aspects of the school. Nieuwenhuis (2007:79) explains that the researcher should ensure that the participants' views are organised in a systematic context but that the influence of prior knowledge cannot be denied. I recognised and declared the subjective understanding of the educator-coach's security, as discussed above, although strong attempts were made to comprehend the phenomenon from the participants' point of view.

3.5 Population and sampling / Identifying participants

Using the appropriate methodology and instrumentation and by identifying the best sampling strategy ensures a strong study (Cohen *et al.*, 2018:202). Maree (2011:79) defines sampling as how a researcher selects participants of the population for a study. Cohen *et al.* (2018:207) identify two main sampling methods and state that the researcher should choose between probability or non-probability sampling.

3.5.1 Non-probability samples

Non-probability samples hold a certain degree of selectivity due to the researcher targeting a specific group, knowing it represents only itself and not the wider, undifferentiated population (Cohen *et al.*, 2018:217). There are different types of non-probability samples, which include convenience sampling, quota sampling, dimensional sampling, purposive sampling, and snowball sampling (Cohen *et al.*, 2018:217). Table 3.2 summarises these different samples and types (Joubert *et al.*, 2016:96).

Table 3.2: Different types of probability and non-probability samples

Probability Samples	Non-probability Samples
Simple random sampling	Convenience sampling
Systematic sampling	Quota sampling
Random stratified sampling	Snowball sampling
Cluster sampling	Purposive/Purposeful sampling

The probability samples in the table above are commonly used in positivistic research. The non-probability samples in the right hand column are more commonly used in interpretivistic qualitative studies and allow the researcher to include participants who can contribute the most towards the study without discriminating against anyone. For the purpose of this study, the researcher made use of non-probability samples.

3.5.2 Purposeful sampling

With qualitative research, the aim is not to generalise to a population but to attempt to comprehend and explore a central phenomenon (Creswell, 2012:206). Creswell (2012:206) continues by stating that the research term “purposeful sampling” is used for qualitative research. Cohen *et al.* (2018:218) aver that the researcher handpicks the participants “based on his/her judgment of their typicality or possession of particular characteristics”. In most cases, purposive sampling is used to get to “knowledgeable people” or participants with the in-depth knowledge needed to understand the phenomenon (Cohen *et al.*, 2018:219). This is also depicted by Creswell (2012:206).

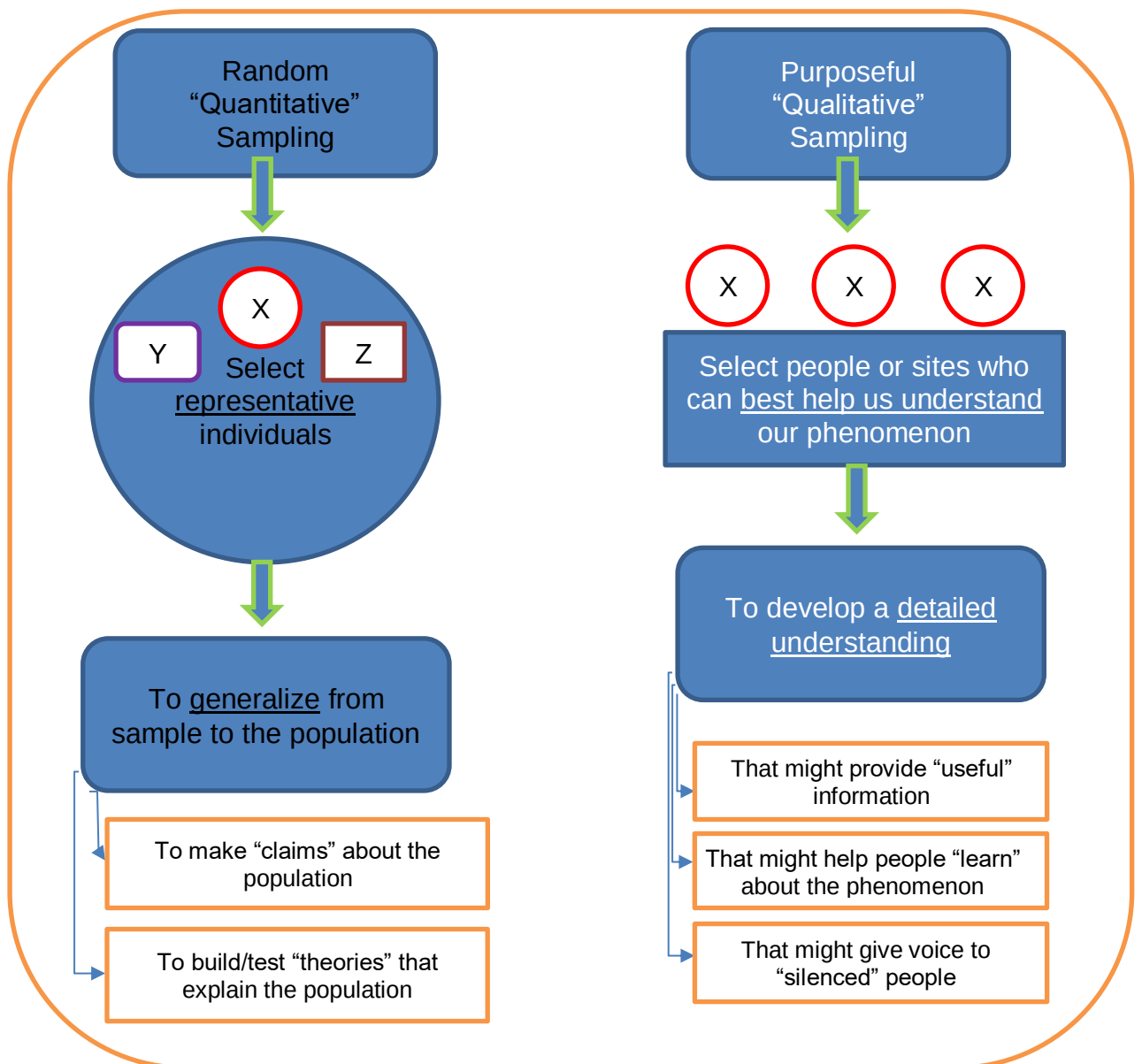


Figure 3.1: Differences between random and purposive sampling

Since the aim of this study was to obtain specific information from specific people, the purposeful sampling approach was used to select participants. As mentioned in chapter 1, the study population consisted of participants from eight public primary schools in Mpumalanga, two of which were rural schools, two quintile 3 schools and four quintile 5 schools. The participants were:

- principals;
- heads of sport;
- sport organisers;
- educator-coaches.

It was very important to include all the role players who had an interest in the study. The province comprised primary schools of different quintiles and the study therefore had to involve these different quintiles to be able to validate the research. These schools also offered sport that had little to higher probability of risk that needed to be included together with the governance and management of such risks. This also meant that both genders had to be considered because the schools accommodated both boys and girls. No SGB members were included – even though governance stood central to the study – because most SGB members had been newly elected that year as determined by law and possessed little or no experience. Principals were included to convey the point of view of the SGB, as most of the principals had been part of such a governing structure for a longer period. As stated earlier, because I was involved in middle management of a school at the time of the study, I purposefully steered away from involving participants from my own direct environment.

3.6 Data generation through interviews

According to Cohen *et al.* (2018:186), methodology explains how we enquire about the phenomenon, the approach the researcher uses, how data are analysed, the principles which underpin it, and justifying using such an approach. Methods involve processes (how data are collected) and methodology warrants the methods used (Cohen *et al.*, 2018:186). Creswell (2012:213) identifies four approaches to data collection, namely observations, interviews, questionnaires, documents, and audio-visual materials. In this study, interviews were selected as the preferred way to generate data.

According to Maree (2011:87), the purpose of qualitative interviews is getting to see the world through the participants' eyes. Once the researcher has decided on interviews to collect data, the type of interview should be considered, as it needs to be one that would assist best in completely grasping the phenomenon (Creswell, 2012:218). According to Joubert *et al.* (2016:113), the interview is the most prominent data collection technique when capturing people's perceptions, definitions and understandings of certain situations and to determine their idea of reality. Joubert *et al.* (2016:113) and Maree (2011:87) identify four types of

interviews that researchers should consider. Between the options of structured, open-ended, focus group and semi-structured interviews, the latter was found to be the most appropriate for this study.

Semi-structured interview is used when the participants possess the needed and thorough knowledge about the phenomenon under investigation (Joubert *et al.*, 2016:113). Leedy and Ormrod (as cited in Joubert *et al.*, 2016:113) explain that the researcher can adapt according to what the participant is sharing; this allows the researcher to get more clarity on a specific interview question, or even to consider going in a new direction with a specific question. The predetermined questions in an interview schedule allow probing and clarification of responses (Maree, 2011:87). Maree (2011:88) adds that the researcher should be aware of “emerging lines of inquiry”, which are mainly concerned with the phenomenon being studied. Based on adaptability and some structure, I was convinced that semi-structured interviews would assist in answering the central research question of the current study best.

3.7 Data analysis

Qualitative data analysis is the process whereby the researcher moves from collected data to actually grasping and explaining the phenomenon by organising the data in terms of the participants’ definition (Cohen *et al.*, 2018:643). Patton (as cited in Cohen *et al.*, 2018:643) remarks that the analysis of data will lead the researcher to findings, but that there is no single recipe when doing this because there are several ways to analyse and present qualitative data. Joubert *et al.* (2016:117) refer to this data analysis as “textual analysis”, since it is usually field notes or transcribed interviews that should be analysed. Contrary to a quantitative approach, with qualitative research, the generation and analysis of data are simultaneous processes (Creswell, 2013:182).

An interpretative phenomenological approach was used when the data were analysed. The aim was to examine the generated data for meaningful content that would help me better understand how educator-coaches’ perceive their security while coaching a sport, as well as determine the legal aspects that they might be aware of. I attempted to get to the heart of the phenomenon as

experienced by the participants. By doing an inductive analysis of the data, as described by Nieuwenhuis (2007:99), I was able to identify themes and categories that emerged as the data were collected and analysed. McMillan and Schumacher (2010:476) state that the researcher should have certain expectations of the study and the problem statement. McMillan and Schumacher (2010:378) designed a figure – which was also adopted by Doubell (2012:76) and Rossouw (2014:152) – which illustrates the possible correlations and patterns of different categories that emerge as one's study evolves. I also adopted this figure for this study.

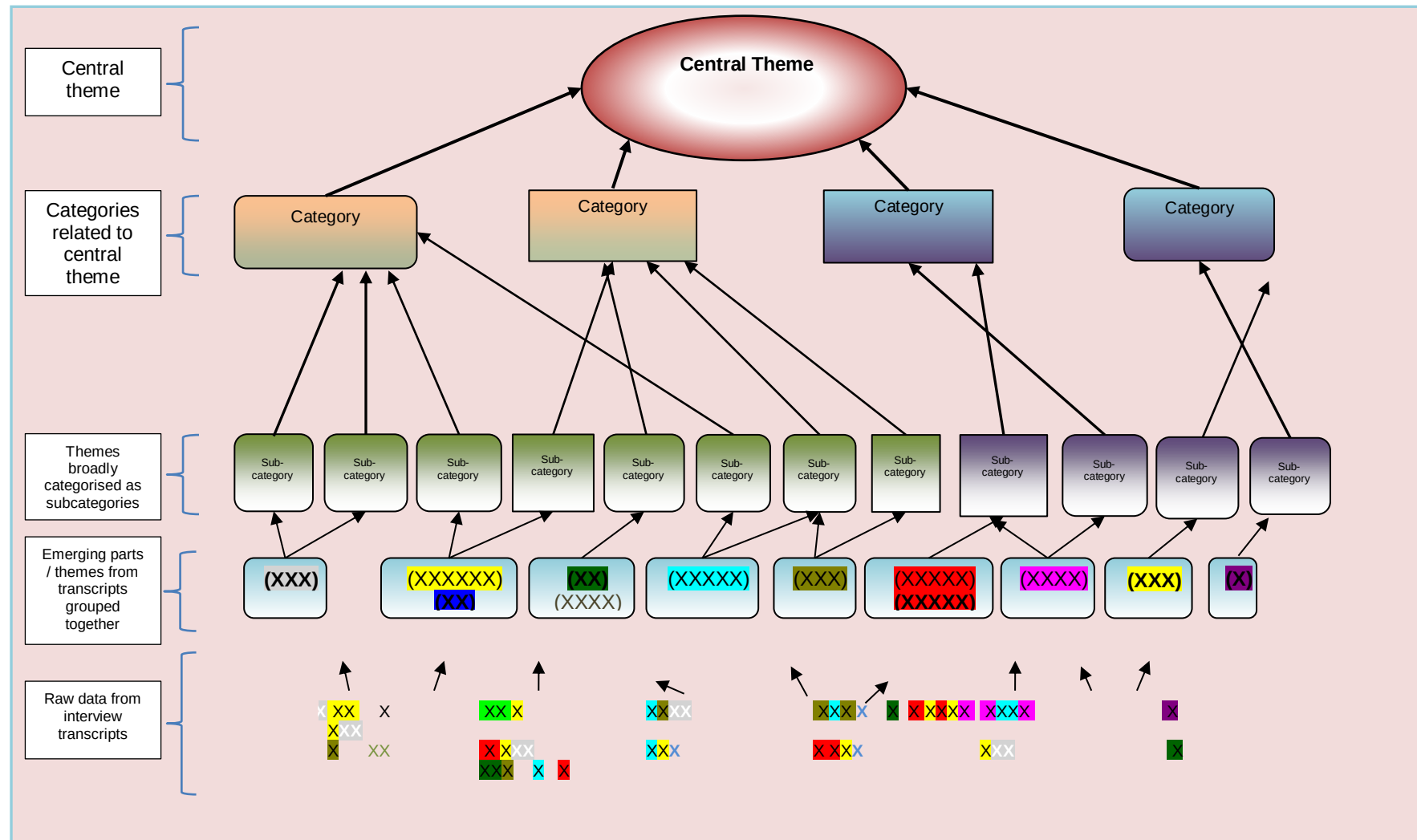


Figure 3.2: Process for analysing emerging data

Figure 3.2 illustrates the basic analysis process followed. Raw data collected was colour coded and categorized according to themes. The emerging themes were then grouped into subcategories, which in turn made up the categories related to the central theme. The arrows refer to the different links between the emerging themes and related categories leading up to the central theme. Although I might have been aware, prior to the data collection and analysis, of possible categories that already emerged from the literature, it was not the only guideline used. I was open to new categories that could emerge from the data collected during the interviews, which actually was the case. Coding of labelled sections and categorising developed mainly from the empirical data itself and also reflected the research question.

3.8 Validity and reliability

Creswell (2013:250) refers to reliability and validity as the “accuracy with which the researcher describes the participants’ reality”. Agar (as cited in Cohen *et al.*, 2018:245) states that the meaning of validity and reliability changes when using different research designs and the researcher should ensure that the instruments used to gain knowledge and understanding of a phenomenon are as sound as possible.

3.9 Ethical considerations

Cohen *et al.* (2018:112) state that ethics are “a matter of principled sensitivity to the rights of others”. Ethical issues prevail throughout the study and not only at a certain phase (i.e. collection of data, analysing data, reporting on data as generated) (Creswell, 2013:58). Cohen *et al.* (2018:540) argue that interviews have an ethical element as they involve interpersonal interaction that yield private or personal information and perspectives. The following aspects were considered to ensure that the research was conducted ethically.

3.9.1 Permission to conduct a research study

The research design and methodology has been described in detail and were submitted to the North-West University ethics committee for approval. After receiving the clearance from the ethics committee, I applied for consent from the

Mpumalanga Department of Education to conduct the research. All other institutions – such as SGBs, schools and unions – were informed regarding the research being conducted and necessary consent was requested. The letter (see Addendum C) included the nature and purpose of the study, how the research was to be conducted, how participants were to be identified, how long the interviews were expected to be, and how the data gathered were to be applied. Participants for the study consisted of principals, sport organisers and educator-coaches based on their post level and experience from various public schools in the Mpumalanga province. All the participants were notified that they could, at any time and without any explanation, withdraw from the study.

3.9.2 Confidentiality

According to Creswell (2012:230), confidentiality calls for a high level of trust between the researcher and the participant(s). In this study, confidentiality and anonymity were guaranteed before every interview in order to promote trust. No information was disclosed to any person regardless of their position of authority. The identities of all the participants were coded by the researcher in order to ensure confidentiality. Each participant knew beforehand exactly what was expected of them and were also requested to complete a consent form in which they stated that they participated voluntarily, that they allowed the session to be recorded, and that the researcher had discussed the ethical issues before the interview started. Only the researcher and study supervisor had access to the audio recordings and transcripts. All the data are kept in a safe place as determined by the study supervisor. Any electronic data are protected by means of a password. The researcher understands that by disclosing any of the said material would violate the participants' right to confidentiality, which could lead to legal action being instated.

3.9.3 Informed consent

Creswell (2012:621) describes informed consent as an acknowledgement that ensures that all participants were provided with sufficient information regarding the study and were able to make an informed decision on whether or not to participate in the study. An informed consent form that acknowledges that the

participant's rights would be protected during data collection must be drawn up by the researcher and willingly signed by participants (Creswell, 2009:43), which is exactly what was done in this study (see Addendum C). This acknowledgement was signed by each participant. This acknowledgement confirmed the legal protection the participant is entitled to during and after the research study. Each participant consented to participate as well as agreed that their knowledge and perceptions could be used in the study.

Chapter 4: Data analysis

4.1 Introduction

The purpose of this study was to determine the nature of public school governance and management towards enhanced security of the educator-coach viewed from an education law perspective. The phenomenon of effective public school governance and management gave rise to the following research questions, which have not been addressed in previous chapters:

- How do SGBs and SMTs of public schools understand and implement the legal imperatives regulating school sport policies towards enhanced security of the educator-coach?
- Which aspects regarding qualifications, experience and the ongoing development of educator-coaches influence and/or inform the drafting of a sport policy by an SGB towards improved security of the educator-coach?
- How can the implementation of school sport policies by the SMT improve the security of educator-coaches?

4.2 Biographical profile of participants

At the time of the study, most of the participants were coaching learners daily. A total of nine males and six females were purposefully selected for an interview, as was indicated in the discussed on the research design. The participants from seven schools, of which the quintiles varied from 2–5, represented a variety of communities from various districts in Mpumalanga. The participant group comprised eight educator-coaches, five sport organisers, and two principals, totalling 15 participants. Newly elected SGB members were not included (§ 3.4.2); rather, the focus was on principals to convey the point of view of the SGB as the principals had been part of their respective SGBs for a longer period. These participants from all the different post levels in schools formed the ideal combination that enabled the goal of the study to be reached and led to a deeper understanding of the phenomenon.

4.3 Analysis and interpretation of empirical data

The purpose of the data analysis is to develop a deeper understanding of the phenomenon. This was done by capturing and interpreting the perceptions of the educator-coach, especially with regard to legal awareness and what was being done by the governance and management of the school to enhance educator-coaches' security. Furthermore, the aim was to determine the understanding and implementation of legal imperatives by governance and management in these public schools as well as the influential aspects with regard to policy drafting and implementation in order to improve the security of educator-coaches.

A variety of subcategories emerged during the analysis of the transcriptions of the interviews. Some subcategories were then grouped together to form main categories found to be constantly referred to during the interviews. However, in some cases, the category emerged before the subcategories, and as the analysis continued, subcategories were added to these categories over time. Four categories finally emerged: Educator-Coaches' security and competence; Finances; Legal awareness; and Law and policy. These categories are the core of the central theme of this study. The nature of school governance and management is illustrated below in Figure 4.1 (adapted from McMillan & Schumacher, 2010:378).

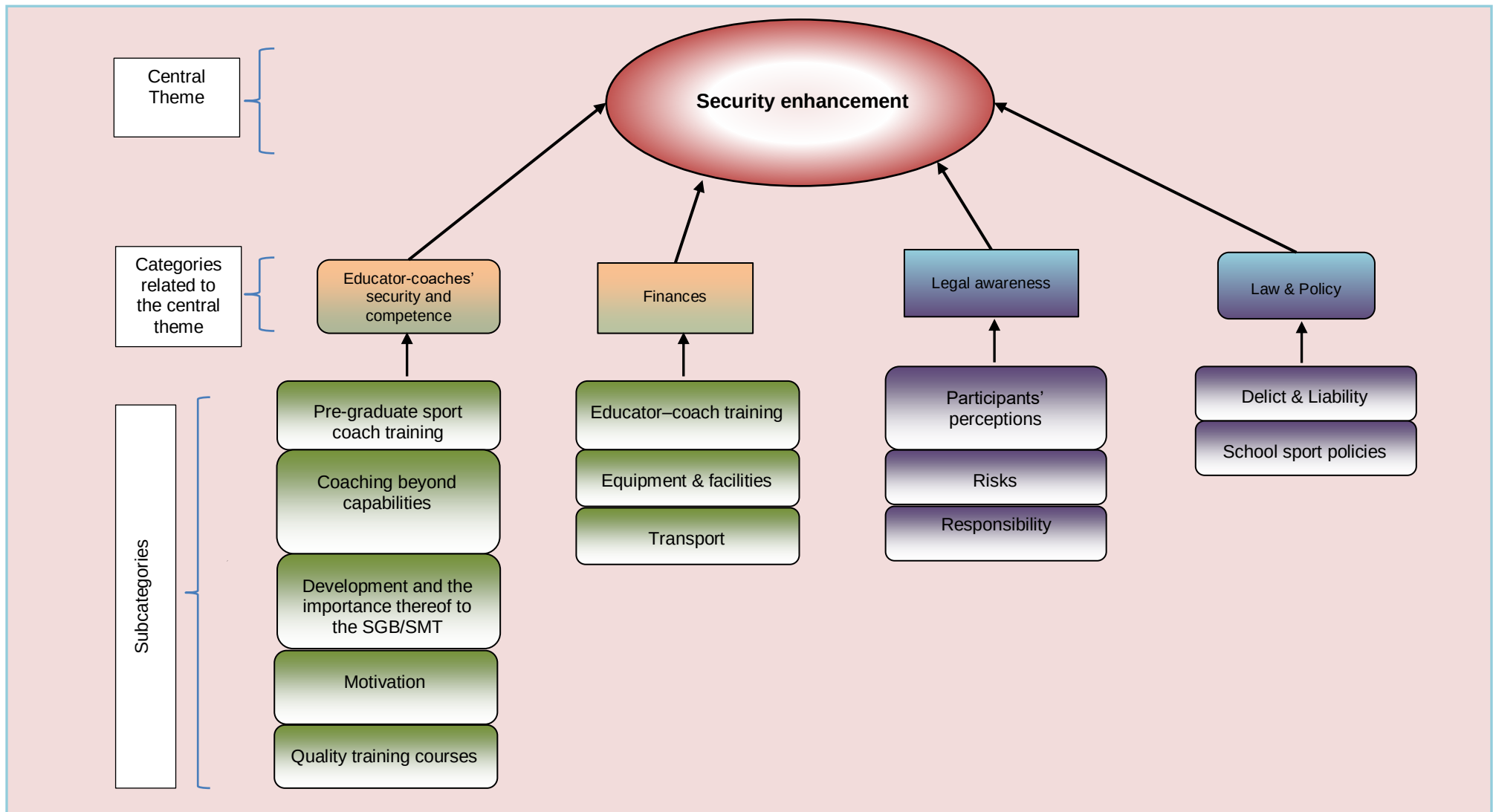


Figure 4.1: Data analysis

Each of the groups and categories depicted above are subsequently discussed in more detail together with the opinions and perceptions of the participants.

4.3.1 Category 1: Educator-coaches' security and competence

Five subcategories emerged during the data analysis, all relating to the educator-coach's security. The following table indicates each participant and explains the abbreviations used:

Table 4.1: Participant abbreviations and line numbers

Educator-coaches (EC)		
Abbreviation:	Transcription line numbers:	Gender:
EC1	Ln. 1–359	Male
EC2	Ln. 360–692	Female
EC3	Ln. 693–1173	Female
EC4	Ln. 1174–1832	Male
EC5	Ln. 1833–2459	Male
EC6	Ln. 2460–2800	Male
EC7	Ln. 2801–3036	Female
EC8	Ln. 3037–3337	Female
Sport Organisers (SO)		
Abbreviation:	Line numbers:	Gender:
SO1	Ln. 3338–3754	Male
SO2	Ln. 3755–4155	Male
SO3	Ln. 4156–4588	Male
SO4	Ln. 4589–4796	Male
SO5	Ln. 4797–5086	Female
Principals (P)		
Abbreviation:	Line numbers:	Gender:
P1	Ln. 5087–5438	Male
P2	Ln. 5439–6082	Female

4.3.1.1 Subcategory 1.1: Pre-graduate sport coach training

Responding to a question on the training undergone to become an educator-coach (see Addenda D, E and F, item 5) all the participants provided quite a detailed history. Some of the older educator-coaches specifically referred to the first professional sport coach training they had received at a tertiary institution while studying to become an educator. Most of the participants, however, also indicated that they had not had any formal pre-graduate sport coach training in most of the sport codes that they were expected to coach when they started their careers as educators. This supports the observation of Van der Merwe (2012), who expressed that SAQA does not include training to coach a sport activity as part of being trained as an educator (see § 1.1). The sport codes mentioned by the participants varied from rugby, hockey, netball and soccer to drum majorettes and athletics. Participant EC 1 (a young educator) considered himself lucky in that he studied sport management and was expected to participate in various types of sport training that was not compulsory for a “normal educator” (Ln. 48–50) (numbers indicated like this refer to the specific line number of the interview schedule), while participant SO4 referred to “...young uneducated coaches” (Ln. 4652–4653) who must be sent for training. Participant EC5 (a young male educator) mentioned (while blushing vigorously and clearly feeling embarrassed) how he had to consult YouTube videos and friends from other schools, since he knew nothing about hockey coaching (Ln. 2201–2204). This correlates with what Van der Merwe (2012) (see § 1.1) stated: some educator-coaches were under-qualified to coach and that extracurricular activities are not deemed the main professional function of the educator (see § 2.2.3).

In essence, it is evident from the participants’ responses that pre-graduate sport coach training of the educator-coach was not on the level one would expect. However, this did not influence an SGB’s decision to appoint specific educators while also expecting them to coach a sport of which they had little knowledge or no experience.

4.3.1.2 Subcategory 1.2: Coaching beyond capabilities

The participants' responses on a question regarding coaches coaching beyond their capabilities after being assigned to a specific sport code (see Addendum D, item 10) sketched a grim reality that educators face in the teaching profession. The majority of the educator-coach participants indicated that they were aware of this practice, with EC1 and EC6 replying without hesitation: "[o]f course yes" (Ln. 111) and "[m]ost of them" (Ln. 2586). There was a strong indication that this practice was still observed and in many cases, was becoming acceptable. EC3 continues on the question regarding knowledge of educator-coaches coaching beyond their capabilities by answering "[j]a. And as the years go by; more frequently. I think." (Ln. 862), while EC4 replied "[j]a *dit gebeur...dit gebeur gereeld...*" (Yes, it happens...it happens regularly) (Ln. 1471). One of the reasons for this unacceptable practice, as mentioned by the participants, is the winning motive. As discussed in chapter 2 (see § 2.2.1.5), the educator-coach might feel tempted to take a chance on a learner, pushing the learner to win. This is not deemed to be in the best interest of the child and the educator-coach is, in turn, causing his/her own security to be compromised.

The main reason, however, indicated by the participants was the SGB and/or SMT that deployed educators as coaches without them having sound knowledge of a sport.

A concerned participant (EC2) referred to a colleague's situation stating: "[t]he teacher was forced to do hockey coaching which she did not have any training for." (Ln. 472–437), "...she just became very, very negative...in fact she got a doctors' letter to state she's not allowed to go into the sun anymore" (Ln. 483–484). This occurrence refers to the discussion on section 10 of the Constitution (see § 2.2.1.2) regarding the violation of the educator's dignity and professional security in the workplace. Participant EC3 shared EC2's concern stating "...I won't say 'forced' but they must train a certain sport because there is nobody else that can do it."

Participant P1 (a principal from a quintile 5 school) responded to a question asking what he would take into consideration before assigning an educator-

coach to a specific sport (see Addendum F, item 13), saying that when someone is needed and there is no one else to coach “...*dan moet jy ’n ou dwing* (force a person to) *om aan ’n sportsoort* (a sport code) *te gaan, te gaan deelneem* (to partake), *of aan ’n sportsoort te gaan coach*” (Ln. 5334–5335).

The majority of the participants shared the common view that, due to a lack of coaches, the school would place educators as sport coaches where needed, leaving the educator with no choice but to coach a sport regardless of their experience or competency. EC 8 summarised it when she stated: “*[j]a, as gevolg van te min onderwysers wat bereid is om af te rig, word ’n afrigter daar gesit wat nie kan nie, wat nie weet hoe nie.*” (Due to a lack of educators who are willing to coach, they use someone that does not have the knowledge and skills) (Ln. 3118–3119). The SGB may reasonably expect the educator to also coach a sport, as discussed in chapter 2. In order for the expectation to be reasonable, the SGB should, however, ensure that the educator undergoes proper training in order for him or her to be well-equipped with knowledge of rules and dangers of the specific sport and be psychologically ready to coach (see § 2.2.3). The necessity for training has emerged during the analysis, as was discussed under subcategory 2.1.

The interests of the school in sport achievements are seemingly put above being held legally liable. The legal implications of forcing an educator to coach beyond his or her capabilities as part of the winning motive should always be recognised, as the school can be held liable for such actions as discussed later in § 5.3.1.

The responses above confirmed that a lack in the availability of pre-graduate sport coach training and in-service educator-coach training exists. The risks in sports have not changed, however, nor has the importance of proper technical training courses that ensure safe participation. Pre-graduate sport coach training used to be part of a tertiary institutions’ Faculty of Education curriculum. This is not the case any more, and SGBs and the Department of Education as employers need to ensure that in-service sport coach training is provided. A lack of proper communication regarding the need for pre-graduate sport coach training between stakeholders such as the Department of Basic Education, sport unions and schools was mentioned by some participants. The participants further

acknowledged that, even though pre-graduate sport coach training is absent, schools in the meantime offer sport as part of their daily programme and need coaches to ensure this happens. From a legal perspective, SASA (SA, 1996c) as discussed (see § 2.2.1) clearly states that the role of the SGB includes determining the extramural curriculum of a school. The SGB also has a duty of care towards the learners by ensuring their safety. The legal duty on governance and management of a school is to ensure the proper provision and maintenance of facilities, a fair distribution of coaching tasks, and preventing excessive pressure on coaches for the performance and achievement of players. It is also by law expected of the SGB to see to it that a safe school environment is created and maintained. This implies ensuring that the educator-coach receives the required in-service educator-coach training. Sufficient in-service training would ensure that all educator-coaches are not only up to date with new coaching skills but also have a heightened risk awareness when coaching a sport. By not doing so, the employer is failing in its duty of care regarding safe sport participation and could be held delictually liable in cases of serious injuries or other damage (see § 2.3.1).

4.3.1.3 Subcategory 1.3: Development and the importance thereof to the SGB/SMT

The role of the SGB in educator-coach training starts after pre-graduate sport coach training that should continue as in-service educator-coach training, according to most of the participants. When asked how important continuous in-service training of the educator-coach was to the governance and management of the school (see Addendum D, item 17 and Addendum E, F item 9), almost all the participants responded that it was indeed important to their respective SGBs and SMTs. Participant EC2 made her own comparison to illustrate how important in-service training should be for the educator-coach as well as for SGBs and SMTs: "...it's like a doctor that stays on the same medicine regime for the past 20 years and did not know there was something new coming out." (Ln. 570–571).

Contrary to this was the response of participants SO2 (a head of sport from a quintile 5 school), who said that, although it is important to the SMT, in-service educator-coach training had never been discussed at SGB level (Ln. 3899).

Participant EC3 (who serves on the SGB at another school) joined in by stating that there was always a discussion within the SGB on in-service training, but it never moved beyond the discussion itself (Ln. 1031–1046). Participant EC5 mentioned that his principal decided whether or not an educator-coach would attend a training session (Ln. 2236). These responses showed that the wide range of legal principles discussed in §§ 2.2 and 2.3 are mostly unknown to the participants, as well as to the SMTs and SGBs. The reasons for the importance of in-service educator-coach training differed as some participants made it clear that it was all about performance enhancement, to become better, to win more games, but not about the interest of the educator-coach and possible legal implications when coaching. This is discussed in detail under the category of legal awareness (see § 4.3.3).

4.3.1.4 Subcategory 1.4: Motivation

Motivation, passion and interest, or the lack thereof, are themes that emerged when educator-coach training was discussed and were not anticipated. According to most of the participants, one could only be a successful educator-coach if you were positive and enthusiastic about what you were coaching. Two participants stated that the educators' motivation or eagerness needed a boost (Ln. 897, 2893), while others explained a lack of interest that existed from the educators to become better coaches (Ln. 2595–2596). Vosloo (2010) also mentioned in his research that not all educators are motivated to pursue coaching in their free time (§ 1.1). Some unions make educators concerned about working hours and to what extent educators make themselves available after official school hours (Ln. 2625). It is interesting to note that other educators from the same environment remained enthusiastic about school sport and coaching irrespective of the unions' influence (Ln. 3190–3196). One participant from a school in a more affluent area indicated that coaching without passion meant that the risk of injury to learners increased. Some educator-coaches did not care about attending training courses. Others with adequate experience and knowledge were reluctant to properly coach the learners, potentially putting themselves and the learners at risk (Ln. 4413–4414). This negative attitude

among some educator-coaches is something that could lead to and result in a legal problem for the school and the Department of Basic Education.

4.3.1.5 Subcategory 1.5: Quality training courses

One of the demotivating aspects, as identified by a few of the participants, was the poor quality of training courses in some sport codes. Three of the participants specifically referred to the *Boksmart* course as something where you just sit and watch a DVD, have a few short discussions, and further described it as too easy to obtain (Ln. 70–74, 3855). They continued by saying that it was not worth the time as it was always presented indolently, with a presenter who would press the play button on the DVD player, after which he would take a seat and start playing around on his cell phone for the duration of the presentation. One participant explained that this feeling of time-wasting brushed off on the educator-coaches attending the training (Ln. 1284–1289). Most of the male participants who coached cricket also concurred that they had never been on any kind of cricket course, while one specifically referred to an Australian cricket player who had died due to a ball hitting him in the neck: “...we play cricket tomorrow with the children...” (in a very concerned voice, throwing his hands in the air and shaking his head in disbelief) (Ln. 81–83). While discussing the lack of cricket training sessions, EC8 mentioned that “...*ek is die sekretaris* (I’m the secretary) *van, van ons distrik hierso* (of this district) *en ons kom nooit bymekaar nie* (and we never get together) ... *daardie (kursus) is ’n ding wat baie lanklaas plaasgevind het* (that has not happened for a long time).” All the participants were of the opinion that the inadequate training courses demotivates the educator-coach and that the children are affected at the end of the day. This means that the legal principle of the best interests of the child is not met (§ 2.2.1.5).

4.3.2 Category 2: Finances

All the participants from the different quintile schools had some or another opinion or concern regarding the finances in relation to the research question. Schools from different communities were purposefully selected in order to understand the different challenges relating to the nature of public school

governance and management towards the enhanced security of the educator-coach.

4.3.2.1 Subcategory 2.1: School budget allocation to sport

Most participants indicated that sport is allocated one of the biggest portions of the school budget. Participant SO2 mentioned that about a third of the annual budget is allocated to sport (Ln. 3958), while participant P1 concurred by saying that “...ons spandeer regtig baie geld aan sport...” (we really spend a lot of money on sport) (Ln. 5254).

Some participants from quintile 2 and 3 schools reported that sport, in their communities, was not considered that important by the SGB to be budgeted for. This made it clear that some schools approached things differently regarding the portion of the budget allocated to school sport. Participant EC6 said that whatever remained in the annual budget was allocated to sport, while participant P2 added that educator-coaches could ask for anything they needed, but that it could not exceed in total R5 000 per annum for all sport. Surprising was how each participant described the sport budget allocation at their schools, and more particularly, the different line items categorised under the sport portion of the budget. Both participants EC2 and EC8 mentioned that rugby would get the biggest cut of the sport budget, with EC2 saying “...especially rugby...” (Ln. 537) and EC8 adding “...rugby kry ook ’n groot voorkeur (rugby gets preference over other sports) ...” (Ln. 3169). This was interesting to hear, as rugby was not the sport with the most participants at any of the schools that formed part of this study. Some participants experience this as an unfair distribution of funding and indicated that they got very demotivated as educator-coaches.

With regard to the sport budget and an allocation towards specifically reducing the risks of sports, the participants were mostly of the opinion that not a single line item on the budget was allocated to specifically coaches’ training to reduce risks but rather to transport and affording expensive tours. They continued to say that more emphasis had to be put on risk reduction and safety when compiling the sport portion of the school budget.

4.3.2.2 Subcategory 2.2: Educator-coach training

Most participants indicated that the school's sport budget would include a budget for educator-coach training. As mentioned in § 4.3.1.3, participant EC 5 from a quintile 3 school indicated that the principal would decide whether or not an educator-coach would attend a specific training session. Participant EC 8 from a quintile 5 school, where a wide variety of sporting codes were being offered, shared (while rolling her eyes and suggesting sarcastically) that the type of sport would determine the SMT's and SGB's willingness to spend money on training (Ln. 3201). This raises some concern, seeing that an educator-coach's actions or lack thereof in any sport offered by the school will be judged by the standard set by the reasonable coach similar to the one who might be accused of being negligent (§ 1.1). Thus, there was a lack of legal awareness that is discussed in § 4.3.3. Participants EC2, EC3 and EC6 from different quintile 2 schools all indicated that their schools had sport budgets, but that those budgets did not make any provision for training of the educator-coach. The lack of financial provision towards educator-coach training has its own legal implications and does not refer to best practice. EC2 mentioned that she had just completed a learning-to-swim course that she paid for herself (Ln. 507–508), while EC3 was of the opinion that coaching courses were neglected (Ln. 874–875). EC6 only mentioned training sessions that the Department of Basic Education would sometimes offer (Ln. 2522), and he continued later, saying that, to most of the schools, offering sport was a luxury (Ln. 2580). This contrasts with the aim of Sport and Recreation South Africa, which is to ensure the availability of school sports in all schools (SRSA, 2015) (§ 1.1).

4.3.2.3 Subcategory 2.3: Equipment and facilities

When asked to describe the level of risk of injury the school's equipment and facilities posed (see Addendum D, item 14 and Addenda E and F, items 11 and 10), most participants replied that the risk in general was not too high and that people were allocated to look after the equipment and facilities. The understanding that there would always be risks was also noted from most of the participants. Participants EC2, EC3 and EC4 referred to the equipment as being quite old, while EC8 added that some of the hockey goalie kits were around 10

years old and quite run down, which posed a higher safety risk. The general feeling of the participants was that the equipment and facilities could be better maintained. It was also noted with interest that both participants EC6 and SO2 mentioned the high jump mats as example, while participant EC2 said "...some of the athletic equipment for example is quite old..." (Ln. 526–527).

The majority of the participants were cognisant of the fact that sporting equipment was sometimes just too expensive. Four participants shared their frustration about equipment that had been, or in some cases, was still posing a risk but could not be replaced due to financial restrictions. Participants EC2 and EC8 both referred to action that they had to take to replace equipment that posed a risk. Participant EC2 reported that she wrote a letter to the SGB, notifying them of the plastic swimming lane ropes that were about 14 years old and cutting the swimmers. The SGB's only response on a few occasions was that there were no funds available. EC2 had to resort to fundraisers and sponsors to get the lane ropes replaced. She proudly (with a satisfactory look on her face) went on to say that R15 000 were raised for the new lane ropes. EC8 experienced budget cuts at her school; her hockey budget for replacing the 10-year-old goalie kits was turned down. She explained (irritated and powerless) "*[e]n as dit nie goedgekeur is nie, kan jy nie iets daaraan doen nie*" (Ln. 3149–3150), meaning there is nothing you (educator-coach) can do about it if it is not approved (by the SGB). She had to rely on the parents of her hockey team players to sponsor equipment while stating "...*die goed is duur* (the equipment is expensive)" (Ln. 3150–3151). Participant EC5 referred to an incident where a learner dislocated her knee when she fell from a balancing ball, hurting herself as there was no mattress or padding around the ball. He continued while shyly laughing "...*ek het balansering nie vir 'n paar maande gedoen nie*" (I did not do the balancing ball exercise for a few months after that) (Ln. 2330). Despite the risk that had already led to a serious injury, it took the SGB six months to obtain a mattress, whereafter the balancing ball was used again. Participant EC6 explained (while shaking his head in disbelief) that he was still waiting for the SGB to allocate funds for new high jump mattresses. The SGB had not made any progress regarding the request from the educator-coach, and he stated (with shrugged shoulders) "[u]p till today now, we make do with what we have, we improvise and most of the time, the children get

injured, but not so bad up to now” (Ln. 2743–2744). The fact that this educator-coach allowed the athletes to continue practice under such risky conditions can be interpreted as the ignorance and/or uncertainty of the educator-coach with regard to legal principles and the legal implications (§§ 1.1 and 1.2.4, and §§ 2.2.1.5 and 2.2.2.1). This also confirms the statement made in chapter 2 (see § 2.2.1.1) that, when considering public schools in rural areas, one can comprehend that improvised facilities and equipment might be the only way to offer certain types of sport.

All of the above-mentioned incidents and experiences between educator-coaches and SGBs make it clear that not all SGBs are functioning as prescribed in sections 20(2) and 36(1) of SASA (SA, 1996c), as discussed in chapters 1 and 2. The legal obligation of the SGB with regard to these incidents and its actions or lack thereof are discussed under the theme of legal awareness.

4.3.2.4 Subcategory 2.4: Transport

While agreeing that sport receives sufficient funding from the school budget, the majority of the participants went on to say that the transportation costs of sport teams absorbed most of the budget. Participants EC3, EC5, SO1 and P2 explained that most of the sport budget went to transport costs, while EC4 described the costs as one of the biggest problems for his school. This is partially due to the fact that schools in Mpumalanga are widespread and, for the schools to be able to compete, travelling significant distances is not optional and has to be funded.

Transportation costs usually forms a budget on its own, and not part of the sport budget. It was, however, evident from the interviews that the matters discussed under the previous two subcategories (educator-coach training and equipment and facilities) were being restricted and in some instances determined by transportation costs. It seemed as if the schools had no choice but to merge the sport and transport budgets, as no other school-related activity made as much use of transport as sport. EC4 went on to mention that it was not just a challenge to get teams to other schools, but an even bigger challenge for him as an

educator-coach to attend training sessions due to transport costs “...*dit is onbekombaar om by die venues uit te kom...dis ’n finansiële probleem...*” (Ln. 1285-1286). As previously mentioned, participant P2 stated that educator-coaches could not spend more than R5 000 on equipment and training per annum for all sport, as the rest of the budget was allocated to the transportation of learners. EC4 joined by stating that “...*klein skole het ’n kleiner budget, maar die afrigters probeer dieselfde standaard en hoeveelheid wedstryde as groter skole speel* (smaller schools has a smaller budget, but the educator-coaches try to play the same standard and quantity of games as larger schools) ...*die beheerliggaam keur dit nie goed nie, want dit is te veel uitgawes vir die klein begroting om te absorbeer* (the SGB does not approve it as the expenses are just too much for the small budget to absorb) ...” (Ln.1354–1356). Participant EC3 also confirmed this challenge by stating that “...we don’t have the finances to go there (places that are more than 200 kilometres away) ...” (Ln. 938)

The lack of finances has a detrimental effect on the ability of the SGB to comply with section 38(1) of SASA (SA, 1996c) to establish a budget each year, and this affects the sport participants and educator-coaches.

4.3.3 Category 3: Legal awareness

Participants supported the findings of Minne (2015:76), that is that educators are involved in other school-related activities, such as coaching a sport (see § 1.1). Previous research confirms the existence of legal implications for the educator-coach and their uncertainty regarding the legal aspects of their profession (see §§ 1.1 and 2.1). However, this study also focusses on governance and management. Rossouw (2017:32) states that the law has an impact on all aspects of the educator-coaches’ work and that lack of knowledge in this area can have disastrous results for the school as an institution as for the educator-coach in person. It was therefore necessary to identify and understand the legal link between all the participants involved when referring to public school governance and management, sports and the safety of the educator-coach.

4.3.3.1 Subcategory 3.1: Participants' perceptions

It became clear from the interviews that all the participants had a feeling of legal uncertainty in common. Most participants were able to share things that they had done, were still doing, or had seen things that could have undoubtedly jeopardised the safety of the learner, educator-coach and the school as a whole by means of legal action being instituted. There is a variety of situations that can jeopardise the security of the educator-coach from a legal perspective. Section C of the interview questions (see Addenda F, G and H) dealt with what the participants understood regarding the law protecting them while fulfilling their duties as well as to establish their opinion about their responsibility and actions as coaches.

When asked how they thought the law protected them as educator-coaches (see Addenda D and E, item 19 and Addendum F, item 15), not one participant could give a definite answer. The closest was participant SO4: "...I can't elaborate on any law or policy, but I think they will consider ... negligence...*hulle sal ook terug gaan kyk op wat was die oorsprong wat hierdie besering veroorsaak het* (they would go back to determine the cause of the injury)" (Ln. 4761–4764). What he did not know, however, was that a coach should keep in mind that his or her actions, or lack thereof, will be judged by the standard set by the reasonable coach similar to the one that might be accused of being negligent (Botha & Oosthuizen, 2003) (see § 1.1). Participant SO5 also had something to add: "*Ek weet nie...dit bly die departement se aanspreeklikheid wat daar gebeur...want jy werk vir hulle en jou beheerliggaam. Daar moet iewers iets wees* (I do not know...the department stays liable for what happens there...because you work for them and your governing body. There must be something somewhere)" (Ln. 5019–5023). According to SASA (SA, 1996c), section 60(1), the State is liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public school and for which such a public school would be liable. This, however, does not exempt the SGB and educator-coach from being held liable as well.

Participants were further asked to elaborate on any specific law or policy that protected them. Again, not one law was mentioned and the majority of the

participants would either reply something similar to EC4, who stated “[e]k persoonlik weet van geen so...beleid...of wet...wat ons oppas nie (I personally do not know of such a... policy...or law...that protects us)” (Ln. 1646–1648), and EC6 “[n]o. There is no law that protects me according to my knowledge” (Ln. 2720–2722). It was interesting how many participants still did not know of any policy or law protecting them but were just hoping there was something. This confirms the findings of Doubell (2012), Jurgens (2012) and Marx (2013), who all found that educators were uncertain and, in some cases, ignorant about their legal awareness. The participants made it clear that they knew a lack of legal awareness was a real threat but that they felt powerless and would rather just put their hope in something or someone to help them. The only participant to vaguely refer to the policy of the school that could be used as legal protection was a principal from a quintile 2 school. She replied: “...we do not have much except for the policy...the SGB chairperson...signs together with me...and the circuit manager...so the department is involved. So it means the policy is protecting the school in a way, or protecting the teachers in a way” (Ln. 5798–5799).

Instead of saying how they were protected, a few participants mentioned how they reckoned the opposite. EC1 said “...I am not aware of any policies, uhm, or laws that will protect me... I thought it was quite vice versa...” (Ln. 227–228). Even a principal from a quintile 5 school mentioned “...ek weet nie of daar so ’n wet is wat ons regtig so erg beskerm nie. Ek dink amper die wet is meer teen ons gedraai...die wet is meer gerig op wat jy verkeerd kan doen as dit wat jy reg kan doen. Ons is regtig baie blootgestel.” (...I do not know of such a law that really protects us. I tend to think that the law is actually against us...it is more often directed at what you can do wrong as to what you can do to comply. We are really exposed)” (Ln. 5372–5375).

The participants were both unsure about how and by what means they were protected against legal action being instituted. This is concerning as one might get the idea that no one really cares and that anything that happens will be dealt with at such time that it is too late to prevent unnecessary harm and discomfort. Although the State remains liable, as determined by SASA (SA, 1996c), the SGB

should also be in a position to protect their educator-coaches from a legal perspective. This is done by ensuring a properly drawn up and signed policy is in place and known to all. The fact that only one participant referred to a school's policy is evident that SGBs are not aware of the importance of such a policy. Policies are discussed in more detail later in this chapter.

4.3.3.2 Subcategory 3.2: Risks

Risk has been touched upon in the discussion on finances above. As mentioned in § 1.2.4, the inherent characteristics of especially contact sport at school level automatically include a high-risk factor that can be directly linked as a security issue for all involved (Rossouw & Keet, 2011).

The participants were asked whether they had ever approached the management or governance structures with regard to risk (however small) of a sport that might lead to legal action being taken (see Addendum D, item 21, and Addendum E, item 13). Most of the participants did indicate that they had communicated such risks. Although most of the participants also indicated that they knew of coaches coaching beyond their capabilities, not one participant referred to this as a risk that they had communicated. It was also noted that the educator-coaches highlighted equipment and physical risks – such as sprinklers that are not covered as well as goalie kits and high jump mats not being up to standard – as communicated risks. When asked to elaborate on the type of risk (see Addendum E, item 14), the sport organisers, however, said communicated risks involved educator-coaches who would approach them with low confidence to coach a specific sport, being scared to coach, or asking to be sent on a training course. Educator-coaches communicating with management or SGBs is an indication that the participants were very aware of risks.

Although risks are identified and communicated, it does not mean that they are always addressed. Participant SO1 puts it frankly: "...nobody is going to do anything until something happens..." (Ln.3649-3650). Later in the interview, the same participant shared how a child got injured by something that had been reported to both the safety committee and the groundsman six months before the said incident. It was only after this incident that the risk was addressed (Ln.

3521-3531). This amounts to total negligence on the school's part, as section 8A(2)(a) and (b) of the Regulations for Safety Measures at Public Schools (SA, 1996d) determines that all measures possible must be taken to ensure the safety of learners during any school activity (see § 2.2.2.3). Most of the participants also shared incidents where they themselves created a risk or took a chance while being aware of the risks involved and that they could have been held liable (see Addendum D, item 25, Addendum E, item 22, and Addendum F, item 18). With reference to these incidents and the educator-coaches' frustration as discussed in § 4.3.2.2, it is necessary to also understand how the participants felt with regard to their responsibility towards the learners they coached under these circumstances.

4.3.3.3 Subcategory 3.3: Responsibility

All the participants indicated that they felt responsible for the learners they coached. This confirms the statement of Rossouw and Keet (2011) that educator-coaches accept certain responsibilities by agreeing to coach (see § 1.2.3). When asked whether they felt responsible for something that they could not really control (see Addendum D, item 20), all the participants also indicated that they did indeed. Participant EC2, while sitting up straight with a concerned frown, nervously stated: "I feel responsible for everything...you cannot take the chance..." (Ln. 615-619). She continued by immediately explaining that the complaint of a single parent can "...cost you your job..." (Ln. 619-620). The fact that this educator-coach linked her responsibility as an educator-coach directly to her security as an educator (her job) is evidence that educators see coaching as inextricable from their education profession. This supports the findings of Saffici (2015) that expert educators do not always have the necessary skills and attributes to be an equally successful coach, which could have a direct impact on their security (see § 1.2.3). Participant EC3 explained that feeling responsible was part of her character as an educator (Ln. 1097), while participant EC4 added that it was not just about the learners' wellbeing as sport participants but also their personal circumstances for which he sometimes felt responsible (Ln. 1654). This statement relates closely to the *in loco parentis* legal principle and although that does not substitute the parent as primary untrained "educator", the educator-

coach acts as trained and professional secondary educator who teaches or coaches a specific subject or sport in which he or she has undergone adequate and specialised training (Oosthuizen *et al.*, 2016:148) as discussed in § 2.3. Even though mostly unaware of this legal principle, all the participants were unconsciously abiding thereto. The rest of the participants all explained that they understood that everything cannot be controlled, but despite this, they still felt responsible. Participant EC7 shook her head slowly while anxiously saying "...some say just help me God, whatever comes I will just handle it" (Ln. 3029). It is clear from the reactions of the participants that they felt overwhelmed by all the responsibilities that they had towards learners on a daily basis. Some participants felt helpless and chose to rather not think of all the responsibilities but to just go on while hoping and praying that nothing would go wrong.

Not a single participant was able to look beyond the question when asked to indicate whether the school or they themselves as the educator-coaches were ultimately responsible for the safety of the participants they coached (see Addendum D, item 22). The question was formulated to see whether the participants were aware of the law relating to ultimate responsibility and liability. Some participants felt that they alone were ultimately responsible, while others said the school. Participant EC 4 indicated that he, the school and the parents were equally responsible (Ln. 1713). These replies demonstrate a serious lack of basic legal knowledge of the daily occurrence where educator-coaches assume responsibility. According to section 60(1) of SASA (SA, 1996c), "[t]he State is liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public school and for which such public school would have been liable...". Although the educator-coach and SGB of a school could also be held liable, the State will ultimately remain responsible.

The lack of legal awareness is clearly evident, although the participants were well aware of all the responsibilities they had towards the learners they coached. However, some participants showed a lack of interest when discussing the legal implications with regard to coaching. Others indicated that, although they were

not knowledgeable with regard to the law, they would like to be but were not sure where to start. The following category was identified.

4.3.4 Category 4: Law and policy

One of the aims of this study was to determine the legal framework regulating sport policies and how it is being drafted and implemented by SMTs and SGBs of schools. According to Nieuwenhuis (2007:84), a legal framework indicates the actions or policies deemed acceptable or unacceptable before the law in that specific area. Chapter 2 focussed on the statutory determinants of the South African legal system that regulate and influence the duty of the SMT and SGB of the school to ensure a safe environment.

4.3.4.1 Subcategory 4.1: *Delict and liability*

The legal concepts of *delict* and *liability* have been discussed at length in chapters 1 and 2. Although not familiar terminology to all the participants, most indicated that they had done something before, or knew someone who had done something, which could have led to them being found negligent and delictually liable (see Addendums D and E, item 22 and Addendum F, item 18). This is not discussed in more detail as it was determined that there was the general knowledge among the participants of such incidents. The focus is rather on school policies and how they protect the people involved.

4.3.4.2 Subcategory 4.2: *School sport policies*

When asked about the school's sport policies, especially with regard to reducing legal risks (see Addendum D and E, item 20, and Addendum F, item 16), not one participant could indicate that the policies were sufficient. According to them the policies do not succeed to address any legal risks. What was even more concerning, was the indication from participants that there was no such policy at their school. Participant EC6 bluntly and without hesitation replied "[w]e do not have a sport policy" (Ln. 2753), followed by participant SO4 saying "...we do not have a sports policy, but it is a developing progress" (Ln. 4769). The mere fact that there was no policy drafted for participants to be informed of what was expected of them and protect all role players can be seen as negligence on the

part of the SMTs and SGBs. The reply of participant SO2 in particular was also indicative of an SMT not meeting the expected standards regarding legal awareness. Being a deputy principal of sports for the past few years, the participant said without any sign of guilt: “Me myself...did not even do the trouble to go and read through it (sic)” (Ln. 4064).

Participant EC8 only referred to an indemnity form that the parents signed if their children participated in sport, adding that it was not actually something that could be used to protect the educator-coach or the school (Ln. 3278). A few participants added that they never thought the sport policy had to include measures to reduce legal risks, but that it made sense and that the policy needed to be revised in order for this to be included. There was also an indication from some participants that the schools’ safety policies addressed some of the legal risks. According to them, said policies were, however, not very effective as most did not contain a contingency plan with regard to sport coaching and the associated risks. It was evident from the responses that more effective policies are needed in most of the schools. The participants all indicated that policies should be drafted by SGBs, SMTs, sport organisers and the educator-coaches themselves. This is indicative of a team effort to ensure everyone’s safety and reaffirms

Figure 1.2 regarding the co-ordinating entities of a school to ensure collaboration.

Chapter 5: Findings, recommendations and conclusion

5.1 Introduction

This chapter comprises a summary of the previous chapters, followed by specific findings that emerged from the research. Finally, recommendations are made, aimed at ensuring that the management and governance in public schools together with educator-coaches are aware of the legal imperatives regarding sports coaching. These imperatives as well as legal implications are identified in order to be addressed within the applicable school sport policies.

5.2 Synopsis

Chapter 1 presented the problem statement and gave an overview of the research questions. The research objectives outlined in § 1.3 were:

- to explore the South African legal framework that regulates the drafting and implementation of school sport policies towards educator-coach security at public school level;
- to determine how SGBs and SMTs of public schools understand and implement the legal imperatives regulating school sport policies;
- to investigate which aspects regarding qualifications, experience and the ongoing development of educator-coaches influence and/or inform the drafting of a sport policy by an SGB towards improved security of the educator-coach;
- to determine how the implementation of school sport policies by management teams improve the security of educator-coaches.

Based on the research problem and central research question, the purpose of the study and the theoretical framework were discussed, whereafter an overview of the research design was provided.

Chapter 2 addressed the first two research objectives by means of the literature study together with a discussion and analysis on the legal framework in education that focussed on legal determinants for public school governance and management and educator-coach security.

In chapter 3, the research paradigm and research design, together with the qualitative research terminology and characteristics thereof, were discussed. The methods of data collection were explained, and the interview schedule was designed for the empirical qualitative study. My role as researcher was explained, and ethical aspects associated with this study were discussed.

Chapter 4 presented the data analysis and interpretation of findings that emerged from the research. This chapter addressed objectives three and four. The analysis was formed around four categories that resulted from the central theme: (a) Educator-coaches' security and competence; (b) Finances; (c) Legal awareness; and (d) Law and policy. The central theme of security enhancement has emerged regularly during the discussion of these categories.

5.3 Findings and recommendations

In keeping with the nature of qualitative research, neither the findings nor the recommendations are attempts to generalise wider than the scope of the particular participants and their contexts. Nevertheless, the findings may be of value to a wider group of educators, SGBs, SMTs and officials in the DBE.

The most salient findings that emerged during the study will be offered in the paragraphs that follow. The structure used is that of the categories that emerged as reported in chapter 4.

5.3.1 Finding 1: Educator-coaches' security and competence

Valuable insights were gained while participants shared their experiences of their personal security and competence as educator-coaches. It was found that most participating educator-coaches were not trained to coach the sport assigned to them when they first entered the teaching profession. Sport coach training for educators used to be included in the higher education and training curriculum for education but was removed from the pre-graduate curriculum. This is consistent with the observation of Van der Merwe (2012) that SAQA does not require sport coach training for educators (see § 1.1). Educators do, however, become more knowledgeable and confident in coaching a specific sport as they gain experience. Although educator-coaches become more confident to coach after a

few years in the position, they do not necessarily develop general awareness about legal imperatives that an educator-coach has to adhere to on a daily basis. Young educator-coaches who enter the teaching profession mostly rely on older educator-coaches and sport organisers to mentor them. Some of these new, untrained educator-coaches, who are not comfortable to ask for coaching assistance, would rather make use of resources such as YouTube or friends in an attempt to obtain the required basic knowledge. Such an approach cannot be regarded as acceptable as such resources do not necessarily address other elements such as working with the opposite gender or coaching young children.

Although participants did not refer to the legal implications related to coaching the opposite gender, certain problems associated with this emerged during the literature review (see § 2.2.1.1). Sexual abuse can be committed in both non-contact actions (i.e. verbal harassment of sexual nature) as well as making unwelcome physical contact. In the latter case, the intentions of the educator-coach might be to apply a hands-on coaching technique, without any sinister motive, but the participant experiences the physical contact as unwanted (see § 2.2.1.1).

The young age of some children taking part in sport and their relative inability to identify and understand risky behaviour in a sport also have legal implications for the educator-coach. Younger learners might be impulsive and not able to identify risks and would therefore need closer supervision and a higher standard of care. Older participants understand the risks associated with the sport and would require a coach with higher levels of knowledge of the technical aspects of the sport (see §§ 1.2.5 & 2.2.1.1).

All SGBs may not be aware of the fact that pre-graduate educator-coach training is not being done by tertiary institutions any more. Such SGBs may not realise their role and duty in this regard when appointing an educator-coach. As discussed in § 2.2.3, and confirmed by most participants, the expectation to coach must be reasonable and the SGB should therefore ensure that he or she is equipped with knowledge of rules, technical matters and risks of the specific sport and is psychologically ready to coach.

Educator-coaches might be reluctant to inform the SGB about their lack of training because they are afraid that they might not be appointed at the school. This silence on the part of the educator-coach on appointment creates the possibility of legal implications for the SGB and the State. It should be noted that it is the State who is ultimately held responsible (§ 2.2.2.2).

Despite their ignorance regarding the relative absence of sport coach training amongst newly appointed educators, to be trained is nonetheless found to be important to the school's management and governance. The importance of educator-coach training to the SGB and SMT is consistent with the obligation of the SGB to include sport-focussed support, as stipulated in section 21 of SASA (SA, 1996c), which was discussed in § 2.2.1.3. Section 2.2.2.1 also refers to the duty of the SGB to ensure the safety of learners and educators (section 20(1)(a) of SASA (SA, 1996c)). This obligation regarding safety also has implications for extramural activities, since section 21(1)(b) allocates the function to determine the extramural curriculum of the school to the SGB.

The majority of educator-coaches who participated in this study were unsatisfied with the quality of training courses available to them as it was not presented interactively and was lacking up-to-date content. Of specific concern is that it did not address legal imperatives, which should include laws, policies and regulations related to the specific sport they coached. Most participants stated that there had never been any discussion regarding the legal aspects of coaching a sport. This is supported by previous research: Jurgens (2012:209) found that the educator-coach is not always aware of his or her legal liability and accountability towards learners while coaching and being governed by specific statutes and policies (see § 1.1). Despite the lack of discussions on legal imperatives and the contribution thereof towards legal risks faced by the educator-coach, some educator-coaches also appeared to perceive the low-quality training courses as an indication of the level of respect shown towards them by the sport union. This had a negative impact on their right to human dignity (§ 2.2.1.2).

The lack of pre-graduate and in-service training leads to educator-coaches coaching beyond their capabilities, which could lead to them being held

delictually liable in cases of serious injuries to learners. In most cases, the educator-coaches, sport organisers and principals were aware of the “coaching beyond capabilities” practice that occurred at school level. Some educator-coaches and sport organisers confessed that they and some colleagues were guilty of this practice. Participants sometimes get injured because of such a coach’s instructions. Risk of liability increases drastically when coaches coach above their abilities, experience and qualifications (Rossouw, 2004:28) (see § 1.1). Although being aware of such situations, the educator-coaches were not too concerned about it.

The unwillingness or tardiness of some educator-coaches to undergo training courses as well as the desire to win at all cost contribute to the “coaching beyond capabilities” practice. It was found that some of the educator-coaches had never received any training, which is consistent with the finding of Van der Merwe (2012) that some educator-coaches are generally reluctant to improve their own coaching skills (see § 1.1).

As discussed in § 2.2.1, Rossouw (2017:34) explains that educator-coaches should respect, uphold and apply constitutional principles in their relationships with all sport participants, parents and fellow coaches. Not all educator-coaches, sport organisers and principals adhere to these requirements and expectations found in literature, which implies that some violate children’s constitutional rights during sport coaching. This is consistent with the discussion on section 28 of the Bill of Rights (SA, 1996a) (see § 2.2.1.5), where it is stated that the best interest of the child must always be considered and honoured.

5.3.2 Recommendation 1: Coaches’ security and competence

The lack of pre-graduate and in-service educator-coach training are obstacles with serious legal consequences that educator-coaches face. Legal imperatives such as legal risk awareness and knowledge of applicable laws and policies are some of the most important aspects that emerged from this study. In the light of this need of legal knowledge, the following recommendations are made:

- In order for educator-coaches to be prepared for the general expectations (such as coaching a sport) at most schools, broad-

based pre-graduate sport coaching modules should again form a compulsory component of curricula at education faculties in higher education institutions. By completing compulsory sport coaching modules, the prospective educator-coach would be self-confident and knowledgeable about the technical and legal aspects of the specific sport code. His or her security would be enhanced, seeing that coaching would not be experienced as a threat.

- It was found that, though limited to a specific province and only related to school sport coaching, a lack of collaboration exists between the national Department of Basic Education, SGB organisations, such as FEDSAS and the National Association of School Governing Bodies (NASGB), sport unions as well as SGBs at schools. An improved collaboration between these existing structures might see the provision of proper annual in-service educator-coach training courses for all sport codes facilitated by knowledgeable coaches (both on the sport itself as well as the legal aspects thereof). This type of collaboration between structures that are well-equipped with resources could serve as a much-desired mechanism for the enhancement of educator-coaches' security.
- Sport governing bodies must provide SGBs with the expected proficiency level that the educator-coach must obtain in order to coach and should describe the acceptable standards of sport facilities and equipment.
- Sport organisers, school management and SGBs should prevent or address situations where educator-coaches coach beyond their capabilities. This practice can be curbed by including both sport-specific training programmes and educator-coach training courses in the sport policy. The occurrence of looking the other way rather than addressing educator-coaches who coach beyond their capabilities, must be eradicated. All participants must feel safe to report such situations.
- Sport unions and the Department of Basic Education in Mpumalanga should be held accountable by SGBs for the lack or absence of

educator-coach training courses. Over and above the technical aspects of the sport, the course content should be adapted to include a focus on the most important legislation and legal imperatives that should be explained to the educator-coach.

- SGBs in the same district should work together in identifying the needs of educator-coaches and invest in getting the most appropriate and professional trainers to conduct educator-coach training courses over and above those offered by the Department of Basic Education or the sport unions.

5.3.3 Finding 2: Finances

The allocated portion of the annual school budget towards sport is significant in that it is, in most cases, one of the biggest portions. The majority of educator-coaches and sport organisers agreed that money allocated to sport was spent on tours, equipment and maintenance, as it should be. This sentiment acknowledges the legal duty of the SGB for the upkeep of the school grounds and all the sport facilities (see § 2.2.2.2). The allocations within this sport portion is, however, of concern as most of the time, no definite allocation is made towards educator-coach training or safety courses. The availability of funds towards educator-coach training courses could ensure that the enhancement of educator-coach security is realised.

Participants indicated that SMTs and SGBs need guidelines when allocating funds for training purposes. These guidelines should include the expected proficiency level that the educator-coach should obtain before being allowed to coach a sport as well as indicate the frequency that coaches should attend training courses. A different degree of risk exists in each sport type, but not all include an equal likelihood of harm and therefore not all educator-coaches require the same intense support pertaining to the risks of a sport. Good communication and transparency regarding the budget and how it was spent, was lacking, according to some participants.

As deducted from the interviews, without the proper management of finances and setting of a realistic budget as part of school development goals, the willing

and enthusiastic educator-coach would not be able to coach to the best of his or her abilities and his or her security would probably not be enhanced.

5.3.4 Recommendation 2: Finances

A school sport budget that is realistic, well-prepared and managed transparently contributes to the success of the provision of school sport. The following recommendations are made based on the findings in this study:

- The SGB, who handles the annual budget, should ensure that in-service educator-coach training courses for each sport offered are appropriately funded. These should be budgeted for without neglecting expenses related to the maintenance and improvement of equipment and facilities.
- Management of the budget must be transparent so that all educator-coaches would understand why funds might not be allocated as requested.
- Due to the risks of injury associated with school sport, expenses related to the security of educator-coaches and learners should be specifically provided for in the school budget. The SGB must utilise this portion of the budget where an imminent risk is identified that needs to be addressed as a matter of urgency.

5.3.5 Finding 3: Legal awareness and knowledge

Awareness and knowledge differ in meaning: a reasonable coach might foresee a risk but might not have the knowledge to deal with it decisively and prevent the imminent damage or injury. The majority of educator-coaches who participated in this study understood that they could be held liable should a serious injury occur as a result of their actions; however, they were unsure as to how to prevent or deal with such situations. These educator-coaches and sport organisers mainly relied on their own experience that they had gained over the years, rather than on concrete knowledge of legal imperatives when it came to coaching. The uncertainties of these participants regarding all the different legal imperatives to consider such as delictual liability are, however, concerning.

Furthermore, as stated in § 2.2.4, the Children's Act expects the educator to respect, protect and promote the rights of the children he or she is coaching. Not only are the majority of educator-coaches, sport organisers and principals not always focussed on children's rights but they are also doubtful of specific children's rights and how they should be applied.

The mutual feeling among educator-coaches were that they just wanted to coach the sport without all the "red (legal) tape". However, Singh (2005:83) (see § 2.1) states that the correct guidance and supporting aids should be available and in place to support coaches at schools on the relevant aspects of the law. The expectation for the SGB to guide and support the educator-coach cannot be realised if the educator-coach is not willing to abide by school policies or constantly claims to be unaware of such policies.

5.3.6 Recommendation 3: Legal awareness and knowledge

Legal awareness and knowledge of legal risks form an intrinsic part of the enhancement of the security of the educator-coach. The following recommendations are made to ensure that the educator-coach is able to foresee a risk, has the knowledge to deal with it decisively and prevent damage or injury:

- In order to fill the legal knowledge gap amongst educator-coaches, principals and SMTs of schools should promote general legal awareness. General legal knowledge can be developed by having focussed discussions about the coaches' fears and uncertainties with regard to applicable legal imperatives. The filling of the legal knowledge gap can also be addressed through effective policy implementation by the SMT.
- The SGB should develop a policy that clearly describes the legal imperatives of the educator (curricular by nature) and that of the coach (extramural by nature). There will be some similarities, but educator-coaches need to know how they are protected should legal action be taken against them.
- The principal, SGB and Department must equip the educator-coach with sufficient legal knowledge by conducting formal in-service

training sessions or launching a legal awareness campaign where education law specialists relay educational law information to the educator-coaches.

5.3.7 Finding 4: Law and policy

It was found that sport management has become more complex (see § 2.2.2.1). The need for a proper legal framework and clear policies on sport coaching has become more prominent, especially in the context of a developing democracy as is currently witnessed in South Africa (see § 1.1). The legal framework informs all actions and policies (Nieuwenhuis, 2007:84).

Some educator-coaches believe that there could be more support and protection from the Department of Basic Education and SGBs regarding liability matters as part of school sport coaching. This perception amongst educators-coaches was confirmed (see § 1.1) in a study by Jurgens (2012), who found that some educator-coaches believe that SGBs do not play big enough roles in protecting them. Educator-coaches and sport organisers realise that the government provides guidelines on safety regulations as part of SASA (SA, 1996c) and that quarterly reports on safety aspects are submitted by the school, but demand more support and clarity on the application of departmental and school policies with regard to extramural activities.

However, the majority of the educator-coaches and sport organisers in this study shared the view that school sport policies were merely there as a formality and they did not realise that such a policy is related to a legal framework. Many participants shared that there were no sport policies in their respective schools. A few educator-coaches indicated that there was a sport-specific policy in place but conceded that it was lacking in addressing any legal imperatives and continuous educator-coach training. The absence of or deficiencies in policies cause an increased level of risk and have negative legal implications for all the participants.

5.3.8 Recommendation 4: Law and policy

Law and policy, specifically relating to educators who also coach a sport, were found to be either unavailable or unclear. Most of the schools' sport policies were either non-existent or outdated. The following recommendations are made based on the findings in this study:

- All schools offering sport should have a comprehensive sport policy that is updated at least once a year. This policy should inform the SMTs, SGBs and educator-coaches of schools by including the most important legal imperatives of each sport as well as the expected levels of training and conduct of educator-coaches. A basic contingency plan in case of an injury, which is fully compliant with legislation, should also be determined and included. All parties involved with sport should have the opportunity to contribute to the policy formulation.
- SGBs should add a legal awareness clause to the sport policy. This clause should specifically deal with the legal imperatives that every educator-coach should be aware of when coaching learners. Such a policy becomes part of the legal framework in which the educator-coach finds himself.
- It must be compulsory for employees of the school to be highly knowledgeable about the school policies. School policies, and specifically sport policies, should be brought under the attention of all parties involved, including the children and parents.

5.4 Contribution of the study

The contribution of this study is made on two levels as envisaged in the problem statement of the study. Firstly, a contribution was made to education practice, more specifically governance and management of school sports and educator-coaches, and secondly a contribution was made to the body of scholarship.

- The first contribution towards the improvement of education practice was the need for security enhancement of the educator-coach, which emerged as the central theme of the study. This central theme of

security emerged after a gap in the influence of management and governance on the security of the educator-coach was identified during the initial problem statement. All the participants agreed that they were concerned about the fact that they were not always aware of the legal imperatives of sport coaching. The majority of the participants, mostly educator-coaches, also indicated that the management and governance structures of the schools did not have the basic legal knowledge needed to appreciate the risks and legal implications educator-coaches face every day. SGBs and SMTs of schools need to be informed of the legal imperatives with regard to sport coaching and be equipped to manage the associated risks. This led to the conclusion that closer collaboration between the Departments of Higher and Basic Education, SGBs, school governing body organisations, teacher unions, SMTs and educator-coaches is required in order to enhance the safety of the educator-coach.

- A second contribution towards the education practice is offering a deeper insight into the educator-coaches' perceptions and expectations of SGBs and SMTs. These expectations amounted to the responsibilities and functions of the SGBs and SMTs that have an impact on the potential enhancement of the security of the educator-coach. When SGBs and SMTs do not fulfil their responsibilities and functions, they could jeopardise their own legal security, as well as that of the educator-coaches and learners, causing these sport participants to reconsider their involvement in sports. Multiple responsibilities and functions of the SGBs and SMTs – such as the provision in their budgets to attend formal coaches' training opportunities, proper provision and maintenance of facilities and a fair distribution of coaching tasks – were investigated.
- The third contribution of this study towards the education practice is the realisation of the serious need for improved drafting and implementation of school policies in general and more specifically comprehensive sport policies. The school policies should, where

applicable, include a legal basis on which it is formulated in order to offer legal protection to all parties involved.

As regards the body of scholarship, this study contributed towards the existing corpus of knowledge on educator-coach security, especially on the influence of management and governance on this security, from a sport law perspective. It was necessary to determine how SGBs and SMTs operate with regard to the drafting and implementation of policies in general, while focussing on the sport policy. The initial findings from the literature, the principles discussed in the legal framework and the empirical investigation resulted in a number of findings and recommendations. These outcomes of this study can lead to further research, as is subsequently discussed.

5.5 Recommendations for further research

The enhanced security amongst educator-coaches needs urgent attention because of the specific legal imperatives they face and automatically and sometimes unknowingly accept when coaching a school sport. Therefore, future researches could focus on the following research foci in the context of public school governance and management and the enhancement of the security of the educator-coach:

- An investigation into approaches to and best practice during policy formulation as the statutory duty of every SGB.
- A study on professionalism in school sport coaching: determining how the national and provincial sport structures and the Department of Basic Education as employer could contribute towards professionalising the approach of educator-coaches.
- An inquiry into enhanced communication and collaboration between education structures (Department of Higher Education, Department of Basic Education, SGB organisations, teacher unions and SGBs) towards improving the security of educators and particularly educator-coaches.

5.6 Conclusion

The ever-changing South-African public school system finds itself in a country where increased legal consciousness prevails as part of a rapidly evolving democracy. Making oneself available to serve on an SGB or an SMT and getting elected or appointed is part of an important process, but it only marks the beginning of one's contribution towards improving the education system. Schools need individuals who have the expertise to comprehend and appreciate the intricate workings of the institution while being able to foresee and address challenges. One of these challenges is exposure of educator-coaches to legal risks. As employees of the state or SGBs, they need to be assured of how they are protected from legal action.

The current perception of sport coaching at schools that needs to be addressed is that sport coaching at especially primary schools can be done by anyone, irrespective of him or her being trained as a coach. SGBs, amongst others, argue that coaching only entails applying the basic techniques and skills. These basic techniques and skills are important, but educator-coaches also need to be empowered to gain sufficient and appropriate legal knowledge to protect themselves, the school and the State from delictual liability.

A deficiency in the functioning of the SMT and SGB with regard to enhancing the security of the educator-coach was initially identified from previous studies and later elaborated upon in the literature study. The initial findings from the literature study and the principles of the legal framework informed the empirical investigation. A number of categories emerged from the empirical data which gave rise to a number of findings and recommendations.

Sport coaching at schools is widely considered to be part of the normal daily functions of the educator-coach, but some make themselves available for coaching without the required knowledge and skills to coach a sport. This, in turn, creates a challenge for the SMTs and SGBs of schools, as legal imperatives are part of this reality, leading to real possibilities of the educator, SGB and State being held delictually liable. A wide-scope approach, where all role players – such as the Departments of Higher and Basic Education, teacher unions, SMTs,

SGBs, SGB organisations and sport unions collaborate – is necessary to ultimately ensure the enhanced security of the educator-coach.

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Addendum A: Letter requesting permission to collect data to DBE.



Mrs. M.O.C. Mhlabane
The Head of Department
Mpumalanga Department of Basic Education
Nelspruit

Private Bag X6001, Potchefstroom
South Africa 2520

Tel: 018 299-1111/2222
Web: <http://www.nwu.ac.za>

Faculty of Education

Edu-HRight Research Unit

Tel: 018 2994782
Email: jp.rossouw@nwu.ac.za

Date 2018-08-31

PERMISSION TO CONDUCT RESEARCH IN THE PROVINCE OF MPUMALANGA DEPARTMENT OF BASIC EDUCATION INSTITUTIONS

Dear Madam

I herewith wish to request your consent to conduct research, which involves teachers from primary and secondary schools. Before you give consent, please acquaint yourself with the information below.

The details of the research are as follows:

TITLE OF THE RESEARCH PROJECT:

Legal aspects of school governance and management in the security of the educator-coach: a sport law perspective.

PROJECT SUPERVISOR: Professor JP Rossouw
CO-SUPERVISOR: Mr. AJ Karstens
ADDRESS: Building C6, Potchefstroom Campus, North-West University
CONTACT NUMBER: 018 299 4782

MEMBER OF PROJECT TEAM MEd Student: Mr. D.J.J. Jacobs
ADDRESS: 14 Michelle Street, West Acres – Nelspruit
CONTACT NUMBER: 082 461 9596

FACULTY OF EDUCATION RESEARCH ETHICS COMMITTEE
Contact person: Ms Erna Greyling, E-mail: Erna.Greyling@nwu.ac.za, Tel. (018) 299 4656

This study has been approved by the Ethics committee of the Faculty of Education Sciences of the North-West University and will be conducted according to the ethical guidelines of this committee.

What is this research about?

The aims of this research is:

- To determine the legal framework that regulates the drafting and implementation of school sport policies towards educator-coach security at public school level.
- To determine how SGBs and SMTs of public schools understand and implement the legal imperatives regulating school sport policies.

- To investigate which aspects regarding qualifications, experience and the on-going development of educator-coaches influence and/or inform the drafting of a sport policy by an SGB towards improved security of the educator-coach.
- To determine how the implementation of school sport policies by management teams improve the security of educator-coach.

Participants

- Educator-coaches
- Sport Organisers / Heads of Sport
- Principals

From 8 public schools that will consist of Rural and Quintile 5 primary and high schools.

What is expected of the participant?

To voluntarily partake in the study by having an individual semi-structured interview that should not take longer than one hour.

Benefits to the participant

Becoming more aware of the legal aspects surrounding sport coaching at school level.

Risks involved for participants

None.

Confidentiality and protection of identity

- Educators, Schools and Institutions will not be identifiable in any way from the results of the research.
- Upon completion of the research, a full report will be submitted to the research office of the Department.
- Participation is strictly voluntary and participants may withdraw without any consequence.

Dissemination of findings

The findings of this study will be made available to the Department.

If you have any further questions or enquiries regarding this research, please contact the researchers for more information.

Yours in education.



Mr. DJJ Jacobs
MEd Research Student

Addendum B: Letter granting permission to collect data from DBE.



education
MPUMALANGA PROVINCE
REPUBLIC OF SOUTH AFRICA

Building No. 5, Government Boulevard, Riverside Park, Mpumalanga Province
Private Bag X11341, Mbombela, 1200.
Tel: 013 766 5552/5115, Toll Free Line: 0800 203 116

Litiko le Tamfundvo Umyango we Fundo

Departement van Onderwys

Ndzawulo ya Dyondzo

Mr D.J.J Jacobs
14 Michelle Street
West Acres
Nelspruit, 1200
Email: niel@laerskoollaeveld.co.za
Cell: 082 461 9596

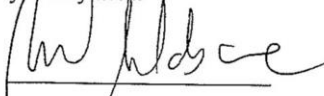
RE: APPLICATION TO CONDUCT RESEARCH: MR DANNIEL J.J. JACOBS

Your application to conduct research study was received and is therefore acknowledged. The title of your research project reads: **“Legal aspects of school governance and management in the security of the educator-coach: a sport law perspective”**. I trust that the aims and the objectives of the study will benefit the whole department especially the beneficiaries. Your request is approved subject to you observing the provisions of the departmental research policy which is available in the department website. You are requested to adhere to your university’s research ethics as spelt out in your research ethics.

In terms of the research policy, data or any research activity can be conducted after school hours as per appointment with affected participants. You are also requested to share your findings with the relevant sections of the department so that we may consider implementing your findings if that will be in the best interest of the department. To this effect, your final approved research report (both soft and hard copy) should be submitted to the department so that your recommendations could be implemented. You may be required to prepare a presentation and present at the departments’ annual research dialogue.

For more information kindly liaise with the department’s research unit @ 013 766 5476/5148 Or
a.baloyi@education.mpu.gov.za

The department wishes you well in this important project and pledges to give you the necessary support you may need.


MRS MOC MHLABANE
HEAD: EDUCATION

29/9/18
DATE



Addendum C: Informed consent from participants



(Recipient Name)
(Recipient address)
(Recipient address)
(Recipient address)

Private Bag X6001, Potchefstroom
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Tel: 018 299-1111/2222
Web: <http://www.nwu.ac.za>

Faculty of Education

Edu-HRight Research Unit)

Tel: 018 2994782
Email: jp.rossouw@nwu.ac.za

Date: 2018-08-31

PERMISSION TO CONDUCT RESEARCH AT (SCHOOL NAME)

Dear Sir / Madam

I herewith wish to request your consent to include you in this research, which involves teachers from primary and secondary schools. Before you give consent, please acquaint yourself with the information below.

The details of the research are as follows:

TITLE OF THE RESEARCH PROJECT:

Legal aspects of school governance and management in the security of the educator-coach: a sport law perspective.

PROJECT SUPERVISOR: Professor J.P. Rossouw
CO-SUPERVISOR: Mr. A.J. Karstens
ADDRESS: Building C6, Potchefstroom Campus, North-West University
CONTACT NUMBER: 018 299 4782

MEMBER OF PROJECT TEAM MEd-Student: Mr. D.J.J. Jacobs
ADDRESS: 14 Michelle Street, West Acres – Nelspruit
CONTACT NUMBER: 082 461 9596

FACULTY OF EDUCATION RESEARCH ETHICS COMMITTEE
Contact person: Ms Erna Greyling, E-mail: Erna.Greyling@nwu.ac.za, Tel. (018) 299 4656

This study has been approved by the Ethics committee of the Faculty of Education of the North-West University and will be conducted according to the ethical guidelines of this committee. Permission was also asked from the Department of Basic Education as well as the school principal.

What is this research about?

The aims of this research is:

- To determine the legal framework that regulates the drafting and implementation of school sport policies towards educator-coach security at public school level.
- To determine how SGBs and SMTs of public schools understand and implement the legal imperatives regulating school sport policies.

- To investigate which aspects regarding qualifications, experience and the on-going development of educator-coaches influence and/or inform the drafting of a sport policy by an SGB towards improved security of the educator-coach.
- To determine how the implementation of school sport policies by management teams improve the security of educator-coach.

Participants

- Educator-coaches
- Sport Organizers / Heads of Sport
- Principals

What is expected of you as participant?

To voluntarily partake in the study by having an individual semi-structured interview that should not take longer than one hour.

Benefits to you as participant

Becoming more aware of the legal aspects surrounding sport coaching at school level.

Risks involved for participants

Minimal.

Confidentiality and protection of identity

- Educators, Schools and Institutions will not be identifiable in any way from the results of the research.
- Upon completion of the research, a full report will be submitted to the research office of the Department.
- Participation is strictly voluntary and participants may withdraw without any consequence.

Dissemination of findings

The findings of this study will be made available to the Department and participants upon request.

If you have any further questions or enquiries regarding this research, please contact the researchers for more information.

Yours in education.


Mr. DJJ Jacobs
MEd Research Student

DECLARATION BY PARTICIPANT:

By signing below, I agree to take part in a research study entitled:

Legal aspects of school governance and management in the security of the educator-coach: a sport law perspective.

I declare that:

- I have read this information and consent form and understand what is expected of me in the research.
- I have had a chance to ask questions to the researcher and all my questions have been adequately answered.
- I understand that taking part in this study is voluntary and I have not been pressurised to take part.
- I may choose to leave the study at any time and will not be penalised or prejudiced in any way.
- I may be asked to leave the research process before it has finished, if the researcher feels it is in my best interests, or if I do not follow the research procedures, as agreed to.

Signed at (place) _____ on (date) ____/____/20____

Signature of participant

Signature of witness

Addendum D: Interview schedule: educator-coach

Individual Interview: Educator-Coach

The researcher would like to get an overview of the educator-coaches' perceptions regarding the coaching of sport at school level and the security of the educator-coach with regard to the laws and policies. The researcher would also like to understand what the participant knows about these policies and laws that regulate his/her safety. The researcher would also like to get a better idea of how the school's sport policy are developed and implemented.

A. Demographic information: Please complete this section by supplying the answer in the space provided.

1. How long have you been an educator-coach?

2. How many learners are registered at your school?

3. According to which quintile is your school classified?

4. Name any 2 sports you coach that involve some degree of risk.

B. Matters pertaining to sport coaching and training of coaches:

5. Briefly tell me about your experience of sport coaching.

6. Tell me about the sport related training you have undergone, and be as specific as possible by referring to the content covered during these training sessions.

7. Regarding the reduction of risks in a sport, what is your opinion on the content of coaches' courses? Is this adequate to reduce risks?

8. Are there any particular risks to a sport you coach that you feel might need more attention in general?

9. Based on the previous question, how will you suggest it be addressed in order to reduce such a risk?

10. Have you ever felt that an educator-coach is coaching beyond their capabilities?

11. Based on the previous question, state whether or not it had a negative effect.
12. What would you suggest be done to rectify this?
13. In your opinion, do you think the management and governing structures of schools in general do enough to ensure the safe participation of the educator-coach?
14. Based on the sport equipment and facilities of your school describe the level of risk it poses and who maintains the equipment?
15. Do you think that the school spends an adequate portion of the annual budget on sport in general and specifically to reduce the risks associated to sport?
16. Have you ever been in or are you aware of any situation where the educator-coach is not comfortable with coaching a specific sport? For example, because they have not been properly trained? Please explain why and how the situation unfolded.
17. Could you tell me how important the continuous training of the educator-coach is to the governing and management structures of your school?
18. Let's pretend a participant gets injured quite severely during a practice session. What according to your school's policy does the educator-coach, sport organizer / head of sport do?

C. Legal matters

19. How, according to your knowledge, does the law protect the educator-coach? Can you mention and elaborate on any specific law or policy that protects you?
20. When coaching, do you sometimes feel that you are responsible for something that you cannot really control? If so, please elaborate.
21. Have you or ever approached the management or governing structure with regard to risk (however small) of a sport that might lead to legal action being taken? If so, please elaborate on the type of risk and what was done to address it if necessary.

22. Who in your opinion is ultimately responsible for the safety of the participants you coach, you as coach or the school?
23. Tell me more about your school's sport policy, especially whether it pays attention to the reduction of legal risks for the school and educator-coaches and in what way it does this.
24. Please elaborate on the process followed to draft the sport policy regarding the specific sport that you coach and name all the parties / people who were consulted at the time.
25. Can you tell me about a situation where an educator-coach were held liable for injuries of a participant, where parents claimed, or could have claimed negligence on the school's side? Please elaborate and state how the incident could have been prevented.
26. In the light of the above, how could the school have handled the situation better?
27. What impact did it have on the security of the coaches involved?

Addendum E: Interview schedule: sport organiser

Individual Interview: Sport Organizer / H.O.D. of Sport

The researcher would like to get an overview of the sport organizer's / H.O.D.'s of Sports' perceptions regarding the coaching of sport at school level and the security of the educator-coach with regard to the laws and policies. The researcher would also like to understand what the participant knows about these policies and laws that regulate his/her safety. The researcher would also like to get a better idea of how the school's sport policy is developed and implemented.

A. Demographic information: Please complete this section by supplying the answer in the space provided.

1. How long have you been a sport organizer / H.O.D. of sport?

2. How many learners are registered at your school?

3. According to which quintile is your school classified?

4. Name any 2 sports you coach that involve some degree of risk.

B. Matters pertaining to sport coaching and training of coaches:

5. Briefly tell me about your experience of sport coaching
6. Tell me about the sport related training you have undergone, and be as specific as possible by referring to the content covered during these training sessions.
7. Regarding the reduction of risks in a sport, what is your opinion on the content of coaches' courses? Is this adequate to reduce risks?
8. Please state what is being done by you as sport organizer / H.O.D. of sport to help reduce the safety and security risks associated with sport.

9. Could you tell me how important the continuous training of the educator-coach is to the governing and management structures of your school?
10. In your opinion, do you think the management and governing structures of schools in general do enough to ensure the safe participation of the sport organizer / H.O.D. of sport and educator-coach?
11. Based on the sport equipment and facilities of your school describe the level of risk it poses and who maintains the equipment?
12. Do you think that the school spends an adequate portion of the annual budget on sport in general and specifically to reduce the risks associated to sport?
13. Have or do educator-coaches sometimes approach you regarding risks (however small) of a sport that they are coaching?
14. If answered yes on the previous, please elaborate on the type of risk.
15. What do you normally do to address the risk named in the previous question, if necessary?
16. Let's pretend a participant gets injured quite severely during a practice session. What according to your school's policy does the educator-coach, sport organizer / head of sport do?
17. How do you think the school went about assigning you to a specific sport as an educator-coach? What did they take into account?
18. Do you think there might be more to consider when generally assigning an educator-coach to a specific sport?

C. Legal matters

19. How, according to your knowledge, does the law protect the sport organizer / H.O.D. of sport and educator-coach? Can you mention and elaborate on any specific law or policy that protects you?
20. Tell me more about your school's sport policy, especially whether it pays attention to the reduction of legal risks for the school and educator-coaches and in what way it does this.

21. Please elaborate on the process followed to draft the sport policy regarding the specific sport that you are responsible for and name all the parties / people who were consulted at the time.
22. Can you tell me about a situation where an educator-coach were held liable for injuries of a participant, where parents claimed, or could have claimed negligence on the school's side? Please elaborate and state how the incident could have been prevented.
23. In the light of above, how could the school have handled the situation better?
24. What impact did it have on the security of the coaches involved?

Addendum F: Interview schedule: principal

Individual Interview: Principals

The researcher would like to get an overview of principals' perceptions regarding the coaching of sport at school level and the security of the educator-coach with regard to the laws and policies. The researcher would also like to understand what the principal knows about these policies and laws that regulate his/her safety as well as that of the staff, especially the educator-coach. The researcher would also like to get a better idea of how the school's sport policy are developed and implemented.

A. Demographic information: Please complete this section by supplying the answer in the space provided.

1. How long have you been a principal?

2. How many learners are registered at your school?

3. According to which quintile is your school classified?

4. Name up to 5 sports that your school offers that involve some degree of risk.

B. Matters pertaining to sport coaching and training of coaches:

5. Briefly tell me about your experience of sport coaching

6. Tell me about the sport related training you have undergone and be as specific as possible by referring to the content covered during these training sessions.

7. Regarding the reduction of risks in a sport, what is your opinion on the content of courses, where the focus is on mainly on rule discussions? Is this adequate to reduce risks?

8. Please state what is being done by you as principal to help reduce the safety and security risks of the educator-coach.

9. How important is the continuous training of educator-coaches to the governing and management structures at your school?
10. Based on the sport equipment and facilities of your school describe the level of risk it poses and who maintains the equipment?
11. Do you think that the school spends an adequate portion of the annual budget on sport in general and specifically to reduce the risks associated to sport?
12. Let's pretend a participant gets injured quite severely during a practice session. What according to your school's policy does the educator-coach, sport organizer / head of sport do?
13. How do you go about assigning an educator-coach to a specific sport? What do you take into account?

C. Legal

14. Tell me about the general awareness regarding the legal aspects of sport coaching among you and your colleagues, especially regarding the safety and security of the educator-coach.
15. Can you mention and elaborate on any specific law or policy that protects your sport organizer / head of sport or the educator-coach? How, according to your knowledge, does the law protect the educator-coach?
16. Tell me more about your school's sport policy, especially whether it pays attention to the reduction of legal risks for the school and educator-coaches and in what way it does this.
17. Please elaborate on the process followed to draft the sport policy and name all the parties / people who were consulted at the time.
18. Can you tell me about a situation where an educator-coach were held liable for injuries of a participant, where parents claimed, or could have claimed negligence on the school's side? Please elaborate and state how the incident could have been prevented.

19. In the light of the above, how could the school could have handled the situation better?

20. What impact did it have on the security of the coaches involved?

Addendum G: Interview transcription and analysis example

BLUE = Training and development PINK = Security of EC PURPLE = Finances YELLOW = Legal

NAME OF AUDIO : SO1
DATE OF AUDIO :
LENGTH OF AUDIO : 30:21
TRANSCRIBER- NAME : CYBER TRANSCRIPTION
TRANSCRIPTION LEGEND : RESEARCHER- R
: INTERVIEWEE- I

R My research as a master student is titled “Legal Aspects of School Governance and Management in the security of the educator coach – a sport law perspective”. Your participation in this study is very important and can help to create awareness of the legal risks that the educator coach is facing on a daily basis as well as how to find a way in which school management and governance bodies can help to reduce such risks. There is no right or wrong answer, your honest personal opinion is all that is needed. You may decline to answer any of the interview questions if you so wish, and are more than welcome to ask me to repeat any of the questions. There may be instances where I could ask you to give more detail regarding your answer or ask another question based on your answer. Please talk slowly and clearly. The interview will be audio recorded to facilitate collaboration, correct information and later be transcribed for analysis. All the information you will provide is considered completely confidential. Your name will not appear in any publication resulting from this study and identifying information will be omitted from the report. A report will be sent to you after completion of the study on your request. Do you understand the abovementioned and can we go ahead?

I Yes I do.

R Alright question one, how long have you been a sport organiser or an HOD of sport?

I I have been the HOD of sport for the last two and a half years.

R How many learners are registered at your school?

- I Approximately a 1000 learners
- R Alright question three, according to which quintile is your school classified?
- I We are a quintile five school.
- R Question four, name any two sports you coach that involve some degree of risk?
- I Well cricket in a certain way yes, rugby for sure.
- R Question five. Briefly tell me about your experience of sport coaching?
- I Well I have been a coach since I started teaching, that's 8 years ago. Uhh in various sport types, and I have been, like I said, previously HOD of sport for the last two and a half years.
- R Tell me about the sport related training you have undergone, be as specific as possible by referring to the content covered during these training sessions?
- I I have coached or specialised in four types of sport. If we look at the rugby I have done the Ruby Bok Smart, the Boks Smart is to enable coaches to uhm prevent neck injuries or serious injuries on the sport field, you have to do that every two years. I am a rugby level C referee. I am a rugby level one coach although the levels don't really mean anything. In the cricket league I am a level one coach and a level c umpire and I am a level one hockey coach and a ASA accredited hurdle and relay coach, so in all of these I have got accreditation.
- R Mmmm.
- I Uhm so ja that's it.
- R Alright and the content that you mentioned uhm if I can ask you to be more specific, uhm is that about just actually coaching the learners properly.
- I Ja basically the only one that I would say that teaches how to go risk free or what you have to get in place in order to ensure the safety of the learners, will be the Bok Smart. Although coaches feel they are just trying to pass the buck. Uhm and for instance the ASA is the athletics one for the hurdles and relays, because they show you in detail how to prevent different injuries, how to warm up and so on as well. Do the Bok Smart, how to form ruts on the correct

way how the learner must jump in the lineout and so on. But the others ja, they don't specialise in the safety of learners or the safety of the people interacting in the sport.

R Alright uhh question seven regarding the reduction of risks in a sport, what is your opinion on the content of coaches courses, is it adequate reduced risks based on what you have just said now?

I Well basically like I told you the ASA, Athletics South Africa set up and the rugby set up yes. Well structured, it is mostly well structured, but then you get the other ones, other types of sports, uhm I would say sport accredited courses that are really not up to standard, they, they don't tell you what to look out for when training, all of these types of things, but yes, I will say a 50, 50 if you look at the cricket and the uhm hockey and so on. These courses that are attended are not up to standard, but the other two, the Bok Smart is, it's not too bad.

R Okay, uhh question eight. Please state what is being done by you as a sport organiser or HOD of sport to help reduce the safety and security risks associated with sport?

I Well basically the, all that I am going to tell you now is what I have learned in the Bok Smart because they give you a format or PDF format that you have to look out for, things that you should ensure as soon as you organising a rugby day or a just a normal practice session, what should be next to the field. So uhm basically there should be an **evacuation plan** for a rugby or a sports day, that you have to ensure this is going to happen and that's not only for rugby, it can be with the athletics day or so one.

R Do you, do you do the same for the other sport types?

I No not yet, we are still trying to implement it as a protocol. If something happens during a sporting event at the school, you must follow the procedures and everyone must know what's to be expected of them.

R Okay and I am right to understand that this originated from the Bok squad?

I Ja.

R Okay.

I Yes. And so another thing is all the coaches need to be up to date regarding what is expected of them. They need to attend courses

and like I told you in the previous session or the previous question, unfortunately not all the courses are up to standard, and I think that's where you as a school should get in the experienced person even if it's another coach from another school, just to get involved with your teachers and teach them what to do and so on, but that's my opinion.

R So have you identified courses that is not up to standard according to the school and that you would like, you would not go and attend that course, but find another course, that is more suitable, more to your liking with regard to the safety of the learners etcetera?

I Well unfortunately, we live, our district or our province isn't accessible, accessible to these, to the experienced people and other different types of coaching methods that's maybe better than the ones we have here. So uhm the guys in Gauteng and so on, they have got excellent systems but it is very expensive to get those people here. But for instance the ASA course that's uhm being presented every year in November here in our district is quite good. But all of those people, they get them from Gauteng and so on. So unfortunately for instance the cricket is presented by local guys and it's not up to standard at all.

R So you don't have that many courses to choose from, to start with.

I Yes, ja unfortunately we have to take what we can get.

R Alright, uhm question nine, could you tell me how important the continuous training of the educator coach is to the governing and management structures of your school?

I Well it's very important for instance if there is an incident of a coach being negligent or not well trained or up to standard regarding the set up that he has to portray in his coaching level, or coaching perspective, that might cause some difficulties for the management, the, if a child gets injured and you find that coach had no idea what he was doing there he is just, they just put him in that position because they need someone there then, and the parents don't like that or the parents plan to take legal action for sure, that's got an immense, immense impact on the management of the school.

R Okay so in your opinion, in your school they do pay enough attention to the training of the educator coaches, both your SGB and your SMT?

- I I, in a certain way yes maybe, but first let me explain to you, when these things come to table and we in the SMT talk about it, okay, we talk about and we are all hyped and everything, but that's where it stays. It doesn't flow through to the staff members, there, usually what should happen is you identify people, you say listen here you will be going to the following because you have no accreditation with the sport that you are, that you are doing. I feel in my own opinion that unfortunately no there is not enough being done.
- R Not enough, okay is it because it's not that important at this stage?
- I Ja.
- R Alright, I understand. Question ten, in your opinion do you think the management and governing structures of schools in general do enough to ensure the safe participation of sport organiser or the HOD of sport and the educator coach?
- I No. No I don't think so.
- R Alright question eleven, based on the, is there anything else that you would like to say at question ten that you would like to elaborate, or is it, is that it?
- I No basically, ja I would say, no they don't do enough, in the times that we live in today, or the times we are living in, uhm, it's so easy for someone to get the wrong idea or they don't agree with what you are doing at your school and so on, and they just decide to sue. And, that's a reality. And uhm, I think it's the role, or not the role, it's the SGB and the SMT that should ensure that their staff members are well equipped, their staff members are well informed, regarding what is expected of them, each coach or each organiser should have an outline that their, that their coaches signed. For instance, this is what is expected of me, this is our two ear plan and the next three years I must attend different courses and that's what I would say.
- R and that's not happening at this moment?
- I No it's not happening ja.
- R Alright, question eleven then, based on the sport equipment and facilities of your school, describe the level of risk it poses and who maintains the equipment?
- I Well I will say we have got a relatively low risk regarding the facilities and equipment at our school. We have got an excellent

safety committee that uhm ensure all of these things are up to standard, and a groundskeeper that supports us all the way, so when something is broken, we have got a chain of command, if I can say so. The coaches report it to me, I report it to the safety committee, they report it to the SGB for a yes or no it's going to happen, it's not going to happen, and regarding the severity of the, uhm the **level of risk that will depend, is the money going to be spent immediately or later in time.**

R Alright based on that question, and that answer that you gave me, do you sometimes feel that it might take too long, for things to get done, when it poses a level of risk, have you ever felt that?

I **Yes definitely, there we had an incident the other day due to a risk posed by a wire on the sport field that needed to be addressed, we have been talking about that for I think almost 6 months, and another incident happened again the other day and another child was injured.**

R Regarding this, that was because of the ...[intervened]

I Ja it was reported.

R The facilities?

I Ja. It was reported to me and I reported it to the safety committee and they reported it immediately to the groundskeeper to go and fix it, unfortunately the groundskeeper did not have enough time or he is overloaded, and uhm now it is as the school governing body, and **we are waiting for their approval** and then we can start immediately.

R Alright so ...[intervened]

I So it's, it's quite a long process except when it's uhh, a decision, it must happen now, it's ...[intervened]

R Immediate danger?

I Ja you can say the foreseen risk.

R Okay.

I Regarding that.

R Okay alright, question twelve, do you think that the school spends an adequate portion of the annual budget on sport in general and specifically to reduce the risks associated to sport?

- I Uhm on sport in general yes, for sure. There is a lot of money, or a big portion of the budget going into the sport in general tours equipment and things like that. But uhh specifically to the, to reduce the risks associated with sport, uhm I don't, there, there, if I can say basically that fall, the coaching of staff members or coaches, that can fall underneath that banner, but unfortunately like I told you earlier, we are all hyped and very excited to do everything, when it is on the table, but unfortunately most of the time it stays there.
- R Okay. Uhh question thirteen, just a short answer, have or do educators, educator coaches sometimes approach you regarding risks. Regardless of which sport t they are coaching?
- I Yes they do.
- R Uhm alright number fourteen. You have answered yes on the previous, please elaborate on the type of risk?
- I Well basically it can be, there is various types of incidents that is being reported to me, for instance a case that the educator feels unsafe, meaning they aren't adequately trained or they don't know precisely, remember if you do a sport like rugby and you don't know how your learners should ruck, you could, that could cause a learner to, with neck injuries, or those types of things, so they need to be informed. So, some of the coaches have come to me in the past and said listen here, I am, I am afraid for myself and the learners because I am not competent enough to do this. And uhm, uhm ja basically they, they do come to you in a form, I am just thinking about another incident that, okay ja, I think that's it.
- R Okay no that's fine, uhm with regard to the, to the, the educator coaches coming to you saying listen, I am not very comfortable with coaching this in that team, what happens to them, what, immediately like now, what do you, what do you tell them, what do you do?
- I Unfortunately, uhm we have the need for coaches, understand because you, there is, there is, we are a big school and we don't always have enough people to plug all the holes that we have, so we use anyone that we can, but uhm, ja, the thing with any, any type of sport, usually before the season, like for instance in November or October/November there is an athletics course, the ASA course, so then those people should be awake and say listen her, okay, I am not sure what I am doing and they should come to you and say listen here, okay, I need to go on a course, understand and we book the course for them. We do budget for that. The same

with the rugby, the rugby course is in February, and the season starts in March. So they should be, they should know listen here, this is what we are going to do, they should plan as well because if you have got 40, 50 teachers to think for, at the end of the day you won't sleep at night.

R Uhm with you, if you send someone on that course, let's say someone that's very out of his depth with rugby, coaching rugby, and you send someone on the Bok Smart course. Are you confident that they are now well equipped on and their way, on their own 100% or is there, do you mentor them, is there a mentor assigned to them, for especially like for a starter teacher.

I Ja for sure, I think you, a new teacher, or a teacher entering the education system, for the first time, uhm, training a rugby team especially under 9's where they start out at, that's the foundation of their rugby, they don't know what they are doing. At the end of the day that team will suffer the rest of their rugby career, at primary school level. Now that is important what you said there, you do, need a mentor, you do need a, uhm a competent, I don't want to say "old guy" that's being doing it for years, for a few years uhm to help that guy and show him listen here this is the, these are the ropes, you must do this, when this happens and all of that, ja so you definitely do need a mentor.

R Okay question fifteen, what do you normally do to address the risks named in the previous question. If necessary, I think we have covered that with what you are doing for those people. Question sixteen, let's pretend a participant gets injured quite severely, during a practice session, what according to your schools' policy, does the educator coach sport organiser or head of sport do?

I Well we, I started at my school two and a half years ago and unfortunately there wasn't any sign of a sport policy, there was nothing, any document or anything like that, so we are in the process of developing one, now usually what the coaches are supposed to have, they should have the medical service or so on. We are fortunate enough to have two hospitals very close to our school, so they should have the emergency numbers for those hospitals, but ja, so that's what is supposed to happen at the end of the day.

R Alright you said they should have, uhm do they have in your opinion, do they have the numbers, can you tell me that?

- I Well unfortunately you, you wish that every person would take their own initiative and do these things and take the number of get the number from someone, but at the end of the day, basically I think what, what you should do is put the number up on the screen in the mornings and say listen here, every coach here, take this number, this is the response unit or medical response unit for this hospital across, not far from us, and uhm in any form of emergency you phone that person or that number, it is for instance Bok Smart has got a number as soon as an injury happens and it's a neck injury, you phone the number and each coach must have that on the phone but unfortunately like I told you sometimes you have to think for, for all the people.
- R Ja okay, everyone. Alright, uhm question seventeen, how do you think the school went about assigning you to as specific sport as an educator coach, uhm and what did they take into account?
- I Well in a perfect world I think they will assign a coach who has got experience, even if it is a new student coming from University into the school or education system. And they have got a background in let's say for instance hockey, you put them in the hockey field. If they have got experience in rugby you put them there and then, as soon as possible you get the accredited, I think that will be the best but unfortunately, uhm like I told you earlier, if we need you somewhere we are going to put you somewhere. Even though you don't have the qualifications of the certificates or things like that then ja we, that's something that we need to strive to correct.
- R Mmmm and do you think generally speaking all the schools that uhm, the management structures or the governing structures might just shy away from that risk or maybe just ignore that risk a bit. Associated with putting someone in a sport that they haven't coached before or they don't have any experience in just to be able to, to say well here is the team, here is the coach and where we go?
- I Well my personal opinion nobody is going to do anything until something happens, understand so unfortunately something first has to happen before they will do anything.
- R Okay question eighteen, do you think there might be more to consider when generally assigning an educator coach to a specific sport. I think that you have also answered that just now, with regard to the training and the, and the experience. Uhm let's move to question nineteen, how according to your knowledge does the law

protect sport organiser, HOD of sports, or the educator coach?
And can you mention and elaborate on any specific law or policy that protects you?

I No unfortunately not, I am not up to date regarding the law or how it protects me as a sport organiser, uhm or the educator coaches.
Ja.

R But you believed that there ...[intervened]

I Ja there must be ...[intervened]

R Something.

I Ja there must be something, I think that's the responsibility of the, uhm, the SGB, it's the SGB Chairman's responsibility to get up to date regarding these things and uhm have a meeting with all the sport coaches in the school and say listen here this is your, this is what is expected of you and I think like I said the document that each organiser should get together, all of these things should be outlined there.

R In a sport policy.

I Ja. So basically ja.

R Okay uhm question twenty, tell me more about your schools' sport policy? Especially whether it pay attention to the reduction of legal risks for the school and educator coaches and in what way it does this.

I Uhm well like I told, or explained to you earlier we are still in the process of getting our sport policy, ja really so what we have done, we have taken a few other schools sport policies and formulating it as our own, now this is quite interesting, this is an interesting question and thank you very much for this, I will be uhm I am making a note of it, I think this is a very, very important aspect that you are looking at here, ja so, uhm I am going to, I am writing it down now thank you.

R ...[laughing] am I right to say that you would not have even thought about the legal risks involving sport or whatever to include it into your sport policy?

I Ja if you did not say now yes, yes.

R Uhm number twenty-one, please elaborate on the process followed to draft the sport policy regarding the specific sport that you are

responsible for and name all the parties, people who were consulted at the time. You basically touched on that just now, uhm just in short are you consulting all the parties involved from the educator coach level up, upwards, or are you basically just formulating the policy from what you got from other schools?

I Basically I am formulating it, uhh what I got from the other schools but it is important that to get your organisers involved like your athletics, netball, hockey, all the coaches, organisers involved, uhh because it, makes your workload that much easier because those are the people that are directly involved in the type of sport and you and the SGB member that is responsible for the sport or for sport, should collaborate throughout the whole process, what is the expected and so on.

R Alright, question twenty-two can you tell me about a situation where an educator coach were held liable for injuries of a participant? Where parents claimed, or could have claimed negligence on the school side. Please elaborate and state how the incident could have been prevented.

I Well there was an incident at our school a few years back, it was actually before my time here, where a coach, jukskei coach, he was late for practice and the children were playing with jukskei and it was already out on the field so there was no control, there was no supervision and so on, and one of the learners threw another learner against the head and so when the teacher arrived, he just saw this learner with blood and everything and he got the learner into his car and he drove to the hospital and left all the other learners alone, and the parents were very upset or the other learners and the learner that was injured, because that's completely negligent of the teacher to do that, so yes, uhm that luckily there was no legal actions taken or so on but it was so severe that we stopped the jukskei, there was, there wasn't any jukskei from then on.

R Okay, wow. Number twenty-three, in light of the above how could the school have handled the situation better?

I Again that's where I want, or where I said the document that they must outline, this is your responsibilities, basically like the induction program for sport, so you know this is what you are responsible for, your training times, what procedure to follow when a day is cancelled, regarding the weather, who is responsible for the learners getting that time and so on. So that is quite important.

- R Question twenty-four, what impact did it have on the security of the coaches involved?
- I Well like I told you earlier, **you are never focussed on something until it happens to you** and that's what the school governing body that I think they maybe went overboard regarding the situation to stop the jukskei in, completely, maybe just uhm, uhh reprimand the teacher and he should basically apologise to all the, role-players.
- R Learners. If we go back and just look at what the educator coach did firstly, uhm he was apparently late for the session, for the practice session, uhm so were that learner according to your knowledge his responsibility?
- I Ja.
- R That he wasn't there.
- I No for sure.
- R Okay so firstly he, I am sure that he should know that that's also, it's making his security to himself, it's a threat basically to his security as a person, uhm the other thing is he, he actually put an injured learner in his car and I guess he drove to the doctor?
- I Ja that's another, that's another infraction if you can say because you not allowed to do that, only in school transport and ...[intervened]
- R Like you just said, you only realise this when it is happening to you now and when you rethink about this whole situation and you think of everything that could have gone wrong then you realise that there is much more to the security of the educator coach.
- I Yes, yes for sure, there is a lot more.
- R Alright thank you so much for your time, I appreciate it. And I wish you the best for your sport policy then.
- I Okay thank you very much.

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Legal aspects of school governance and
management in the security of the educator-
coach: a sport law perspective

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