

An Education Law perspective on educator misconduct and educator security

C. S. Mans

10396101

Dissertation submitted in fulfilment of the requirements for the
degree *Magister Educationis* in Education Law at the
Potchefstroom Campus of the North West University

Supervisor: Prof. M. H. Smit
Co-supervisor: Prof. J. P. Rossouw

October 2015

DECLARATION

I, the undersigned, hereby declare that the work contained in this thesis 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, consisting of a stylized first letter followed by a cursive name.

Signature

2014. 10. 24

Date:

Copyright©2015 North West University (Potchefstroom Campus)

All rights reserved

A word of thanks

- *Soli Deo Gloria. Sola gratia.*
- My parents, husband Kobus and family: I would not have been able to complete this dissertation without your loving support, interest and motivation. You mean the world to me.
- All my friends and colleagues: you supported and motivated me in exceptional ways and understood what I was going through – thank you that I can always count on you. Aquilla, you are worth far more than rubies.
- Professor Marius Smit: I appreciate your insightful guidance tremendously. Thank you for being such a professional study leader and for really motivating and supporting me. During the days when my own energy levels dwindled you were a dependable pillar of strength.
- Professor JP Rossouw: Your academic as well as technical knowledge and assistance are without comparison. Thank you for sharing it with me.
- Ms. Christine Bronkhorst: I could always count on you to expeditiously and accurately send any information that I required from the library services. Thank very much.
- Professor Casper Lessing: Thank you for the proficient checking of the bibliography.
- Mrs. Schylah Schreuder: Thank you very much for the excellent language editing. You rendered a superior service and my appreciation goes beyond words.
- The National Research Foundation: for financial support in the form of a three year Grant Holder-linked bursary as part of the *Educator security and educator rights* project. The study was conducted within the Edu-HRight Research Unit and I am much obliged to the NRF for such assistance that enhanced the quality of the research.

Summary

Protective, as well as punitive legal measures applicable to education, are embedded in various acts. Despite these legal measures, incidences of educator misconduct occur at schools and often go unpunished. The implied situation, namely that the legal measures are not applied correctly, as well as the effect that educator misconduct has on educator security, is a cause for concern. This study is embedded in Education Law as the subject area and aimed to determine the effect of educator misconduct on educator security. Factors contributing to the phenomenon of non-punishment of educator misconduct were also investigated and determined.

By utilising a qualitative research design and participants from a specific geographical area, a variety of findings have been made. The most important finding is that particular instances of educator misconduct has a detrimental effect on educator security which manifests on the physical as well as psychological levels of the participants in this study. Educator misconduct not only impacts educator security, but may also lead to a dysfunctional equilibrium, rendering schools ineffective.

Some reasons for not applying legal measures include an unacceptably low standard of legal knowledge among employees, union involvement, *ubuntu* and the tribal hierarchy system. These reasons have, however, been found to be perfunctory. The deep-seated reason can be attributed to the quest for modernisation. Not all societies have fully modernised and rural societies, in particular, are still trapped in a transition period. The expectancy levels for service delivery and professionalism in these societies are low, thus contributing to educators' misconduct and unprofessional behaviour.

Key concepts: Education Law, legal determinants, application of legal measures, tribal hierarchy, educator misconduct, union, educator security, modernisation, dysfunctional equilibrium, professionalism, Integrated Quality Management System, Annual National Assessment

Opsomming

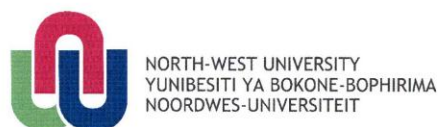
Beskermings- sowel as strafmaatreëls van toepassing op die onderwys, word verskans in verskeie wette. Opvoederwangedrag vind ten spyte van hierdie maatreëls by skole plaas, en word dikwels ongestraf gelaat. Die implikasie – dat regsmaatreëls nie na behore toegepas word nie – asook die invloed wat opvoederwangedrag op opvoedersekuriteit het, is 'n rede tot besorgdheid. Hierdie navorsing is in Onderwysreg as vakgebied gesetel. Die doel was om die invloed van opvoederwangedrag op opvoedersekuriteit te bepaal. Ondersoek is ook ingestel na faktore wat bydra tot die verskynsel van opvoederwangedrag wat nie gestraf word nie, en die bepaling van bykomende faktore.

'n Aantal bevindinge is gemaak deur middel van kwalitatiewe navorsing en die deelname van deelnemers vanuit 'n spesifieke geografiese omgewing. Die belangrikste bevinding is dat opvoederwangedrag 'n nadelige uitwerking op die opvoedersekuriteit van die deelnemers betrokke by hierdie studie het, met fisieke- sowel as psigologiese gevolge. Opvoeder-wangedrag het nie slegs 'n nadelige invloed op opvoedersekuriteit nie, maar kan ook aanleiding gee tot 'n disfunksionele ekwilibrium en oneffektiewe skole.

Die ontoereikende toepassing van regsmaatreëls word, onder andere, toegeskryf aan die onaanvaarbaar lae vlakke van kennis van die reg, vakbondbetrokkenheid, *ubuntu* en die stamhiërargie-stelsel. Daar is egter bevind dat hierdie redes slegs oppervlakkig is. Die dieperliggende rede is die soeke na modernisering. Nie alle gemeenskappe is al ten volle gemoderniseer nie, en veral plattelandse gemeenskappe is nog vasgevang in 'n oorgangsperiode. Hierdie gemeenskappe se verwagtinge ten opsigte van dienslewering en professionaliteit is laag en dra tot opvoederwangedrag en onprofessionele gedrag by.

Sleutelbegrippe: Onderwysreg, regs-determinante, toepassing van regsmaatreëls, stamhiërargie-stelsel, opvoederwangedrag, vakbond, opvoedersekuriteit, modernisering, disfunksionele ekwilibrium, professionalisme, geïntegreerde kwaliteitsbeheerstelsel, nasionale jaarlikse assessering.

Ethics certificate



Private Bag X6001, Potchefstroom
South Africa 2520

Tel: (018) 299-4900
Faks: (018) 299-4910
Web: <http://www.nwu.ac.za>

Ethics Committee
Tel +27 18 299 4852
Email Ethics@nwu.ac.za

ETHICS APPROVAL OF PROJECT

The North-West University Ethics Committee (NWU-EC) hereby approves your project as indicated below. This implies that the NWU-EC grants its permission that provided the special conditions specified below are met and pending any other authorisation that may be necessary, the project may be initiated, using the ethics number below.

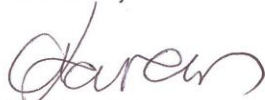
Project title: An education law perspective on educator rights and educator security within a changing education environment																															
Project Leader: Prof JP Rossouw																															
Ethics number:	<table border="1"><tr><td>N</td><td>W</td><td>U</td><td>-</td><td>0</td><td>0</td><td>0</td><td>1</td><td>8</td><td>-</td><td>1</td><td>1</td><td>-</td><td>A</td><td>2</td></tr><tr><td colspan="3">Institution</td><td colspan="5">Project Number</td><td colspan="2">Year</td><td colspan="5">Status</td></tr></table> <p><small>Status: S = Submission; R = Re-Submission; P = Provisional Authorisation; A = Authorisation</small></p>	N	W	U	-	0	0	0	1	8	-	1	1	-	A	2	Institution			Project Number					Year		Status				
N	W	U	-	0	0	0	1	8	-	1	1	-	A	2																	
Institution			Project Number					Year		Status																					
Approval date: 2011-03-17	Expiry date: 2016-03-17																														

Special conditions of the approval (if any): None

<p>General conditions:</p> <p>While this ethics approval is subject to all declarations, undertakings and agreements incorporated and signed in the application form, please note the following:</p> <ul style="list-style-type: none">• The project leader (principle investigator) must report in the prescribed format to the NWU-EC:<ul style="list-style-type: none">- annually (or as otherwise requested) on the progress of the project,- without any delay in case of any adverse event (or any matter that interrupts sound ethical principles) during the course of the project.• The approval applies strictly to the protocol as stipulated in the application form. Would any changes to the protocol be deemed necessary during the course of the project, the project leader must apply for approval of these changes at the NWU-EC. Would there be deviated from the project protocol without the necessary approval of such changes, the ethics approval is immediately and automatically forfeited.• The date of approval indicates the first date that the project may be started. Would the project have to continue after the expiry date, a new application must be made to the NWU-EC and new approval received before or on the expiry date.• In the interest of ethical responsibility the NWU-EC retains the right to:<ul style="list-style-type: none">- request access to any information or data at any time during the course or after completion of the project;- withdraw or postpone approval if:<ul style="list-style-type: none">· any unethical principles or practices of the project are revealed or suspected,· it becomes apparent that any relevant information was withheld from the NWU-EC or that information has been false or misrepresented,· the required annual report and reporting of adverse events was not done timely and accurately,· new institutional rules, national legislation or international conventions deem it necessary.

The Ethics Committee 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 Ethics Committee for any further enquiries or requests for assistance.

Yours sincerely



Prof Amanda Lourens
(chair NWU Research Ethics Regulatory Committee (RERC))



EDUCATION AND
HUMAN RIGHTS
IN DIVERSITY



NORTH-WEST UNIVERSITY
YUNIBESITI YA BOKONE-BOPHIRIMA
NOORDWES-UNIVERSITEIT
POTCHEFSTROOM CAMPUS

DECLARATION BY PROJECT LEADER

I hereby declare that the study

An Education Law perspective on educator misconduct and educator security

by

C. S. Mans

formed part of the NRF funded project

An Education Law perspective on educator rights and educator security within a changing education environment.

Ethics clearance for the research project of Mrs Mans was granted

by the NWU Ethics Committee

under the ethics number

NWU-00018-11-A2

The study was completed within the Edu-HRight Research Unit

of the Faculty of Education Sciences

of the North-West University.

Prof JP Rossouw

Project Leader

Research Director: Edu-HRight

2 Mint Avenue

Roodekrans

1724

28 October 2014

To whom it may concern

LANGUAGE EDITING AND PROOFREADING

I, the undersigned, **Schylah Schreuder**, certify that
I undertook the language editing and proof reading of the

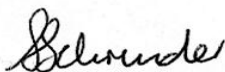
Magister Educationis Degree:

**An Education Law perspective on educator
misconduct and educator security**

by

C S Mans

Signature: _____



Mrs. S. Schreuder

Language editor and proof reader

BA Communication (RAU)

NHOD (RAU)

Post Graduate Diploma in Labour Law (RAU)

BA Honours Applied Linguistics (UJ)

Tel. 011 768 1379

Cell 073 234 8908

schylah@telkomsa.net

Table of Contents

1	CHAPTER 1: INTRODUCTION, PROBLEM STATEMENT AND RESEARCH DESIGN	1
1.1	Introduction	1
1.2	Problem statement and literature overview	2
1.2.1	International occurrence of educator discipline.....	3
1.2.2	Educator misconduct in South Africa.....	4
1.3	Conceptual framework	8
1.4	Rationale and significance.	9
1.4.1	Problems related to practice	9
1.4.2	Lacunae in the literature:.....	9
1.5	Research questions	9
1.6	Research objectives	10
1.7	Research design	10
1.8	Research paradigm and methodology	11
1.9	Research Methods	13
1.9.1	Literature study.....	13
1.9.2	Empirical research.....	14
1.9.2.1	Study population and sampling	14
1.9.2.2	Measuring instruments.....	15
1.9.2.3	Methods of data collection	15
1.9.2.4	Data analysis	16
1.9.2.5	Trustworthiness	17
1.9.2.6	Researcher's role.....	17
1.9.2.7	Ethical aspects of the research	18
1.10	Anticipated problems.....	18
1.11	Contribution of study.....	19
1.12	Chapter division	19
1.13	Conclusion.....	21
2	CHAPTER 2: LEGAL DETERMINANTS FOR EDUCATOR MISCONDUCT AND EDUCATOR SECURITY22	
2.1	Introduction	22
2.2	Determinants of educator security and educator misconduct.....	23
2.2.1	Legislation	23
2.2.1.1	The South African Constitution Act 108 of 1996	23
2.2.1.2	The Labour Relations Act 66 of 1995 (LRA).....	35
2.2.1.3	The Employment of Educators Act 76 of 1998	36
2.2.1.4	The South African Council for Educators (SACE).....	44
2.2.1.5	The South African School Act 84 of 1996 (Schools Act).....	45

2.2.2	Common Law	50
2.2.2.1	In loco parentis.....	51
2.2.2.2	The ultra vires doctrine	51
2.2.2.3	Rules of natural justice.....	52
2.2.3	Case Law.....	54
2.2.3.1	Despatch High School v Head of the Education Department	54
2.2.3.2	Wynkwart v Minister of Education	54
2.2.3.3	Wium v Independent Mediation Service of South Africa	56
2.2.3.4	S v Mohlakane	56
2.2.4	Quality measures	57
2.2.4.1	Annual National Assessment	57
2.2.4.2	Integrated Quality Management System.....	58
2.2.4.3	Annual Teaching Awards.....	59
2.3	Summary	60
3	CHAPTER 3: THE NATURE AND MANAGEMENT OF EDUCATOR MISCONDUCT AND ITS EFFECT ON EDUCATOR SECURITY.....	61
3.1	Introduction	61
3.2	The quest for modernisation	62
3.2.1	Urbanisation.....	62
3.2.2	Liberal individualism	64
3.3	The nature of educator misconduct	64
3.3.1	The widespread dysfunctionality of South African schools	65
3.3.2	Professional misconduct and the South African Council for Educators.....	66
3.3.3	Verbal abuse, victimisation, harassment and defamation	68
3.3.4	Sexual misconduct	70
3.3.5	Fraud, theft, financial mismanagement.....	73
3.3.6	Corporal punishment	75
3.3.7	Racism	77
3.3.8	Unprofessional conduct: alcohol abuse, absenteeism, insubordination.....	78
3.3.9	South African Council for Educators disciplinary process.....	80
3.3.9.1	Preliminary procedure prior to a SACE hearing.....	81
3.3.9.2	Hearing procedure	81
3.3.9.3	Sanctions.....	82
3.4	Underlying causes for widespread misconduct	82
3.4.1	Bronfenbrenner's ecosystems theory and the dysfunctional equilibrium	82
3.4.2	Toxic personalities and the bad apple effect	84
3.4.3	Ubuntu	86
3.4.4	The tribal hierarchy system.....	87

3.5	Misconduct during strikes.....	88
3.6	Misconduct and the effect on educator security.....	89
3.7	Summary	90
4	CHAPTER 4: RESEARCH DESIGN.....	91
4.1	Introduction	91
4.2	Research design	91
4.3	The research paradigm and methodology.....	92
4.4	Research Methods	93
4.4.1	Literature study.....	93
4.4.2	Empirical research.....	94
4.4.2.1	Study population and sampling	94
4.4.2.2	Methods of data collection	95
4.4.2.3	Trustworthiness	96
4.4.2.4	Researcher’s role.....	97
4.4.2.5	Ethical aspects of the research	98
4.4.2.6	Data analysis	99
4.5	Data analysis for this research	101
4.5.1	Education law: levels of applicable knowledge	103
4.5.1.1	Ubuntu	104
4.5.1.2	The tribal hierarchy system.....	105
4.5.2	Educator misconduct	106
4.5.2.1	Forms of misconduct.....	107
4.5.2.2	Toxic personalities and the bad apple effect	108
4.5.2.3	Handling of misconduct at school level.	109
4.5.2.4	Trade unions and educator misconduct	111
4.5.3	Educator insecurity	113
4.5.3.1	Insecurity caused by factors in the workplace.....	113
4.5.3.2	Insecurity caused by the employer	115
4.6	The National Teachers’ Awards	118
4.7	Summary	118
5	CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS	120
5.1	Introduction	120
5.2	Overview of the research.....	120
5.3	Overview of chapters.	121
5.4	Findings and discussion.....	122
5.4.1	The nature and extent of educator misconduct	122
5.4.2	The nature, extent and causes of educator insecurity	124
5.4.3	Factors influencing the application of legal measures	127

5.4.3.1	Levels of legal knowledge	127
5.4.3.2	Ubuntu	128
5.4.3.3	The tribal hierarchy system.....	129
5.4.3.4	Unions	130
5.4.3.5	The dysfunctional equilibrium	131
5.4.3.6	Liberal Individualism	132
5.4.4	The National Teachers' Awards	133
5.4.5	Summary of findings:	133
5.4.6	Summary of hypotheses for future research.....	133
5.5	Recommendations for teaching practice.....	134
5.5.1	Courses on Education Law	134
5.5.2	Department should display a quicker reaction time.....	135
5.5.3	Appointment of class assistants.....	136
5.5.4	Appropriate induction courses for newly appointed school managers.....	136
5.5.5	Reconsideration of promotional system.....	137
5.5.6	Reconsider and adapt implementation of ANA.....	137
5.5.7	Appoint independent assessors for IQMS	138
5.5.8	Motivational speakers to visit schools annually.	138
5.6	Recommendations for further research	139
5.7	Conclusion.....	139
6	BIBLIOGRAPHY.....	143
7	LIST OF COURT CASES.....	162

Table of Figures and Tables

Table 1.1	Participant selection	15
Table 3.1	Misconduct cases reported to the South African Council of Educators	67 66
Figure 4.1	Procedure of data analysis.....	100 99
Figure 4.2	Analysis: Categories and subcategories	102 101

1 CHAPTER 1: INTRODUCTION, PROBLEM STATEMENT AND RESEARCH DESIGN

1.1 Introduction

Since the promulgation of the Constitution in 1996, education in South Africa has undergone many changes. These changes have been regulated by different statutes such as the South African Schools Act 84 of 1996, the Labour Relations Act 66 of 1995 and the Employment of Educators Act 76 of 1998 among others (Mothemane, 2003:13). According to Rossouw (2012: 133) legislators attempt to protect the interests of employees through developments in South African labour legislation.

Enshrined in the Bill of Rights are a number of fundamental rights that, in principle, offer protection in the workplace (Rossouw, 2012: 133). Yet, despite the established protective legal framework, South African schools regularly witness incidents where fundamental rights of educators are infringed. Many of these infringements result from misconduct committed by educators. These infringements may, according to Rutherford (2009: 16), have serious repercussions for educators, ultimately leading to insecurity among staff members.

Mothemane (2003: 13) states that laws provide a framework for the management of quality education, yet educator misconduct continues to undermine the intended aim and misconduct cases among educators are increasing. For more than a decade the education sector was confronted with several incidences of violent, often fatal, assaults, homicides and murders (Oosthuizen (*ed.*), 2008: 22). The climate of violence which is created in many schools is, however, not the only cause of insecurity experienced by educators (Rutherford, 2009: 15). Rutherford (2009: 16) cites dysfunctional relationships, management style and misconduct by fellow employees as other causes of the unsafe and insecure working environment encountered by educators.

According to Keating (2011: 2) the specific environment in which an educator has to teach, also has a direct influence on his or her security. Beard (*in* Keating, 2011:2)

contends that a pleasant working environment is conducive to productivity and does not only include the physical environment, for example facilities, resources and little disturbance, but also involves positive interpersonal relationships. Educators want, and more importantly need, a structured and orderly environment in the classroom as well as in the school (De Klerk & Rens, 2003:367), since this has a direct impact on the behaviour and achievement of the learners and the security of the educator. The idea behind the creation of a safe and secure environment conducive to learning and teaching is that it should be a secure environment for all participants – not only for learners, as is often emphasised, but also for the educators (Oosthuizen, Wolhuter & Du Toit, 2003:475).

Chikamhi (2006: 3) states that educators who are physically violent and abusive create a regime of fear and intimidation. Their actions create physical and mental dangers to the person, and probably also cause other problems that develop within the education system, the community and the teaching profession as a whole. Rutherford (2009: 188) found that it is important to gain insight into how to create environments conducive to learning and teaching because of the insecurities and stress experienced by many educators.

1.2 Problem statement and literature overview

There are a multitude of policies, strategies and programmes directed at the rendering of effective service to the citizens of South Africa by public service managers. Chikamhi (2006: 2) is of the opinion that educator conduct during both official and unofficial times has to be appropriate, and that professional standards as well as the general value of education will likely be lowered by educator misconduct. Jewkes (2002:15) found that serious misconduct such as sexual abuse of learners, fraud, truancy, theft and dealing in drugs, does exist in public schools. However, in spite of the pursuit of effectiveness and the condemning of unethical behaviour by public service managers, scandals still occur and allegations are still made (Lues, 2007: 219).

Following a series of reported incidents regarding educator misconduct, amendments to education legislation in 2000, and the Employment of Educators Act 76 of 1998 in particular, included some radical changes and additions (Rossouw, 2010: 169).

According to Mbonambi (2002: 12) attention is being focussed on the educators' professional conduct and imposing discipline on an educator should he or she commit any transgression that is harmful to the employer-employee relationship.

One demand of contemporary employment is the creation of safe working environments (Rutherford, 2009: 19). Safety and security in schools is a non-debatable absolute for the future of our children and our nation (Alston, 2005: 11). Rossouw and Van Vollenhoven (2011: 43) argue that, in order to be able to serve the best interests of the child, as contemplated in section 28(2) of the SA Constitution 108 of 1996, educators must feel secure in the workplace – physically, as well as psychologically. The experience of workplace security is seen as a prerequisite for work fulfilment which, in turn, will lead to serving the best interests of the child and effective teaching (Rossouw & Van Vollenhoven, 2011: 43). Hall (*in* Keating, 2011: 5) states that educator security is a vital consideration because possible insecurity may be an important inducement for educators to seek alternative opportunities.

1.2.1 International occurrence of educator discipline.

The decline of discipline and the occurrence of educator misconduct is not unique to South Africa, but is a world-wide phenomenon (Skiba, 2000:335; Anon, 2011:1; Martin, 2005: 20; Say, 2010: 1; Botha, 2006: 341). According to Say (2010: 1) it is compulsory to report educator misconduct in Pennsylvania, and the school principal or his delegate has to do it. Educators are treated as ordinary government employees in Zimbabwe, and no distinction is made between serious and less serious misconduct (Martin, 2005: 36). Education is, however, treated as a separate sector in Botswana and serious misconduct is distinguished from less serious misconduct. Misconduct is very extensive in Botswana, though, and perpetrators may not be assisted by their Union representatives (Martin, 2005: 51). Anangisye and Barrett (2006: 5) state that concerns have repeatedly been raised regarding the prevalence of misconduct amongst teachers in Tanzania, but that few studies investigating misconduct have been done. The Division of Legal Services of the Kentucky Education Professional Standards Board (2012:1) opens approximately 300 cases of educator misconduct annually. The Florida Department of Education (2012: 2) states that all employees and agents of a district school board, charter school or private school have a duty to report misconduct and even has an online

form available to report misconduct by an educator. It can be downloaded on the website. According to Chikamhi (2006: 2) the shortage of teachers in Namibia is compounded by the sizeable number of educators leaving the fraternity due to dismissal after misconduct.

1.2.2 Educator misconduct in South Africa.

Rossouw (2001: 124) states that the incidence of serious and less serious misconduct among teaching staff in South Africa is increasing alarmingly. Official SACE statistics reveal that a total of 155 cases of educator misconduct were reported in 2005, of which 76 were not within their jurisdiction, 58 were still pending, and only 21 cases were finalised. For the first six months of 2006 only, 100 cases were reported of which 25 were not within their jurisdiction, 70 were still pending and only 5 have been brought to a close (Kikine, 2009: 10).

According to Olivier (2009: 8) a total of 261 cases, of which 27 were for sexual offences, were reported to SACE during 2008. The number of misconduct cases, unfortunately, has not decreased and according to Moroasui (2010: 20) a total of 413 misconduct cases were reported to SACE for 2009. A total of 440 cases were reported to SACE between April 2010 and March 2011 (Kgosana, 2011: 4). When considering that 382 133 educators were employed in 25 850 schools during the 2005 snap survey (Mda & Erasmus, 2008: 23), it is clear that the incidence of misconduct is still increasing.

Even though sexual misconduct is not the only kind of educator misconduct, it is extensively covered in the printed media as is apparent from the following newspaper headings:

- “Teacher sex and assault shocking” (Kgosana, 2011: 4).
- “Teacher fingered for rape leaves school” (Molema, 2007: 7)
- “School’s out for six tutors: Eastern Cape suspends randy educators for sexual encounters with pupils” (Zuzile, 2005: 7)
- “Sexual abuse rampant at rural schools” (Khoza & Masinga, 2010)

- “11 teachers struck off the roll” (Sapa, 2002)

Educator misconduct has also given rise to several court cases:

- In 2005, in *Phenithi v Minister of Education and others*, the educator was found guilty of misconduct after being absent from the school without permission.
- In 2004, in *Van der Walt and others v MEC for Education, Gauteng and others*, the accused was found guilty of misconduct after receiving compensation for work done during school hours.
- In 2007, in *NEHAWU obo Matsha v Dept of Social Services*, Matsha was found guilty of statutory rape.
- In 2003, in *Despatch High School v The Head of the Department of Education, Eastern Cape and others*, disciplinary proceedings were instituted against the school principal for the alleged theft of a cellular phone from a learner.
- In 1993, in *S v Mohlakane*, an educator was sentenced to 18 months’ imprisonment because he molested a female learner under the pretence of giving extra lessons to enable her to pass her exams.

Botha (2004: 39) declares that education systems globally, including the South African education system, are implementing radical changes to adapt to a changing world. The conduct of South African educators is regulated by the Employment of Educators’ Act, 76 of 1998 (SA, 1998), as well as the South African Council for Educators Act 31 of 2000 and the SACE Code of Professional Ethics. At public schools, principals, as fellow employees, act as the representatives of the employer (the HOD of the provincial education department) when disciplinary matters occur (Rossouw & De Waal, 2004: 284). According to Rossouw and De Waal (2004: 284), principals are ‘quasi-employers’ who have been allowed a certain amount of discretion as an indication of the decentralisation of decision making in disciplinary matters.

The workload of the principal is becoming more and more unmanageable, and many principals (especially in secondary schools) lack the time for and an understanding of their leadership task. During the 1980’s school principals were encouraged

specifically to be instructional leaders involved in the direct supervision of the educational process to ensure that their schools remained focused on learning and teaching (Botha, 2004: 240; Botha, 2006: 341). In the new dispensation, however, the customary role of the principal has changed because decision-making is shared among the stakeholders (Botha, 2006: 341). Botha also remarks that principals are required to exercise authority and display competent leadership abilities.

Mothemane (2003: 17) declares that most cases of misconduct remain unresolved due to the principals' lack of knowledge, and that the procedural and documentation requirements are not met in most cases. According to Smit (2009: 432) research has revealed that senior education officials, school principals and School Governing Body chairpersons only have superficial knowledge concerning participatory democracy and Education Law. This lack of knowledge intensifies the challenges to administrate, manage and govern schools (Smit, 2009: 433). Grobler, Bisschoff and Beeka (2012: 41) are, however, of the opinion that little or no training has been provided to school principals to assist them in order to "deliver service to their clients", and that there is no empirical model in South Africa that can serve as a guide to principals regarding collaborative forms of leadership.

During his study, Teleki (2002: 1) found that the management and leadership of school principals in a given situation are influenced by the following: unionism, the legacy of the political struggle, lax and laissez-faire conduct, misconduct and pressure from the education authorities. Smit (2009: 434) supports this view and adds that black communities were not politically demobilised after 1994 and that many of the schools, especially dysfunctional schools, are extremely politicised. Mbonambi (2002: 3) suggests that the crisis in township education may have its origins in the popular struggle against apartheid education in the 1980's, but affirms that the struggle for political freedom is now over and it is time educators took responsibility for their behaviour and actions.

According to Oosthuizen, Roux and Van der Walt (2003:387) there is a persistent lack of order and discipline in South African schools as a result of the period of civil disobedience associated with the political struggle for freedom and democracy. A lack of discipline and the poor work ethic of educators have been cited by Nxumalo *in* Mbonambi (2002: 1) as some of the reasons why schools are ineffective in providing

quality education. Examples of unprofessional conduct by educators include being unprepared or ill-prepared for lessons, neglecting the teaching of learners while furthering their own studies, being absent without reason, not coming to class, alcohol abuse and engaging in sexual intercourse with school girls (Van Wyk, 2001: 199). According to Mothemane (2003: 13) the misconduct of educators is a matter of serious concern and seems to be one of the causes of the decline in standard of education. This lack of discipline occurs amongst learners as well as educators, and is a prominent factor contributing to educator insecurity (Keating, 2011:2).

Anthropologically considered, the feeling of insecurity is a psychological-ethical phenomenon because it concerns relationships (Oosthuizen, Mentz & Van der Walt, 2002: 30). Oosthuizen, Mentz and Van der Walt (2002: 30) also point out that education is one of the community contexts where members may experience security or insecurity and they identify a number of instances where an educator will experience security. These instances include being appointed in a permanent post with adequate remuneration to fulfil all obligations; a stable, constant education system established by the political dispensation; clear performance guidelines which are provided, thereby eliminating uncertainty concerning expectations, and experiencing the support and loyalty of colleagues (Oosthuizen, Mentz & Van der Walt, 2002: 31).

De Wet (2002: 233 – 234) cites job security, protection against unfair labour practices and protection against intimidation from principals as some of the reasons given by educators for joining trade unions. In the same way that learners have to experience safety and security, emphasis also has to be placed on the safety and security of teachers (Doubell, 2012: 19). According to Doubell (2012: 19), this security encompasses physical as well as psychological security and will also include the security that adequate legal knowledge and the correct application of legal principles can generate.

Hanson (2003: 19) identifies a hierarchy of five basic needs in every human being. One of these needs is the need for security – humans need to be free from fear, danger and loss. According to Domingo (2007: 18) this need for security, as far as teachers are concerned, implies that the school principal is compelled to see to it that educators teach in a workplace free from dangers. The educator has to have the

assurance of adequate physical and psychological protection to prevent work frustration. Educators that feel safe and secure will learn to take risks to succeed, creating a positive school climate, conducive to learning (Domingo, 2007: 18).

1.3 Conceptual framework

- Educator misconduct: Section 18(1) of the Employment of Educators Act 76 of 1998 (SA, 1998) defines educator misconduct as any act by an employee which makes the employer-employee work relationship intolerable and unworkable. It is also the violation of the SACE Code of Ethics for Educators.
- Educator security: The Collins English Dictionary (2003) as well as the Oxford Dictionaries (2010) describe *security* as freedom from doubt, anxiety or fear; something that gives or assures safety, like measures adopted by a government to prevent espionage, sabotage or attack. The term security, therefore, does not only refer to the physical well-being of a person, but also the psychological well-being. Kirsten and Viljoen (2004:18) state that well-being includes optimal states in which individuals are physically, psychologically and spiritually in harmony with their environment to actualise their potential. For the purpose of this study, educator security refers to both the physical and psychological security of educators in their work environment.
- Educator: In this research the term *educator*, as contemplated in the SA Schools Act (SA, 1996), will apply to all those persons who teach or educate other persons or who provide professional education services. The term includes educators in the classroom, heads of departments, deputy principals and principals.
- Education Law: Oosthuizen (2009: 24) describes Education Law as the discipline which provides the security (German: *geborgenheit*) of lawfulness within which educational teaching can take place in an orderly, systematic and harmonious manner to all stakeholders in education. For this research project, Education Law will be considered as such.

1.4 Rationale and significance.

1.4.1 Problems related to practice

As shown in the above brief literature overview, a number of problems related to education as praxis do exist in South African education:

- A high frequency of educator misconduct does exist in public schools, including serious misconduct such as sexual abuse of learners, fraud, truancy, theft and dealing in drugs (Jewkes, 2002: 15).
- Educator misconduct is seriously hampering the culture of learning and teaching, manifesting in poor results (Van Wyk, 2001: 195).
- Levels of knowledge among principals and senior education officials are low, which intensifies challenges to govern schools (Smit, 2009: 439).
- The absence of a model to guide principals regarding collaborative leadership may hamper their service delivery (Grobler, Bisschoff & Beeka, 2012: 41).
- Educator misconduct is a factor contributing to educator insecurity (Rutherford, 2009: 16).

1.4.2 Lacunae in the literature:

From the above overview it is clear that literature concerning educator misconduct does exist, and literature regarding educator security is also available, albeit to a lesser extent. In the available literature, the specific influence of educator misconduct on the security of their fellow educators is only mentioned in passing. This study will, thus, contribute to eradicate the existing gap in the literature.

1.5 Research questions

The central research question for this study is: What is the nature of the influence of misconduct by fellow employees on the security of educators? An attempt [has been](#) made to answer the following specific research questions

- i) What is the nature and extent of misconduct by educators?

ii) What is the nature, extent and possible reasons for insecurity among educators?

iii) In what manner does the law apply to educator misconduct and security of educators?

iv) What are the factors influencing the application of legal measures?

1.6 Research objectives

The central attempt for this research has been to determine what the nature of the influence of misconduct by fellow employees on the security of educators is. It also attempted to determine

i) what the nature and extent of misconduct by educators is;

ii) what the nature, extent and possible reasons for insecurity among educators are;

iii) how the law applies to educator misconduct and the security of educators;

iv) what the factors influencing the application of legal measures are.

1.7 Research design

Creswell (2009: 3) refers to research design as the plan or proposal to conduct research. A research design states what type of study will be undertaken in order to provide acceptable answers to the research problem or question (Mouton, 2009: 49). Creswell (2009: 3) advances three types of research designs, namely qualitative, quantitative and mixed methods. Qualitative research is an umbrella term for a range of qualitative strands that have developed over the years (Nieuwenhuis, 2010: 47). The distinction between qualitative and quantitative research is often framed as using words (qualitative) rather than numbers (quantitative), or using closed-ended questions (quantitative hypotheses) rather than open-ended questions (qualitative interview questions). Mixed methods research is an approach that combines both qualitative and quantitative forms (Creswell, 2009: 4)

In order to give a true reflection of the reality of educator misconduct and the effect it has on educator security in the Maquassi Hills area, qualitative research was done. The motivation for selecting qualitative research for this research is to help me

understand the phenomenon that I study, and the social and cultural contexts within which the participants live (Myers: 2004).

1.8 Research paradigm and methodology

According to Nieuwenhuis (2010: 47) a paradigm is a set of beliefs about reality which gives rise to a particular world-view and serves as the lens or organising principles by which reality is interpreted. Interpretivism is such a paradigm, and is a philosophical theory of meaning, understanding and literary interpretation (Nieuwenhuis, 2010: 58). The ultimate aim of interpretivistic research is to offer a perspective of a situation, analyse it and provide insight into the way in which a particular group of people make sense of their situation or the phenomena they encounter (Nieuwenhuis, 2010: 60). The phenomenological approach to doing the research will allow research on a specific phenomenon, which, for the purpose of this study, is educator security and educator misconduct.

According to Leedy and Ormrod (2005: 139) a phenomenological study is one that attempts to understand people's perceptions, perspectives and understandings of a particular situation. Leedy and Ormrod (2005: 139) state that phenomenological researchers depend almost exclusively on lengthy interviews with a carefully selected sample of participants. The researcher listens closely as the participants describe their everyday experiences related to the phenomenon and must be alert to subtle, yet meaningful cues in every participant's expressions, questions and occasional side-tracks. A typical interview looks more like an informal conversation, with the participant doing most of the talking and the researcher doing most of the listening (Leedy & Ormrod, 2005: 139).

In order to give a true reflection of the reality of educator misconduct and the effect it has on educator security in the Maquassi Hills area, qualitative research has been done. Qualitative research is an umbrella term for a range of qualitative strands that have developed over the years (Nieuwenhuis, 2010: 47). For this research, qualitative research has been done from the interpretivistic perspective with a phenomenological approach.

Scholars in leadership, looking to answer questions about meaning and culture have found experimental and quantitative methods on their own insufficient for explaining

the phenomenon they were researching. As a result, qualitative research has gained momentum as a mode of inquiry (Ospina, 2004).

The primary purpose of qualitative research, according to Borg and Gall *in* Chikamhi (2006: 5), is to understand the facts that form the basis of a certain phenomenon. This research will be an investigation into educator misconduct and educator security, which is a component of the broader social science field of education. Myers (2004) states that qualitative research involves the use of qualitative data, such as interviews, documents, and participant observation data, to understand and explain social phenomena. The motivation for doing qualitative research is to help researchers understand people and the social and cultural contexts within which they live (Myers 2004). This research aims to provide insight into the phenomenon of educator misconduct and the effect it has on the fellow educators.

Woods (2006) states that the commonality amongst the approaches to qualitative research is a focus on natural settings and an interest in meanings, perspectives and understandings. Woods (2006) also stresses that the qualitative researcher does not set up artificial experiments, but makes as few assumptions in advance as possible and needs to develop a certain rapport with the participants to win their trust. The qualitative researcher seeks to discover the meanings that participants attach to their behaviour, how they interpret situations, and what their perspectives are on particular issues (Woods, 2006).

The advantages of qualitative research, highlighted by Henning (2004: 34 – 41), are that the researcher gains an in-depth understanding of the situation and meaning for those involved, and the lived experience and deeply held beliefs or feelings can truly be determined. Qualitative research has been chosen because it allows, through interviews, people who are involved in school situations to talk about their experiences and perceptions on educator misconduct, what influence it has on their security and the role of the school principal in the prevalence of educator misconduct. It will also enable the researcher to answer questions regarding the complex nature of educator misconduct and educator security as well as its legal determinants, to understand insecurity and stress from the educators' point of view and to describe these phenomena in order to establish the effect that educator misconduct has on educator security.

1.9 Research Methods

To ensure that the research objectives are reached, a literature study as well as empirical research have been undertaken.

1.9.1 Literature study

Creswell (2009: 25) states that a literature review shares with the reader the results of other, similar studies and it relates a study to the larger, on-going dialogue in the literature, filling in gaps and extending prior studies. A literature study also provides a framework for establishing the importance of the study, as well as a benchmark for comparing the results with other findings (Creswell, 2009: 25).

The literature study for this proposed research aims to establish the nature of educator misconduct and what effect this misconduct has on education and fellow educators. In addition, the sources of law, which include statutory law, common law and case law have been analysed as part of the literature study in order to establish the legal norms, to determine the correct and lawful procedure and approach in addressing educator misconduct and to glean the most recently established legal principles as determined by the courts in reported judgments and case law. Roos and Oosthuizen (2009: 128) explain that recorded law reports contain the particular facts of each case, the proceedings of the cases, the reasons for each particular judgment and the legal principles that apply to the legal questions of cases. Under certain circumstances, in terms of the precedent system of South African Law, the decisions in High Courts and superior court judgments are applicable to later judgments. Appropriate cases have been identified and analysed to determine how educator misconduct was dealt with and sanctioned.

Recent national as well as international journal- and conference articles, books and dissertations have been consulted to compare the nature, extent and measures dealing with educator misconduct in South Africa in comparison with other countries that experience similar challenges. In order to find the relevant literature applicable computer searches in databases such as EBSCO Host, Academic Search Premier, Sabinet, Juta Law Reports and Lexis-Nexis Law Reports have been undertaken by using key words like 'educator', 'misconduct', 'principal', 'discipline', 'conduct', 'legislation' and 'disclosure'.

1.9.2 Empirical research

Empirical research was undertaken to provide insight into the phenomenon of educator misconduct and the effect it has on fellow educators.

1.9.2.1 Study population and sampling

The study population comprises of all the educators and principals of all the primary and secondary schools in the Maquassi Hills Area. The Maquassi Hills area includes three towns, namely Ottosdal, Wolmaransstad and Sannieshof, in which there are two Afrikaans and 13 English secondary schools, three Afrikaans and 35 English primary schools and 998 teachers in total (Engelbrecht, 2012).

After consultation with the North West Department of Education, participants from five primary and five secondary schools were purposefully selected to reflect on the effect that educator misconduct had on their security. The most important selection criteria for selecting these schools were:

- Existing or previously reported incidences of educator misconduct. Schools where no incidences of educator misconduct have been reported were not considered since participants were required to have been affected by the misconduct of fellow educators.
- Accessibility. Because farm schools are usually more difficult to reach, they are less likely to be selected than township schools.

The only selection criterion for educators was experience: In the selected schools, the more experienced educators were preferred to educators who are less experienced in order to gain as much qualitative data as possible.

Factors like language of instruction, quintile, school size and whether the school is a public or private school, were not considered as primary selection criteria for the purposeful sample. A variety was nevertheless included to enhance my understanding of the phenomenon.

According to Maree and Pietersen (2010:90-91) purposeful sampling aims to identify and select members that represent the target population, bearing in mind factors such as homogeneity/heterogeneity, age and gender, race and class, socio-

economic status, literacy level and demographics. In purposefully selecting the participants, the aim was to seek alternative perspectives from participants that were most likely to provide qualitative data that is rich, profound and addresses the pertinent issues. In order to establish whether educator misconduct affected fellow educators on all levels, and whether the perceptions of insecurity experienced in primary and secondary schools were similar, a total of 20 educators from different post levels, as well as two departmental officials were selected. Being an educator in the area myself, I selected participants known to me and whom I knew would provide valuable data.

Table 1.1 Participant selection

	Primary	Secondary
Post Level 1	4	4
Post Level 2	2	2
Post level 3	2	2
Post level 4	2	2
Departmental Officials	2	

1.9.2.2 *Measuring instruments*

Qualitative data was gathered through personal interviews with the participants. Because participants were asked to describe their experience of a certain phenomenon, for instance how educator misconduct affected their security, phenomenological research was done.

See addendum D for the interview schedule utilised during the interviews.

1.9.2.3 *Methods of data collection*

Interviews are methods of gathering information from participants through oral quizzes, using a set of pre-planned core questions (Thomas, 2010: 314). Depending on the need and design, interviews can be unstructured, structured and semi-structured for individuals, or they may be focus group interviews (Thomas, 2010: 314). Thomas also explains that semi-structured interviews have features of both structured and unstructured interviews, with the advantage that it may generate rich data, information and ideas, and can easily be standardised because the same questions are asked to all the participants. According to Thomas (2010: 315) this

ensures that the interviewer is consistent with all participants and that the same areas are covered by each interviewee.

For this research, data was generated by means of face-to-face interviews with educators. The participants were informed of the time of and venue for their individual interviews. A semi-structured interview schedule was developed to guide the interviews, and was based on the findings of the literature study. The interviews were recorded and the confidentiality of the results and interviews were emphasised. Addendum D contains the questions posed during the interviews, which was designed to gain information regarding the main stressors experienced by participants, their attitude towards these stressors and their ability to cope with the psychological insecurity caused by change, indiscipline, workload, violence, management style and a negative classroom climate. Other questions dealt with the extent to which legislation protects educators from psychological insecurity.

1.9.2.4 Data analysis

The method of analysis and evaluation of the qualitative data was largely interpretative (Leedy & Ormrod, 2005: 150). After transcribing and typing the interviews, the data was categorised into general categories and themes. The process of data analysis began with the categorisation and organisation of data in search of patterns, critical themes and meanings that emerged from the data (Thomas, 2010: 317). Leedy and Ormrod (2005: 140) explain that the central task during data analysis is to identify common themes in the participants' description of their experiences of the phenomenon. Common themes were noted by means of a system of open, selective and axial coding (Merriam, 2009). Statements relating to the topic of educator misconduct and educator security were identified and categorised into meaningful units. Divergent perspectives were identified in order to document the different experiences regarding the phenomenon of educator misconduct and educator security.

The meaning of these findings were evaluated and synthesised into units portraying educator misconduct and its effect on educator security (Leedy & Ormrod, 2005: 150) Ultimately, all the findings were synthesised into conclusions and recommendations about educator misconduct and educator security.

See Figures 4.1 and 4.2 for diagrammatic representations of the analysis process.

1.9.2.5 Trustworthiness

Reliability indicates that results remain similar (consistent), even when they are obtained on different occasions or by different forms of the same assessment or measuring mechanism (Maree & Van der Westhuizen, 2010: 37). Maree and Pietersen (2010: 147) explain that reliability has to do with the consistency of a measure, and is obtained when the measure gives the same results if the research is repeated over the same sample. If a measure or instrument measures what it is supposed to measure, it is valid (Maree & Pietersen, 2010: 147). For quantitative research, validity and reliability are crucial aspects, specifically as far as research instruments are concerned, but when qualitative researchers speak of research reliability and validity, they are usually referring to research that is credible and trustworthy (Nieuwenhuis, 2010: 80).

Maree and Van der Westhuizen (2010: 38) list six different strategies in which internal validity may be ensured for qualitative studies, namely long term observation, peer examination, crystallisation, member checks, collaborative research and clearing researcher bias. Trustworthiness for this study will be ensured by clearing researcher bias by clarifying the researcher's theoretical orientation, assumptions and views before starting the research.

1.9.2.6 Researcher's role

According to Maree and Van der Westhuizen (2010: 41) the researcher's main aim should be the entering into a collaborative partnership with the participants in order to collect and analyse data and create understanding. For the collection of the qualitative data, with the cooperation of the North-West Department of Education, I was responsible for the identification of suitable participants, as well as finding a suitable location in which to conduct the interviews. I was also responsible for the conduction, recording and transcription of the interviews, as well as the analysis and synthesis of the collected information. In such a way I became a measurement instrument myself.

1.9.2.7 Ethical aspects of the research

Confidentiality of the results and findings of the research, as well as the protection of the participants' identities by obtaining letters of consent and permission to be interviewed, are essential ethical aspects (Maree & Van der Westhuizen, 2010: 41). Maree and Van der Westhuizen also stress the importance of researchers familiarising themselves with the ethics policy of the particular institution.

Before the commencement of the research, I applied to the Research Ethics Committee of the North West University in writing for approval to engage in empirical research with human subjects. Approval was granted and an ethics certificate was subsequently issued. (See page vi).

Permission for interviews with educators was obtained from each educator (see Addendum E) and, where applicable, from the principals of the identified schools. Permission was also obtained from the North-West Department of Basic Education (see Addendum B) for research in the selected schools.

I conducted interviews with participants in a private, comfortable environment in a relaxed atmosphere. Participants were assured of the confidentiality of the interviews and the results. They were informed that the data gathered would be interpreted without revealing the names of participants or schools. I also informed participants that they may withdraw from the research at any stage.

I used a cellular phone to record the interviews, after participants had granted their permission for recordings to be done. These recordings were transferred onto a USB device. Verbatim transcriptions of the recordings were made by myself, and electronically mailed to each particular participant to verify the correctness of the transcripts. The USB device was safely stored in my residence and I am the only one who will have access to the USB device. The identities of the participants are known to me, but were not be mentioned anywhere in the transcriptions, as pseudonyms were used.

1.10 Anticipated problems

A possible limitation that was foreseen, was that participants might not have been willing to speak freely about the misconduct of the fellow educators because it is a

sensitive topic. Participants might have feared victimisation in the case of transgressors finding out that condemning information was given to me. I therefore handled the situation sensitively, for instance by assuring them of the anonymity of their contribution, thus gaining the confidence and cooperation of the participants.

1.11 Contribution of study

This study contributes to the understanding of the legal rights of educators to a physically as well as psychologically safe working environment. It also deepens the understanding of educators' perceptions regarding the negative impact that educator misconduct has on fellow educators. The investigation into the management of educator misconduct highlights implications for school management, and points out whether the employer would benefit from implementing support programmes for educators affected by fellow educators' misconduct.

This study falls within the NRF funded research project under the title *Educator security and educator rights*. This project forms part of the Edu-HRight research unit of the Faculty of Education Sciences of the North-West University.

1.12 Chapter division

Chapter One

Introduction, problem statement, objectives and research design

This chapter includes the problem statement and aims of the research. The description of the research paradigm and methods and a clarification of the concepts and terms also form part of this chapter.

Chapter Two

Legal determinants for educator misconduct and educator security

This chapter includes an analysis of the Constitution, general legislation and other education law determinants that impact on educator conduct as well as on safety and security in the school environment as workplace. This analysis includes an analysis of South African and international sources and covers descriptions of educator misconduct and the current regulatory legislation, a description of safe work

environments and the rights of educators in this regard, as well as relevant court cases and possible lacunae in legislation, and other related discussions. It also deals with the physical and psychological effects that educator misconduct has on fellow educators' security.

Chapter Three

The nature, frequency and handling of educator misconduct and its effect on educator security.

Based on literature research, the general nature of educator misconduct is stated, and an investigation into possible causes for educator misconduct is lodged. A distinction, if any, is made between the frequency of misconduct between male and female educators. General methods that principals apply to handle educator misconduct, based on literature study, are stated.

The effects of educator misconduct are discussed, specifically concerning the effect that educator misconduct has on educator security. Attention is also given to the effect that educator misconduct has on learners and the community.

Chapter Four

Research design and data analysis.

The design of the empirical investigation, including the selection of participants, the collection of data and the data analysis, form a prominent part of this chapter.

Chapter Five

Findings of empirical research, conclusions and recommendations.

In this chapter the findings of the empirical research are reported. These findings were categorised into themes and categories. The conclusions to which I was led during the literature study as well as the empirical research, are stated in this chapter. I made recommendations based on the conclusions. .

1.13 Conclusion

In this chapter, the problem was stated and the research design was briefly discussed. In the following chapter legal determinants for educator misconduct and educator security are examined.

2 CHAPTER 2: LEGAL DETERMINANTS FOR EDUCATOR MISCONDUCT AND EDUCATOR SECURITY

2.1 Introduction

Since 1994, South Africa's new political dispensation has led to many disruptions in the education system (Oosthuizen, Mentz & Van der Walt, 2002: 27). The effects of this disruption also affected teachers, and many of them manifest symptoms of insecure behaviour, resulting in their inability to add pedagogical value to their teaching efforts (Oosthuizen *et al.*, 2002: 27). This statement is supported by Rossouw (2003: 413) who states that "if disruptive behaviour prevails, education cannot be successful". According to Roos, Oosthuizen and Smit (2009: 104) education is dependent on legal order to function optimally, and it is imperative that educators comprehend and evaluate their position in terms of applicable legislation to attain legal order in education. Legislation applicable to labour issues is referred to as labour law. Rossouw (2010: 1) states that labour law is a complex field of study that has developed very rapidly during the 1990's and it has largely been rewritten after 1996 to comply with the human rights culture. Van Jaarsveld and Van Eck (as quoted by Rossouw, 2004:2) define labour law as a set of objective law principles that regulate the juridical relationship between employer and employee on individual as well as collective levels.

Labour law recognises two types of relations: individuals (employers and employees) involved in a labour relationship, and collective relationships, i.e. employers' organisations and trade unions (Rossouw, 2010: 1). In education, the relationships are usually those between the Department of Education as employer, and teachers as employees.

One of the aims of labour law in education is the creation of security that will protect all stakeholders (Oosthuizen, 2009:9). Oosthuizen, Mentz and Van der Walt (2002: 29) state that educators have experienced feelings of insecurity since the new political dispensation has been, since 1994, characterised by instability, disruption and change in education. According to Chikamhi (2006:9) problems regarding labour relations may create a lack of security, which may lead to the under-development of

learners' personal achievements and welfare. A source of insecurity identified by Jewkes (2002:15) is misconduct by educators. In the same manner that learners have to be safe and secure, teachers also have to be safe and secure (Doubell, 2012: 19). This security encompasses the psychological as well as the physical security of the teacher, and the security ensured by sound juridical knowledge as well as the correct application of law principles is also added in this study.

In order to specifically identify and discipline educator misconduct, it is important to have relevant legislation and codes of conduct in place. The sources of education legislation, with specific reference to labour relations in education, are discussed in this chapter. Legislation, common law and case law are taken as the determinants of educator misconduct and educator security.

2.2 Determinants of educator security and educator misconduct

The relationship between employer and employee, or groups of each, is referred to labour relations (Rossouw, 2004: 2), but it has to be acknowledged that labour relations in education are different from those in most other workplaces because educators in the same school may have different employers (Rossouw, 2004, 29). The employment and practice of all educators are, however, subjected to the rule of law (Taunyane, 2006: 20).

2.2.1 Legislation

In this section the most relevant legal determinants, with an emphasis on legal determinants applicable to educators, educator misconduct and educator security, will be discussed.

2.2.1.1 *The South African Constitution Act 108 of 1996*

According to Joubert and Prinsloo (2001: 15) a constitution is a '*blueprint for running a country*', a document that promotes the protection and rights of a country's citizens. Some of the stipulations are designed to correlate with international legislation – legislation that regulates the relations between countries (Joubert & Prinsloo, 2001: 32).

In section 2 of the Constitution (SA, 1996) it is categorically stated that the 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 preamble of the Constitution commits South Africa to the creation of a community based on democratic values, social justice and fundamental human rights (Smit, 2009: 21). Malherbe (2004: 875) states that every person is entitled to, but also bound by the rights guaranteed in the Bill of Rights. This means that all people have rights as well as duties under the Bill of Rights – insofar as an individual is entitled to a right, everyone else has a duty to respect that right. Because of the emphasis placed on rights denied during apartheid, the misconception that people only enjoy rights and have no obligations under the democratic Constitution, exists (Malherbe, 2004, 875). Malherbe (2004: 875) points out that this erroneous notion was compounded by the perception that only learners have rights, and that educators are more or less right-less. He explains that the rights in the Constitution are applicable to “every person” – with no distinction in principle between educators and learners as bearers of rights – and, in order to make rights meaningful, others are automatically bound to respect these rights.

Although the Constitution does not directly address educator misconduct (Chikamhi, 2006: 13), a number of fundamental rights enshrined in the Bill of Rights, chapter 2 of the Constitution, have implications for labour relations (Rossouw, 2004: 13). The first implication for the school as public institution is that the Bill of Rights not only commits the government and its institutions to it, but also positively compels the state to promote and execute it (Roos, 2009: 506). According to Roos (2009: 506) it comprises of the proactive endeavours of government institutions to fulfil all fundamental rights – those of learners as well as those of educators. Roos (2003: 507) also states that the Bill of Rights is applicable not only vertically between a teacher and the school or state, but also horizontally between educators. When one person’s rights infringe upon the rights of another person, each case will be judged individually because there is no single test that can be applied to determine whose rights weigh the most (Roos, 2003: 507).

Rossouw (2009: 246 – 249), Malherbe (2004: 882 – 906) and Oosthuizen, Roos, Smit and Rossouw (2009: 31 – 56) high-light and briefly discuss the following sections that are important to education labour relations:

- Section 9: Equality

This section aims to ensure that no-one is unfairly discriminated against, that people in the same position are treated the same; and that the equivalence of people is protected. This provision does not prohibit all discrimination, only unfair discrimination. The equality principle underpins other rights in that it guarantees the full and equal enjoyment of all other rights. The equality principle is closely linked to and supportive of other rights and impacts on education in different ways.

- Section 10: Human dignity

Aims to ensure that no-one's dignity is violated and that employers will prioritise the dignity of the employees. Human dignity is a critical and fragile component among the multitude of relationships in the educational environment, especially because so many vulnerable minors are involved.

- Section 12: Freedom and security of the person:

This principle provides for the right not to experience any violence and not to be punished in a degrading manner. Aspects of this right relevant to education are the total ban of corporal punishment and the responsibility of educational institutions to eliminate any initiation practises and ceremonies which may lead to abuse. Before corporal punishment was prohibited in terms of section 10 of the Schools Act (SA, 1996), reasonable, moderate corporal punishment was administered in South African schools as lawful means of disciplining children (Oosthuizen, Roos, Smit & Rossouw, 2009: 25). In the matter of *Christian Education South Africa v Minister of Education*, section 10 of the South African Schools Act was contested. Christian Education South Africa argued that the parents' right to religious freedom was infringed by section 10 of the Schools Act, thus rendering it unconstitutional. The unanimous opinion of the court, as expressed by Sachs J, was that the matter at issue was not so much whether the general prohibition on corporal punishment can be justified, but whether the impact of such a prohibition on the religious beliefs of the members of the appellant could be justified under the limitations test of section 36. The court

acknowledged that Christian parents sincerely believe that they are obliged by scriptural injunction to use corporal correction as integral part of the upbringing of their children. Yet, while the parents may no longer authorise teachers to apply corporal punishment pursuant to their beliefs, the Schools Act does not deprive them of their general right and capacity to bring up their children according to their Christian beliefs. The prohibition of corporal punishment is part and parcel of a national programme to transform the education system to bring it in line with the letter and spirit of the Constitution and to help diminish the amount of public and private violence in society. After applying the proportionality test, the court concluded that the Schools Act was not unconstitutional and that the limitation of the freedom of religion of the parents was justified in terms of section 36 of the Constitution (Smit, 2011: 239).

According to Naong (2007: 283) the abolishment of corporal punishment seems to have generally attributed to a sense of despair amongst teachers, because of a perception that discipline cannot be maintained without it. Cicognani (2004: 22), Naong (2007: 293), Kubeka (2004: 52) as well as Mentz, Wolhuter and Steyn (2003: 406) found that there are still reported cases of the use of corporal punishment since some educators believe that it has meritorious benefits.

By simply continuing to practise the use of corporal punishment teachers are guilty of committing misconduct. During 2005 a total of 620 teachers were reported for committing serious offences. Corporal punishment was one of the offences and a total of 269 were subsequently fired by the Department of Education (Naong, 2007: 283).

It should be noted that section 12 of the Constitution also includes the individual's right to psychological integrity. Empirical research done by Rutherford (2009: 148 – 162) lists learner and educator ill-discipline, work overload, different roles, overcrowded classrooms, cultural differences, parents, incessant changes, violence and bullying as reasons for educator insecurity. Psychological abuse violates educators' right to a safe working environment (Rossouw, 2010: 53).

- Section 14: Privacy

Section 14 makes provision for everyone's right to privacy and that their person or possessions may not merely be searched or seized. An invasion of someone's personal privacy, or a disclosure of private facts about a person would violate the right to privacy. In the educational environment, however, it can be expected that much more leeway will be tolerated as long as reasonable pedagogical considerations can be advanced, such as the protection of the educational process or the rights or safety of other learners.

- Section 15: Freedom of religion, belief and opinion

This principle provides for the right that every individual has the right to pursue the religion of his choice and that all religious exercises will receive equal amounts of time in schools and that the attendance thereof will be voluntary. South Africa is distinguished from the American position where all forms of religious observances have been banned from public institutions like schools. The traditional South African approach is rather that the state is actively involved in the creation of favourable conditions for the exercise of religious freedom without favouring a particular religion. The conditions under which religious observances may be conducted in schools are significant, because it prevents discrimination and protects those who belong to minority religions.

- Section 16: Freedom of expression

Freedom of expression states that everyone has the right to express himself freely. This includes the right to clothing and reading- and listening matter. The right to freedom of expression is closely involved in the education process which is all about expression and the conveying and receiving of information and ideas. This right is, however, not unlimited: vulgar words, insubordination and insults are not protected speech. When expression leads to the subversion of schools, this right may be limited because the subversion of schools is unacceptable.

- Section 17: Assembly, Picket and Demonstration;
Section 18: Freedom of association and
Section 23: Labour relations

Interpreted, these sections entail that everyone is free to enter into associations with other and assemble, demonstrate, picket and present petitions peacefully and unarmed. It also means that every worker has the right to join a trade union,

participate in its activities and join others in forming and expressing their views and pursuing common goals. Applied to education it means that educators are free to join any association, political parties included, unless it is biased against the educational process; and that educators have the right to join trade unions, participate in its activities and to strike. Deacon (2012) points out that, even though the right to strike is a constitutional right, it must be exercised in accordance with provisions in the Labour Relations Act. Section 69 of the Labour Relations Act 66 of 1995 (SA, 1995) seeks to give effect to the constitutional right enshrined in Section 17 of the Constitution (CCMA, 2013) and pertinently states that demonstrations have to be peaceful. Where gatherings are not peaceful, the trade unions that organised the gathering cannot rely on section 17 for protection, since they did not organise a peaceful event (De Vos, 2010). In the case of *South African Transport and Allied Workers' Union and another v Garvis and others* [2011] 12 BLLR 1151 (SCA), Hlope JP held that a march or demonstration that turns violent and leads to the wanton destruction of property is not protected by the right to peaceful assembly at all, and that no one has the right to organise a protest march knowing that it might become violent or that the members might go on a rampage.

Section 68 of the Labour Relations Act 66 of 1995 (SA, 1995) defines a strike as the partial or complete concerted refusal to work by employees for the purpose of remedying a grievance or resolving a dispute. Picketing is described as standing or parading near a business or government office usually with signs of protest or claims in labour disputes. Picketing is constitutionally guaranteed as free speech, but may be limited by a court order to prevent physical combat, threats to the public safety or blocking of entrances (Legal Dictionary, 2013). According to Deacon (2012) picketing is the visual part of protest action and is available to a union, in addition to a strike, in order to drum up public support and to exert pressure on the employer. Picketing may only take place if there is a set of rules to which the parties have agreed. These rules are to protect the school community and minimise the risks for educators (Deacon, 2012). Deacon (2012), however, questions the contribution of striking or picketing to the resolution of the dispute and points out that legislation regulating strikes does exist, but the application thereof is a problem.

Section 69 of the Labour Relations Act (SA, 1995) determines that an authorised picket may be held “(a) in any place to which the public has access, but outside the premises of the employer, or (b) with the permission of the employer, inside the employer’s premises”. The answer to who exactly educators’ employer is, is found in section 1(a) and 1(b) of the Employment of Educators Act 76 of 1998 (SA, 1998), which states that the employer for educators in the service of the Department of Education is the Director General, and the Head of the Department is the employer for educators in the service of the provincial department of education. It is important to note that the employer is not the principal of the school – the principal is merely the representative of the employer (Rossouw, 2001: 124; Deacon, 2012). Speaking from an education and ethics perspective, Deacon (2012) contends that educators should not be allowed to picket during school hours or on school grounds if the objective is to put pressure on the employer. The appropriate place to picket is outside the employer’s office – as determined in the Labour Relations Act – which would make the provincial or district offices of the Department of Education the appropriate place to picket, since the school principal is not the employer.

The damage is done during protest actions when learners are deprived of their rights to education. This holds grave consequences not only for the youth of our country, but the country as a whole (Deacon, 2012). Deacon (2012) points out that these educators who strike and commit misconduct, or who participate in any unlawful strike action, effectively sever themselves from constitutional protection and risk being disciplined and even dismissed. Provincial education departments, as employers, have the responsibility to apply discipline consistently.

The *Code of Good Practice on Picketing* provides practical guidance to those who may be organising or taking part in a picket in support of any protected strike or in opposition to any lock-out (CCMA, 2013). Important to note, are the prescriptions regarding conduct of union members during picketing. It is required of the trade union to appoint a union member or official as convenor to oversee the picket and notify the employer and the police of the intended picket in advance. Picket marshals, wearing arm bands to identify themselves as picket marshals, must also be appointed by the union. The picket may be held in any place to which the public has access, but it may not interfere with the constitutional rights of other persons.

Picketers may carry placards, chant slogans and sing and dance, but must conduct themselves in a peaceful, unarmed and lawful manner. Picketers may neither physically prevent anyone from gaining access to, or from leaving the premises, nor commit any action which may be unlawful or which may be perceived as violent. If the conduct of the employee taking part in a picket is of such a nature that it constitutes misconduct, the employer may take disciplinary action in accordance with the provisions in the LRA (CCMA, 2013).

Despite these clear guidelines, teachers display unethical conduct during strikes. Reports of intimidation and subversive conduct (Malala, 2007: 9), violent actions inflicted on other educators who did not want to take part in the strike (Khoabane, 2010: 2) and general conduct that left a lot to be desired (Cohen, 2010) regularly appear in the printed media during strike actions. It seems, thus, that union members are unaware of, or uninformed about, the stipulation that the employer might take action against them if their conduct during picketing constitutes misconduct, or they have become so used to the fact that the employer does not act against them in such instances, that they simply are not afraid to misbehave.

- Section 28: Children's rights

Children's rights based on the International Convention on the Rights of the Child (1989) are guaranteed. Every child – who is someone under the age of 18, according to the Constitution (SA, 1996) – has the right to a name, nationality from birth, appropriate care, basic nutrition, shelter, basic health care and social services as well as to be protected from maltreatment, neglect, abuse or degradation and exploitive labour practices. Children are protected against any form of abuse, including sexual abuse of any kind.

The common law principle that the best interest of the child is of paramount importance, has been included in section 28(2) as a basic constitutional right, and impacts on education concerning age limit on admission, appointment of teachers and teaching medium.

- Section 29: Education

Since education is a crucial means of realising other human rights and is a human right in itself, its value and necessity is beyond dispute – to such an extent that

everybody has the right to claim basic education from the state, in the official language of choice where practicable and equitable (Smit & Oosthuizen, 2011: 303 - 306). Basic education is defined by Smit and Oosthuizen (2011: 309) as education to learners to adequately equip them with the fundamental skills of functional literacy and numeracy, as well as an awareness and knowledge of economy, culture and politics.

Smit and Oosthuizen (2011: 309) state that The International Committee for Economic, Social and Cultural rights has accepted the so-called four A's as standard to measure the state's obligation to provide a basic education which is available, accessible, adaptable and acceptable. Available education means that the state should make functioning educational institutions and programmes available in sufficient quantities. Accessible education means that barriers that prevent access to education, like language and fees levied, should be removed, that the system is non-discriminatory and that positive steps are taken to include even the most marginalised (Arendse, 2011: 97). Smit and Oosthuizen (2011: 313) explain that adaptability in education requires that the curriculum and school environment must adapt to accommodate learners with different capabilities. This might be illustrated by the comprehensive National Curriculum and Assessment Policy Statement (CAPS) based on the enhancement and development of principles such as cooperation, critical thinking and social responsibility. CAPS aims to empower learners to be responsible citizens. **Acceptable** education is education that is closely linked to the aim and theory of education within a particular society – an outgrowth of the needs of the society in which it exists, no matter what type of society it is (Smit & Oosthuizen, 2011: 313).

According to Smit and Oosthuizen (2011: 314) the right to basic education includes a substantive right to basic education of adequate quality – and the quality of the quantitative faculties and literacy in particular is a worrisome factor. The inadequate quality is demonstrated by South Africa's weak performance on national and international tests like the *Progress in International Reading Literacy (PIRLS)* and the *Southern and Eastern Africa Consortium for Monitoring Education Quality (SAQMEQ)*. The state's failure to provide substantively adequate basic education is confirmed by the weak performance in these tests (Smit & Oosthuizen, 2011: 314).

The Department of Education, as quoted by Smit and Oosthuizen (2011: 316), acknowledges a number of key factors that contribute to the system failure, under which the lack of competence of school managers and governing bodies, poor teacher capability and commitment, and inadequate learning and teaching inputs. These are areas of grave concern, and the failure of the state departments to “assertively address the incompetence and lack of commitment of educators by disciplinary action or rigorous retraining is not excusable” (Smit and Oosthuizen, 2011: 316).

- Section 30: Language and culture

This section states the fact that everyone has the right to use a language of his own choice, as well as to take part in the cultural life of his choice. This right must be considered in conjunction with the prohibition of discrimination inter alia of language in section 9(3) and with the right to education in the language of one’s choice in section 29(2). However, the right in section 30 refers to the right of learners as well as educators in the official education environment to communicate for other purposes (e.g. on the playground or in the tea room) in another language than the language of instruction.

- Section 32: Access to information

This section provides for the right to access any information that the state has, and is an important right which will play a significant role in the further unfolding of the democratic state. It ensures that people are able to make informed choices, and that government power is exercised legitimately. Since educational institutions compile and control records and personal information, they are bound by section 32 of the Constitution to follow the conditions and procedures of the applicable education legislation to make information available when requested to. The Promotion of Access to Information Act of 2000 was adopted to give effect to section 32.

- Section 33: Just administrative action

Everyone has the right to reasonable, just and fair administrative action. If their labour – or human rights have been violated, employees may have the decision revisited by a court or independent tribunal. Administrative action can be described as any action in which rules of law are applied to an individual instance and include

all official actions performed by education departments, school governing bodies, principals and staff members.

Section 33 means that executive and administrative bodies may only perform actions that have been authorised by law, that these actions must be reasonable in terms of the provisions of the Constitution and such an action must be procedurally fair. Procedurally fair primarily means that the rules of natural justice must be followed in the performance of an administrative action. The rules of natural justice mean that the person affected by the action must be afforded the opportunity to state his / her case; all relevant facts that might be detrimental to the case, must be furnished; the body performing the action may not be prejudiced or biased and reasons for the action – written or public – must be provided. Since schools and other public educational institutions act in terms of the law, they are required to comply with these rules. The Promotion of Administrative Justice Act 3 of 2000 has been adopted to give further effect to section 33.

Administrative justice in terms of section 33 of the Constitution includes the requirement for open deliberation or meaningful discussion. This was not the case in *Beuvalton Secondary School and 36 others v Minister of Education for the Western Cape*, where 18 rural schools from economically deprived backgrounds were informed, by letters from the Western Cape Education Department, that they would be closed only two months after having received the letters. Although public hearings had been held with parents and School Governing Bodies for a period of five months prior to the issuing of the letters, neither the educators nor the union (SADTU) was involved. Only a month before the planned closure of the schools, the educators were informed that they were to be transferred to other schools. The educators were represented by SADTU, and brought an urgent application for review of the decision of the Western Cape Education Department before Desai J. They argued that the public hearings were not conducted fairly and that due consideration had not been given to the representations, as is required by section 33 of the Schools Act. They contended that the Western Cape Education Department merely listened passively to the community and then reported back to the Member of the Executive Council. Even though the Western Cape Education Department argued that they did not need to enter into a debate because the Schools Act only requires hearings, the

application for review was granted. The court found that the Western Cape Education Department did not give due consideration to the representations and that just complying with section 33 of the Schools Act was not sufficient – the requirements for administrative justice have to be complied with as well.

The implication for education is that administrative justice is also expected from employers. State organs – including the Department of Education – have to act administratively just, otherwise it might result in disconsolation.

- Section 36: Limitation of rights

No constitutional right is absolute, and all of them may be limited in the public interest, for a public purpose or to protect somebody else's rights. Article 36 is applied where individuals or groups experience a clash of interests and a decision has to be taken on whose interests weigh the most.

Of specific importance for this study, is article 12 of the Constitution, which enshrines the individual's right to freedom and security. Smit (2011: 162) states that one aspect of article 12 is that educators have the right to teach in an environment free from all forms of violence. Article 12 guarantees everyone's physical freedom and security, as well as other aspects for which specific provision is made (Rossouw, 2011: 35). It includes protection from violence as well as protection against being treated in a way that may be regarded as inhuman or degrading. Rutherford (2009: 22) points out that it is important to note that the right to security also includes the right to psychological integrity.

The fact that psychological integrity is mentioned pertinently is possibly a constitutional acknowledgement of the importance of psychological security which may be regarded as a prerequisite for job fulfilment (Rossouw, 2011: 35). Rutherford (2009: 21) stresses that educators are entitled to both physical and psychological security within their work environment and should receive ample protection in this regard. Rutherford (2009:24) reasons that the implications for education are enormous, because schools have to actively promote the principles of the Bill of Rights, and not only comply with it. She continues that this right, interpreted literally, indicates that the rights of educators as employers are infringed when their colleagues or employers humiliate or disregard them. Keating (2011: 14) stresses

that the need for educator security cannot be disputed and even correlates productivity to security.

2.2.1.2 *The Labour Relations Act 66 of 1995 (LRA)*

Rossouw (2009: 249) remarks that the fact that the LRA was promulgated before the Constitution is an indication of the importance of the new labour legislation. The LRA was designed to incorporate the basic provisioning measures – to determine the way the new democratic dispensation will become visible in the labour sphere. This act has since been revisited nearly annually, and serves as the most important point of reference for other labour statutes (Rossouw, 2009: 250).

The LRA aims to align labour relations between specific employers and employees in accordance with the Bill of Rights, and is a form of general legislation which provides the necessary security for educators who are not employed by the state but, for example, employed by the School Governing Body (Keating, 2011:27). Rossouw (2010: 35) explains that all legislation depends upon the Constitution, and the LRA provides set principles according to which the Employment of Educators Act and other education laws were written. De Waal *et al.*, as cited by Rossouw (2010: 35), state that the LRA was implemented primarily to ensure that the legislative framework pertaining to labour relations in the Bill of Rights was adhered to.

The purpose of the Act includes the regulation of trade unions' organisational rights, the facilitation and promotion of collective bargaining, the regulation of the right to strike and recourse to lock-out, promoting employee participation in decision making and providing procedures for the resolution of labour disputes (SA, 1995). The key principle is that employers and employees should treat one another with the necessary mutual respect (SA, 1995) vital to the promotion of human dignity.

The importance of sound labour relations in education, with regard to both collective labour relations as well as on the individual level, is highlighted by strike actions undertaken by trade unions (Rossouw, 2009: 276). A number of regulations pertaining to union activities in a workplace are grouped in Chapter III of the LRA (Rossouw, 2010: 101). Trade unions have the right to deduct member subscriptions from their salaries, and to be granted reasonable access to the premises and their members. Shop stewards represent the union in certain meetings, and have to be

allowed time off for report back and attending to member grievances. Shop stewards may also take reasonable leave during working hours for performing the functions of that office. Elected shop stewards are regarded as leaders among the staff and should not allow that his duties interfere with his primary task, that of education, but should rather actively develop the culture of teaching and learning at that specific school (Rossouw, 2010: 102).

Rossouw (2010: 104) observes that unions play an active role in the process of appointing educators at public schools to help ensure the fair treatment of their members. He points out that unions also have a certain duty towards their members to attend meetings held during the selection, short listing and interview process in order not to harm their members' careers or general interests. Unions also represent their members in cases of poor work performance or illness, as well as in disciplinary cases, as discussed in paragraphs 2.2.1.3.1 and 2.2.1.3.2. In matters of mutual interest to the employer as well as the employee, collective bargaining – to reach collective agreements – takes place (Rossouw, 2010: 105).

According to Keating (2011: 27) the establishment of certain agents of the state, such as the Department of Labour, the Labour Court and the Commission for Conciliation, Mediation and Arbitration would impact positively on educator security as educators know that, if necessary, efficient channels for problem solving are available. Guidelines which will assist appointed managers to deal with various aspects of disciplinary actions are included in the LRA in the Code of Good Practice: Dismissal (Keating, 2011: 27). Of particular importance is section 187 of the LRA (SA, 1995), which is based on dismissal which is automatically unfair, or dismissal which may be fair, depending on the inherent job requirements. A certain measure of security will be experienced by educators because of these guidelines as well (Keating, 2011: 27)

2.2.1.3 The Employment of Educators Act 76 of 1998

The Employment of Educators Act (hereinafter the EEA) is the main statute that regulates labour relations in education (Rutherford, 2009: 29; Liwane-Mazengwe 2012: 146). The purpose of this act is "to provide for the employment of educators by the state, for the regulation of the conditions of service, discipline, retirement and discharge of educators and for matters connected therewith" (SA, 1998). Rossouw (2009: 250) contends that this statute serves as the most prominent statute in all

employment matters in education, and should therefore be consulted first in all matters related to the employment of educators by the state since, according to Beckmann and Bray (2006: 430), the employment relationship between the employer and employee is a labour law relationship of authority in which the employer exercises authority over the employee. Labour legislation changes rapidly because of the constant verdicts, directly affecting labour matters, given by the labour courts and Constitutional Court. Important amendments to the EEA have also been implemented annually because of court verdicts (Rossouw, 2010: 35).

The EEA has chapters to deal with the interpretation and application of the Act, conditions of services and educator establishments, appointments, promotions and transfers, termination of services, incapacity and misconduct, the South African Council of Educators, and general matters. Chapter 6, regarding the South African Council of Educators, was repealed when the South African Council of Educators Act 31 of 2000 was promulgated (Rossouw, 2009: 250).

Rossouw (2010:77) states that employers do not only have the basic right to maintain discipline, but also to maintain reasonable efficiency and expect employees to carry out legitimate instructions. Disciplinary action towards educators is required after they have committed acts of misconduct. According to Mothemane (2003: 31) educator misconduct refers to a breach in the relationship between the employer and employee. The misdemeanours that are listed in Section 17 of the EEA (SA, 1998) are of a serious nature and it is stated that an educator *must be* dismissed if he or she is found guilty of any of them. Theft, bribery, examination fraud, sexual assault, sexual relations with a learner, illegal possession of illegal, intoxicating or stupefying substances as well as causing a learner to commit any of these deeds that are listed as dismissible offences. The disciplinary action in these cases of misconduct is not delegated to principals, and officials from the Department of Education should be involved right from the start of the informal phase (Rossouw, 2010: 174). The types of offences listed in Section 18 of the EEA (SA, 1998) are of a less serious nature and may be categorised under property and finances, criticism of employer or institution, misuse of position to promote certain interests, poor work performance, improper behaviour, disregarding safety regulations, dishonesty and refusal of counselling or rehabilitation (Rossouw, 2010: 172).

Principals have the delegated power to handle cases like wrongful possession of school property, operating money-lending schemes from school property, disobeying safety regulations, endangering lives of self or others, unjustifiable prejudices towards school or Department, misuse of position to benefit someone else, absent without a reason, poor work performance for reasons other than incapacity, sleeping on duty, failing to carry out lawful orders, unacceptable conduct while on duty, inciting other personnel to unacceptable conduct, displaying disrespect or intimidation or victimising of colleagues. Cases where departmental officials should also be involved from the start of the informal phase are cases like mismanagement of school finances, intentional damage to school property, accepting money from another person for doing his or her duty, intoxicated while on duty, unfairly discriminating against another person, assaulting another person, victimising another person, carrying firearms or dangerous weapons on state premises, giving of false statements or evidence in the execution of his or her duties, failing or refusing to undergo counselling, medical examination or rehabilitation (Rossouw, 2010: 174),

Rutherford (2009: 29) states that the physical safety of the educator is addressed in section 17 of the EEA (SA, 1998) when it is stated that an educator must be dismissed if found guilty of “seriously assaulting, with the intention to cause grievous bodily harm to a learner, student or other employee”. She also contends that the provisions in section 18(x) and (y) are clearly instituted to protect educators at school from possible harmful or threatening conduct of fellow educators, thus ensuring their physical safety, but argues that it might be considered a lacuna that the protection of the psychological security of the educator is not referred to in this statute (Rutherford, 2009: 30).

When disciplining educators, the employer is required to follow a fair process. Two schedules, serving as procedural guidelines in the disciplinary process were important additions in the Education Laws Amendment Act 53 of 2000 (Rossouw, 2009: 251). In order to follow the correct procedure for each case, the employer or his or her representative investigating the case, firstly has to distinguish between incapacity (or incompetence) that arises from misconduct of wilful negligence, and incapacity caused by circumstances beyond the employee’s control (Rossouw, 2010: 156). Different procedures have been determined for the different grounds for

eventual dismissal. This means that different procedures will be followed for dismissal on grounds of, for instance, incapacity, misconduct, operational requirements and ill health or injury (Rossouw, 2010: 158).

- Schedule 1: Incapacity code and procedures for poor work performance.

Schedule 1 provides the correct procedures to be followed by examining officials in cases where no deeds of misconduct were committed (Rossouw, 2009: 251). An educator may demonstrate an inability to perform his or her duties satisfactorily because of unsuitability, incompatibility or automation. Unsuitability refers to the character or temperament of the person, incompatibility has to do with the fact that a person does not fit into the working environment or relates poorly to colleagues, and automation refers to technological change that may result in experienced educators finding themselves incompetent to perform effectively because they did not keep up with the rapid technological changes in their subjects or the school setting (Rossouw, 2010: 157).

Incapacity on grounds of poor work performance and incapacity on grounds of ill health and injury are closely related because both are of a non-disciplinary nature, but they should be distinguished because the approach in the investigation of the matter differs (Rossouw, 2010: 159). During the investigation into an educator's poor work performance, the educator must be given ample time to respond, and be judged with more tolerance if he or she is an inexperienced teacher (Rossouw, 2010: 155). The educator then has to undergo appropriate training or counselling, after which realistic time frames have to be set for the educator to meet the required standards. If the educator still does not meet the required standards after completing training or counselling programmes, the employer may either provide further training and counselling, or transfer, demote or dismiss the educator (Rossouw, 2010: 158).

Item 3(1) of Schedule 1 of the EEA is summarised by Rossouw (201: 164) who states that, as far as ill health or injury is concerned, the employer may initiate an investigation into cases of ill health or injury, or that the educator may apply for a discharge. The subsequent process will involve an examination by a registered medical practitioner who has to file a confidential report containing an indication of the nature, extent and permanency of the educator's incapacity. Because dismissal

must be seen as a last resort, alternative employment or the adaptation of the educator's duties or work circumstances may be considered. In cases of alcohol and drug abuse – which are specifically mentioned in section 10 of Schedule 1 – a formal rehabilitation programme has to be followed at the expense of the educator (Rossouw, 2010: 164). According to Rossouw (2010: 164) this procedure may be seen as contradictory: On the one hand, educators must be dismissed for the illegal possession of an intoxicating or stupefying substance in terms of Section 17(f) of the EEA (SA, 1998). On the other hand the suggested counselling and rehabilitation in Schedule 1 may be interpreted as the continued employment of the educator which will only be terminated if the behaviour is repetitive (Rossouw, 2010: 169). Rossouw (2010: 169) contends that the seriousness of substance abuse may definitely warrant the limitation of rights of the educator, and that the best interests of the learners should be of paramount importance. The employer should therefore not wait until the abuse is repeated before the educator is suspended, but should rather follow the suggested procedure in Schedule 2, item 6(1) (suspension) in all cases of alcohol and drug abuse as in cases of serious misconduct.

- Schedule 2: Disciplinary Code and Procedures for Educators.

Section 2 of the EEA is based upon The Code of Good Practice: Dismissal, contained in the LRA, which has been formulated to determine whether the employer followed fair procedures during a dismissal (Rossouw, 2010: 174). Rossouw (2010: 175) explains that Schedule 2 of the EEA is specifically applicable to the educator as employee in his or her relationship with the employer and ensures that a fair procedure is followed during disciplinary actions.

According to Rossouw (2010: 147) a corrective approach for employers is prescribed in section 8 of the LRA, whereby efforts have to be made to correct employees' behaviour through a system of graduated disciplinary measures such as counselling and warnings. The principle of progressive discipline is echoed in Schedule 2 of the EEA. Article 4(1) of Schedule 2 of the EEA also determines that principals may and should take the initial steps in the disciplinary process since the application of discipline and the exercising of authority over their staff members are important elements of a principal's managerial duties (Rossouw, 2001: 124).

In less serious types of misconduct the prescribed disciplinary action in the informal phase ranges from verbal warnings to a final written warning by the principal before more serious steps are taken (Rossouw, 2010: 148). Rossouw (2010: 176) summarises the step-by-step procedure as follows:

During the first step information concerning the alleged deed of misconduct has to be gathered: the extent to which the alleged misconduct impacts the work, has to be determined, the nature of the educator's work and responsibilities have to be determined, as well as the circumstances under which the alleged misconduct took place.

During the second step counselling has to be done if the seriousness of the misconduct warrants it. The educator's attention has to be drawn to the misconduct, and he or she must be given the opportunity to respond to the allegations. The educator has to be consulted and then a method to remedy the conduct has to be decided upon.

In the third step warnings are issued, if necessary. The first warning issued, is a verbal warning, followed by a written warning which has to be in accordance with Form A in Schedule 2. If the verbal warning and written warning do not produce the desired result, it may be followed by a final written warning in accordance with form B of Schedule 2.

A copy of the written warning must be handed to the educator, who has to sign for receipt of the warning. Rossouw (2010: 177) points out that the signing of the warning does not constitute to admission of guilt, but if the educator refuses to sign for receipt, the warning must be handed to him or her in the presence of another educator who will sign in confirmation that the written warning was handed to the educator. A copy of the written warning, as well as any additional information or written objections by the educator, has to be filed in the educator's personal file. If any further disciplinary actions take place within six months of issuing the warning, the warning may be brought into consideration when determining suitable sanctions (Rossouw, 2010: 177).

In cases of more serious misconduct a more formal inquiry process, not delegated to principals, should be followed immediately (Rossouw, 2010: 176). Procedurally, the

examining officer should convene a meeting where the educator and a representative of his or her choice are present. This representative may be a colleague of the educator, or an authorised trade union representative. (Rossouw 2010: 177) In order to determine the appropriate disciplinary action, valid warnings for similar offences by the educator should be taken into account, but Grogan (*in* Rossouw, 2010: 176) points out that the guilt of the accused should be determined on the evidence, without reference to the disciplinary record of the accused.

In terms of item 2(d) of Schedule 2 educators are ensured of having a fair hearing, of being informed of allegations of misconduct made against them in due course, of receiving written reasons for any decision taken and that they have the right to appeal against a finding or sanction (Rossouw, 2010: 148). Rossouw (2010: 177) states that, since a disciplinary hearing is sometimes conducted during the informal phase as well, principals should take note of and follow the procedural stipulations as set out in items 5 and 6 of Schedule 2. He summarises the procedure as follows: Notice of the hearing, in accordance with Form C of Schedule 2 and that includes details of the allegations against the educator, must be given to the educator at least five working days before the hearing. Receipt of the notice is acknowledged by the educator by signing a copy. During the hearing, the educator should be present, as well as his or her trade union representative, if the educator so prefers, and should be heard on the misconduct and reasons thereof. If the educator is absent from the meeting without a valid reason, the hearing may continue in the educator's absence.

Before the start of the hearing, the notice of the hearing is read, whereupon the employer's representative leads evidence of the conduct which gave rise to the hearing. If the employer has called any witnesses, the educator or the representative may question any witness. If the educator has requested that a person be present as a witness, the employer must provide assistance to the educator to ensure that such witness attends. Witnesses have to be summoned to a disciplinary hearing in accordance with Form D in Schedule 2. The educator or representative must be given an opportunity to lead evidence. Witnesses may be questioned by the employer's representative.

The presiding officer must give a finding as to whether the educator committed the misconduct, and must inform the educator of the findings and the reasons thereof.

Before the presiding officer decides on a sanction, the educator has an opportunity to present evidence in mitigation and the employer's representative has an opportunity to present evidence of aggravating circumstances. The presiding officer communicates the final outcome of the hearing within five working days of the conclusion of the hearing. The outcome must be recorded on the educator's personal file.

- Personnel Administration Measures

Specifications regarding the terms and conditions of educators' service are provided in the Personnel Administration Measures (PAM) which was published in the *Government Gazette* no 19767 on 18 February 1999 (Rossouw, 2010: 15). Liwane-Mazengwe (2012: 151) explains that parameters in terms of conditions of service, workload, duties and responsibilities, appointments, service benefits and grievance procedures are provided and emphasises that the Personnel Administration Measures also prescribe that the principles of fairness and justice have to be taken into account when the processes involved in recruitment are carried out.

The Personnel Administration Measures as part of the Employment of Educators Act (SA, 1998) determines that school based educators should be able to account for 1 800 actual working hours per annum. Every educator is expected to be at school for a minimum of seven hours per day, including breaks and periods when the learners are not at school. It is expected from the educators to cover the following core duties, both during and outside of the formal school day: scheduled teaching time, relief teaching, pastoral duties like ground duties, detention and scholar patrol, administration, supervisory and management duties, extra and co-curricular activities, planning, preparation and evaluation, professional duties like workshops, meetings, or seminars and professional development. Item 3.2(c) of the Personnel Administration Measures (SA, 1998) clearly states that none of these core duties may "diminish the overall amount of scheduled teaching time or negatively impact upon the curriculum".

Scheduled teaching time for educators differs according to post level, the size of the school and whether it is a primary or secondary school. Generally, PL 1 and PL 2 educators are expected to teach between 85% and 92%, Deputy Principals have to

teach 60% and principals have to teach between 5% and 10% of the scheduled teaching time, depending on the post level on which they have been appointed. The core duties and responsibilities of each school based educator, distinguishing between post levels, from principal to educator, are clearly stipulated in items 4.2 to 4.5 of the PAM (SA, 1998). These stipulations cover the core duties and responsibilities of the job, namely teaching, extra and co-curricular duties, administrative duties, interaction with stake holders and communication. The Personnel Administration Measures document also prescribes that the principles of fairness and justice have to be taken into account when the processes involved in recruitment are carried out (Liwane-Mazengwe, 2012: 151).

According to Keating (2011: 25) it is imperative to ascertain how educators' conditions of service are regulated, because it may have a significant impact on the levels of security experienced in the workplace. Educators should also be well informed of their rights, responsibilities and expected conduct since it will have a positive impact on the security of the educator (Keating, 2011: 25). Keating (2011: 26) also points out that an indication of the degree of protection educators are entitled to, is found in the objectives of the Education Labour Relations Council (ELRC) – a bargaining council established to promote peaceful labour relations. The objectives of the ELRC include maintaining and promoting labour peace in education, to prevent dispute resolution functions, to prevent and resolve labour disputes in education and to promote collective bargaining in relation to all matters of mutual interest (Keating, 2011: 26).

2.2.1.4 The South African Council for Educators (SACE)

All South African educators, whether teaching at private schools, independent schools or public schools, must register with SACE and thus commit themselves to conduct according to the Code of Professional Ethics (Martin, 2005: 18). The South African Council for Educators Act 53 of 2000 was promulgated in August 2000 when Chapter 6 of the Employment of Educators Act was repealed (Oosthuizen, 2009: 223). The objectives of SACE are to provide for the registration of all educators, the promotion of the professional development of educators as well as the setting, maintaining and protection of professional standards for educators by ways of the functioning of SACE (Oosthuizen, 2009: 223; Brijraj, 2013: 10).

Rossouw (2009: 251) summarises the aims of SACE by stating that SACE provides for the professional registration of all educators in South Africa, a disciplinary function in cases of unprofessional behaviour, as well as setting a Code for Professional Ethics. This code encompasses the educator's relationships with the learners, parents, community, colleagues, profession, employer and the Council. The detailed description of good behaviour plays a key role in establishing teaching as a profession (Rossouw, 2009: 252). SACE (2013: 7) regards professionalism as a core value, and has a vision to promote the professionalism of all educators by continuously empowering them in order to ensure that they are committed to the profession and adhere to the ethos enshrined in the Constitution. Brijraj (2013: 12) states that the promotion of professional development needs urgent attention and that all teachers must be encouraged to undertake professional development programmes.

Professionalism is, according to Deacon (2012), what differentiates an educator from an employee. He compares the definition of an educator, as provided in the South African Schools Act and the Employment of Educators Act, to that of an employee as provided in the Labour Relations Act and concludes that every educator can be an employee, but not every employee can be an educator. The difference essentially lies in professionalism. Education is a formal profession that deals with the pedagogy of teaching and learning, and requires a certain degree of professional training. The unionisation of the education sector has relegated an educator from a professional to just another employee (Deacon, 2012). Professionalism might, according to Liwane-Mazengwe (2012: 287), be restored if education could be declared an essential service so that educators are prevented from striking during school hours. Poor discipline of educators, materialising as unprofessional conduct and low levels of accountability, is cited by the Basic Department of Education (2012: 28) as a problem in education.

2.2.1.5 The South African School Act 84 of 1996 (Schools Act)

The promulgation of the Schools Act in 1996 was the beginning of a new era in education (Roos, 2003: 482). The Schools Act is a new act to provide for a uniform system for the governance, organisation and funding of schools after the history of racial inequality and segregation that formed part of the previous education system

(Rutherford, 2009: 30). One of the aims [of the Schools Act] is to give expression to provisions made in the Constitution, even though many teachers and governing bodies struggle to grasp the implications of the new approach (Roos, 2003: 482).

According to Smit (2009: 23) the Schools Act creates the legal framework for a uniform system of state aided schools that aim to provide education of a progressively high quality. The preamble of the Schools Act supports the promotion of an education climate, conducive to learning and teaching with a resolution to eradicate unfair discrimination and intolerance, to maintain and protect human rights and to promote diversity (SA, 1996). In terms of article 16 of the Schools Act (SA, 1996) the managing of a school is vested in the principal, while the School Governing Body has the responsibility to govern the school.

- The role and responsibilities of the principal.

The role and responsibilities of the school principal is described in section 16 of the South African Schools Act (SA, 1996) and can be summarised as an academic leadership and quality function. Van der Westhuizen and Van Vuuren (2007: 432) state that the academic and professional training of school principals have been a central point of discussion in many countries, but that the formal training and professional development of principals can only be achieved if it forms part of a national qualification policy. The Department of Basic Education (2012: 32) shares this view, and an Advanced Certificate in Education was implemented in 2011 as a minimum requirement for new principals to strengthen school management.

Oosthuizen (2009: 278) expresses the professional managerial functions of the principal as the day-to-day administration, control, monitoring, handling of educational issues, organisation of activities, managing staff, execution of rules and guidelines provided by the provincial Department of Education as well as the execution of the national education policy.

In matters of educator misconduct the principal has delegated power to handle the investigation up to the end of the informal phase and must follow the correct, fair procedure, as discussed in paragraph 1.2.1.3.2. Principals should be knowledgeable about the fact that they do not have the power to take the process into the formal phase (Rossouw, 2010: 175).

- The role and responsibilities of the School Governing Body.

In terms of article 8 of the Schools Act (SA, 1996) all public schools are expected to have a school governing body, democratically elected by members of the school community, consisting of a majority of parents, a number of educators, administrative staff and, in the case of secondary schools, learners. The role and responsibilities of the School Governing Body are described in the South African Schools Act 84 of 1996 (SA, 1996) which, in summary, state that the school governing body is responsible for creating a healthy school environment and has to deliver supporting services. They may not interfere with the disciplinary function of the school, but are expected to ordain a code of conduct for learners, and the principal and teachers have to implement the rules (De Wet & Russo, 2009: 11). De Wet and Russo (2009: 11) also state that these codes of conduct usually include school- and class rules, the disciplinary measures applicable to the learners as well as the regulation of the day-to-day relationship between the learners and educators.

Beckmann and Prinsloo (2009: 183) remark that the establishment of school governing bodies represents a significant decentralisation of power in the South African education system and is, according to Keating (2011: 30) an ambitious and meaningful attempt to involve parents in the governance of public schools. If the parents are not only involved, but rather interfere, they overstep the boundary and it might lead to insecurity among the educators (Keating, 2011: 30). Rossouw (2001: 124) remarks that decentralisation of decision making power in education systems has been a worldwide phenomenon since the late 80's. The basic principle underlying these initiatives is that learners usually benefit when decisions that have an influence on them, are taken as close as possible to the operational level (Rossouw, 2001: 124). Smit (2009: 23) states that the decentralisation of power to local governing bodies is an innovative democratic characteristic of the Schools Act.

Decentralised power is, however, not always interpreted in the same way by all parties involved. The case of *Nuwe Republiek Skool v Mnguni* is an example of such a difference in interpretation. During the year 2000 the school governing body made some alterations to an unused section of the school to accommodate a privately run Grade R class. This came to the attention of the Provincial Department of Education, which sent a letter to the principal, asking who had permitted the accommodation of

such a class at the school and how improvements to the immovable property had been affected without the consent of the Department. The principal referred the letter to the chairman of the school governing body, who replied and defended the alterations. A series of letters followed, each addressed to the school principal, and the chairman of the school governing body making a reply. The principal was informed that disciplinary steps against him were considered because he did not obey a lawful order to close down the class. The principal was charged with misconduct in terms of section 18 (1)(c) of the Employment of Educators Act, which states that an educator may not use state property without permission. The principal's defence was that he was not the person who opened the class. The school governing body opened the class, and in terms of section 21 of the Schools Act, they have the power – and exercised it – to make decisions regarding the use of school property. A disciplinary enquiry into the matter was chaired by Mnguni who found the principal guilty as charged, and ruled that the principal be demoted to an entry level educator for a period of 12 months after which he could apply for promotional posts again. The principal appealed to the MEC against these findings, but the appeal was dismissed. The principal then applied to the high court for an order preventing the implementation of the sanction. Olsen AJ ordered the sanction to be set aside since the principal was not guilty of misconduct and the school governing body acted within their power. The Head of the Department of Education and Culture of the KwaZulu Natal Provincial Government was ordered to pay the costs of the appeal.

According to Beckmann and Prinsloo (2009: 172) the school governing body does not have original power to act on its own outside the provisions in the Schools Act, but it has original power to perform its functions in terms of the Schools Act. Diagrammatically the functions of the school governing body in relationship with the other stake holders can be represented as follows:

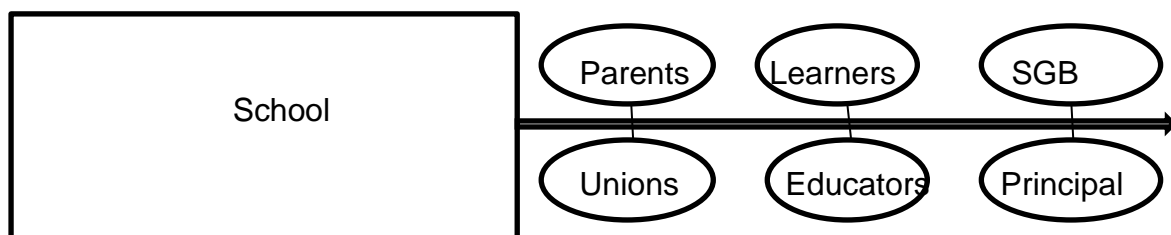


Figure 2.1 Functions of the SGB in relation to the other stakeholders

In this diagram, the rectangle represents the school, which is like a wagon that is pulled by six oxen, represented by the oval shapes. The first two oxen, respectively, are the principal and school governing body and they are the leaders who have to indicate the direction into which the wagon has to be pulled. The oxen in the third, fourth, fifth and sixth positions represent the teachers, parents, learners and unions. The parents have an interest in the school, but they do not have management- or leadership functions. The unions do not have management- or leadership functions either but they have to support their members during disciplinary action, as well as during negotiations and training. An important factor to bear in mind is that all the oxen have to pull together as a unit and in the same direction in order to effect positive movement of the wagon. The same is true for a school: in order for a school to be effective and functional the role players have to work together as a team towards a common goal.

- The Schools Act and educator security

Rutherford (2009: 31) contends that there are several sections of the Schools Act that, directly or indirectly, refer to security in the workplace. She argues that an educator involved in disciplinary proceedings will be protected under the provision of section 8(5) of the Schools Act which states that a code of conduct “must contain provisions of due process safeguarding the interests of the learner and any other party involved in disciplinary proceedings” (SA, 1996). Keating (2011: 30) points out that both state- and school-employed educators are protected in terms of section 60 of the Schools Act, should damage occur to a learner. It is stipulated that the State will pay the damages, if the damage or injury was sustained during school activities – thus ensuring the security of the educators, because they will not be held liable in their personal capacity (Keating, 2011: 30).

According to Maphosa and Shumba (2010: 387) and Keating (2011: 29) disciplinary measures in schools are vital, since school discipline is declining and has a negative impact on the security of the educator. Keating (2011: 29) identifies the lack of learner discipline as a “major factor in relation to educator security” and contends that

some educators might feel that the abolishment of corporal punishment has a negative impact on their security.

In our modern society, crime and violence are having a considerable impact on feelings of safety and security of all citizens. Oosthuizen (2005: 52) states that, even though the Schools Act is silent about the impact of crime and violence on schools, it places the responsibility of promoting and maintaining a culture of learning and teaching on principals, educators and Governing Bodies

- The role of the state in terms of the Schools Act.

Another factor which the Schools Act is silent about is the role of the state in terms of cases of transfers or promotions. In instances where schools merge or educators are transferred or promoted, financial implications for the educators are mostly incurred in the form of additional transport costs to reach their workplace. Some even have to move to another location. These costs have to be borne by the educators themselves, since the Department of Education will only cover the relocation costs for an educator promoted to the post of principal. Feelings of insecurity might arise if the transfer is not financially supported by the state. This is identified as a lacuna in legislation.

2.2.2 Common Law

Common law may be defined as the unwritten legal principles and traditions which were derived from the English and Roman-Dutch law, that were adapted and developed for the South African culture and legal background (Roos, Oosthuizen & Smit, 2009: 105). Even though it is the original and oldest form of law (Keating, 2011:32), Roos *et al.* (2009: 105) points out that the Constitutional Court, the Appeal Court and Supreme Courts have, in terms of Article 173 of the Constitution, the inherit powers to develop common law, therefore judgements by these courts are currently the most important source of common law.

According to Chikamhi (2006: 49) human rights are protected by the principles of common law, of which the most important ones relevant to this study, and which will be discussed briefly, are *in loco parentis*, the *ultra vires* doctrine and rules of natural justice.

2.2.2.1 *In loco parentis*

Hiemstra (1992: 490) literally translates '*in loco parentis*' with 'in the place of the parent'. Keating (2011: 34) refines the concept by explaining that the taking over the role of the parent for a particular period of time, by a teacher who has been specially trained and qualified to teach learners, is known as *in loco parentis*. The educator remains a "substitute parent", the role of the parent is at no point taken over and the educator does not have the same role as the parent (Keating, 2011: 34; Roos, Oosthuizen & Smit, 2009: 105). Even though being *in loco parentis* gives educators the authority and responsibility to correct the behaviour of learners (Rossouw, 2007: 76), and provides the educator with a considerable amount of security (Keating, 2011:35), Chikamhi (2006: 50) as well as Keating (2011:35) warn that educators or the education authority might be sued for damages in the event of children being harmed, since parents are more critical because of the changed society. Therefore they will not hesitate to take legal action against educators when they feel that the educator was negligent and the child had not been adequately protected from danger.

In loco parentis is described as a duty of care, which becomes demanding in instances where learners' backgrounds are challenged by domestic violence, disrespect, immorality, drug abuse, discrimination and, above all, HIV/AIDS (Chikamhi, 2006: 35), but it is serious and non-negotiable, because the safety of the learners is at stake – not only their physical safety, but the general health and well-being of each learner (Keating, 2011: 35). The educator is required to take as much care for the child as a caring parent would, and also exercise reasonable care when supervising learners. In the event that learners are harmed, courts will have to establish whether there was a breach of legal duty on the part of the educator, who will have committed an act of misconduct if found guilty (Chikamhi, 2006: 50).

2.2.2.2 *The ultra vires doctrine*

Ultra vires is a Latin phrase meaning literally "beyond the powers" (Hiemstra, 1992: 497). Actions of government bodies or corporations that exceed the scope of power given to them by laws or corporate charters are described as *ultra vires* actions. A constitution is most often the measuring stick of the proper scope of power when

referring to the acts of government bodies, for example legislatures (Legal Information Institute, 2012).

The state's administrative and executive functions are mainly executed by departmental officials (Roos *et al.*, 2009: 109). Legislation that, for example, is applicable to the Department of Education, is executed only by the department's officials. An education manager will act *ultra vires* when he or she acts beyond the limits of his or her capacity or powers as stipulated by the specific legislation (Roos *et al.*, 2009: 109). Chikamhi (2006: 52) explains that an educator's rights are infringed by *ultra vires* actions. When the conduct of the officials is not regulated by control-mechanisms, they are bound to act *ultra vires*. Rossouw (2010: 90) advises school governing bodies, in particular, to guard against *ultra vires* actions in cases where extra educators are appointed by the school governing body. When members feel tempted to act as individuals – like owners of businesses – they might overstep the boundaries of the professional educator as well as the professional management of the school (Rossouw, 2010: 90). In the case *South African Democratic Teachers' Union (SADTU) v Minister of Education and Others*, the Minister of Education acted unilaterally and promulgated regulations providing detailed information regarding strike actions. The Minister's actions were declared invalid and *ultra vires*, and he was ordered to pay the costs of the application.

2.2.2.3 Rules of natural justice

Procedurally fair administrative justice is a constitutional right which embraces the common law concept of 'natural justice' (Smit, 2011: 330). The purpose of the rules of natural justice is to ensure that justice prevails between two parties (Roos *et al.*, 2009:111; Chikamhi, 2006: 53). In the administrative process where, for example, an educator as official of the department of education (as state institution) exercises authority over a learner, there has to be clear evidence of justice (Roos *et al.*, 2009:111).

When disciplining a learner, an educator has to be reasonable, fair and just (Roos *et al.*, 2009: 111). In the same way these principles apply to a learner, it also applies when disciplinary steps are taken against an educator. According to Roos *et al.* (2009:111) the education manager is free to exercise his discretionary power provided he stays within the defined limits of the law.

It is commonly accepted, according to Burns and Beukes (2006: 318) and Smit (2011: 330), that the rules of natural justice have crystallised into the following two principles:

Audi alteram partem (“listen to the other side”)

Nemo iudex sine causa (“no-one may be a judge in his own case”)

which is also known as the rule against bias.

The rule against bias requires absolute impartiality. Smit (2011: 330) cites the matter of *De Kock NO v Departementshoof van die Onderwysdepartement, Provinsie Wes-Kaap* as an example of bias. In this case the deputy principal had served both as a member of the disciplinary committee and as main witness in a matter concerning the possession of *dagga* by a learner at school. Although the learner was found guilty and expelled from school, the Western Cape High Court found that the procedure had been unfair and irregular, as there was a reasonable suspicion of bias on the part of the deputy principal. The decision of the School Governing Body of Overberg High School was accordingly set aside.

The *audi alteram partem* principle entails that an accused or defendant should be accorded the opportunity for an oral hearing and personal appearance (Smit, 2011: 331). He cites *Governing Body, Tafelberg School v Head, Western Cape Education Department* to illustrate: In this matter, the Governing Body of Tafelberg School applied for the review of the decision of the Head of Department to override the school’s recommendation to expel a learner who was found guilty of stealing the school’s computer equipment. The Head of Department based his decision to re-admit the pupil on written recommendations submitted by the learner’s parents, and the Governing Body was not provided with copies or afforded an opportunity to respond. The Court found that the Head of Department’s decision to re-admit the learner had a materially adverse effect on the school’s interests, and that the school should have been afforded a hearing before making a decision. The Head of Department’s decision was resultantly set aside and the learner was expelled from school.

2.2.3 Case Law

Case law consists of court decisions which are recorded in law reports that provide important information and guidelines on many educational issues (Joubert & Squelch, 2005: 7). Case law is applied as determinant for educator misconduct because legal rules are, according to Roos and Oosthuizen (2009: 128) often formulated in broad terms, making it unclear whether legislation or common law principles are applicable to a situation, or how it should be applied. In such instances, the concerned parties may approach the court to settle their dispute. The court will interpret and apply the relevant legislation and rules of natural justice and come to a verdict. In typical cases, the court will state what the concerned parties' legal rights are and also make a suitable order (Roos & Oosthuizen, 2009: 128). A number of relevant cases will be discussed.

2.2.3.1 *Despatch High School v Head of the Education Department*

In the case of *Despatch High School v Head of the Education Department* the School Governing Body reported a case of alleged misconduct to the Head of the Department of Education. The principal had allegedly stolen a cell phone from a learner. The governing body investigated the matter after which the principal admitted guilt. The governing body then reported the case to the concerned provincial department of education, but no steps were taken, and a disciplinary investigation was launched only after the governing body had laid a criminal charge at the police.

The principal was suspended until the completion of the investigation. He was criminally charged, pleaded guilty and was sentenced to six months' imprisonment or R2 000 fine. He also received a final written warning and was allowed to return to the school in terms of article 18(1)(dd) of the Schools Act.

2.2.3.2 *Wynkwart v Minister of Education*

In 2002, in *Wynkwart v Minister of Education*, the plaintiff (father) filed suit on behalf of his eight year old son. The plaintiff considered the educator to have committed misconduct by neglecting to supervise sufficiently. The son, a grade three learner at the time, was injured severely after school. The learners in the junior grades left the school earlier than learners in the higher grades, and the custom was that they left

the school at Gate 4 under supervision of the teachers. In order to cross a busy highway safely, the learners were assisted by the scholar patrol on duty, accompanied by a teacher. On the day of the accident, the learner left the school grounds by climbing over Gate 5, an unused locked gate. While climbing over the gate he fell on his head, sustained serious injuries and is now a quadriplegic.

The court ruled in favour of the plaintiff and the Department of Education was held liable for damages. The court found that the incident was reasonably foreseeable and added that the expected care should have been in line with the kind of care applicable to learners of such a young age, whose conduct is characterised by being impulsive.

Appeal was granted, and in 2004 the ruling was set aside by the full bench of the High Court. Judge Desai argued that the most important question was not if the damage as such was foreseeable, but if reasonable steps were taken to prevent an accident. Unreasonable demands cannot be placed on public institutions – such as schools – in their duty to safeguard all situations. The judges unanimously found that sufficient preventive measures had been taken because the gate was locked and the learner was in the familiar school surroundings. Sufficient measures were taken for the learners' daily safe leaving of the school premises and eight year old learners need not be under constant supervision any more. The court thus ruled in favour of the appeal, and the first ruling was set aside.

The *Wynkwart* case raises the question of whether a specific educator owed a specific child a duty of care and to what extent educators may be held liable for damage to a child. Well drafted indemnity forms where parents undertake not to sue the individual educator or the school might, according to Rossouw (2009: 256), create some security for educators in the performance of their work. Indemnity forms do however have definite limits and educators should realise that they might be held liable in their official or even personal capacity in instances of gross neglect (Rossouw, 2009: 256).

2.2.3.3 *Wium v Independent Mediation Service of South Africa*

The viewpoint that leaders have to lead by example led to *Wium v Independent Mediation Service of South Africa* where an educator was discharged because he did not reveal his criminal record in his *Curriculum Vitae*.

During the application process for the position of school principal, a member of the school's governing body, being aware of the situation, objected because of the teacher's omission of his conviction on a count of theft from his *Curriculum Vitae*. This resulted in the employer lodging his own investigation, during which the correct procedures were followed. The chairperson found the teacher guilty of misconduct, and recommended that the teacher received a final written warning. The Superintendent General did not endorse the recommendation, but instituted dismissal as sanction. In this case the teacher was guilty of making a false declaration, as is prohibited in the Employment of Educators Act 76 of 1998.

This case should serve as a serious deterrent to all educators never to commit any deed of misconduct. If an educator is found guilty, the consequences will have to be borne and might have a hampering effect on future prospects.

2.2.3.4 *S v Mohlakane*

The case of *S v Mohlakane* is an example of an educator that was punished because he misused his position of trust. The educator coerced the plaintiff to come to his office with promises that he would help her to pass her examinations. In his office he molested her. She filed suit, and the regional court sentenced him to 18 months' imprisonment. He successfully appealed, and the Supreme Court of Appeal took extenuating circumstances into consideration, even though it recognised the seriousness of the transgressions against women and children. These extenuating circumstances were that he was a first time offender, that he was a married man with three small, dependent children and that he had, over years, made a significant contribution to education. He had to resign from his post and had to tolerate the condemnation, guilt and belittlement from his colleagues, learners and most probably his family. This, together with the loss of his job, was punishment in itself. The Supreme Court of appeal thus found that the Regional Court over emphasised the importance of the community's interests above the personal circumstances of the

appellant, and that direct imprisonment was not a suitable sanction in this case. The case was referred back to the Regional Court to impose correctional supervision as sanction.

These court cases serve as examples not only of determinants of educator misconduct and educator security, but also of legal steps taken against transgressor-educators. It clearly implies that educators are held accountable for their conduct.

2.2.4 Quality measures

The Department of Basic Education has implemented certain measures that serve as indicators of educator and learner performance in schools. These measures are the Annual National assessment, Integrated Quality Management System and National Teaching Awards.

2.2.4.1 Annual National Assessment

The Annual National Assessment is done annually in languages and Mathematics to identify specific areas of weakness (DBE, 2012: 2). The first Annual National Assessments were done in February 2011 to assess learners who had completed grades one to six in 2010. An analysis of the results showed that the majority of learners seemed not to be developing beyond the elementary levels of knowledge and skills, and that they had a poor handwriting, suggesting that handwriting was not practised sufficiently (DBE, 2012: 33). The Diagnostic Report of the Department of Basic Education (2013 a: 39) indicated that the situation did not change, and that most learners had not mastered the knowledge and skills for the grade in which they were placed. Teachers were urged to develop remedial programmes to address these shortcomings.

When it is considered that more weaknesses than strengths (DBE, 2013 a: 6) and an “acute lack knowledge of basic elements of language structure” (DBE, 2013 a: 25) were reported, it is clear that educators do not teach the learners as they are supposed to do, thus not fulfilling their primary duty. By not doing their jobs, educators are guilty of committing misconduct – which mainly goes unreported.

2.2.4.2 Integrated Quality Management System

The Integrated Quality Management System, informed by schedule 1 of the Employment of Educators Act, and agreed upon in the ELRC Resolution 8 of 2003, was introduced to enhance the delivery process of quality education in South African schools (Letsoalo, 2009: 1; Sambumbu, 2010: 3). Letsoalo (2009: 1) explains that the purpose of the Integrated Quality Management System is to determine competence, assess strengths and areas for further development, promote accountability and monitor the overall effectiveness of an institution. The Integrated Quality Management System was implemented to develop and evaluate educators for pay progression, or, in other words, performance-related pay and was implemented in schools in 2005 (Letsoalo, 2009: 2; Sambumbu, 2010: 2). According to the Department of Basic Education (2009) the Integrated Quality Management System is the integration of three quality management programmes, aimed at enhancing and monitoring performance of the education system. The three programmes are Developmental Appraisal (which aims to appraise individual educators to determine their strengths and weaknesses), Performance Measures (which evaluate individual educators for salary progression) and Whole School Evaluation (which evaluates the overall effectiveness of a school as well as the quality of learning and teaching). Each individual educator's performance must be measured against the stipulated performance standards of the Integrated Quality Management System document (Sambumbu, 2010: 3).

The implementation of the crucial aspects of the Integrated Quality Management System such as the Development Support Group, Personal Growth Plan and School Improvement Plan has to empower educators to be in a position to execute their duties effectively and efficiently (Letsoalo, 2009: 1). It was envisaged that empowered educators would be in a position to deliver quality public education.

During his research, however, Letsoalo (2009: 2) established that the use of performance-related pay to motivate staff usually resulted in corrupt tendencies such as favouritism, awarding high, undeserved scores, and fraud. Sambumbu (2010: 48) agrees and points out that each evaluation system is only as good as the people who design and use it. Educators indicated that the Integrated Quality Management System failed to improve their performance because the Department of Education did

not support them (Letsoalo, 2009: 48), and were worried that the old, judgmental form of inspection was revived under a pseudonym (Sambumbu, 2010: 92). Letsoalo (2009: 61) states that the implementation of the Integrated Quality Management System undoubtedly had no visible or experienced positive impact on the educators in his study. Sambumbu (2010: 92) concurs with this and states that the Integrated Quality Measurement System was not favourably received by educators. The main comments, resulting in a negative overall impression were that the process is too long and cumbersome; involving too much paperwork, that nepotism flawed the process and that one or two class observations cannot give a true reflection of the educator (Sambumbu, 2010: 99).

When it is considered that the Department of Education (2013 b: 41) acknowledges that 39% of South African schools are not yet implementing the Integrated Quality Management System, and that the majority of schools still struggle to implement IQMS processes and procedures (2013b: 52), it is clear that the Integrated Quality Management System still faces many challenges.

2.2.4.3 Annual Teaching Awards

An incentive from the Department of Education to recognise and reward those teachers who really are dedicated and diligent, are the National Teaching Awards. The National Teaching Awards were conceptualised and launched in 2000 to celebrate teaching as a profession and recognise outstanding individual teachers (DOE, 2010).

Annually, the process to determine the winners of the eight categories in the National Teaching Awards starts when nominations are made and assessed. District finalists are announced from the nominations, they receive Certificates of Excellence and a winner is announced. All district winners are then re-assessed to select the regional finalists. Regional finalists receive another Certificate of Excellence and a winner is announced. The regional winners are assessed again in order to find the provincial finalists, who receive a third Certificate of Excellence. The provincial winners also receive prizes. The final stage is when the provincial winners are assessed once more to find the national finalists. The national finalists receive a fourth Certificate of Excellence and the winners of the National Teaching Awards receive prizes (DOE, 2010).

The awards ceremony is a glamorous event often attended by high ranking officials in the cabinet as well as the Department of Education (Staff Reporter, 2012). The awards ceremony is also broadcast on national television, which makes it an even more prestigious event – especially for the receivers of the awards. In this way the Department of Education attempts to motivate all educators to deliver quality service.

2.3 Summary

In this chapter, the determinants of educator misconduct as well as of educator security were scrutinised. Legislation, common law and case law were considered as determinants. It was shown that educators are well protected – but are also held accountable – in terms of the legislation that exists. Clear legislation on what is considered as educator misconduct, as well as prescriptions on the punitive action to be taken if an educator is found guilty of misconduct, exist. The fact that educators' psychological security was not pertinently protected by legislation was identified as a lacuna. The fact that the Schools Act does not provide pertinent legislative measures concerning the financial implications in cases of merging schools or educators who were promoted, is considered as a lacuna as well.

The next chapter is based on the nature, frequency and handling of educator misconduct and its effect on educator security.

3 CHAPTER 3: THE NATURE AND MANAGEMENT OF EDUCATOR MISCONDUCT AND ITS EFFECT ON EDUCATOR SECURITY

3.1 Introduction

A literature overview of the nature and manifestations of educator misconduct is provided in this chapter. The ways in which it is addressed in the workplace, both at school level as well as departmental level, is discussed. The chapter concludes with a summary of the current literature concerning the influence of educator misconduct on educator security.

The central function of the public sector in South Africa, according to Lues (2007: 220), is the delivery of service to the public – and all managers should strive to deliver exceptional service. The public sector has, however, nearly become synonymous with a lack of service delivery and unethical behaviour (Lues, 2007: 220). Rossouw (2001: 123) observes that incidences of educator misconduct in South Africa have increased and the additions to the lists of offences in sections 17 and 18 of the Employment of Educators Act reflect this phenomenon in many South African schools.

Grogan (2000: 43) states that common law determines that an employee who does not render service violates a trust relationship between an employer and an employee, and it may constitute misconduct. Mbonambi (2002:13) also states that the failure of educators to render such service may grant the departments of education a right to discipline them. Rossouw (2001: 123) points out that, according to section 4(1)(i) and (ii) of schedule 2 of the Employment of Educators Act it is the duty of the school principal to handle cases of misconduct in the informal stage of the investigation. However in his study Mothemane (2003: 67) found that school principals do not play the role they are supposed to play when dealing with educator misconduct and that there is no proper use of legislative provisions pertaining to educator misconduct, either. The failure to adequately apply legislative provisions might be ascribed to the historical development of education and the South African society.

According to Nasson (2002: 1) the foundations of life, whether language, national identity or the organisation of work and politics, are the inheritance of a resilient human past and if we want to plot a realisable future, we need to understand how our present was achieved through history. Carr and Harnett (1996: 20 – 26) point out that any political system shapes education and that conversely, education unquestionably determines the type of political system a society will have. This illustrates the interwoven natures of education and politics. For this reason an overview of the historic developments policies in education might be meaningful and instructive.

3.2 The quest for modernisation

South Africa's economic development from a colonial existence, with an agricultural economy, to urbanisation and industrialisation, to a post-industrialised, modern society affirms current development (Groenewald, 2014). For Boshoff (2014: 19) *modern* has the same meaning as *contemporary*. In South African context, the modern era commenced towards the end of the nineteenth century when the mining industry started to grow. However, the twentieth century was the blooming period for modernisation (Boshoff, 2014: 19). According to Boshoff (2014: 23) the most dramatic phenomenon of modernisation is urbanisation.

3.2.1 Urbanisation

Farms destroyed during the Anglo Boer Wars and by natural disasters resulted in large scale urbanisation during the first half of the twentieth century (Boshoff, 2013: 23). White societies urbanised to a large extent, but experienced poverty, over-populated areas, alcohol abuse and prostitution in the cities (Boshoff, 2014: 23). Giliomee (2003: 127) describes the Afrikaner of the 1920's as "unsophisticated, uneducated, impoverished and generally backward" – a situation that was referred to as the poor white problem. The poor white problem led to incalculable social and economic disruption and resulted in broken human relations and political distrust (Giliomee, 2003: 128).

Successive governments promoted and actively executed economic policies of industrialisation, urbanisation, large-scale training, compulsory education and the associated modernisation (Groenewald, 2014). Groenewald (2014) explains that the

average South African's education level was only on a grade six standard before the Second World War. After World War II, however, the economic development and increased levels of education began to bear fruit.

Nationalism was mainly applied to fuel cohesion, cooperation and economic sacrifice – and it was successful to such an extent that the poor white problem was largely solved in the mid-1950's (Groenewald, 2014). Millward (*in* Sparks, 2013) describes the years from 1945 to 1980 as the “halcyon days for public enterprise”: The *Afrikaner* middle class expanded and grew increasingly sophisticated and self-confident (Ehlers, 2000). Unfortunately, the *apartheid* policies of the *apartheid* governments were ethnically exclusive and racially driven, resulting in mainly whites advancing economically. Afrikaner nationalism ended with the establishment of the New South Africa (Boshoff, 2014: 19).

Since the early 1990's urbanisation has increased. Urban areas experience an influx of approximately one million people per year (Du Preez, 2014). The proportion of urbanised South Africans resultantly increased from 52% in 1990 to an estimated 67% in 2014 (Du Preez, 2014). Urbanised societies have access to more services, education and job opportunities in contrast to rural societies. Currently, in many respects rural African communities in South Africa are experiencing similar developmental trends as those of the 1920's Afrikaner. This trend of urbanisation has the pursuit of higher living standards, improved levels of education and the eradication of poverty as its goal.

The pace of urbanisation has resulted in numerous societal challenges. The squalid conditions, high crime rate and massive unemployment result in failing schools (Du Preez, 2014). Comparable to the 1920's yearning for improved socio-economic conditions and the improvement of education, the current African communities display a similar desire for improved living standards and education. However, in contrast, with the demise of *apartheid* and nationalism, and since the advent of constitutionalism, the philosophy of liberal individualism has become dominant in the South African society.

3.2.2 Liberal individualism

Afrikaner nationalism ended with the establishment of the New South Africa and room was made for liberal individualism as dominant ideology of the urbanised, modern South African (Groenewald, 2014). Linzer (1997: 1) describes liberal individualism as a philosophy that focuses on individual autonomy and less government while Khawaja (2000: 3) associates individualism with struggles against monarchy, imperialism, racism and totalitarianism. Groenewald (2014) states that liberal individualism is a philosophy currently contemplated by the majority of South Africans – even people in rural and transitional societies.

Boshoff (2014: 32) views individualism as a modern philosophy which states that the society exists because of and for the individual – the individual does not arise from the society. Individualism has far-reaching implications – to such an extent that everything a person requires and experiences is measured according to the liberal individual's needs and wants (Boshoff, 2014: 33). However, Boshoff (2014: 33) points out that, in time, liberal individualism has become a closed, totalitarian philosophy in which tolerance is idolised.

Liberal individualism in schools manifests in educators that no longer want to be involved in community matters, educators that display self-centredness apathy towards improving the education system. It seems that the underlying philosophy negates altruistic attitudes and undermines the uplifting of the community. Liberal individualistic educators consider their own interests to be of paramount importance, which on occasion gives rise to acts of misconduct.

3.3 The nature of educator misconduct

Educator misconduct is stipulated in sections 17 and 18 of the Employment of Educators Act 76 of 1998 (SA, 1998) and is referred to as a breakdown in the employment relationship. According to Chikamhi (2006: 14) educator misconduct is a violation of the constitutional values and Mbonambi (2002: 12) describes educator misconduct as unprofessional conduct that commits transgressions that are harmful to the employer-employee relationship. Rossouw (2010: 169) points out that some of the forms of specified misconduct not only point at 'setting a bad example', but may

directly impact on learners when they are drawn into actively becoming involved in immoral, corrupt or fraudulent acts.

3.3.1 The widespread dysfunctionality of South African schools

Taylor (2006: 2) states that approximately 75% of schools in South Africa are dysfunctional. Dyosop (2014) concurs with this statement but reports that the Federation of Governing Bodies of South African Schools (FEDSAS) considers approximately 90% of schools in South Africa to be dysfunctional. FEDSAS explains that functionality is measured by focussing on six criteria. These criteria are:

- Leadership – does the principal play a leading role in the school?
- Commitment – are the educators committed?
- Work ethic – do educators display professionalism, accountability and responsibility?
- Discipline – as exhibited by learners, educators and parents.
- Governance – of the School Governing Body.
- Involvement – parental involvement in the education of their children (Dyosop, 2014).

The unacceptably high percentage of dysfunctional schools contributes to South Africa having one of the worst education outcomes in the world (Deacon, 2011: 2). Smit and Oosthuizen (2011: 64) explain that effective and proper education does not take place in dysfunctional schools. Taylor (2008: 8) found that dysfunctionality is exacerbated by educators who only teach for 3,4 hours per day which is less than half of the teaching time prescribed in the Personnel Administration Measures (See paragraph 2.2.1.3). Taylor (2008: 7) ascribes dysfunctionality in schools to principals who do not take responsibility and exercise control over their own work environment by laying down strict time-management rules. Taylor (2008:7) remarks that South African education officials and managers seem to be trapped in the dependency culture fostered by successive authoritarian regimes over the last three centuries. Where managers, educators and learners blame forces outside their control for their failure or success, a culture of passivity and failure is present (Taylor, 2008: 7).

3.3.2 Professional misconduct and the South African Council for Educators

The professional council for educators that aims to enhance the status of the teaching profession, the South African Council for Educators, reports that most of the misconduct cases reported to the Council itself come from the provinces with major metropolitan areas, namely KwaZulu-Natal, Gauteng and the Western Cape (2012: 31). This is understandable since metropolitan areas have more educators than the less populated areas and school environments are of a metropolitan nature.

Furthermore, the report reveals that males are more likely to be accused of misconduct than females; that the largest proportion of offenders are between the ages of 35 and 54 and that the largest proportion of cases involve professional misconduct, followed by assault. Professional misconduct comprises the personal and professional standards of behaviour expected from professionals. Since 2008 there has been an increase in the number of sexual cases, which includes allegations of rape, harassment and inappropriate relationships with learners (SACE, 2012: 31). The South African Council for Educators (2012:31) reports that, in 14% of the cases brought before the Council during the 2011/2012 financial year, offenders were struck off the role, but the most common sanction in finalised cases were cautionary or advisory notices. During the 2012/2013 financial year, the number of educators struck off the roll decreased slightly to 13,4% (SACE, 2013: 30).

A total of 39 522 educators are registered with the South African Council for Educators (SACE, 2012:7) and 525 cases of misconduct were reported to the Council for the period 1 April 2011 to 31 March 2012 (2012: 26). This indicates that approximately 1.3% of the registered educators were charged with misconduct that was of such a nature that it was reported to the South African Council for Educators. When it is considered, however, that the Department of Basic Education (2013c: 4) reports that 390 074 educators were teaching at public schools during the same period, it is noticeable that roughly only 10% of educators are registered with the South African Council for Educators. This implies that the number of misconduct cases reported by the South African Council for Educators is not representative, but might represent only ten percent of misconduct cases.

The following table provides statistical information regarding the categories and number of misconduct cases reported to the South African Council of Educators during the 2011 – 2012 and 2012 – 2013 financial years.

Table 3.1 Misconduct cases reported to the South African Council of Educators

Categories	Number of cases reported for the 2011 – 2012 financial year	Number of cases reported for the 2012 – 2013 financial year
Verbal abuse, harassment, defamation	79	83
Sexual misconduct, including rape	126	104
Fraud, theft, financial mismanagement	58	65
Racism	3	2
Corporal punishment, assault	174	182
Unprofessional conduct, alcohol abuse, absenteeism, insubordination	69	115
Negligence	13	0
Murder	0	2
No jurisdiction	3	3
Total:	525	556

Source: SACE Annual Report 2011 – 2012: 26 and SACE Annual Report 2012 – 2013: 28.

These data sets indicate that educator misconduct has increased, confirming the trend identified by Rossouw (2001: 123). Even though the category for sexual misconduct is the third highest of all categories, it shows an encouraging decrease in numbers. The only other category which decreased for the second period, is the category for negligence. The same amount of cases that do not fall within their jurisdiction were reported to SACE for each of the two periods, but all the other categories have shown an increase in occurrence. An alarming category that was added for the 2012 – 2013 period is murder. When it is considered that the largest amount of occurrences are reported in the categories for corporal punishment, unprofessional conduct and sexual misconduct, the conclusion is made that forms of

physical misconduct are increasing to such an extent that it even starts to result in murder.

Each category identified by the South African Council for Educators will briefly be discussed to clarify the meanings.

3.3.3 Verbal abuse, victimisation, harassment and defamation

This category varies widely in meaning and purport and ranges from minor forms of misconduct to serious offences and crimes. Bosch (2013) defines verbal abuse as persistent behaviour where words or “mind games” are used to insult or instil self-doubt in the victim and to build the abuser’s sense of dominance and control. In schools verbal abuse is sometimes disguised as “good natured humour” or belittling “pet names” for example:

“You take things too seriously. Can’t you take a joke?” or

“Hey little fatso, come here!”

According to Bosch (2013) most cases of physical abuse or battering in schools start with verbal abuse. People, who are verbally assaulted, know that the insults are abusive. By the tone of voice and the words that were used; the person feels hurt, confused and embarrassed (Bosch, 2013). Brown (2013) identifies verbal abuse, offensive conduct and work interference as manifestations of workplace bullying. *Victimisation* and *harassment* are terms used as synonyms for bullying (Brown, 2013).

Aquino and Thau (2009: 717) describe workplace victimisation as acts of aggression perpetrated by one or more members of an organization that cause psychological, emotional, or physical harm to their intended target. Victimisation is defined by The Free Dictionary (2013) as “*an act that exploits, victimises or treats someone unfairly*”, while the Victorian Equal Opportunity and Human Rights Commission (2013) describes victimisation as “*subjecting a person to some form of detriment which can include bullying or intimidation by co-workers, being denied a promotion or be moved to a position with lower responsibility, dismissal from employment or being refused further contract work*”.

The Victorian Equal Opportunity and Human Rights Commission (2013) states that victimisation is specifically prohibited in Australia under the *Equal Opportunity Act 1984*, and employees who believe they have been harassed or discriminated against, have the right to make a complaint – either using the organisation’s internal procedure, or by reporting it to an external agency such as the Victorian Equal Opportunity and Human Rights Commission.

In South Africa victimisation and unfair discrimination are statutorily defined and prohibited (Strydom, 2013). The Protection from Harassment Act, 17 of 2011 came into effect in April 2013 to offer extra protection to victims of harassment – including abusive electronic communication, stalking and school bullying (Hartley, 2013). According to Hartley (2013) the Protection from Harassment Act principally aims to address harassing behaviour by means of a court order in terms of which the harasser is prohibited from continuing with the act of harassment. The Legal Dictionary (2013b) defines harassment as systematic or continued unwanted and annoying actions of one party or a group, including threats and demands. The motive behind the harassment may vary to include racial prejudice, personal malice, gaining sexual favours or merely to gain sadistic pleasure from making someone fearful or anxious. Such activities may be the basis for a lawsuit if due to unfair discrimination based on race or sex (Legal Dictionary, 2013b).

Defamation, categorised as misconduct by the South African Council for Educators, is described by the Legal Dictionary (2013a) as “*a criminal or civil charge and encompasses both written and spoken statements, known as libel and slander respectively. Any intentional false communication, either written or spoken, that harms a person’s reputation, that decreases the respect, regard or confidence in which a person is held, or that induces disparaging, hostile or disagreeable opinions or feelings against a person is known as defamation of character*” (Legal Dictionary, 2013a).

Lunenberg, Korthagen and Swennen (2007: 589) state that all behaviour that is abusive, harasses or victimises should be condemned as it will impact negatively on educator security and serves as negative examples to learners.

3.3.4 Sexual misconduct

Fox and Nkosi (2003: 4) define sexual abuse against children as the assertion of power, through sexual acts, against children under the age of 16. Sexual intercourse with a child under the age of 16 is legally defined as statutory rape (Fox & Nkosi, 2003: 4). Sexual misconduct is a range of behaviours that are used to obtain sexual gratification against another's will or at the expense of another (Naylor, 2010: 5). Sexual misconduct includes sexual harassment, sexual assault as well as any conduct of a sexual nature that is without consent or that makes the person against whom such conduct is directed, feel threatened or intimidated. Generally, sexual misconduct can involve intentional touching without consent, exposing genitals under circumstances likely to cause affront or alarm, or forcing a victim to touch – directly or through clothing – another person's genitals, breast, groin, thighs or buttocks (US Legal, 2013).

Sexual harassment is not only oppressive, humiliating and exploitative, but also a form of abuse and discrimination which should be as condemned as other forms of discrimination and racism are (Naylor, 2010: 5). According to Naylor (2010: 6) sexual harassment undermines a woman's potential for social equality in the same way *apartheid* undermined blacks' opportunities to social equality. She also states that sexual misconduct is not equally applicable to all South African women: research indicates that South African women are separated by class, race, colour, culture, rural or urban situation, education and language (Naylor, 2010: 5).

Blackstone *in* Rettner (2011) states that as many as 70 percent of American women and 45 percent of American men have experienced some form of sexual harassment in the workplace. According to Rettner (2011) victims of sexual harassment can experience strained relationships in the workplace, but are also at risk of health problems like hypertension, depression, post-traumatic stress disorder, sleep disorders, neck pain and suicidal behaviour.

Sexual misconduct in the workplace is also experienced in education. The South African Council for Educators Annual Report (SACE, 2012), reveals that the number of cases in the sexual misconduct category was the second highest of all categories and, furthermore, states that the number of sexual cases, including rape allegations,

harassment and inappropriate relationships with learners have increased since 2010. The severity of the situation is emphasised when the observations of Jewkes and Abrahams (2002: 1240) are taken into consideration – they found that, in South Africa, a nine-fold difference exists between the number of sexual assault cases reported to the police and the number reported in their studies.

The consequences of sexual assault on learners and educators are far reaching – not only are victims of sexual assault psychologically abused (Sarkar & Sarkar, 2005: 407), but they are also concerned about having contracted sexually transmitted diseases or even an unwanted pregnancy (Community Crisis Centre, 2013) Sarkar and Sarkar (2005: 411) warn that women who were sexually assaulted in their childhood, are twice as likely to be assaulted in adulthood and list sleep disorders, anxiety, nightmares, depression and suicide ideation among other disorders following sexual assault or rape.

Naylor (2010:5) states that a number of judicial developments, that attempt to address sexual harassment in the work place, exist in South Africa. Before 1994 women in all sectors struggled with the social and judicial inability to regard sexual harassment as a form of abuse. Before any legal measures were available employers had to act within the confines of common law, and they had two duties only, namely to show respect to the employees, and to create a secure working environment (Naylor, 2010: 6). In the work place, this ‘security’ was incorrectly regarded as the physical security of the employee and the consideration of sexual harassment and sexual transgression was neglected. Up until the case of *J v M* [1989] 19 ILJ 755 (IC) – which was the first court case concerning sexual harassment – the issue of sexual harassment did not receive any attention in courts (Naylor, 2010: 6). This position has changed, and sexual perpetrators are now sanctioned by courts of law.

In terms of section 17 (1) (b) of the Employment of Educators Act 76 of 1998 (SA, 1998) an educator must be dismissed if he or she is found guilty of committing an act of sexual assault on a learner, student or other employee. However, according to the South African Council for Educators Annual Report (2012: 31) educators were struck off the roll in only 14% of the cases, and written advisory or cautionary notices to offenders were the most common result. The reason for these decisions of the South

African Council for Educators might have been that there were mitigating factors that were taken into consideration, as it happened in the following court cases of educators involved in sexual misconduct:

In the unreported case of *S v Ndaba*, Case no. 425/92, SCA at 133, a 28 year old teacher sexually assaulted a nine year old girl. The regional court sentenced him to six years' imprisonment, but, on appeal, the Court found that long-term treatment was necessary to control his paedophilia, and that a sentence of correctional supervision was appropriate in these circumstances.

In the case of *S v Mohlakane* 2003 (2) SACR 569 (O), (as previously mentioned in paragraph 2.2.3.4) the appellant had been convicted of indecently assaulting the complainant, one of his female pupils, in his office. He summoned her to his office under pretext of helping her to pass her examinations. The accused was sentenced to 18 months imprisonment by the trial court. On appeal, the Court emphasised the seriousness and prevalence of offences perpetrated against women and children, public concern about them and the need for stiff sentences. The Court held that the trial court over-emphasised the gravity of the offence and the interests of the community at the expense of the personal circumstances of the appellant, and that direct imprisonment was not an appropriate sentence in this case. Mitigating factors in favour of the accused were that he was a first offender, that he was married with three dependent children, that he had rendered valuable service as a teacher to the community, that he had resigned from his position and had suffered shame, humiliation and contempt in the eyes of his family, colleagues and pupils. The probation officer recommended correctional supervision, and the case was referred back to the trial court to impose a sentence of correctional supervision and determine the conditions.

In *S v R* (1995) conditions were not mitigating but aggravating: A primary school educator was accused of committing indecent acts with his pupils, stood by and watched while they committed indecent acts with each other and even made a video recording of the activities. The Court viewed such conduct, together with the abuse of the position of authority, as a strongly aggravating factor and that correctional supervision was not an appropriate sentence. The appellant was sentenced to five years' imprisonment. Two years were conditionally suspended.

- Criminal Law (Sexual Offences and Related matters) Amendment Act 32 of 2007

Stringent measures for keeping sexual offenders at bay are in place. Legislation introduced to strengthen the South African child protection system specifically are the Sexual Offences Act 32 of 2007, the Children's Act 38 of 2005 and the Children's amendment Act of 2008 (Mathews *et al.*, 2012: 91). A range of non-penetrative acts as well as the rape of boys are recognised as sexual assault in terms of the Sexual Offences Act. The Sexual Offences Act also makes provision for specialised courts and care centres for victims of sexual assault (Mathews, *et al.*, 2012: 91). Mathews *et al.* (2012: 91) point out that educators are integrally involved in the collaborative effort between social services, the police, health care and education to prevent sexual abuse.

The Sexual Offences Act, however, does not protect children only but also provides protection to all citizens. In terms of the Sexual Offences Act 32 of 2007 employers are prohibited from employing sex offenders in certain occupations, including nurses, doctors, teachers and airline personnel (Kriel, 2008). According to Kriel (2008) the Bill is applicable to those who committed sex crimes towards children, and determines that a database with the names of all the offenders has to be compiled. Sexual misconduct, both towards learners as well as towards educators, is described as a disgrace and embarrassment to the profession that renders both psychological and emotional implications (Chikamhi, 2006: 120 – 121). It is evident that sexual misconduct will impact negatively on educator security.

3.3.5 Fraud, theft, financial mismanagement

In its *Fraud Policy and Response Plan*, the Department of Education (2013) considers *fraud* as an umbrella term, and clusters theft as well as financial mismanagement as sub divisions of fraud. The Department (2013) clearly states that it supports and fosters a culture of zero tolerance to fraud in all its manifestations.

In a school situation, the most common forms of theft are stealing or misusing school funds, stealing or unauthorised use of school computers by educators and stealing of cell phones from fellow educators (Mbonambi, 2002: 15). Thiroux *in* Mbonambi (2002: 15) states that theft not only violates the property rights of individuals and

institutions, but also leads to the breakdown of trust. Theft affects the trust between the educator and his or her colleague, and it also makes the relationship between the educator and the employer intolerable and unworkable (Mbonambi, 2002: 15). In terms of section 17 (1) (a) of the Employment of Educators Act 76 of 1998 (SA, 1998) if an educator is found guilty of theft, he or she must be dismissed by the employer. The Labour Court, however, does not always view termination as a fitting punishment, because of the conflict between the consistency of treatment and fairness to individuals, thus placing the onus on the principal and the Department of Education to be consistent in dealing with cases of theft (Mbonambi, 2002: 16).

In the court case *Despatch High School v Head of the Education Department, Eastern Cape Province and others* (2002) (also see paragraph 2.2.3.1) the school governing body reported to the Head of the Eastern Cape Education Department a case of alleged misconduct. A cellular phone was allegedly stolen by the principal of the school. Although the principal admitted guilt to the charge after an investigation by the school's governing body, the Head of Department did not take any action and only carried out a disciplinary enquiry after the governing body reported the matter to the police, where a criminal conviction was made. The principal was suspended from duty, pending the outcome of the investigation. The principal was criminally prosecuted and stood trial. He pleaded guilty and was sentenced to a fine of R2 000 or a six month imprisonment term. He was also served with a final written warning as sanction, and was then allowed to go back to the school.

In terms of section 34(1) of the South African Schools Act (SA, 1996) the state must fund public schools from public revenue on an equitable basis in order to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in education. The Schools Act (SA, 1996) also prescribes how schools should manage their funds and provides guidelines for the School Governing Body and the principal on their roles and responsibilities in managing the finances of the school. The responsibility for the accuracy of the financial records lies with the principal, even if he or she does not have the task of maintaining the financial record on a regular basis (Hansraj, 2007: 2). Many principals and SGB members lack the necessary financial skills and knowledge, and are placed under considerable pressure because they are unable to find practical solutions to practical problems

(Mestry, 2004: 126). It was reported that principals and school governing bodies were subjected to forensic audits by the Department of Education due to the mismanagement of funds through misappropriation, fraud, pilfering of cash, theft and improper control of financial records (Mestry, 2004: 126). A forensic audit at High School Ermelo eventually resulted in the 2002 case, *Schoonbee and others v MEC for Education, Mpumalanga and another*. The forensic audit suggested that several matters, including expenditure of school funds by the principal, could have been handled differently by the School Governing Body. The Provincial Head of Education subsequently dissolved the whole School Governing Body and suspended the principal as well as the senior deputy principal. Moseneke, J, however, set aside the decision of the Provincial Head of Department on grounds of unfair administrative action.

3.3.6 Corporal punishment

Although corporal punishment in schools has been prohibited for nearly two decades, it is still the most common type of misconduct committed by educators and that is referred to the South African Council for Educators (2012: 31). Maree *in* Morrell (2001: 293) describes corporal punishment as the infliction of pain by a teacher or other educational official on the body of a student as punishment for doing something that was disapproved of. Prior to 1995 moderate corporal punishment was acceptable – and meted out – as a corrective measure. However, in terms of section 10 of the South African Schools Act (SA, 1996), corporal punishment is prohibited in all South African schools. The case of *Christian Education of South Africa v The Minister of Education* (2000), discussed in paragraph 2.2.1.1, confirmed that the prohibition of corporal punishment was also applicable to private schools, and that no educator may be granted permission by a parent to administer corporal punishment on his child (Oosthuizen, Smit & Roos, 2009: 183). Despite this ruling, a private school in Mpumalanga was recently ordered to close. The Department of Education found that the educators of the school still administered corporal punishment. The Department's attention was focussed on the school after a learner was beaten so severely that she passed away (Alfreds, 2014).

As it happens, despite the *Christian Education* decision, many educators ignore the judgment and still illegally apply corporal punishment at schools with the approval of

parents (Maree, 2004: 72-85). Morrell (2001:292) found that corporal punishment is still applied in South African schools despite its illegality and suggests that the general decline in discipline in South African schools is the most important reason for the phenomenon of continued use of corporal punishment.

The Centre for Justice and Crime Prevention study (CJCP, 2006) reported that 51% of learners indicated that they had at some stage been caned or spanked at school. The Human Rights Commission reported that corporal punishment is still applied in more than half of the schools (51.4%), with the Eastern Cape (65.3%), Mpumalanga (64.1%) and Limpopo (55.7%) reporting the highest incidences (SAHRC, 2008). Recent research (Olivier, 2011) seems to show that corporal punishment still persists in 70% of the schools in South Africa. The number of complaints regarding the use of corporal punishment against educators that are investigated by the South African Council for Education ("SACE") amount to approximately 200 cases per year (SACE Annual Reports, 2003-2010).

In the matter of *George v Member of the Executive Council, Eastern Cape Education Department* the plaintiff instituted an action claiming damages in his personal capacity, and as father and natural guardian of his minor son. The claim arose from an alleged assault of the boy by an educator in the form of corporal punishment on 7 February 2006 when he was beaten by an educator, Johnson.

On that specific day, the boy was a learner in Johnson's class, and when Johnson entered the classroom, he found that the cabinet where administrative files and books for indigent learners were stored had been vandalised, and that the contents were strewn all over the classroom floor. Enquiries among the learners indicated that it was the plaintiff's son (George Jr.) and a fellow learner who had been responsible. Johnson admitted that he used a stick to discipline them. He meted out six cuts on the buttocks of each boy as punishment. The George Jr.'s wrist was fractured when he tried to block one of the lashes. The plaintiff succeeded in claiming damages from the Education Department and in turn the educator was disciplined by his employer.

Attempts to explain the persistence of corporal punishment have been undertaken by various researchers: In a study lodged by Mentz, Wolhuter and Steyn (2003: 406) they found that corporal punishment was still applied in 10% of the schools in their

study. This was because of historical perceptions that corporal punishment was the only way to maintain discipline. Naong (2007: 283) argues that teacher morale is directly correlated to learner discipline at school and that it seems as if a sense of despair has taken over amongst South African teachers since the abolition of corporal punishment. Kubeka *in* Naong (2007: 283) found that educators argued that discipline could not be maintained without corporal punishment and that children would not show them respect unless they were beaten or threatened with being beaten; they felt that their power as educators had been taken away. During her research, Naong (2007: 293) found that 38% of the white teachers, 70% of the black teachers and 60% of the coloured teachers who took part in her study supported the reintroduction of corporal punishment and admitted to still administering corporal punishment because they did not find that other methods of instilling discipline were effective.

The empirical research conducted by Mentz *et al.* (2003) indicated that 13.3% of school principals participating in their research considered leaving the teaching profession because of the decaying discipline situation among learners. It might thus be argued that some educators found a certain measure of security in being able to administer corporal punishment and that their security was adversely affected by the abolition thereof.

3.3.7 Racism

Racial discrimination – racism – is described by The Oxford Dictionary (2014) as “*prejudice, discrimination or antagonism directed against someone of a different race based on the belief that one’s own race is superior.*” In terms of section 9 of the Constitution (SA, 1996) everyone is equal before the law and has the right to equal protection and benefit of the law. This requires a deliberate break from historically institutionalised racial discrimination and the denial of equality under the *apartheid* system (Smit, 2011: 113). In *Matukane v Laerskool Potgietersrus [1997] JOL 102 (T)* the Court found that the school had a racist admission policy under the guise of protecting cultural and language differentiation and concluded that the school was seeking to accomplish indirectly what it could not do directly.

Even though the number of racism cases referred to the South African Council for Educators is the smallest of all categories, it is often reported in the media: “DA disgusted by school racism” (SAPA a, 2013); “This school is the home of racism” (Diale, 2011); “A monster of racism at Potch” (John, 2013). Recently, a Police Captain was denied promotion three times, based on her race. She took the matter to court, and in *Solidarity obo Barnard v South African Police Service 2013 JDR 2673 (SCA)*, the Supreme Court of Appeal delivered a landmark verdict on affirmative action when it struck down the use of racial quotas in determining job appointments, finding that it was unfair to attempt to achieve employment equity by the rigid application of a numerical formula. The verdict was later overturned in the Constitutional Court who described the actions of the South African Police Service as a “restitutionary measure”. However, this case has far reaching implications for the public service because rigid demographic quotas to determine placements and promotions are used by several departments (Paton, 2013). These departments will thus have to revisit their policies on placements and promotions. These policies will have to be adjusted to reflect placement and promotional criteria based on merit.

Racism is a contentious, emotional issue that will definitely contribute to educators feeling insecure when they become victims thereof. On the other hand, educators who practise racism are in direct violation of section 9 of the Constitution, thus guilty of disobeying the law.

3.3.8 Unprofessional conduct: alcohol abuse, absenteeism, insubordination.

The World Health Organisation (2011) reveals that South Africans consume in excess of five billion litres of alcohol per year, and if sorghum beer is included, this amount will be even higher. This equates to nearly ten litres of pure alcohol per person per year, which places South Africa among the highest per capita consumption rates in the world (WHO, 2011). Rehm and Shield (2012: 15) describe alcohol consumption as a double-edged sword: on the one hand, it is deeply engrained in many cultures and thus contributes to pleasure and positive well-being. On the other hand it is a major risk factor for health harms, and also contributes to a social and personal burden of injury and disease. The World Health Organisation (2011) points out that the harmful use of alcohol causes harm far beyond the physical and psychological health of the drinker and is detrimental to the well-being of people

around the drinker. An intoxicated person can harm others or put them at risk of violent behaviour as well as negatively affect co-workers, relatives, friends or strangers. Harmful drinking is a major determinant of neuropsychiatric disorders, like epilepsy, non-communicable diseases, like cardiovascular diseases and cirrhosis of the liver, as well as several infectious diseases like HIV/AIDS, tuberculosis and sexually transmitted infections. Thus, the impact of the harmful use of alcohol reaches deep into society (WHO, 2011).

In terms of section 18(1)(p) of the Employment of Educators Act 76 of 1998, being intoxicated at work is a misconduct. Besides committing misconduct by being intoxicated at work, the harmful use of alcohol will affect teachers in the same ways as explained by the World Health Organisation, therefore, the misuse of alcohol will negatively impact on educator security.

Another issue of the harmful use of alcohol, as pointed out by the World Health Organisation (2011), is absenteeism in the workplace. Motshekga the Minister of Basic Education, disclosed that South African educators were on average absent for 19 days per person during 2012, which is highest rate of absenteeism in the Southern African Development Community. Educator accountability – arriving at school on time and teaching for the full day – as well as the rate of absenteeism are causes of great concern in the Department of Education (SAPA, 2013b). Maluleke (2013) is of the opinion that the high rate of absenteeism among educators is due to the fact that educators have to contend with the high levels of ill-discipline in schools as well as heavy workloads, insufficient training and huge personal debt. This leads to depression which, in turn, leads to absenteeism (Maluleke, 2013).

A regulation that does not appear in any legislation or the Personnel Administration Measures, and is thus identified as a lacuna in the legislation, is the stipulation concerning substitute educators for educators who are granted sick leave for extended periods of time. The onus thus rests on the Provincial Departments of Education to regulate the appointment of substitute educators for educators on sick leave. The only two provincial departments of education that have written regulations regarding the appointment of substitute educators, however, are the Gauteng Department of Education and the KwaZulu Natal Department of Education, and these regulations differ. The Gauteng Department of Education (2004) stipulates that a

substitute educator may be appointed for educators on sick leave of more than 20 consecutive school days, while the KwaZulu Natal Department of Education (2001) stipulates that substitute educators may fill in for educators who are absent for more than 30 consecutive school days. Levels of educator security will be influenced positively when legislation is amended to include a regulation regarding substitutes for extended sick leave.

The third form of unprofessional conduct specified by the South African Council for Educators is insubordination. In the workplace insubordination usually means one of two situations: an employee refuses a direct order from a superior, or an employee has a confrontation with the superior. Insubordination has steep consequences because the employee is essentially breaching his contract by refusing to work (Griffin, 2013). The Code of Good Practice: Dismissal in the Labour Relations Act 66 of 1995 serves as guideline for all those presiding over disputes related to discipline and dismissal (Israelstam, 2013).

3.3.9 South African Council for Educators disciplinary process

The core objective of the Legal Affairs and Ethics Division of the South African Council for Educators is to enforce, maintain and implement the Code of Professional Ethics for educators in the country. The South African Council for Educators does not have jurisdiction over employment or labour-related issues as described in paragraph 2.2.1.3, but investigates all complaints that the Department of Education receives that are of an ethical nature. In terms of its disciplinary procedures, the Council is authorised to remove the name of any educator found guilty of unprofessional conduct from the register (SACE, 2012). Unprofessional conduct which the Council has jurisdiction over consists of cases that include alcohol abuse, absenteeism and insubordination.

The investigation of alleged breaches of conduct is set out by the South African Council for Educators (SACE, 2012): Any person who believes that an educator is guilty of unprofessional conduct, may lodge a complaint – preferably in writing and clearly disclosing the nature of the alleged breach – with the Council. As soon as practicable after receiving a complaint, the Chief Executive Officer must refer the complaint to the disciplinary committee for consideration. The disciplinary committee

will then refer the alleged breach to an investigating panel for investigation. On investigating the alleged breach, the investigating panel may interview the complainant and other witnesses, as well as the educator who has allegedly breached the code. Summonses must be served on every person to be interviewed. Before interviewing the educator who has allegedly breached the Code, the investigating panel must warn him about his right against self-incrimination and that any admission or explanation given by him may be used against him at a disciplinary hearing. A record of the investigation must be kept and if the investigating panel is satisfied that there is enough evidence of a breach of the code, the panel may refer the matter to a disciplinary panel for a hearing. A member of the investigating panel may not serve as a member of the disciplinary panel which hears the matter.

3.3.9.1 Preliminary procedure prior to a SACE hearing

Before a disciplinary hearing may be held, summonses disclosing the nature of the alleged breach, the date, time and venue of the disciplinary hearing as well as the educators right to legal representation, call witnesses and make written submissions must be served at least twenty days before the hearing. If the educator fails to attend the hearing, it may continue in the educator's absence.

3.3.9.2 Hearing procedure

During the hearing – of which a record must be kept – the panel must put the charge to the educator and ask him to plead to the charge. If the educator pleads guilty, the panel may decide whether or not to hear evidence regarding the charge, but if the educator pleads not guilty or refuses to plead, the panel must hear evidence regarding the case. In hearing evidence regarding the case, every party's representative may lead evidence in support of their case, cross-examine any witness of the opposing party and re-examine any witness led by that party. Members of the disciplinary panel may question any witness at the hearing. After evidence has been completed and every party has been given a fair opportunity to be heard, the disciplinary panel must make its recommendation on whether or not there was breach. If the disciplinary panel finds that the educator has breached the code, they must request the parties to suggest an appropriate sanction, which may include the leading of further evidence. On the basis of the recommendations of the disciplinary panel, the disciplinary committee must recommend a finding and

appropriate sanction to the Council and inform the educator accordingly. The Council may accept, reject or substitute the recommendation of the disciplinary committee.

3.3.9.3 *Sanctions*

If an educator is found guilty of a breach of the code, the Council may impose one of the following sanctions: a caution or reprimand, a fine not exceeding one month's salary or the removal of the educator's name from the register permanently or for a specified period, subject to specific conditions. The Council must inform the educator in writing of its decision. The Council's decision is final, but the educator may appeal against the findings or the sanction or both (SACE, 2012).

3.4 Underlying causes for widespread misconduct

Educator misconduct is, however, not always only limited to – or as clearly identifiable as – those specified in sections 17 and 18 of the Employment of Educators Act. In view of the phenomenon that liberal individualism is the general philosophy of South Africans (see paragraph 3.2.2 above), possible causes, for the widespread occurrence of misconduct under South African educators will be discussed. The systemic nature of widespread dysfunctionality in South African schools and possible reasons for this phenomenon, will be discussed.

Many times, even by not explicitly committing any statutory misconduct, the general dysfunctionality and toxic personalities of some educators cause feelings of insecurity among their colleagues. This will be discussed in the following sub-paragraphs.

3.4.1 Bronfenbrenner's ecosystems theory and the dysfunctional equilibrium

The conception that educators' behaviour and conduct are influenced by their environment has long been discussed in educational and psychological literature (Swartz, 1997: 3). There is an abundance of theoretical applications and evidence supporting this concept. Although this study researches the theme from an Education Law perspective, these concepts, and particularly the ecosystems theory, are applicable. The following discussion is not a comprehensive portrayal but merely an overview to explain the relevance and applicability of the ecosystems theory to the focus of the study.

Bronfenbrenner (1979: 7) theorises that the environment extends beyond the behaviour of individuals to encompass systems that can be modified and expanded. According to Bronfenbrenner's ecosystems theory (1979: 8) the environment in which an individual functions consists of five subsystems namely the micro system, mesosystem, exosystem, macrosystem and chronosystem. Within a society or social group, the structure and substance of systems tend to be similar and function in similar ways. Conversely, constituent systems between different social groups may vary markedly (Bronfenbrenner, 2009: 8). The ecological subsystems such as schools or educational systems have an inclination towards equilibrium and homeostasis – a condition where the systems are in harmony with each other (Eckenrode, Izzo & Campa-Muller, 2003: 162). Eckenrode *et al.* (2003: 162) state that human behaviour is shaped and influenced by risk factors that change processes and might lead to dysfunction. Despite the dysfunctionality, the subsystems will still incline towards a state of homeostasis. Thus, a condition of dysfunctional equilibrium is reached.

The term 'dysfunctional' is defined as '*not operating normally or properly*' (Oxford Dictionary, 2013)). In contrast, 'functional' is defined as '*working*' or '*in operation*' (Oxford Dictionary, 2013). Bipath (2002: 12) defines dysfunctional schools as those schools where a breakdown of learning and teaching is evident. The breakdown of learning and teaching is usually associated with poverty, material deprivation and disruption in the community. In contrast herewith, Bipath (2002: 12) defines a functional school as an effective school that accomplishes what it sets out to do.

A high incidence of dysfunctionality in poor and disrupted communities, such as townships, is identified by Bipath (2002: 12). Bipath (2002: 12) reasons that the dysfunctionality and poor functioning of some South African township schools might partially be due to the previous system of apartheid education and campaigns such as "no education before liberation".

When opposing forces or influences are balanced, they are in a state of equilibrium (Oxford Dictionary, 2013). In a school situation equilibrium is reached when, for example, standards-based instruction and curricular innovation, and creativity and independence are in balance (Scallion, 2010: 28). According to Brown (2004), because schools are faced with multiple tasks and influences, they develop an

equilibrium that both stabilises them and makes them resistant to change. The development of this state of equilibrium is linked to a school's culture, which, according to Peterson and Deal (2009: 28), encompasses a set of informal expectations and values that shape how people feel, think and act in a school. Over time, however, some schools have become unproductive because of a fragmented staff who are negative and without hope (Peterson & Deale, 2009: 29).

The general state of dysfunctional equilibrium in of South African schools may be explained according to the Bronfenbrenner ecosystems theory. According to Eckenrode *et al.* (2003: 163) a state of dysfunctional equilibrium has to be prevented from being reached. If dysfunctionality occurs or if a system tends to be dysfunctional, intervention processes should be initiated as early as possible. The intervention processes should be comprehensive, linked with the desired outcomes and continue until the dysfunctionality is addressed (Eckenrode *et al.*, 2003: 162 – 164).

3.4.2 Toxic personalities and the bad apple effect

In workplaces, some employees are motivated by personal gain, use unethical, mean-spirited and sometimes illegal means to manipulate and annoy those around them, and are motivated to maintain or increase power or special status (Felps, Mitchell & Byington, 2006: 176). Felps *et al.* (2006: 176) state that these employees are known as toxic employees or toxic personalities and do not recognise a duty towards the organisation they work for, or towards their co-workers in terms of ethics or professional conduct and can cause co-workers to feel angry, betrayed, fearful or filled with self-doubt.

According to Felps *et al.* (2006: 176) not all groups are equally successful. While some groups display divisiveness, conflict and a tendency to 'burn themselves up', other groups achieve cohesion between team members, as well as a mutually supported ethos and high collective efficacy. Felps *et al.* (2006: 176) argue that group-level variables such as group paranoia, group think and low group efficacy are important factors in determining the success or failure of a group, but in some cases a single, toxic team member may be the catalyst for group-level dysfunction. The idiom "One bad apple spoils the whole barrel" captures the core idea of negative

individuals having an asymmetric effect on others. Peterson and Deale (2009: 28) refer to these schools as toxic schools, and point out that no-one wants to live in work in these kinds of schools. Tyler (2004:77) urges managers to be trained to deal with poor performers since these “bad apples” are like cancer that spreads throughout the workplace.

Three categories of difficult team member behaviour that might ‘spoil the barrel’ are identified by Felps *et al.* (2006: 181 – 182). The first category’s members are the *withholders of effort*. The withholders of effort intentionally free ride off others and dodge their responsibilities. Behavioural examples consist largely of not doing something: tasks are not completed or contributed on time and no risks or responsibilities are taken on. The members in the second category are personally negative or *affectively negative* individuals who continually express a negative mood or attitude. The affectively negative members are more likely to exhibit an awkward interpersonal style and to express pessimism, anxiety, insecurity and irritation. The third category’s members are *interpersonal deviants* who commonly display behaviour like making fun of someone, saying something hurtful, making an inappropriate ethnic or religious remark, cursing at someone, playing mean pranks, acting rudely and publicly embarrassing someone. Negative group members might have a powerful, asymmetric effect on the group and can provoke dysfunctional dynamics (Felps *et al.*, 2006: 183).

Where a group member’s behaviour is persistently and consistently negative, it influences the rest of the group (Felps *et al.*, 2006: 191). Felps *et al.* (2006: 191) summarise group members’ responses to negative team members’ actions: *Withholders of effort* violate effort norms and take advantage of other members’ good-faith contributions. When the group – as a result – is under-rewarded, perceptions of inequity will arise when group members compare their own contributions to those of the withholder of effort in their team. This will result in a desire to restore equity by reducing contributions. *Affectively negative* individuals influence their team mates’ attitudes, moods and emotions. During their study Hatfield, Cacioppo and Rapson in Felps *et al.* (2006: 191) found that simply observing another person’s expression of affect can generate those feelings in others. Felps *et al.* (2006: 192) conclude that individuals will pay more attention to

negative others and are prone to use them for social comparisons. Negative cognitions, feelings and events usually produce stronger effects than equivalent positive cognitions, feelings and events (Felps *et al.*, 2006: 189). Negative emotions generated by an affectively negative group member will, thus, be experienced for a longer period by the group members. The main effect of an *interpersonal deviant* is to undermine trust in an individual. This might be problematic in groups since members depend on each other to benefit from the division of labour efficiencies. On the other hand, distrust in a group member requires increased monitoring of the interpersonal deviant and can distract from task performance.

Group cohesion and group dynamics determine unity in a group (Forsyth, 2006: 14). Group dynamics and the individual's ability to influence relative to their specific environment is explained by Bronfenbrenner's ecological theory of social development (Christensen, 2010: 101).

3.4.3 Ubuntu

Ubuntu is an African word for a universal concept. It entails the showing of respect towards others, to be honest and trustworthy, to strive to help people in the spirit of service (Chaplin, 2006) and is a determining factor in the formation of perceptions which influence social conduct (Mokgoro, 1997). Chaplin (2006) states that *ubuntu* regards humanity as an integral part of the eco system, is fair to all, is compassionate and is a collective respect for human dignity. The basic respect, compassion and empathy for others is expressed as 'I am what I am because of you' (Bonn, 2007: 865; Chaplin, 2006) and the phrase 'An injury to one is an injury to all' reinforces this sentiment (Chaplin, 2006). According to Chaplin (2006) *ubuntu* is one of those things that will be recognised when it is experienced. Bonn (2007: 864) lists, among others, compassion, tolerance, understanding, empathy, mutual responsibility and a concern for others' welfare as moral values that may safeguard the conservation of the group and promote the harmonious existence of the individual within the community.

However, Jansen (2009: 175 – 176) cautions that *ubuntu* is often naively contended as a way of signalling acceptance of the new South Africa and its democratic values without much reflection on any product. He adduces that *ubuntu* is not in touch with the empirical reality and cites one of the highest crime rates in the world as example.

The concept of *ubuntu* might explain certain phenomena on an inter-personal level. The compassionate nature of *ubuntu* might influence people's reactions towards supporting and accommodating other people's conduct and behaviour.

3.4.4 The tribal hierarchy system

According to Ronfeldt (2006) tribal governance is thousands of years old. Its main dynamic is kinship, through which people derive a distinct sense of identity and belonging. Oxford dictionaries (2014) describe a tribe as “*a social division of a traditional society consisting of families or communities that are linked with economic, religious or blood ties*”.

South African ethnic tribes are groups of people who recognise the authority of one tribal chief and live in a specific tribal area. The highest tribal authority is vested in a monarch (king or tribal head) assisted by a family council. Chiefs, who inherit the title via a paternal line, form the second level of authority and report to the monarch. Headmen, who have to report to the Chiefs, are elected by the villagers of the village where they live, and each household in the village is headed by a homestead head that has to resolve domestic issues (www.krugerpark.co.za).

Rose (1996) states that, although modern structures, such as a cabinet and parliament that pass legislation, have power delegated by the monarch, the passing of the legislation is still subject to approval by the monarch. Traditional councils, in which procedures are not controlled by codified legal rules or by legislative enactments, co-exist with modern courts formalised by national legislation (Rose, 1996).

Ronfeldt (2006) identifies four phases in the progression of societies and societal governance since the earliest ages. The first form of societal organisation that developed thousands of years ago was the *tribe* with kinship as main dynamic. Tribes were succeeded by the *institutional* form of governance which developed the state and military. The third form of societal organisation to occur was the *market* form which enabled people to excel at openly competitive, free and fair economic exchanges. The *network* form is the most modern form of society and involves the digital information technology revolution to connect dispersed groups so that they may act conjointly (Ronfeldt, 2006). According to Ronfeldt (2006) each form of

society requires a different set of conditions before it can take place, yet occurs mainly because each form enables people to address a core problem their society faces as it develops. The tribal form excelled – and still excels today – at addressing the early problem of social identity and belonging; the institutional form addressed the problem of power and administration and the market form addressed the problem of complex exchanges (Ronfeldt, 2006).

The influence of the tribal hierarchy in education is uncertain.

3.5 Misconduct during strikes

As discussed in paragraph 2.2.1.1, educators have the constitutionally enshrined right to participate in strikes and demonstrations, but these strikes and demonstrations must be peaceful (De Vos, 2010), held at the correct location (Deacon, 2012) and also be non-violent and non-intimidating (CCMA, 2013). In terms of section 18(1)(v) of the Employment of Educators Act 76 of 1998 (SA, 1998) the prevention of other employees from exercising their right to freely associate with trade unions is a misconduct, and the employer must institute disciplinary proceedings in accordance with Schedule 2 of the Employment of Educators Act. The only reference made to misconduct during strikes is done by the Council for Conciliation, Mediation and Arbitration (2013) that randomly states that if the conduct of the employee taking part in a picket is of such a nature that it constitutes misconduct, the employer may take disciplinary action in accordance with the provisions in the Labour Relations Act. Neither the Employment of Educators Act, nor the Labour Relations Act, however, includes or determines any action or sanction against unacceptable behaviour by educators participating in strike actions.

Unacceptable behaviour such as intimidation and subversive conduct (Malala, 2007: 9), violent actions inflicted on property as well as on other educators who did not want to take part in the strike (Khoabane, 2010: 2) and general conduct that leaves a lot to be desired during strike actions (Cohen, 2010) are often reported in the printed media. Less often are reports of action taken against these perpetrators. They do not appear in the printed media, and the South African Council for Educators is also silent about it. It seems, thus, as if unacceptable behaviour during strike actions goes unpunished.

The unacceptable conduct of union members embarking on protest actions strongly reminds of the mass-protest actions organised by COSATU (Congress of South African Trade Unions) and the UDF (United Democratic Front) during the liberation struggle (Groenewald, 2014). During the protests of the 1980's and 1990's, teachers and learners participated in organised actions and militantly disrupted schools, municipal services and townships. The motives driving this conduct were, on the one hand, the desire for political power and, on the other hand, a protest against exploitation, suppression and racism (Groenewald, 2014). The phenomenon of militantly protesting against authorities to fight exploitation was etched into the minds of all participants and the repercussions thereof are still experienced. Educators feeling that they are exploited by the authorities or the education system, will rather be unproductive and dysfunctional than be productive and contribute to what they consider to be exploitative authorities.

3.6 Misconduct and the effect on educator security

Kennedy (2004: 61) states that the need for security cannot be disputed and that learners and educators who do not feel safe will result in education taking a back seat. The Penguin Concise English Dictionary (2002: 801) indicates that security is "*freedom from anxiety*" and the Collins Cobuild Essential English Dictionary (1989: 716) states that security is "*a feeling of being safe and not having any worries*". In order to enable educators to educate learners effectively, they have a right to security. With secure and confident educators, children are likely to receive a fully effective education (Hayes, 2004: 26).

Article 12 of the South African Constitution guarantees everyone's physical freedom and security, as well as other aspects for which specific provision is made (Rossouw, 2011: 35) and includes protection from violence as well as protection against being treated in a way that may be regarded as inhuman or degrading. Rutherford (2009: 22) points out that it is important to note that the right to security also includes the right to psychological integrity. The fact that psychological integrity is mentioned pertinently is possibly a constitutional acknowledgement of the importance of psychological security which may be regarded as a prerequisite for job fulfilment (Rossouw, 2011: 35). Rutherford (2009: 21) stresses that educators are entitled to both physical and psychological security within their work environment and should

receive ample protection in this regard. Rutherford (2009:24) reasons that the rights of educators as employers are infringed when their colleagues or employers humiliate or disregard them. Keating (2011: 14) stresses that educators need to feel at ease in their workplace because it will enable them to perform optimally.

3.7 Summary

This chapter provided an overview on the nature and extent of educator misconduct, guided by the categories used by the South African Council for Educators. The possible underlying reasons for widespread dysfunctionality and educator misconduct in schools, as well as a brief discussion of the disciplinary process by which such misconduct may be addressed by the employer or professional body. The effect of misconduct on security has also been briefly discussed.

4 CHAPTER 4: RESEARCH DESIGN

4.1 Introduction

In this chapter the focus is on the empirical research of the study. The first part of the chapter focuses on the qualitative research methodology, including aspects such as the research paradigm and the methods of data gathering and analysis. The second part of the chapter includes the identification and selection of the participants as well as a discussion of the collection and analysis of the data.

4.2 Research design

McMillan and Schumacher (2001: 5-6) regard educational research to be imperative since it provides valid information, knowledge and principles to guide the decision making, thinking and discussion process in education. The research design is the researcher's plan of enquiry on how to proceed to gain an understanding of a certain phenomenon and has to provide, within an appropriate mode of enquiry, the most valid and accurate answers possible to the research question (McMillan & Schumacher, 2011: 31, 72).

Creswell (2009: 3) refers to research design as the plan or proposal to conduct research. A research design states what type of study will be undertaken in order to provide acceptable answers to the research problem or question (Mouton, 2009: 49). Creswell (2009: 3) advances three types of research designs, namely qualitative, quantitative and mixed methods. Qualitative research is an umbrella term for a range of qualitative strands that have developed over the years (Nieuwenhuis, 2010: 47). The distinction between qualitative and quantitative research is often framed as using words (qualitative) rather than numbers (quantitative), or using closed-ended questions (quantitative hypotheses) rather than open-ended questions (qualitative interview questions). Mixed methods research is an approach that combines both qualitative and quantitative forms (Creswell, 2009: 4). Myers (2004) states that qualitative research involves the use of qualitative data, such as interviews, documents, and participant observation data, to understand and explain social phenomena. The motivation for doing qualitative research is to help researchers understand people and the social and cultural contexts within which they live (Myers

2004). Woods (2006) states that most of the approaches to qualitative research have a focus on natural settings as well as an interest in meanings, perspectives and understandings in common. Woods (2006) also stresses that the qualitative researcher does not set up artificial experiments, makes as few assumptions as possible in advance and needs to develop a certain rapport with the participants to win their trust. The qualitative researcher seeks to discover the meanings that participants attach to their behaviour, how they interpret situations, and what their perspectives are on particular issues (Woods, 2006).

The advantages of qualitative research, highlighted by Henning (2004: 34 – 41), are that the researcher gains an in-depth understanding of the situation and meaning for those involved, and the lived experience and deeply held beliefs or feelings can truly be determined. In order to reach the overarching aim of this study, namely to provide insight into the phenomenon of educator misconduct and the effect it has on the fellow educators in the Maquassi Hills area, qualitative research was done.

4.3 The research paradigm and methodology

According to Nieuwenhuis (2010: 47) a paradigm is a set of beliefs about reality which gives rise to a particular world-view and serves as the lense or organising principles by which reality is interpreted. Interpretivism is such a paradigm, and is a philosophical theory of meaning, understanding and literary interpretation (Nieuwenhuis, 2010: 58). The ultimate aim of interpretivistic research is to offer a perspective of a situation, analyse it and provide insight into the way in which a particular group of people make sense of their situation or the phenomena they encounter (Nieuwenhuis, 2010: 60). The phenomenological approach to doing the research allows research on a specific phenomenon, which, for the purpose of this study, was educator security and educator misconduct.

According to Leedy and Ormrod (2005: 139) a phenomenological study is one that attempts to understand people's perceptions, perspectives and understandings of a particular situation. Leedy and Ormrod (2005: 139) state that phenomenological researchers depend almost exclusively on lengthy interviews with a carefully selected sample of participants. The researcher listens closely as the participants describe their everyday experiences related to the phenomenon and must be alert to subtle yet meaningful cues in every participant's expressions, questions and occasional side-

tracks. A typical interview looks more like an informal conversation, with the participant doing most of the talking and the researcher doing most of the listening (Leedy & Ormrod, 2005: 139). Because the phenomenological approach was chosen, the participants' perspectives were the empirical point of departure. Thus, the real-life experience of educators regarding the impact of educator misconduct on educator security was analysed in the final report. Participants for this research were selected based on their experience. Since I am a teacher in the research area, I know the educators and departmental officials personally. The participants were purposely selected to provide rich qualitative data in view of their experience with regard to educator misconduct and its effect on the school and educator security. Each educator or departmental official has at least fourteen years' teaching experience and supplied rich data.

4.4 Research Methods

To ensure that the research objectives are reached, a literature study as well as empirical research was undertaken.

4.4.1 Literature study

Creswell (2009: 25) states that a literature review shares with the reader the results of other similar studies and it relates a study to the larger, on-going dialogue in the literature by filling in gaps and extending prior studies. A literature study also provides a framework for establishing the importance of the study as well as a benchmark for comparing the results with other findings (Creswell, 2009: 25).

The literature study for this proposed research aimed to establish the nature of educator misconduct and what effect this misconduct has on education and fellow educators. In addition, the sources of law, which include statutory law, common law and case law, were analysed as part of the literature study. This was done in order to establish the legal norms, to determine the correct and lawful procedure and approach in addressing educator misconduct and to glean the most recently established legal principles as determined by the courts in reported judgments and case law. Roos and Oosthuizen (2009: 128) explain that recorded law reports contain the particular facts of each case, the proceedings of the cases, the reasons for each particular judgment and the legal principles that apply to the legal questions of cases. Under certain circumstances, in terms of the precedent system of South

African Law, the decisions in High Courts and superior court judgments are applicable to later judgments. Appropriate cases were identified and analysed to determine how educator misconduct was dealt with and sanctioned.

Recent national as well as international journal- and conference articles, books and dissertations were consulted to compare the nature, extent and measures dealing with educator misconduct in South Africa in comparison to other countries that experience similar challenges. In order to find the relevant literature, applicable computer searches in databases such as EBSCO Host, Academic Search Premier, Sabinet, Juta Law Reports and Lexis-Nexis Law Reports were undertaken by using key words like 'educator', 'misconduct', 'principal', 'discipline', 'conduct', 'legislation', 'unions', 'security' and 'disclosure' were used.

4.4.2 Empirical research

Empirical research was undertaken to provide insight into the phenomenon of educator misconduct and the effect it has on fellow educators

4.4.2.1 Study population and sampling

The study population comprised of all the educators and principals of all the primary and secondary schools in the Maquassi Hills Area. The Maquassi Hills area includes three towns, namely Ottosdal, Wolmaransstad and Sannieshof, in which there are two Afrikaans and 13 English secondary schools, three Afrikaans and 35 English primary schools and 998 teachers in total (Engelbrecht, 2012).

After consultation with the North West Department of Education, participants from three primary and three secondary schools were purposefully selected to reflect the effect that educator misconduct has on their security. The most important selection criteria for selecting these schools were:

- Existing or previous reported incidences of educator misconduct. Schools where no incidences of educator misconduct have been reported were not considered since participants were required to have been affected by the misconduct of fellow educators.
- Accessibility. Because farm schools are usually more difficult to reach, they were not selected.

Factors like language of instruction, quintile, school size and whether the school is a public or private school, were not considered as selection criteria for the purposeful sample.

According to Maree and Pietersen (2010:90-91) purposeful sampling aims to identify and select members that represent the target population, keeping in mind factors such as homogeneity/heterogeneity, age and gender, race and class, socio-economic status, literacy level and demographics. In purposefully selecting the participants, the aim was to seek alternative perspectives from participants that were most likely to provide rich, deep qualitative data that addressed the pertinent issues. Participants were identified after the research topic was discussed with the individual school principals. The school principals then recommended staff members who were experiencing the effects of educator misconduct, or who were part of the management team who had to handle cases of misconduct. The researcher then approached the recommended educators for an interview.

An initial target of 22 participants was set in order to establish the effect of educator misconduct on fellow educators, and whether similar perceptions of insecurity are experienced in primary and secondary schools. The number of participants that were interviewed, however, did not reach the original target since the data reached a saturation point. As indicated in the following table, interviews were conducted with departmental officials as well as 13 educators from different post levels:

	Primary	Secondary
Post Level 1	1	2
Post Level 2	1	2
Post level 3	3	2
Post level 4	0	2
Departmental Officials	2	

4.4.2.2 *Methods of data collection*

Qualitative data was gathered through face-to-face interviews with the participants. Phenomenological research was done, thus participants were asked to describe the influence of their fellow educators' misconduct on their perceptions of security. Participants were also asked to describe how educator misconduct is handled at

school level in order to ascertain whether the appropriate legal procedures are known and followed. The interview question schedule was not made available to the participants before the actual interview. This was to prevent them from acquiring knowledge at the last minute which would give an inaccurate reflection of the real situation. The questions were used as a guide and participants were encouraged to speak freely and provide additional information concerning their psychological security. Probing strategies were used to get as much data from participants as possible and to verify previous information. All the interviews were audio recorded once the participants had given their permission.

During the individual interviews the following procedure was followed:

- I introduced myself.
- I explained the research study and mentioned that, for this study, security specifically was aimed at psychological security.
- The confidentiality of the interview and the anonymity of the participants were emphasised.
- Participants were asked to complete the form for granting informed consent for the interview to take place. (See addendum E)
- Permission was obtained to make a voice recording.
- The interview proceeded by using the interview schedule to guide the interview. (See addendum D)

By keeping to the specific sequence of events as stipulated in the procedure was vital for each interview in order to apply consistency and contribute to the trustworthiness of the research (Keating, 2011: 97).

4.4.2.3 Trustworthiness

According to Nieuwenhuis (2010: 113) trustworthiness in qualitative research is of the utmost importance. Trustworthiness in qualitative data may be enhanced by using multiple data sources like individual as well as focus group interviews, by having the participants verifying the raw data or by maintaining the confidentiality and anonymity of the participants (Nieuwenhuis, 2010: 113 – 115). Additional measures to ensure

the trustworthiness, as suggested by Nieuwenhuis (2010: 113 – 115), are to keep notes of research decisions taken, to ask an independent coder to code some of the data to compare with the researcher's coded data, to have participants verify and validate findings, to control for researcher bias, to avoid generalisation across a population and by stating the limitations of the study upfront in order to help the reader understand how conclusions were drawn. Trustworthiness for this study was ensured by attempting to be unbiased by not selecting participants from my own school, thus avoiding responses which might not be trustworthy. My theoretical orientation, assumptions and views were cleared before starting the research. During the interviews, I frequently rephrased the participants' answers in my own words to eliminate any uncertainties and possible misinterpretation, and contribute to the trustworthiness of the study. After transcribing the interviews, a copy of the transcribed interview was electronically mailed to each individual for content verification. Participants were requested to reply within a certain time frame in order to confirm the content or report any misinterpretation by the researcher, should there be any. The electronic replies that were received are stored safely on a USB device at the my residence.

4.4.2.4 Researcher's role

Maree and Van der Westhuizen (2010: 41) state that the researcher's main aim should be to enter into a collaborative partnership with the participants in order to collect and analyse data and create understanding. For the collection of the qualitative data, with the cooperation of the North-West Department of Education, I was responsible for the identification of suitable participants, as well as finding suitable locations in which the interviews could be conducted. I was also responsible for the conducting, recording and transcription of the interviews as well as the analysis and synthesis of the gathered information. I am a white female educator at a primary school in a township myself, and I am closely involved in the education setting where the research took place. In my interpretation of my participants' responses I did not make an attempt at being hundred per cent objective, which is consistent with the basic principles of all qualitative research. The personal lens that I have influenced my data analysis, but care was taken not to be selective in my analysis to suit my specific preferences. I also aimed at understanding the phenomenon, rather than trying to prove any preset personal idea.

4.4.2.5 Ethical aspects of the research

Before commencement of the research, the researcher applied in writing to the Research Ethics Committee of the North West University for approval to engage in empirical research with human subjects. Permission was granted under ethics number NWU 00018-11-A2 (see Ethics Certificate, p. vi). Permission was also obtained from the North-West Department of Basic Education for research in the selected schools in two areas of the Dr. Kenneth Kaunda District (see Addendum C).

Permission for interviews with educators was obtained from each educator as well from the principal of the particular school (see addenda A and E). I conducted interviews with participants in a private, comfortable environment in a relaxed atmosphere. Participants were assured of the confidentiality of the interviews and the results. They were also informed that the data gathered would be interpreted without revealing the names of participants or schools. I also informed participants that they might withdraw from the research at any stage.

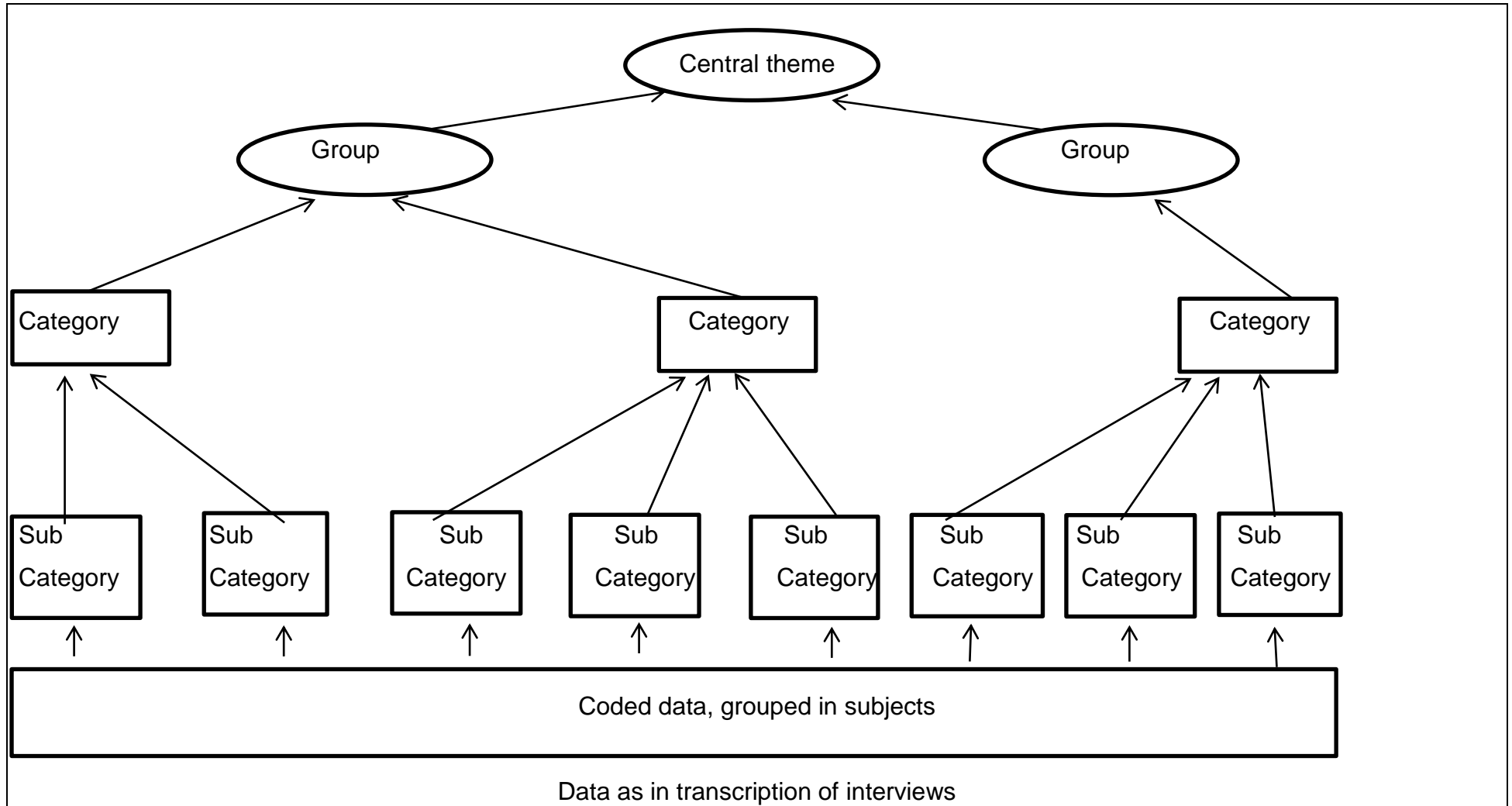
After participants had granted their permission for recordings to be done, I used a cellular phone to record the interviews. The interviews were conducted in English where the educators teach in English, and in Afrikaans where the educators teach in Afrikaans. If participants were unsure about the meaning of a question, the question was repeated or, where necessary, it was rephrased to facilitate understanding. After the interviews had been conducted these recordings were transferred onto an electronic USB device and I made verbatim transcriptions of the recordings. The electronic USB device, as well as the completed forms for informed consent and hard copies of the interviews is stored safely in the my residence where only I have access to the items. The identities of the participants are known to me, but are not mentioned anywhere in the transcriptions. According to the ethics process, after completion of the study the data will be submitted to the Educator Security project leader for safe storage of five years, as required in paragraph 4.15 (Storage and Archiving of Data) of the Ethics application form of the North West University ethics committee (<https://intranet.nwu.ac.za/opencms/export/intranet/html/en/in-im-rs/researchethics/index.html>)

4.4.2.6 *Data analysis*

Data analysis for this research is based on the interpretivistic philosophy and aims to meaningfully analyse the data in order to describe the participants' perceptions and experiences regarding the misconduct of their fellow educators. The first step in the process followed to analyse the data was to transcribe the interviews and produce hard copies of it. Using an open coding system and keeping a master list (Nieuwenhuis, 2010: 105; Rossouw, 2011: 113) all the interviews were coded. After all the data had been worked through, the related codes were sorted into different categories (Nieuwenhuis, 2010: 109; Rossouw, 2011: 113) that were linked to the three main research categories, educator misconduct, educator security and education legislation. The analysed data was interpreted by searching for associations and explanations to draw insight into the researched effect of educator misconduct on educator security. This was done through inductive analysis of the data where the main purpose was to allow findings from the data to surface (Nieuwenhuis, 2010: 100).

Figure 4.1, adapted from Rossouw (2011: 115), illustrates the basic procedure followed. Although the researcher formulated some preliminary categories during the literature study and included these in the interview schedule, it was not the only guideline used. She was open for the development of new categories that could emerge from the data as well.

During the analysis of the empirical investigation relating themes emerged and were treated as sub-categories. Coding and categorising mainly emerged from the data itself.



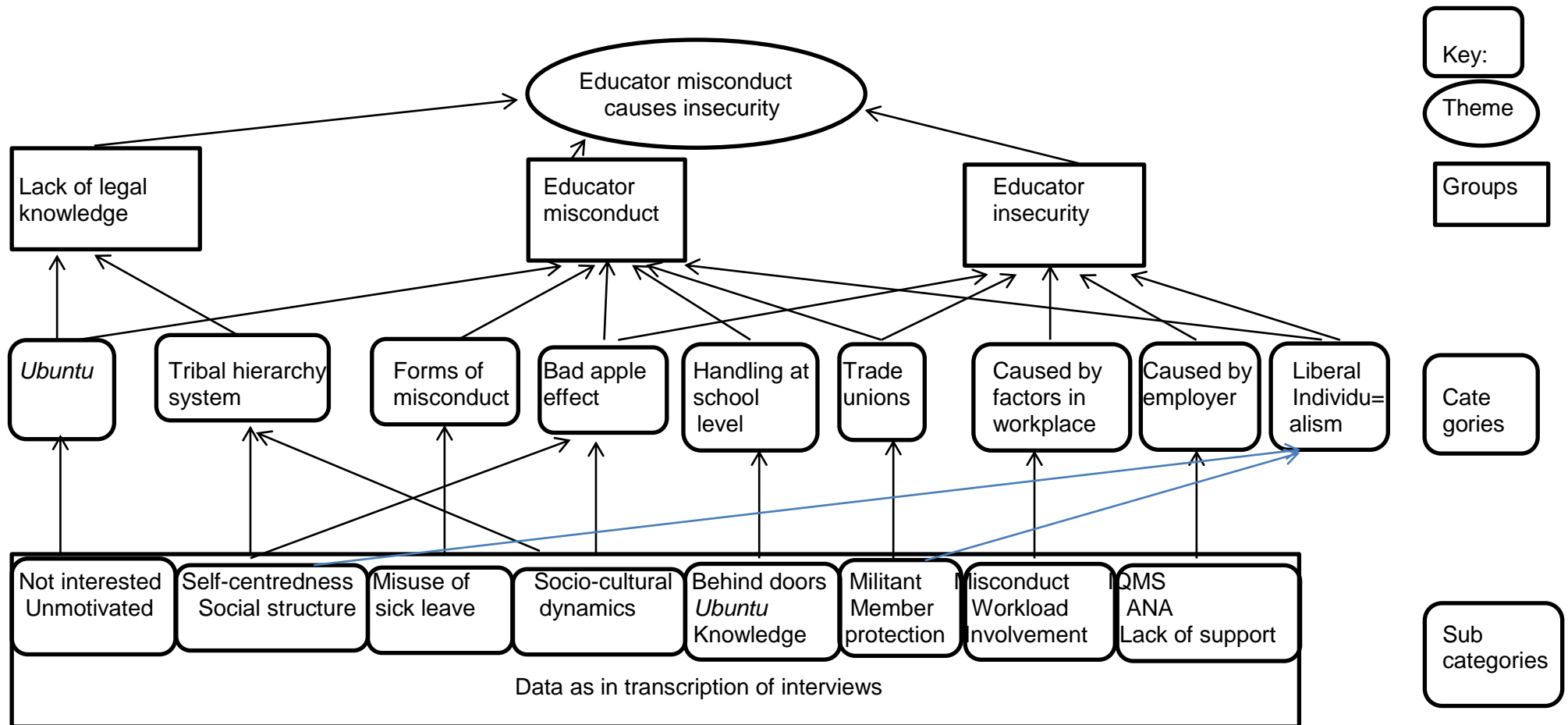
Adapted from Rossouw (2011: 115)

Figure 4.1 Procedure of data analysis

4.5 Data analysis for this research

The most common forms in which educator misconduct manifested itself are described, as well as the ways in which it was handled at school level. Additional factors impacting on educator security – other than educator misconduct – were also identified and described. Perceptions regarding Departmental measures like the Annual National Assessment, Integrated Quality Management System and Annual Teachers' Awards were investigated to determine whether it might give rise to educator misconduct or possibly have an influence on educator security. The involvement of unions in cases where educators are accused of committing misconduct – often resulting in perpetrators going scot-free – is described.

The analysis of the information given below is structured and presented under the respective themes and categories.



Adapted from Rossouw (2011: 122)

Figure 4.2 Analysis: Groups, categories and subcategories

Ryan-Nicholls and Wills (2009:72) state that “after analysis, data derived from qualitative inquiry are used to clarify an experience, improve understanding of a complex phenomenon or cast light on a participant’s thoughts or relationships.” It is at this stage that an understanding of the data, from the view-point of the participants, is attempted. Because the three-fold focus of this research is on education law, educator misconduct and educator security, the findings are structured accordingly.

4.5.1 Education law: levels of applicable knowledge

Although most of the participants could identify the Constitution as the supreme law of the Republic of South Africa and could cite the name of at least one education-specific act, the levels of applicable education-specific legal knowledge among educators – according to the participants’ own admissions –are extremely low (E02: Ln70; E05: Ln208; P06: Ln88; H08: Ln253; H10: Ln212; P11: Ln328; H12: Ln181; DO13: Ln27; DO14: Ln178; DP15: Ln154).¹ A few participants previously attended courses aimed at improving their legal knowledge, but still admitted to low levels of knowledge because “people will not study unless they are forced to” (DP3: Ln105; H12: Ln136; DO13: Ln90). Contradictory to the low levels of legal knowledge, none of the participants reported feelings of not being protected by the laws, and they even expressed feelings such as “I am fine because I know I have the laws that protect me” (DO13: Ln13).

Some participants admitted that they were aware that educator misconduct is described and regulated by law, but that they “are not interested enough to take the book and read it” (H12: Ln195). Some participants ascribed the low levels of legal knowledge to educators who decidedly do not want to obtain legal knowledge in order to be able to “play the innocence card” (DO13: Ln40) – thinking that they might get off scot-free when claiming that they did not know that it was stated in the law. A few participants also regarded the school’s code of conduct as a very important legal document and were of the opinion that each educator should have a signed copy in

¹ Reference to interviews are made between brackets, using sets of two numbers separated by a colon. The first number refers to the number of the interview and is preceded by a capital letter indicating the participant’s employment level, for example ‘E’ indicates that the participant is an educator, ‘H’ indicates a Head of Department, ‘DP’ indicates a deputy principal, ‘P’ indicates a principal and DO indicates a departmental official. The second number refers to the specific line in the interview and is thus preceded by ‘Ln’ every time.

his or her possession (P1: Ln109; H10: Ln220). These participants were of the opinion that the code of conduct formed the baseline in counteracting misconduct, thus providing security. In this regard the participant mentioned:

“I feel aggrieved when I hear that certain school principals do not obey the code of conduct. Consequently, when an educator needs to be disciplined, it results in situations where educators openly defy authority because the principal set a bad example” (P1: Ln 128).

The matter of interpretation of the laws was also raised by a few of the participants: They were of the opinion that laws might be interpreted in a subjective manner by the person interpreting it, thus resulting in differences in the application thereof (H8: Ln276; DO13: Ln125; DO14: Ln156; DP15: Ln256). Further investigation revealed that these participants were of the opinion that cultural differences to play a role in the application of laws as well as in service delivery in the workplace. Two matters that surfaced was the matter of *ubuntu* and the tribal hierarchy system:

4.5.1.1 Ubuntu

Ubuntu was cited to have an influence on the general conduct of people as well as in the application of legal measures in cases of misconduct (H8: Ln286). According to a participant the role that *ubuntu* would play, will not always be the same, but will differ from case to case, depending on the situation (H8: Ln277).

A hypothetical situation was created where a teacher comes to the school while intoxicated, and a participant was asked to explain how *ubuntu* would affect such a situation. He explained that, in such a case, the teacher would be sent home with a warning in order to remove him from the learners and prevent him from causing more damage. He would then be allowed the opportunity to explain himself the next day. In this way, the teacher would be saved the embarrassment of being engaged while still under the influence. In this case, then, *ubuntu* would come in the form of ‘buying time’ to reconsider his actions. The participant did, however, admit to the fact that *ubuntu* could be misinterpreted and that people won’t feel the need to change “because he was treated with kid gloves the first time around” (H8: Ln293), thus leading to the inappropriate protection of dysfunctional or transgressing educators.

The participant was also of the opinion that, if *ubuntu* did not play a role in disciplinary actions, we would have a very disciplined community and remarked:

“ Ubuntu makes it easier for educators while they cannot be blamed for that. Ubuntu might prevent educators from being very disciplined, but it makes it more likely for them to relapse. Or to find it easy to commit misconduct,” (H8, Ln 298)

The question arises whether *ubuntu* is not frequently misinterpreted, misapplied or even used as an excuse not to act against perpetrators. In essence, *ubuntu* acknowledges both the rights and the responsibilities of every citizen in promoting the well-being of individuals and the society (Chaplin, 2006) but. However, in cases – such as the hypothetical situation above – the individual infringed the rules by being intoxicated at his workplace, thus not practising *ubuntu* towards the learners, fellow educators or parent community.

4.5.1.2 The tribal hierarchy system

Even though the tribal system in the different black cultures is not as evident nowadays as it might have been a few years ago, it still exists and the hierarchy is observed by all members of the tribe, no matter where they are. This became evident when a participant reacted affirmatively to a question regarding cultural differences influencing the application of the law (DO14: Ln156). He then explained that he was aware of a situation where some staff members belonged to the same cultural tribe, where one is a royal prince and the other an ordinary citizen. As far as the tribal hierarchy is concerned, thus, the prince is the superior of the citizen. In the workplace, though, the roles were switched around, and the citizen was the senior of the prince – thus, the prince had to be held accountable for his job performance by the citizen. Since their tribal bonds had such a strong influence on their relationship, it resulted in the citizen not feeling comfortable to hold the prince accountable and apply disciplinary measures in fear of retributive actions from the prince (DO14: Ln257). Thus, the tribal hierarchy system impacted on the application of the law in the sense that the social standing of the person in the senior position would be such an important factor to him, that it would influence him to rather let his subordinate go scot free than hold him accountable for his deeds and run the risk of transgressing social protocol, facing subsequent social retribution.

Another participant remarked that culture differences also play a major role in the interpretation and application of laws (DO13: Ln125). He was of the opinion that some issues of misconduct were not really a matter of people being ill-disciplined but rather knowing, understanding and respecting each other's culture (DO13: Ln134). For example when an educator from an Afrikaans or English background was absent for a few days, his or her colleagues would show their concern by enquiring to his or her whereabouts. In many black cultures, though, it is considered an insult to ask an educator why he or she was absent for a period of time. This is because the absence might have been of a personal nature and that he or she did not want to reveal the detail, but is now "put on the spot" and forced to reveal the reasons. Legal procedures, however, require managers to collect as much evidence and information as possible – including details concerning periods of absence. Many black managers, thus, find themselves in situations where their cultural backgrounds are in conflict with their workplace requirements (DO14: Ln157).

The importance of knowing, understanding and respecting each other's culture was stressed when the language barrier was also cited as possible reason for the occurrence of inter-cultural misunderstandings: "I cannot express myself properly in an African language, so, sometimes, my colleagues don't immediately understand what I mean" (DO14: Ln158).

4.5.2 Educator misconduct

All participants were aware of what educator misconduct entails and could give their own definition thereof, such as "Any conduct from educators that leads to the non-delivery of quality education" (DO14: Ln337) or "Conduct that is not in line with the Code of Conduct" (P1: Ln127) or "Anything an educator does that negatively influences the system." (H8: Ln94) Participants could also cite some examples of misconduct but – corresponding with the findings regarding levels of law knowledge – no-one could identify the Act in which it is described. Only one participant (P6: Ln127) was aware that sanctions are prescribed in Schedule 1 and Schedule 2 (of the Employment of Educators Act), but couldn't distinguish between the two schedules or explain when they should be applied. A few participants highlighted the Quality Learning and Teaching Campaign which aims at having "Every teacher on

time, in class, teaching, with a textbook in front of every learner” as an important guideline (P1: Ln180; H10: Ln190; DO13: Ln474).

4.5.2.1 Forms of misconduct

It was clear that a high incidence of educator misconduct prevails, since it was expressed as “there are educators committing misconduct in every school, every day” (DO14: Ln52). Although infrequent incidences of serious misconduct do occur, the most common kinds of misconduct in schools – and that are admitted to by all participants – are of educators who are unprepared for lessons, educators who do not attend classes and corporal punishment that is still being administered. Other kinds of misconduct that were also experienced regularly were late coming, drunkenness and absenteeism. Some incompetence and verbal abuse, as well as rare cases of examination fraud and sexual relationships between educators and learners, were also reported. A kind of conduct which is seemingly innocent but that might have a dire consequence, is that of educators not observing the Language of Learning and Teaching of the school. It was reported to happen frequently that educators, especially in English-medium schools, do not teach their classes in English, but rather in the learners’ mother tongue (E5: Ln170). When tests and examinations are written, it results in learners not being able to interpret or satisfactorily answer the question papers. This also relates to the low marks learners score during the Annual National Assessment (E5: Ln359).

- Evaluation of educators

What is concerning, however, is that all participants admitted to what can be termed as procedural misconduct during the Integrated Quality Management System (IQMS) process: The prescribed procedure was not followed in any of the visited schools – and this is, according to all participants, a general occurrence, even in schools that were not part of the study. The IQMS was expressed as “A manipulated, false evaluation that creates tension” (P1: Ln411) and “A good thing on paper that doesn’t work in practice” (H10: Ln340), “A good idea gone wrong” (DO14: Ln417) or “A process that never produced the result it intended” (H8: Ln209). The main reason for the manipulation of the IQMS process is generally ascribed to the monetary incentive of one percent pay progression connected thereto. “You know the character of a person when money is involved” (DO13: Ln463) was an expression used to attempt

an explanation. The huge amount of paperwork involved (E5: Ln493; E9: Ln327) and the amount of time it consumes (DP15: Ln341) were also cited as reasons for committing procedural misconduct which ranged from evaluation meetings not observed, to class visits not being conducted and the inflation of the marks allocated to the evaluatee.

- Misuse of sick leave

Another kind of misconduct that takes place quite often but is rather difficult to control, is the misuse of sick leave. Participants declared that sick notes could be “bought” from some doctors (H10: Ln162; DO14: Ln370), which resulted in educators taking sick leave and being absent from school, while, in reality they were not sick. It was described as “a very big problem since some of the medical doctors and traditional doctors are not always honest concerning their findings when they provide a teacher with a sick note – it is easily obtainable for R150” (DO14: Ln371). One can only foresee that, to combat this kind of misconduct will be an enormous problem, since educators simply stay away from school and submit the sick note on their return.

4.5.2.2 Toxic personalities and the bad apple effect

Another dimension of misconduct that was reported by participants, was the “contagiousness” of educator misconduct which correlates with paragraph 3.3.1 where toxic personalities and the bad apple effect are discussed in more detail. This was expressed as “One bad potato will make the whole bag go bad” (DO13: Ln282) or “People will copy bad things because they are easily influenced” (DP3: Ln241) and nearly all participants reported such incidences. Participants experienced incidences on the curricular level, as well as on the extra-curricular level.

Examples were cited of educators arriving late for school in the mornings, and then getting off scot free because the principal or management team did not take action against him or her (H8: Ln311; E5: Ln104). This result in more and more educators arriving late at school, putting the effective running of the school day in jeopardy. Other participants cited examples of toxic educators refusing to be involved in sport and other extra-curricular activities (E2: Ln224). These toxic educators had such a strong influence on their colleagues that many were influenced to withdraw their

inputs and although the sporting activities continued, it was supported by a few staff members only. Incidences were reported (P4: Ln64) where the Head of Department at schools did not fulfil his or her prescribed duties and did not monitor the educators' work or moderate their tests. Because the educators were not monitored or moderated, their work did not meet the minimum requirements, and the desired standard was not upheld. Before tests or examinations were to be written, the educators did 'examination training' (E5: Ln85) – the term used to describe that the teachers only taught the content of the examination paper to the learners in order to obtain an acceptable mark. The Head of Department's work "left much to be desired – instead of moderating the question papers he simply signed it" (E5: Ln78) thus creating an opportunity for the educator to get off scot free. From the outside, thus, it seemed as though the school was functional, but in reality it was dysfunctional.

Two cases were reported where schools experienced numerous persistent problems from toxic personalities that influenced the other staff members. Various attempts to solve the problems and restore the schools' functionality failed. The problems, in both cases, were solved by relocating the entire staff to other schools and appointing another principal and staff at the school (DO14: Ln386).

4.5.2.3 Handling of misconduct at school level.

The handling of misconduct cases at school level is not always a process visible to all. This became apparent when a number of participants admitted that they did not know how their principals handled cases of misconduct "behind closed doors" (E5: Ln94) or was very vague about the process followed (H8: Ln258). Upon investigation it became clear that the initial stages of addressing matters of serious misconduct, for example examination fraud or sexual relationships between teachers and learners, are handled by the principal, who then refers the matter to the Departmental Officials. Some participants acknowledged that they had consulted "the law" (H10: Ln95) before taking the appropriate action. Participants did, however, report specific difficulties in handling cases of sexual misconduct because perpetrators would give amounts of money to the learner and her family to persuade them to withdraw the case, rendering prosecution impossible (DO14: Ln356).

The highest incidence of misconduct at the visited schools, however, were cases of educators that did not prepare or who did not attend their classes (P4: Ln36; E5:

Ln159; H8: Ln94; P11: Ln284; H12; Ln136; DO14: Ln348; DP15: Ln88). These cases were usually handled at school level, usually by the principal. The first action that the principals generally took “to call the perpetrator to order” (E2: Ln145) was to have a “brotherly” (H10: Ln86) conversation with him or her in order to establish if there had been a reason for the misconduct being committed. This action was also linked to the *ubuntu* principle whereby the perpetrator could provide a reason, or an excuse, for committing the misconduct. If the reason or excuse was accepted by the principal, the conversation was seen as sufficient action being taken against the perpetrator (H8: Ln276 – 286). It was reported, however, that the situation sometimes did not improve, and that the same educator committed the same misconduct (H8: Ln75). In such cases some principals reported that they would implement measures like increased monitoring and control of the educator’s work (P1: Ln208; H10: Ln143), and making sure that the lost work was caught up (P4: Ln84). Departmental Officials were usually not involved, since not being prepared was not seen as “serious enough to involve the laws” (P4: Ln87).

In more serious cases, like when corporal punishment had been administered, the disciplinary steps taken were different. In such cases, the principals reported that a verbal warning was issued, followed by a written warning and, if the matter persisted, a disciplinary hearing where the School Management Team and School Governing Body members were present (H10: Ln84) took place. Only in cases where a formal charge had been laid against an educator, Departmental Officials would be involved. Some participants explained that Departmental Officials, in their opinion, were not legally capacitated to handle these cases of misconduct satisfactorily, therefore these officials were not involved (E9: Ln267).

Some participants opted to rather handle misconduct cases at the school level instead of involving the Departmental Officials and possibly lose an educator through disciplinary action “because I will rather increase the monitoring and control of the educator than have a class without an educator” (P1: Ln315). This can also be attributed to the slow reaction time of the Department, as discussed in paragraph 5.1.3.2.

It was also reported, though, that some principals did not handle the misconduct cases delegated to them at school level, but immediately – and wrongfully – referred

it to the Departmental Officials (DO14: Ln409). It was ascribed to the fear that, should a principal act against a particular person, that he would be the cause of that person's suffering (DO14: Ln410). Principals, thus, did not want to accept their responsibilities and be the reason for someone else being harmed. The incorrect handling of misconduct at school level might also be due to inadequacies in the system which allows a Post Level One educator to be promoted directly to Post Level Four if he or she has seven years' experience (DO14: Ln228). This promotion practically elevates an educator from the class to the level of principal without "going through the ranks" (DO14: Ln185) and gaining managerial skills. This situation causes numerous uncertainties in inexperienced principals which manifests – amongst others – in the wrong handling of misconduct cases (Do14: Ln 186).

Misconduct, however, is reported to occur on the level of Departmental Officials as well. Participants reported incidences where some Subject Education Specialists submitted reports of school visits, and even commented on the problems experienced by the school, while in reality the school had never been visited (E5: Ln454). Participants also reported that some of the Subject Education Specialists did not moderate the Common Tasks for Assessment as they were supposed to. This resulted in schools receiving question papers that had numerous problems, like incorrect content covered, not enough or too many marks, dissimilarities between question paper and memorandum and incorrect numbering of questions (E5: Ln395 – 403). Since subject educators may not see the question papers in advance, these problems many times go undetected, resulting in "lots of running around and being frustrated" on the day the particular paper is written (P6: Ln398).

4.5.2.4 Trade unions and educator misconduct

Although unions proclaim to take view against educator misconduct, their actions do not always confirm their viewpoint. Participants acknowledge that unions "can play a role" (E2: Ln152; P6: Ln155; P6: Ln226) in reducing educator misconduct, but it is also reported that unions "protect" their members in cases of misconduct (E2: Ln157; DP3: Ln118; H10: Ln228; DP15: Ln173). In this case, protection was granted in the sense that union members were not exposed to disciplinary action because, as was reported, the union relies heavily on *ubuntu* (H8: Ln363) and "manipulates" (H8: Ln276; DO13: Ln125; DO14: Ln156; DP15: Ln256) laws. Upon further investigation it

became clear that the law itself had not been manipulated, but that the union representative had taken advantage of the presiding officer's lack of legal knowledge to get members acquitted on technicalities:

“Sometimes a person goes to preside over a case but that person is not prepared. Then the other party (reference is made to union representative) might take advantage of the situation based on technical errors because a certain procedure was not followed,” (E9: Ln258).

The majority of participants belonged to the South African Democratic Teachers' Union (SADTU), and it was reported that SADTU had “structures in place” (P6: Ln155) to address educator misconduct and act against such educators. Participants reported that media statements had been issued in which members were urged to behave and observe the prescribed code of conduct (E2: Ln169; P6: Ln158).

It was also reported that SADTU is aware of all the laws and stipulations pertaining to strikes and demonstrations (P6: Ln166), yet, unacceptable conduct still occurs during industrial action. For not acting against educators displaying unacceptable behaviour during industrial action, the Department was blamed by a participant for “generalising and pointing fingers, not pin-pointing the transgressors so that they could be acted against” (P6: Ln184) Another participant, though, explained that these transgressors were not acted against because of their “friendship with influential people” (DP15: Ln225). He explained that the “influential fingers” stretched through various layers of the society to protect the perpetrators, and expressed it as “somebody knows somebody” (DP15: Ln225 – 236). He stated that this protection would never be done publicly “but maybe they drank together somewhere, where they are not seen” (DP15: Ln231). He also alluded to the fact that, even though the Department and rival unions would act and pretend as if they did not condone the conduct of the striking members, these members would not be acted against because “if one benefits, all benefit” (DP15: Ln237). In other words, if the strike was successful, everyone would gain the same benefits, therefore no punishment should be enforced.

Although some members indicated that the union was seen to be “a lawyer who had to defend their case” (E2: Ln157), other members reported that the union was biased

and would only promote their own interests (DP3: Ln124; H10: Ln265). This was sometimes achieved by letting a case drag indefinitely until, eventually, the complaint was withdrawn (H10: Ln230). This was, on the one hand, ascribed to union members and union office bearers being from the same cultural background (DP15: Ln281). The office bearers would then want to secure their positions with people from the same background, their cohorts, and would not afford a case the attention that should be afforded. Being from the same background and being cohorts, reportedly, play a role up to the highest levels. A participant expressed it as “That is why you might end up with a situation where the MEC for education was not even an educator, but was a priest who was elevated on grounds of friendship (DP15: Ln309).” On the other hand, the poor handling of cases was ascribed to people who had been elected into leadership positions on grounds of popularity, while in reality they were not good managers and lacked the necessary leadership skills (DP15: Ln298).

A participant suggested that, in order to let the perpetrator bear his punishment, unions should rather not be involved in the initial stages of the investigation, since “the only action they take against a perpetrator is to reprimand him and warn him not to do it again (DP15: Ln169).” Participants alluded to the fact that unions tended to treat the members with “kid gloves” (H8: Ln293) because “they do not want to lose members” (H10: Ln259).

4.5.3 Educator insecurity

Although the majority of the participants displayed a positive attitude, all of them experienced feelings of insecurity. These feelings of insecurity included negative emotions like anger or frustration, as well as feeling overworked, exposed or desperate, therefore the insecurity can be classified into two main categories, namely insecurity caused by factors in the workplace and insecurity caused by the employer.

4.5.3.1 Insecurity caused by factors in the workplace

Educator misconduct, the abolishment of corporal punishment, workload, parental involvement and unmotivated or ill-disciplined learners were found to be the most general workplace factors causing insecurity amongst educators. Of these factors, educator misconduct was identified by all participants as having a detrimental effect

on fellow educators. Individual participants expressed effects that ranged from “feeling bad” (DP3: Ln138; DP15: Ln96), to “going home with a tension headache” (P6: Ln352), to “considering early retirement” (P1: Ln42; DO14: Ln26). All participants alluded to the fact that educator misconduct was the most prominent in-school factor which caused them to experience feelings of insecurity.

The abolishment of corporal punishment was also identified as cause for insecurity (E2: Ln116; DP3: Ln25; P4: Ln192; E5: Ln514; P6: Ln397). The majority of participants readily agreed to the fact that corporal punishment was still being administered in schools “although not as severely as before” (E2: Ln115; DP15: Ln58). Corporal punishment is seen as “quick and effective” (DP3: Ln22), but is only used as a last resort because “we have never received training on the desired disciplinary measures to use instead of corporal punishment” (E5: Ln514). The insecurity that the educators experience in this instance, is uncertainty about the acceptable methods of maintaining discipline.

Workload and parental involvement as causes for educator insecurity were experienced in a more pronounced way among the members of small schools. Participants expressed it as “We have to be everywhere, do everything and be part of every activity” (P11: Ln515). Small schools and big schools alike were expected to take part in all Departmental activities, ranging from academics, to sport, to culture. Beyond teaching full-time, thus, the limited number of staff members at the small schools were involved in every aspect of every extra-curricular activity. The budget allocated to small schools was also raised as a cause for concern. A participant expressed his frustration as “it costs me the same amount of money to water, fertilize and maintain a soccer field as it costs a big school to do it, but my budget allocation is R300 000 while they receive R 3 000 000” (H12: Ln217 – 264).

When it is considered that educators in township schools experience parents who are involved in the education of their children (P6: Ln391), the insecurity caused by their workload becomes even more pronounced. The feeling of being overloaded with work, was also linked to the consequences of the post provisioning model applied by the Department to determine the number of educator posts allocated to schools (H10: Ln289; H12: Ln213). The post provisioning model is a rigid tool which is applied uniformly to all schools – no individual circumstances are taken into account. It was

expressed as “We have a lack of teachers, classes are overcrowded” (H10: Ln289) and “The PPM does not cater for the needs of a school” (DP3: Ln50).

Participants at high schools and primary schools alike identified unmotivated or ill-disciplined learners as cause for insecurity (P4: Ln185; E5: Ln41; P6: Ln410; DP7: Ln160; E9: Ln186) and explained that large numbers of learners tended to stay away from schools on days when social or old-age grants were paid out in order to accompany their parents or grandparents to the pay-out points to receive the grants. These learners did not attempt to catch up lost work and did not even hesitate to be absent from school on days that tests or examinations were written. This resulted in low marks which, in turn, reflected badly on the educator. Participants also reported that learners were not committed and were unmotivated to study and would rather “hang out” (P6: Ln372) with their friends than do their homework or study for their papers. Since this resulted in learners obtaining low marks which, in turn, reflected badly on the educator, it caused insecurity among educators.

Less experienced causes for insecurity included gossiping or back-stabbing colleagues (H10: Ln44 – 45), unmotivated educators (P6: Ln359), tardy, unpunctual educators (H8: Ln94), being involved with staff members’ emotional and physical well-being (P1: Ln355) and feelings of generally not being appreciated by the community (P4: Ln463). A number of participants also identified that they felt insecure when unions defended and “protect” members who had committed misconduct, as discussed in paragraph 4.1.2.4.

4.5.3.2 Insecurity caused by the employer

Noticeably, all the participants experienced a remote relationship with the Department, as if employer and employees were opponents instead of working together to reach the same goal. This was expressed whenever participants referred to the employer as “they”, but all school-based employees were referred to as “we”, and it was even voiced as “They are out there in the air-conditioned offices – they don’t know what exactly is happening here” (P6: Ln435).

As could be expected, participants identified a number of employer-related causes for insecurity. These causes include incessant changes (H8: Ln32; E9: Ln89; H12: Ln18; DO13: Ln235; DP15: Ln355), the time span that elapsed before solutions were

reached (P1: Ln29; E2: Ln34; DO14: Ln42), inadequate support (P1: Ln336; DP3: Ln50; P4: Ln32; E5: Ln446; P6: Ln270; DP7: Ln216; E9: Ln101; H10: Ln279), the Annual National Assessment (P1: Ln403; E2: Ln251; DP3: Ln206; P4: Ln314; E5: Ln351; P6: Ln417; H10: Ln327; P11:Ln 489; H12: Ln73; DO13: Ln433; DP15: Ln371), remuneration (E2: Ln24; DP3: Ln152; E5: Ln30; DP7: Ln21; H10: Ln297; H12: Ln403) and rationalisation (E9: Ln172; DO13: Ln160).

The numerous changes that the Department implements, especially changes to the curriculum, were experienced as causing insecurity in almost all participants. It was expressed as “I wish the Department would stop using us as guinea-pigs” (H8: Ln33; DP15: Ln364) and “Changing, changing, changing! Each and every minister who comes will come with his or her own system! (DP15: Ln352).” The participants explained that, as soon as they were conversant with one curriculum, a new one was introduced, compelling them to change once again. Yet another change which is looming, and that was reported by a participant, is the rationalisation of schools (DO13: Ln160). This is the process where combined and middle schools are phased out and replaced with ordinary primary and secondary schools. Even though the process itself has not started yet, it was reported that insecurity is already experienced by the concerned educators because they are unsure of their future well-being.

Another factor which was identified, is the time span that elapsed before solutions were reached – under which the appointment of temporary educators. In most cases it was unacceptably long and had been the cause of “classes not having teachers for periods of up to three months” (DO14: Ln508) Previously, the Superintendent General had delegated power to the Area Managers to appoint temporary personnel, but this power had since been revoked. Only officials from Head Office now have the authority to appoint temporary educators but because protocol still has to be observed, it is a time consuming process. The effect was experienced badly in cases where the number of learners in a school increased unexpectedly, and the Department did not appoint extra educators in time (DO14: Ln497 – Ln511).

Some participants have also expressed the frustration they experience when Departmental Officials did not give feedback after enquiries had been made or when important information, that required action from the educators, was not

communicated on time. A participant expressed it as “How can they expect something from us if we do not know that we have to do it?” (DP15: Ln404). This might be linked to the participants’ perception of receiving inadequate support from the Department. A participant expressed it as “Just as I am my staff members’ direct security, I expect my senior to be my security and I don’t get it from him” (P1: Ln338). When problems have to be sorted out and help is asked from the Departmental Official, his reaction would be “See how you are going to handle this and just give me a report” (P1: Ln339).

All participants expressed and acknowledged feelings of insecurity caused by the Annual National Assessments. Learners did not fare well in the Annual National Assessments, and educators felt exposed and insecure when the results were linked to them. Participants suggested a number of reasons that contribute to learners not doing well in the Annual National Assessment. Reasons like absent or ill-disciplined learners who are not motivated to study (P6:Ln372) were cited, but in general, the problem was ascribed to the question papers (P4: Ln316; E5: Ln383; H8: Ln390). Most of the participants felt that the standard of the papers was too high, and that there was a discrepancy between the content prescribed to the learners and the content covered in the paper, “as if the person responsible for setting the paper was not aware of what should actually be happening in the class” (DO13: Ln406). Some participants pointed out that the textbooks used to set the papers, also played a role in the achievements of the learners because it is not the same as the one used in the classroom (E5: Ln439 – Ln445; P11: Ln439). A participant expressed it as “You can give me four different textbooks and I will set four different papers on the same content from them” (P11: Ln439). Another possible factor which was cited as reason for the weak performance of the learners, was that the Annual National Assessment is written at the “wrong” time of the year (P11: Ln467). It is usually written in September each year, at the end of the third school quarter. The papers cover the total content of the year’s work while, in reality, nothing of the work of the fourth quarter had been done at that stage and the learners were not able to answer the questions covering the fourth quarter’s work. Participants reported that the Department provided a lot of support for the grade 12 examinations, but not nearly as much for the Annual National Assessment which, in essence, is the same (DP7: Ln191; P11:Ln 464).

Remuneration – predictably – was also uttered as a matter of insecurity among educators (E2: Ln24; DP3: Ln152; E5: Ln30; DP7: Ln21; H10: Ln297; H12: Ln403). Although it was admitted that teacher salaries have improved, many educators still struggled to make ends meet. This might, however, be because educators were not financially apt. A participant expressed her concern about some educators' budgeting abilities and reported staff members wanting to borrow money in the middle of the month (P1:Ln367). Even though it was against the school policy to lend money to colleagues, it was expressed as adding to educators' insecurity because "How can I come home, not knowing if those people have something to eat tonight?" (P1: Ln373).

Other factors which were identified as cause for insecurity, were the limited opportunities for career growth in schools linked to the failure of the Department to recognise educators for improving their qualifications (E9: Ln18) and Departmental meetings which were held during school time, reducing the educators' contact time with the learners (P11:Ln 406).

4.6 The National Teachers' Awards

Questions regarding the National Teachers' Awards were included in the interviews, and all participants displayed a positive opinion towards the awards. Since the National Teachers' Awards were not found to be a contributing cause to educator insecurity, a discussion thereof will not be included in the analysis.

4.7 Summary

The research design utilised for this study was discussed in this chapter. The research paradigm and methodology were explained, and reasons for its particular selection were provided. The literature study, as research method, was then discussed, followed by the detail concerning the empirical study. The detail included steps taken in selecting the participants, the method followed to gather data, explanation of how trustworthiness was ensured, what the role of the researcher was during the research, how ethical aspects were observed and how the collected data was analysed.

In this chapter the collected data was analysed. The analysis was categorised under levels of applicable law-knowledge, educator misconduct and educator security. Participants acknowledged that their levels of legal knowledge were very low and lack of interest to advance their knowledge was expressed. Legal measures were not always interpreted or applied correctly because of *ubuntu* and the tribal hierarchy system.

Educator misconduct is being committed very frequently, and range from educators not being in class to serious misconduct like sexual relationships with learners. Procedural misconduct is frequently committed during the Integrated Quality Management Process. Misconduct is not always handled correctly at school level and might be attributed to the influence of *ubuntu* as well as low levels of law-knowledge. Although unions proclaim a point of view against educator misconduct, perpetrators are rather protected to further union interests. Misconduct during strikes goes unpunished because of the implicated influence of high ranking officials.

Educator insecurity is experienced very often, and is caused by in-school factors such as educator misconduct, the abolishment of corporal punishment, workload and parental involvement. Insecurity amongst educators is, in some cases, caused by the employer as well. Factors like incessant changes, time span for reaction, the Annual National Assessment, remuneration and rationalisation cause insecurity in educators.

Although a generally positive attitude towards the National Teachers' Awards was reported, none of the participants expressed a desire to take part in it. The most common reason for the lack of interest to participate was the preparation of the portfolio for the selection process.

CHAPTER 5

5 CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

The objectives for this study were stipulated in chapter 1, according to which the central aim was to determine how educator misconduct affects educator security. This chapter concludes with a general overview of the findings and provides recommendations in respect of the research objectives. .

5.2 Overview of the research

It is important to reiterate the objectives in order to use it as point of reference. As stipulated in paragraph 1.7, the study objectives were to determine

- i) what the nature and extent of misconduct by educators are;
- ii) what the nature, extent and possible reasons for insecurity among educators are;
- iii) how the law applies to educator misconduct and security of educators;
- iv) what the factors influencing the application of legal measures are.

The first objective was partially attained in chapter 3 where the literature concerning educator misconduct was reviewed. In addition, the data from the empirical investigation, as discussed and analysed in chapter 4, sheds further light on the nature and extent of misconduct of educators (research objective 1) as well as the reasons for insecurity among educators (research objective 2). The literature review in chapter 2 discussed the legal determinants that apply to educator misconduct and security of educators, thus answering research question 3. The fourth objective was reached in chapter 4 when *ubuntu* and the tribal hierarchy system were identified as factors influencing the application of the law.

Before discussing the findings and conclusions in particular, a brief overview of each chapter will be provided.

5.3 Overview of chapters.

Chapter 1 described the interrelated problem of educator misconduct and insecurity of educators. Based on the identified lacunae with regard to the research problem an appropriate research design was developed in chapter 1 in order to attain the research objectives. The literature review commenced in chapter 2. In this chapter the legal determinants were ascertained on analyses of general and specific legislation, common law principles and case law relating to the research themes.

Legal aspects pertaining to educator misconduct and educator security as determined by the Constitution, the Labour Relations Act, the Employment of Educators Act, the South African Council for Educators Act and the South African Schools Act were discussed in paragraph 2.2.1. Departmental quality measures were also discussed. The common law principles that apply to educator conduct were discussed in paragraph 2.2.2, namely *in loco parentis*, the *ultra vires* doctrine and the rules of natural justice. The court cases discussed in paragraph 2.2.3 are applicable examples to indicate how legislation as regulatory measure is applied.

The South African Council for Educators classifies educator misconduct into six main categories, and these categories form the basis for the explanation concerning the nature and occurrence of educator misconduct (Chapter 3). Unacceptable conduct during strikes as well as toxic personalities and the bad apple effect were discussed as grey areas of misconduct.

The interpretative research paradigm, qualitative design and phenomenological methodology utilised for this study were explained in chapter 4. The literature study, as research method, was briefly discussed in paragraph 4.4.1. Detail concerning the empirical study include the steps taken in selecting the participants (Paragraph 4.4.1.1), the method followed to gather data (Paragraph 4.4.1.2), explanation of how trustworthiness was ensured (Paragraph 4.4.1.3), what the role of the researcher was during the research (Paragraph 4.4.1.4), how ethical aspects were observed (Paragraph 4.4.1.5) and how the collected data was analysed (Paragraph 4.4.1.6). The analysis was categorised under levels of applicable law-knowledge (Paragraph 4.5.1), educator misconduct (Paragraph 4.5.2) and educator security (Paragraph 4.5.3).

5.4 Findings and discussion

The empirical findings are discussed in the following paragraphs. The findings are grouped under:

- The nature and extent of educator misconduct,
- The nature, extent and causes of educator insecurity, and
- Factors influencing the application of legal measures.

5.4.1 The nature and extent of educator misconduct

Educator misconduct is being committed very frequently in the research area, and ranges from educators not being in class and absenteeism to serious misconduct like sexual relationships with learners (Paragraph 4.5.2.1). In my specific study I also found that procedural misconduct is frequently committed during the Integrated Quality Management Process (Paragraph 4.5.2.2). Misconduct is not always handled correctly at the participating schools and might be attributed to the influence of *ubuntu* as well as ignorance and knowledge of the law. Although unions in general proclaim to have a point of view against educator misconduct, the actions of some unions in the research area are not consistent with the public announcements as perpetrators are rather protected to further union interests (Paragraph 4.5.2.6). Misconduct committed during strikes go unpunished – an occurrence that is ascribed to some high ranking officials who have enough influence in education circles to prevent punitive action against perpetrators.

The expression “educator misconduct takes place at every school, every day” (DO14: Ln52), used during the empirical investigation, indicated that educator misconduct is being committed often at schools in the research area. Forms of educator misconduct range from educator absenteeism and educators not being in class to a few cases of serious misconduct like sexual relationships with learners. During my specific research I found that educator misconduct has a detrimental effect on educator security, and contributes to some educators experiencing health problems or even considering early retirement.

I also found that procedural misconduct is committed during the evaluation of educators at the participating schools, and specifically during the Integrated Quality

Management Systems (IQMS) process. Ironically the Integrated Quality Management System was negotiated with teacher unions in the Education Labour Relations Council (ELRC). It was signed as the ELRC Collective Agreement No. 8 of 2003 and aims to develop educators, not to judge them (DBE, 2012: 8).

The procedural misconduct committed during the IQMS process in the research area, in essence, is dishonesty because the prescribed procedure is not followed and undeserved marks are allocated to educators. Summarised, the IQMS process requires that every government-paid educator of every public school in South Africa has to be assessed in order to determine whether or not he or she qualifies for a one per cent pay progression. Every educator must select his or her own Developmental Support Group (a peer and a senior) from the staff members. Each educator's Developmental Support Group has to conduct a class visit to observe a lesson presented by the educator in order to evaluate him or her. Before the actual class visit, a pre-evaluation meeting has to be arranged and attended by the members of the Developmental Support Group to establish whether the evaluatee has any questions or problems that need to be addressed beforehand and to hand the evaluation forms to the evaluatee's peer and senior. These evaluation forms have to be completed during the class visit. After the class visit has been conducted, a post-evaluation meeting has to be attended to discuss the observations that were made during the lesson and to complete an evaluation form containing the average marks of the peer, the senior and the evaluatee's self-evaluation form. These average marks then have to be transferred to a mark sheet, which is submitted to the department (SA, 2009).

Dishonesty at the participating schools became apparent when participants (5: 493; 9: 327) alluded to the fact that minutes for the prescribed pre-evaluation and post-evaluation meetings are written without meetings ever being arranged or attended. The prescribed class visits were described as "window dressing" (2: 261) or "sometimes do not even take place" (5: 475). However, in spite of the fact that IQMS coordinators at school level do receive training on the IQMS procedure (13: 365), misconduct is still committed. This leads to the conclusion that IQMS coordinators, on the one hand, are not competent in handling the whole IQMS process correctly and that school principals, on the other hand, do not apply the IQMS results for staff

development – which is an intended aim of the IQMS process (SA, 2009). Not reaching its intended goal, renders the Integrated Quality Management System dysfunctional, specifically in the research area.

The manipulation of the IQMS marks in order to receive the one percent pay progression creates a false picture of the quality of teachers and teaching that takes place at the participating schools. It was voiced as “When the Annual National Assessment results are measured against the quantity of educators that receive the one percent pay progression of IQMS, I don’t know why so many get it.” (DO14: Ln423)

During my specific research I found that misconduct is not always handled correctly at school level and might partially be attributed to the influence of *ubuntu*, which is especially perceivable between members of the same cultural background (see paragraph 5.4.1.1).

The low levels of law-knowledge (see paragraph 5.4.1) also contribute to the incorrect handling of misconduct cases by school principals in the research area. It was reported that unprepared school principals were known to be the cause of perpetrators going scot free because they did not “apply just administrative measures” (E9: Ln260).

The incorrect handling of misconduct at school level might also be due to loopholes in the general system which allows a Post Level One educator to be promoted directly to Post Level Four if he or she has seven years’ experience (DO14: Ln228). This promotion practically elevates an educator from the class to the level of principal without “going through the ranks” (DO14: Ln185) and gaining managerial skills. This situation causes numerous uncertainties in inexperienced principals which manifests – amongst others – in the wrong handling of misconduct cases (Do14: Ln 186).

5.4.2 The nature, extent and causes of educator insecurity

Educator insecurity is experienced very often in the research area, and is specifically caused by in-school factors such as educator misconduct, the abolishment of corporal punishment, workload and parental involvement (Paragraph 4.5.3.1). Insecurity amongst some specific educators is, in some cases, caused by the

employer as well. Factors like incessant changes, time-span for reaction, Annual National Assessments, remuneration and rationalisation cause insecurity in educators (Paragraph 4.5.3.2).

Participants reported that they regularly experience feelings of insecurity and that feelings of insecurity are experienced similarly by their fellow educators. Educator insecurity is caused by in-school factors such as educator misconduct, the abolishment of corporal punishment, workload and parental involvement. Insecurity amongst educators is, in some cases, caused by the employer as well. Factors like incessant changes, time span for reaction, the Annual National Assessment, remuneration and rationalisation cause insecurity in educators.

Even though it was not expressed in so many words, it has been deduced that the abolishment of corporal punishment has left a vacuum in the maintaining of classroom discipline for many educators in the research area – young and old alike. Educators feel uncertain about permissible ways to discipline learners since the border between raising your voice to the child and verbal abuse might easily be crossed (E5: Ln 516). In equal measure it might be seen that the learner's right to education is infringed if he is sent out of the class as punishment for unacceptable conduct, and to detain the learner during break or after school results in being punishment for the invigilating educator as well (P4: Ln 187). An educator linked the maintenance of discipline to IQMS and remarked that, even after explicitly stating that he wanted to receive training on the correct ways to maintain discipline (E5: Ln 513), the department did not react and such training have never been offered. Unfortunately it seems as if the discipline problem will remain unresolved for some time since a Departmental Official, in turn, predicted that educators will not show up if such a workshop were to be arranged (DO13: Ln 477).

The frequent changing of the national curriculum made some specific educators feel like guinea-pigs, as if they were being used to experiment on (E9: Ln 86; DP15: Ln 364). On the one hand it contributed to the increase in workload (P6: Ln 31; E9: Ln 149) which makes them feel overwhelmed, and on the other hand it harmed the Department's image for not developing a working model from the start (DP15: Ln 392). A Setswana participant in the post of Deputy Principal expressed the wish that the Department would start to "realise that not everything done during *apartheid* was

bad”, that numerous principles were sound and yielded good results (DP15: Ln 360). He cited having access to education and being trained as a teacher as examples of positive legacies from the *apartheid* era, “even though we are not saying it was *right*” (DP15: Ln 361). These remarks revealed that educators are aware of the shortcomings in the education system and implied that some would rather revert back to old, obsolete systems that worked, than take the time to think up a workable new solution or change to something new and unknown.

Another finding was that parental involvement in the research area could, to a certain extent, be linked to the different cultures. Schools with predominantly Afrikaans parents experienced parents to be involved in all aspects of their children’s education, to such an extent that it sometimes bordered on over-involvement (P1: Ln 54; P11: Ln 55). By contrast it was found that educators in schools with predominantly Setswana parents complained about most of the parents being completely uninvolved in school matters, showing no interest in the progress of their children (P1: Ln 55; P6: Ln 394). Since the school is an extension of the home, both instances cause educator insecurity. Where parents are over-involved educators feel smothered, as if being watched over by the parents; where parents are under-involved educators feel as if they have no backup and support from the parents.

Educators who teach in township schools located within the research area , where the parents are predominantly illiterate and uneducated, had the experience that parents were uninvolved. On the other hand, educators who teach in Afrikaans schools, where all parents – black and white alike – have completed their school careers, experienced parents to be over-involved. This leads to the conclusion that the education level of parents is a determining factor of their involvement in their children’s education and what they expect of the educators.

Similarly, it also stands to reason that an uninvolved parent community generally contributes to the weak performance of educators and even to educators embarking on strike actions without much ado. The mere silence of uninvolved parents might be interpreted as silent approval of unethical conduct. An involved, informed parent community that expects educators to be on time, in class, teaching their children, will exert pressure on the teachers to perform and display professionalism.

Except for causing insecurity in educators, the general slow reaction time from the Department, as discussed in paragraph 4.1.2.3, was found to have resulted in the erroneous retention of some educators who had been found guilty of unacceptable or serious misconduct. This resulted in lowering the delivery of quality teaching which, in turn, contributed to the low levels of achievement of learners in the Annual National Assessment (H10: Ln 334).

5.4.3 Factors influencing the application of legal measures

I found that legal measures are not always applied correctly in the research area. A number of factors that influence the misapplication of legal measures were identified and are discussed in the following paragraphs.

5.4.3.1 Levels of legal knowledge

Participants acknowledged that their levels of legal knowledge are very low. This was in contrast with SADTU's provincial structure that proclaimed that all of its members were legally informed, especially in matters of misconduct. Legal measures are not always applied correctly in the research area because *ubuntu* is interpreted in such a way that managers are expected to display an understanding and tolerance for perpetrators' conduct. The tribal hierarchy system influences managers of participating schools to consider social standing as an important factor in the workplace as well. This results in the wrong application of legal measures.

During my research I found that the levels of applicable law-knowledge amongst participants and educators – at school level and departmental level alike – were unacceptably low (Paragraph 4.5.1). A lack of interest, a lack of ambition and having a general attitude of being unenthusiastic were mentioned as possible reasons for this occurrence. Another reason for the low levels of legal knowledge amongst union members in the research area specifically might be that union representatives are seen as juristic persons with sufficient legal knowledge to act on behalf of the perpetrating members. The members' attitude, thus, is that it is unnecessary to know the legal stipulations themselves because the union representatives already have sufficient knowledge of the law. This is a generally undesirable situation which may be exploited by the unions to get their members acquitted on technicalities which, consequentially, leads to educator insecurity.

Surprising factors which were found to play a significant role – in the research area – in the application of the stipulations provided in the law, are *ubuntu* and the tribal hierarchy system. *Ubuntu* plays a role in the sense that perpetrators are not handled as strictly as they should be handled, but are rather granted a period for recuperation or to reflect on their actions. This leniency creates the perception that the transgression of laws is not serious. The lack of legal consequences or reluctance to apply the law, results in a disrespect or disregard for the law and thus leads to more acts of misconduct being committed.

The low levels of legal knowledge among educators in the research area were attributed to unmotivated educators who are not interested in broadening their legal horizons, and also to the perception that union representatives have sufficient legal knowledge to act as lawyers in cases of misconduct. Union representatives are aware of the fact that educators – including school managers – do not have sufficient legal knowledge to apply it correctly. Thus, the situation is exploited by the union representatives in order to get their members, who should have been disciplined or dismissed, acquitted and retained in the system. Unless school managers do not actively decide to gain legal knowledge the situation will not improve and less than desirable educators will be retained in the system.

5.4.3.2 *Ubuntu*

The description of what *ubuntu* is (see paragraph 3.4.3 above), partially explains why *ubuntu* was cited as possible reason for not applying legal measures when misconduct is handled in the research area: When it is considered that school managers might reason that tolerance, understanding and empathy are *ubuntu* values, it also stands to reason that these managers will give perpetrators a chance to redeem themselves, rather than strictly apply legal measures. On the other hand, though, school managers cannot solely attribute their incorrect and insufficient handling of misconduct to *ubuntu*, since learners and fellow educators should also benefit from *ubuntu* and should not be adversely affected by educators' misconduct. Values and legal considerations like justice, protection of victims, best interests of the child, rule of law and maintenance of order are blatantly overlooked and lacking. When perpetrators are not handled as strictly as they should be handled, but are rather granted a period for recuperation or to reflect on their actions, it also creates

the perception that the transgression of laws is nothing serious and leads to more acts of misconduct being committed. *Ubuntu*, thus, is only a partial explanation of why legal measures generally are not applied.

On the other hand, Jansen (2009: 175 – 176) cautions that *ubuntu* is often naively contended as a way of signalling acceptance of the new South Africa and its democratic values without much reflection on any product. He adduces that *ubuntu* is not in touch with the empirical reality and cites one of the highest crime rates in the world as example. When *ubuntu's* citation during the empirical investigation is considered, the conclusion is drawn that the citation was a practical example of such a contention without reflection on a product – a productive educator in this case.

As principle *ubuntu* aims to show kindness and tolerance to people but does not promote the ill-discipline and irresponsibility demonstrated by educators committing misconduct. Therefore, to cite *ubuntu* as a reason for not applying legal measures appropriately and sufficiently in the research area, is to use it as an excuse to hide incompetency and uncertainty. Educators misappropriate *ubuntu* as an excuse for committing misconduct, not bearing in mind that *ubuntu* has to be practised towards learners and fellow educators as well.

5.4.3.3 *The tribal hierarchy system*

Since the tribal hierarchy system (see paragraph 3.4.4 above) was found to play an important role in the application of laws and policies in the research area (see paragraph 4.5.1.2 above), it generally emphasises the importance of social standing and kinship above workplace seniority. The tribal hierarchy may be a specifically admissible reason for not applying legal measures in some cases, but only to a limited extent. The number of tribal captains is much smaller than the number of educators in managing and senior positions, thus professionalism cannot generally be confronted by traditionalism so often that it accounts for the large-scale dysfunctionality.

The surprising citation of the tribal hierarchy system as reason for not applying legal measures not only indicated the importance of social standing, but also emphasised the importance of tradition – even in modern societies.

5.4.3.4 Unions

Although unions generally proclaim a point of view against educator misconduct, union members committing misconduct are not being brought to justice. A participant, who plays a prominent role in the provincial structure of the South African Democratic Teachers' Union (SADTU), was asked probing questions concerning SADTU's *laissez faire* attitude towards union members committing misconduct during strike actions specifically. He admitted that he was aware of the fact that these perpetrators were not disciplined by the union, but instead of accepting any responsibility for not acting against them, he blamed the Department for "generalising" (P6: Ln 180) and accusing all SADTU members of misconduct, instead of "picking up individuals who might have transgressed" (P6, Ln 182). He also implied that the Department does not have first-hand information concerning strike incidences since "they rely entirely on the media without looking into what actually happened" (P6: Ln 192). It is questionable whether such an attitude – to simply protect perpetrators and let them get off scot-free – is in the interest of education or beneficial to the union's image. To let such undisciplined conduct, as displayed during strikes, go unpunished, is to contribute to the cultivation of undisciplined teachers, setting an undesired, bad example to the learners.

The participant also stated that union representatives have an above average knowledge of the law (P6: Ln 210) which has to be applied in cases where union members are facing disciplinary actions. Union members expect their union representatives to act as lawyers and defend their cases, or face the consequential "loss of members to another union" (DP15: Ln 187). Educators, school management teams and Departmental Officials, on the other hand, only have a superficial knowledge of the law (DO 13: Ln 27) which is easily exploited by union representatives to get perpetrators acquitted. The importance of applicable legal knowledge is, thus, emphasised again. When educators, and especially managers, have sufficient legal knowledge and follow the correct procedures, union representatives will not be able to manipulate situations to benefit transgressors.

The non-punishment of misconduct committed during strikes was ascribed, on the one hand, to "high-ranking officials" being involved and protecting the perpetrators (DP15: Ln 222). On the other hand, a general feeling of *ubuntu* was cited as reason

for no-one being punished because “everyone is benefitting” (DP15: Ln 224). In reality, though, the union members displaying misconduct are the only ones benefitting from *ubuntu* in this case because they are not disciplined. *Ubuntu* is not experienced by learners who are not taught and schools that suffer damage during violent strike actions. Therefore, to adduce *ubuntu* as reason for not disciplining misbehaving educators is incorrect. This leads to the conclusion that union members do not feel uncomfortable when they misbehave and feel that they can rely on *ubuntu* to protect them from being punished. However, when they in return have to demonstrate *ubuntu* towards the learners, their own interests come first and the *ubuntu* principles are discarded. Unions should divulge moral- as well as technical legal obligations and should at least see to it that their transgressing members are sanctioned appropriately, irrespective of the possibility of losing members. By threatening to leave the union and join another union, union members are controlling the actions of their union representatives, instead of unions cultivating a positive spirit and work ethos in their members.

5.4.3.5 The dysfunctional equilibrium

Schools in general sometimes suffer from the influence of toxic personalities and the bad apple effect. This happens when staff members, exhibiting negative attitudes or actions, influence the other staff members to exhibit the same negative attitudes or actions instead of the positive staff members influencing the negative ones to become positive too. A condition is then reached where all staff members are in equilibrium, but they are not delivering quality service that contributes to the school being functional. At first glance, thus, it seems as though the school is in a state of equilibrium but upon closer investigation it appears to be a state of dysfunctional equilibrium (See paragraph 3.4.1)

A state of dysfunctional equilibrium in a school renders the school ineffective, and is not always easy to determine or resolve. In a departmental attempt to restore effectiveness in previously affected schools, all staff members were removed from the affected schools and relocated to other schools (DO14: Ln 383). This proved to be an effective measure and the attitudes and productivity of most of the teachers changed for the better. Where the effects and influence of the toxic personalities appeared again, it was resolved because the responsible person could be identified

(DO14: Ln386 - 389). The obvious remedy is that a dysfunctional equilibrium has to be prevented from being reached or that intervention processes have to be initiated as early as possible. Intervention processes should be comprehensive and linked with the desired outcomes. Intervention processes should continue until the dysfunctionality is turned around.

The dysfunctional equilibrium may also be linked to the liberal individualism philosophy. Liberal individualism, in essence, is selfish and primarily emphasises the survival of the individual, not the society. When linked to education, this phenomenon is very prominent in dysfunctional schools. If nationalism or socialism were the paramount ideology in some societies in South Africa, one would expect more cohesion and common altruistic sacrifice to benefit the society. This is, however, not the case and no common altruistic sacrifice and cohesion is discerned. This is an assertion of liberal individualism – the general South African’s philosophy. The Bill of Rights in the South African Constitution particularly protects human rights, but specifically the rights of the individual, thus expediting liberal individualism.

Educator misconduct, thus, not only has an effect on individuals, but also on the school as organisation. Participants who formed part of a school in a state of dysfunctional equilibrium warned that such a situation “will spread like wildfire if not prevented well enough” and also warned that it took only one educator not to do what he is supposed to do to drive the whole school into a commotion.

5.4.3.6 Liberal Individualism

Liberal individualism (See paragraph 3.2.2 above) is the dominant underlying philosophy, directing most South Africans’ approach to life. Liberal individualism also influences the application of legal measures, but manifests in phenomena like *ubuntu* and ‘bad apples’. The inappropriate abuse of *ubuntu* as well as the ‘bad apples’ in schools, and the subsequent dysfunctional equilibrium, demonstrate a self-centredness of individuals at the expense of the group.

The mind-set of individuals need to be changed to become more altruistic through a concerted effort of school leaders, political leaders and community leaders. Community leaders in particular can play an important role in influencing and changing the selfish individualism.

5.4.4 The National Teachers' Awards

I did not find that the National Teachers' Awards contributed to educator insecurity in my research area. Although a positive attitude towards the National Teachers' Awards was observed among the participants, none of the participants expressed a desire to take part in it. The most common reasons for the lack of interest to participate were the preparation of the portfolio for the selection process and the incentives that are considered to be too low. These specific reasons might be interpreted as self-preservation by not adding to the own workload, or, as in the case of the legal knowledge, a lack of enthusiasm.

5.4.5 Summary of findings:

This research study generated the following findings:

- Participants have a lack of knowledge of education law.
- Participants perceive the long reaction time from the Department of Education as a security risk.
- Workload leads to insecurity for participants.
- Participants experience insecurity at times because of the lack of parental involvement. In other cases participants experience insecurity because of parental over-involvement.
- Participants find the Annual National Assessment insufficient and a direct factor of insecurity.
- The artificial completion of the Integrated Quality Management System forms for monetary value is a cause for insecurity amongst participants.
- Participants experience insecurity when some union members are benefitted at the expense of others.

5.4.6 Summary of hypotheses for future research

This dissertation generated the following hypotheses that may be considered for future studies or surveys:

- Educators and officials have a lack of knowledge of education law.

- Educators feel insecure because the Department of Education takes a long time to respond on issues.
- Educators feel insecure because of the high workload.
- Educators feel insecure when parents are uninvolved. Similarly, teachers feel insecure when parents are over-involved.
- The lack of management skills of school principals leads to educator insecurity.
- Educators feel insecure due to the ineffective Annual National Assessment.
- The current implementation of the Integrated Quality Management System leads to educator insecurity.

5.5 Recommendations for teaching practice

The following recommendations are presented for consideration by the Department of Education.

5.5.1 Courses on Education Law

This study has revealed that employees in the Department of Education have unacceptably low standards of legal knowledge which is exploited by the unions. In order to improve legal knowledge, promote the correct application thereof and have educators experience legal measures as a measure of protection, compulsory courses in Education Law and legal measures should be presented and attended by educators of all post levels. These courses should be presented annually and form part of the training programme for school management and departmental officials.

Although all education legislation and legal measures should form part of the course, some aspects deserve in-depth attention. Specific content that needs in-depth attention may include the Bill of Rights as contained in the South African Constitution, in order to reinforce democracy in schools. Attention should be paid to prescriptions regarding acceptable, ethical conduct as enshrined in the SACE Code of Conduct, as well as to the duties and responsibilities of educators on all levels as prescribed in the Personnel Administration Measures. The guidelines on strikes and picketing as provided by the CCMA should also be brought under the pertinent attention of all educators and managers. The identification, handling and sanctioning of educator misconduct as found in the Employment of Educators Act should also receive marked

attention. Although the maintenance of discipline also forms part of management measures, disciplinary steps to be taken after misconduct has been committed, are legally embedded in Section 2 of the Employment of Educators Act and should thus be included.

Assessment done after completion of the course will determine whether adequate levels of knowledge were acquired, or whether the course has to be repeated. The successful completion of the proposed course on education laws may be used as a prerequisite for promotion, thus motivating all educators to attend the course. It is imperative that principals, as primary level law-enforcers, need to be capacitated in the application of laws to ensure that procedural and substantive fairness is maintained, especially in cases of educator misconduct. To ensure that all relevant parties are on equal level, it is also recommended that union members attend the course before they are permitted to act as another member's representative. When all employees are on the same level of knowledge, no-one will be able to exploit anyone else's lack of knowledge and in effect cause the retention of transgressors, who deserve to be punished, in the system. The current protection of union members – and, indirectly, the approval given to their misconduct – leads to the perception that misconduct is permissible and will not be punished. This perception leads to the increased frequency in the occurrence of misconduct, which, in turn, leads to educator insecurity increasing in equal measure.

Since educator misconduct is a contributing factor to educator insecurity, educators should experience decreased levels of insecurity when the occurrence of misconduct decreases. Similarly, it also stands to reason that increased legal knowledge will lead to the more effective handling of educator misconduct, resultantly leading to reduced occurrence of misconduct and reduced levels of educator insecurity.

5.5.2 Department should display a quicker reaction time.

The time span that elapses for fundamental problems to be solved, for example the appointment of temporary educators, is unacceptably long and causes unnecessary operational problems in schools. Because of the slow reaction time of the department, schools have experienced being without an educator for periods of up to three months (DO14: Ln 508). This results in either the workload of the remaining

educators increasing, thus leading to increased levels of insecurity, or to the learners' work not being done. This problem can be solved by the decentralisation of the power of appointment to the levels of Area Offices. By doing this, Area Managers will have the power to appoint temporary educators in order to keep schools functional, because they are closer to the operational level than the Superintendent General is. Prompt reaction will be enhanced and schools will be able to function seamlessly.

5.5.3 Appointment of class assistants

It is also recommended that the employer considers the appointment of class assistants in small schools to assist teachers with administrative and extra-curricular duties. As was explained in paragraph 4.5.3.1, educators of small schools feel overwhelmed by their workload. In order to meet departmental regulations, small schools and bigger schools alike are expected to take part in extra-curricular activities. By taking part in these activities, the educators' programmes become extremely full, inevitably leading to administrative work being done at night. The appointment of class assistants, who can render assistance with the administrative tasks like organising teacher files, photocopying notes or test papers and completing reports, will make the educators' load somewhat lighter and easier to bear. Class assistants will also be able to assist with the organisational duties associated with sports days and matches. In this way extra jobs will be created for the country's people.

5.5.4 Appropriate induction courses for newly appointed school managers

Although induction courses for newly appointed managers are presented, the Department does not sufficiently emphasise the stress and pressure to be expected from parental involvement, albeit over- or under-involvement (P11: Ln 625). This is an important aspect that should enjoy more attention to avoid situations where newly appointed principals feel as if they are fighting a lone battle with no support or guidance from the department. It is also linked to the loophole in the promotional system where educators may be appointed as school managers when all the requirements are met, yet they have no managerial experience or expertise because they have not "gone through the ranks" (Do14: Ln 227 – 230). When educators did not have the opportunity to gain managerial experience at school level – for example

to be the chairperson of a committee or be promoted to Head of Department – they experience high levels of insecurity and often make incorrect decisions. It stands to reason that these inexperienced school managers also have questionable levels of legal knowledge, which is easily exploited by the unions in order to retain educators that had been found guilty of unacceptable conduct or serious misconduct, thus contributing to an ineffective education system.

5.5.5 Reconsideration of promotional system

The promotional system, thus, should also be revisited to allow time for educators to develop managerial skills by progressing from post level to post level – in other words, being promoted on merit, and having obtained five years' experience, from an ordinary educator on post level one to a Head of Department on post level two. After gaining three years' experience as Head of Department the educator may then be promoted to the post level three position of Deputy Principal. Deputy Principals with at least two years' experience may then be promoted to the post level four position of Principal. The compulsory completion of the recommended legal course should be a prerequisite for progressing from one post level to the next. This protocol will allow educators to become effective managers, who possess sufficient, applicable legal knowledge not to be exploited by union representatives, thus contributing to a more effective and productive education system.

5.5.6 Reconsider and adapt implementation of ANA

Since the Annual National Assessment is such a prominent cause for insecurity amongst educators, it is recommended that the employer reconsiders and adapts the implementation thereof: Question papers should reflect activities taking place in the classes and should only cover the content that has already been taught to the learners. Since content that should be taught in the fourth quarter of the school year is also examined, learners often answer those questions incorrectly leading to lower levels of achievement. The textbooks used for setting the papers should be made known to the educators since different authors use different approaches to solving problems and finding solutions and it has an influence on the way examination papers are set. Educators and learners in grades three, six and nine should receive Departmental support for ANA in the same way support is given to grade 12

educators and learners when they are writing their final examinations. This support may also be in the form of television and radio programmes in order to be accessible to and of equal standard for all learners.

5.5.7 Appoint independent assessors for IQMS

Procedural misconduct is committed at all schools during the IQMS process, rendering the whole initiative ineffective. The monetary incentive linked to the IQMS process is the main reason for the committing of procedural misconduct: Educators submit favourable mark sheets in order to qualify for the pay progression. In instances where money is used as incentive, like the IQMS or NTAs, it is recommended that the whole process is rather handled by trained independent teams or central committees, rather than colleagues at school level. This will ensure that all educators are assessed objectively and are rated on merit. The assessment results should not only be linked to the rewarding of a monetary incentive to the good performers, but also to a reduction in compensation for the non-performers.

Furthermore, it is recommended that salary increases of educators are linked to compulsory subject-related and administrative courses presented annually. Course facilitators may be travelling Departmental Officials or university lecturers. These courses may serve as prerequisite for admission to tertiary courses for improving qualifications and may also afford educators extra credit points to enrol for further studies. This counter-performance by educators will ensure that they are life-long students, and that their subject-related as well as administrative knowledge stay updated.

5.5.8 Motivational speakers to visit schools annually.

Educators render a very important service in shaping and educating future generations. To work with people, however, is a demanding, stressful occupation that might easily lead to psychological exhaustion. To keep educators motivated, conscious of their self-worth and express the employer's gratitude beyond just paying their salaries, it is recommended that each school be visited by a motivational speaker at least once a year. A motivated work-force, will be productive and less inclined to commit misconduct.

5.6 Recommendations for further research

The results of this research indicate that educator misconduct impacts negatively on educator security. The research also indicates that educator security is adversely affected by a number of factors. The following topics can give rise to meaningful and beneficial research:

- The development of a purposeful system, aimed at reducing the stress caused by the additional workload of small school educators deserves research.
- *Ubuntu* and cultural differences were identified as having an influence on the handling of educator misconduct. Whether it has an impact on other legal matters such as the promotion or appointment of educators may also be researched.
- The possibilities of passing legislation specifically aimed at misconduct during strikes and industrial action need to be researched.
- All hypotheses derived from this study should be tested via qualitative research.

5.7 Conclusion

All the research questions were answered. Summarised answers to the research questions, as well as answers to some concerns that arose from the empirical investigation, are thus provided:

The aim of the central research question was to determine the influence of educator misconduct on the security of their fellow employees in the research area. It was determined that educator misconduct causes fellow employees to be insecure in the participating schools. The insecurity experienced by participants to this study manifests in physical symptoms like anger, tension headaches and loss of appetite, as well as psychological problems like despondency, depression and considering early retirement.

Answers to the specific research questions were also obtained, of which the first queried the nature and extent of educator misconduct. Literature, ratified by this specific empirical research, revealed that educator misconduct is taking place in most schools on a daily basis. Kinds of misconduct in the participating schools range from educators not attending classes and being unprepared for lessons to serious misconduct like having sexual relationship with learners. Misconduct committed during strikes that often goes unpunished and the dysfunctional equilibrium that renders schools ineffective, were identified as grey areas of misconduct. Unfortunately educator misconduct will continue to occur unless educators take a conscious decision not to commit misconduct. Although extenuating circumstances causing anomalies in conduct may occur, the general conduct will be of disciplined, exemplary educators that have the best interest of the learners at heart.

The second specific research question queried the nature and extent of educator insecurity and what the possible reasons for feeling insecure might be. This empirical investigation confirmed that educator misconduct in the participating schools is a detrimental cause of fellow educators feeling insecure, and also revealed that educators in the participating schools feel insecure because of their workloads, parental involvement, incessant departmental changes and the Annual National Assessment. Feelings of insecurity in the research area are linked to and might be alleviated by personal attitude: an enthusiastic, positive educator will focus on the positive aspects of education and teaching, thus finding ways to absorb change and face challenges. Hence the recommendation for motivational speakers to visit schools. When these recommended motivational speakers visit schools, educator insecurity will be addressed simultaneously.

The manner in which laws apply to educator misconduct as well as to educator security as third specific query was answered from the literature. Laws and legal measures that are specifically applicable to education to counteract educator misconduct and promote educator security are the South African Constitution, the Labour Relations Act, the Employment of Educators Act, the South African Council for Educators Act and the South African Schools Act. Common law principles like *in loco parentis*, the *ultra vires* doctrine and the rules of natural justice also contribute to the provision of guidelines for acceptable educator conduct. Examples of educator

conduct that transgressed laws and were sanctioned, are found in various court cases, for example *S v Mohlakane* and *Schoonbee and others v MEC for Education, Mpumalanga and another*. Sufficient legislative measures regulating educator misconduct exist, but are useless if not applied correctly. A campaign to promote awareness of laws and legislative measures might offer a short-term solution until logistics for the recommended compulsory course for prospective managers are sorted out.

The last specific research question queried the factors influencing the application of legal measures. This empirical investigation revealed that legal measures are not applied appropriately in the participating schools due to three main reasons namely: low levels of legal knowledge among educators, the incorrect application of the *ubuntu* principle and the influence of the tribal hierarchy system.

South African history of the first half of the twentieth century provides valuable lessons applicable to the present. Although approximately 40% of the South African population is not yet urbanised, urbanisation is a definite tendency. Urbanisation is a natural phenomenon which ought to be planned and managed well in order to benefit everyone. The urbanised middle class – irrespective of race – underwent the transformation process and modernised. However, the urbanised unschooled- and semi-schooled labourers from rural areas, as well as migrant labourers, still experience poverty and existential crises. Their academic- and service delivery standards are still relatively low.

Rural (or transitional-) societies are still caught in a pre-modern or existential lifestyle. This largely influences their views concerning standards, service delivery and professionalism. The result is that teachers in these rural and transitional societies will have the same low standards and questionable attitudes towards service delivery and professionalism. Urbanised societies tend to become part of the post-industrial world which accentuates service delivery. Good qualifications and professionalism are thus prerequisites in order to survive economically.

This indicates that societies have not yet become part of the post-industrial world which demands service delivery and where professionalism and good qualifications are paramount to economic survival. Although liberal individualism is a contemporary

philosophy, it is inherently selfish and it primarily emphasises the economic and social survival of the individual, not that of the society.

Fact remains that the South African education system does not deliver acceptable results and large numbers of educators are disobedient, dysfunctional and cause their fellow educators to experience insecurity. Legislative measures are in place and should be applied to prevent educators from committing misconduct and counteract educator insecurity. The education system's dysfunctional equilibrium is maintained because of strong counterweights preventing its eradication. Educators are in a comfort zone and want to remain there. The maintenance of the dysfunctional equilibrium is in their interest because it is an equalising factor – if systems do not function properly and no-one is assessed, everyone is on equal level, and the insecurity caused to their fellow educators is disregarded. The obvious remedy is that a dysfunctional equilibrium has to be prevented from being reached or that intervention processes have to be initiated as early as possible. Intervention processes should be comprehensive and linked with the desired outcomes. Intervention processes should continue until the dysfunctionality is turned around.

Neither ethnic nationalism, nor socialism, nor liberal individualism will provide lasting solutions to the education crisis. The solution might be embedded in training on the national strain after modernising, using a *national liberalism* or *Christian-democratic philosophy* together with the principles of professionalism and democracy.

6 BIBLIOGRAPHY

ACTSA (Association of Corporate Treasurers of South Africa). 2010. A timeline of South Africa: football and social and political history. London: ACTSA. http://www.actsa.org/Pictures/UpImages/ACTSA_Timeline%20table%20with%20football.pdf. Date of access: 22 August 2014.

Alston, K. 2008. Red tape is stopping teachers from giving quality education. *Daily Dispatch*: 7, 9 April.

Anangisye, W.A. & Barrett, A.M. 2006. Professional identity and misconduct: perspectives of Tanzanian teachers. *Southern African review of education*, 11(1):5-22.

Aquino, K. & Thau, S. 2009. Workplace victimisation: aggression from the target's perspective. *Annual review of psychology*, 60:717-741.

Beckmann, J. & Bray, E. 2006. The educator employment relationship: a conditional and legislative overview. (In Beckmann, J., ed. *Engaging the law and education in a transforming society: a critical chronicle of the South African Law and Policy Association*. Potchefstroom: South African Law and Policy Association. p. 428-438.)

Beukman, T.L. 2005. The effect of selected variables on leadership behaviour within the framework of a transformational organisation paradigm. Pretoria: University of Pretoria. (Thesis - DCom.) 388 p.

Bipath, K. 2002. Differentiating between functional and dysfunctional schools. Johannesburg: RAU. (Dissertation - MEd.) 154 p.

Bonn, M. 2007. Children's understanding of 'Ubuntu'. *Early child development and care*, 177(8):863-873.

Bosch, K. 2013. When words are used as weapons: verbal abuse. <http://www.ianrpubs.unl.edu/epublic/live/g1814/build/g1814.pdf> Date of access: 11 July 2013.

Boshoff, C. 2014. N.P. van Wyk Louw en die derde Afrikaner. Pretoria: FAK. 230 p.

Botha, N. 2006. Leadership in school-based management: a case study in selected schools. *South African journal of education*, 26(3):341-352.

Botha, R.J. 2004. Excellence in leadership: demands on the professional school principal. *South African journal of education*, 24(3):239-243.

Bronfenbrenner, U. 1994. Ecological models of human development. *International encyclopedia of education*, 3(2):3-43.

Brown, J.E. 2013. The Workplace Bullying Institute definition of workplace bullying. <http://www.workplacebullying.org/individuals/problem/definition/> Date of access: 12 July 2013.

Brown, R. 2004. School culture and organization: lessons from research and experience. (A background paper for the Denver Commission on Secondary School Reform.) http://www.dpsk12.org/pdf/culture_organization.pdf Date of access: 26 October 2013.

CCMA (Commission for Conciliation Mediation and Arbitration). 2013. Code of good practice on picketing. <http://www.ccma.org.za/Display.asp?L1=34&L2=70> Date of access: 26 October 2013.

Chaplin, K. 2006. The ubuntu spirit in African communities. <http://www.coe.int/t/dg4/cultureheritage/culture/Cities/Publication/BookCoE20-Chaplin.pdf> Date of access: 29 July 2014

Chikamhi, P. 2006. Educator misconduct: a study of labour relations in public schools in Namibia. Potchefstroom: North-West University. (Dissertation - MEd.) 176 p.

Christensen, J. 2010. Proposed enhancement of Bronfenbrenner's Development Ecology Model. *Education inquiry*, 1(2):101-110.

Cicognani, L. 2004. To punish or discipline? Teachers' attitudes towards the abolition of corporal punishment. Johannesburg: University of the Witwatersrand. (Dissertation - MEd.) 60 p.

Cohen, M. 2010. South African teachers strike shuts schools: compounds educational crisis. <http://www.bloomberg.com/news/2010-08-31/south-african-teachers-strike-shuts-schools-compounds-educational-crisis.html> Date of access: 26 October 2013.

Collins Cobuild Essential English Dictionary. 1989. London: Collins. 948 p.

Collins English Dictionary. 2003. <http://www.thefreedictionary.com/security> Date of access: 19 October 2012.

Community Crisis Centre. 2013b. Health implications of sexual assault. <http://www.crisiscenter.org/images/saindoc9.pdf> Date of access: 21 August 2013.

Creswell, J.W. 2009. Research design: qualitative, quantitative and mixed methods approaches. Thousand Oaks, Calif.: Sage.

De Klerk, J. & Rens, J. 2003. The role of values in school discipline. *Koers*, 68(4):353-371.

De Vos, P. 2010. Freedom of assembly or freedom to riot? <http://constitutionallyspeaking.co.za/freedom-of-assembly-or-freedom-to-riot/> Date of access: 22 November 2013.

De Wet, C. 2002. Sieninge van 'n groep swart opvoeders oor onderwysunie=lidmaatskap en -doelstelling. *South African journal of education*, 23(3):230-238.

Deacon, J. 2012. The implications and risks of the teacher's right to strike. Proceedings of the 17th International SAELA International Conference 10-12 Sep 2012. Held at Somerset-West, South Africa.

Department of Basic Education **see** South Africa. Department of Basic Education

Diale, C. 2011. This school is the 'home of racism'. <http://www.citypress.co.za/news/this-school-is-the-home-of-racism-20110430/> Date of access: 4 February 2014.

Domingo, A.S. 2007. Die skoolhoof se rol as motiveerder van kurrikulum=verandering in die primêre skool. http://dk.cput.ac.za/td_cput/108 Date of access: 19 October 2012.

Doubell, T.B. 2012. Opvoedersekuriteit en sportafrigting by skole: 'n onderwysregtelike perspektief. Potchefstroom: Noordwes-Universiteit. (Dissertation - MEd.) 165 p.

Eckenrode, M., Izzo, K. & Campa-Muller, S. 2007. The three main sociological perspectives. *Understanding Social Problems*, 5(1): 1 – 2.

Ehlers, A. 2000. Desegregating history in South Africa: the case of the covenant and the battle of Blood / Ncome River. http://sun025.sun.ac.za/portal/page/portal/Arts/Departemente1/geskiedenis/docs/desegregating_history.pdf Date of access: 2 February 2014.

Engelbrecht, A.J. 2012. Verbal communication with author. Ottosdal.

Felps, W., Mitchel, T.R. & Byington, E. 2006. How, when and why bad apples spoil the barrel: negative group members and dysfunctional groups. *Research in organizational behaviour*, 27:175-222.

Florida. Department of Education. 2012b. What is educator misconduct? http://www.fldoe.org/edstandards/misconduct_parent_faq.asp Date of access: 16 February 2012.

Forsyth, D.R. 2006. Group dynamics. Belmont, Calif.: Thomson Higher Education. 35 p.

Fox, S. & Nkosi, N. 2003. Child sexual abuse: a handbook for parents and caregivers. Johannesburg: Centre for AIDS Development, Research and Evaluation. 26 p.

Free Dictionary. 2013. Victimisation. <http://www.thefreedictionary.com/victimisation>
Date of access: 12 July 2013.

Gauteng. Department of Education. 2004. New leave dispensation for institution-based educators. <http://www.education.gpg.gov.za/Document5/Documents/Circ.19.2004.Newleavedispensationforinstitutionbasededucatorsappointed.doc> Date of access: 21 August 2014.

Giliomee, H. 1984. Re-interpreting Afrikaner nationalism, 1850-1900. http://sas-space.sas.ac.uk/4124/1/Hermann_Giliomee_-_Reinterpreting_afrikaner_nationalism_1850-1900.pdf Date of access: 26 August 2014.

Giliomee, H.B. 2003. The Afrikaners: biography of a people. Cape Town: Tafelberg. 698 p.

Global Britannica. 2014a. Liberalism. <http://global.britannica.com/EBchecked/topic/339173/liberalism>. Date of access: 29 August 2014.

Global Britanica. 2014b. Nationalism. <http://global.britannica.com/EBchecked/topic/405644/nationalism> Date of access: 21 August 2014.

Griffin, D. 2013. What is considered insubordination? <http://smallbusiness.chron.com/considered-insubordination-958.html> Date of access: 21 August 2014.

Grobler, B., Bisschoff, T. & Beeka. 2012. Changing perceptions of teachers regarding the importance and competence of their principals as leaders. *South African journal of education*, 32(1):40-55.

Groenewald, P.J. 2013. Die Suid Afrikaanse nasionale kiesstelsels: 'n kritiese ontleding en alternatiewe. Potchefstroom: Noordwes-Universiteit. (Thesis - PhD.) 367 p.

Groenewald, S. 2014. (sg@sun.ac.za) 27 Sept 2014. SA se soeke na modernisering. E-mail to: Mans, C.S. (susanmans@vodamail.co.za).

Grogan, J. 2000. Workplace law. 5th ed. Kenwyn: Juta. 367 p.

Hanson, E.M. 2003. Educational administration and organizational behaviour. Riverside, Calif.: University of California.

Hansraj, I. 2007. The financial management role of principals in Section 21 schools in south Durban, KwaZulu-Natal. Pretoria: University of South Africa. (Dissertation - MEd.)

Härkönen, U. 2007. The Bronfenbrenner ecological systems theory of human development. (*In* Scientific articles of 5th International Conference: person, color, nature, music. Paper read at International Conference held in Daugavpils University, Saule from 17 to 21 October 2007. p 1-19.)

Hartley, W. 2013. Harassment protection law finally put into effect. <http://www.bdlive.co.za/national/law/2013/04/29/harassment-protection-law-finally-put-into-effect>. Date of access: 20 July 2013.

Hayes, D. 2004. Foundations of primary teaching. 3rd ed. London: Fulton. 356 p.

Henning, E. 2004. Finding your way in qualitative research. Pretoria: Van Schaik.

Holloway, E & Kusy, M. 2009. Toxicity in the workplace! <http://www.toxicpersonalities.com>. Date of access: 25 May 2013.

Hughes, T.P.D. 1994. Political liberalism in South Africa in the 1980's and the formation of the Democratic Party. Cape Town: University of Cape Town. (Dissertation - MA.) 402 p.

Israelstam, I. 2013. Does gross insubordination always warrant dismissal? <http://www.skillsportal.co.za/page/features/contributors/ivan-israelstam/1501276-Does-gross-insubordination-always-warrant-dismissal>. Date of access: 8 February 2014.

Jansen, J.D. 2009. Knowledge in the blood: confronting race and the apartheid past. Cape Town: University Press. 337 p.

Jansen, J.D. 2013. Pupils aren't the problem. *The Times*, 12 September.

Jewkes, R. 2002. Abuse of trust: teachers raping school girls. *Quarterly journal of women's health project*, 41:15-17.

Jewkes, R. & Abrahams, N. 2002. The epidemiology of rape and sexual coercion in South Africa: an overview. *Social science and medicine*, 55(7):1231-1244.

John, V. 2013. A 'monster of racism' at Potch. <http://www.citypress.co.za/news/this-school-is-the-home-of-racism-20110430/> Date of access: 4 April 2014.

Joubert, R. & Squelch, J. 2005. Learner discipline in schools. 2nd ed. Pretoria: Centre for Education Law and Policy. 99 p.

Keating, J.B. 2011. Security in the workplace of the Foundation Phase Educator: an education law perspective. Potchefstroom: North-West University. (Dissertation - MEd.) 172 p.

Kemp, A. 1998. Who are the Boers? <http://www.southafricaproject.info/Who%20are%20the%20Boers.pdf> Date of access: 29 August 2014.

Kennedy, M. 2004. Providing safe schools: 10 ways education institutions can bolster security in their facilities. *American school and university*, 75(6):61-64.

Kentucky Education Professional Standards Board. 2012. Educator misconduct. <http://www.kyepsb.net/legal/legal.asp> Date of access: 16 February 2012.

- Kgosana, C. 2011. Teacher sex and assault shocking. *Sunday Times*: 4, 19 October.
- Khawaja, I. 2000. Whose liberalism? Which individualism? http://reasonpapers.com/pdf/25/rp_25_5.pdf Date of access: 29 September 2014.
- Khoabane, P. 2010. How about severance pay instead of more money? *Sunday Times Review*, 29 August 2.
- Khoza, M. & Masinga, S. 2010. Sexual abuse rampant at rural schools. *Mail & Guardian online*. <http://mg.co.za/article/2010-10-15-sexual-abuse-rampant-at-rural-schools> Date of access: 9 April 2012.
- Kikine, R. 2009. Legal affairs and ethics. <http://www.sace.org.za/files/Legal> Date of access: 17 March 2011.
- Kirsten, G.J.C. & Viljoen, C.T. 2004. Revisiting the meaning of the concept “health”: expanding our horizons with wellness. Potchefstroom: North-West University. (Unpublished.)
- Kriel, M. 2008. Fonds verwelkom strengere wetgewing teen die oortreders in werkplekke. <http://solidariteit.co.za/fonds-verwelkom-strenger-wetgewing-teen-die-oortreders-in-werkplekke/> Date of access: 27 July 2013.
- KwaZulu Natal. Department of Education. 2001. Status of temporary educators. <http://www.kzneducation.gov.za/LinkClick.aspx?fileticket=1KcrH1HoBlc=> Date of access: 10 February 2014.
- Leedy, P.D. & Ormrod, J.E. 2005. Practical research: planning and design. International edition. Upper Saddle, N.J.: Pearson Educational International. 352 p.
- Legal Dictionary. 2013a. Defamation. <http://legal-dictionary.thefreedictionary.com/Defamation+of+character> Date of access: 20 July 2013.

Legal Dictionary. 2013b. Harassment. <http://legal-dictionary.thefreedictionary.com/Harassment> Date of access: 20 July 2013

Legal Dictionary. 2013c. Picketing. <http://legal-dictionary.thefreedictionary.com/Picketing> Date of access: 26 October 2013.

Legal Information Institute. 2012. Ultra Vires. http://www.law.cornell.edu/wex/ultra_vires Date of access: 14 January 2014.

Letsoalo, T.J. 2009. The implementation of the Integrated Quality Management System as an instrument of performance management in Lebowakgomo Circuit, Limpopo Province. University of Limpopo. (Dissertation - MA.) 91 p.

Linzer, N. 1997. Liberal individualism and communitarianism: whither the future for Jewish life? <http://www.bjpa.org/Publications/downloadFile.cfm?FileID=1273> Date of access: 29 September 2014.

Liwane-Mazengwe, N. 2012. Teacher unions and educator professionalism: an education law perspective. Potchefstroom: North-West University. (Dissertation - MEd.) 311 p.

Lues, L. 2007. Service delivery and ethical conduct in the public service: the missing links. *Koers*, 72(2):219-238.

Lunenberg, M., Korthagen, F. & Swennen, A. 2007. The teacher educator as a role model. *Teaching and teacher education* 23(5):586-601.

Makana Tourism. 2014. 1820 settlers. http://www.grahamstown.co.za/page/1820_settlers. Date of access: 26 August 2014.

Malala, J. 2007. Unions get away with murder. *The Times*: 11, June 9.

Malherbe, R. 2004. A constitutional perspective on the rights and duties of learners and educators. (In Beckmann, J., ed. *Engaging the law and education in a transforming society: a critical chronicle of the South African Law and Policy*

Association 1996-2005, Part 2: 2003-2005. Potchefstroom: South African Law and Policy Association. p. 875-907.)

Maluleke, M. 2013. SA's 'depressed and helpless' teachers. <http://www.enca.com/south-africa/depressed-teachers-battle-poor-discipline-low-pay> Date of access: 4 February 2014.

Maphosa, C. & Shumba, A. 2010. Educators' disciplinary capabilities after the banning of corporal punishment in South African schools. *South African journal of education*, 30(3):387-399.

Maree, K. & Pietersen, J. 2010. Sampling. (*In Maree, K., ed. First steps in Research. Pretoria: Van Schaik Publishers. p. 172-181.*)

Maree, K. & Van der Westhuizen, C. 2010. Planning a research proposal. (*In Maree, K., ed. First steps in research. Pretoria: Van Schaik Publishers. p. 23-45.*)

Martin, R. 2005. The perceptions of educators with regard to section 17 acts of misconduct in the employment of educators. Johannesburg: University of Johannesburg. (Mini-dissertation - MEd.) 115 p.

Mbonambi, T.S. 2002. The management of educator misconduct in Township schools. Johannesburg: University of Johannesburg. (Dissertation - MEd.) 99 p.

McMillan, J.H. & Schumacher, S. 2001. Research in education: a conceptual introduction. 5th ed. New York: Longman.

Mda, T. & Erasmus, J. 2008. Research report commissioned by the Department of Labour, South Africa. http://www.labour.gov.za/downloads/documents/research-documents/Educators_DoL_Report.pdf Date of access: 4 June 2012.

Mentz, P.J., Wolhuter, C.C. & Steyn, S.C. 2003. 'n Perspektief op die voorkoms van dissiplinêre probleme in Afrikaanse skole. *Koers*, 68:391-412.

Mokgoro, J.Y. 1997. Ubuntu and the law in South Africa. <http://www.ajol.info.nwulib.nwu.ac.za/index.php/peij/article/view/43567/27090>. Date of access: 12 August 2014.

Molema, S. 2007. Teacher fingered for rape leaves school. *City Press*: 8, 29 April.

Moroasui, G. 2010. Legal and ethics. SACE 2009-2010 annual report: 19 - 21. <http://www.sace.org.za/files/SACE%20AREport%20web>. Date of access: 17 March 2011.

Morrell, R. 2001. Corporal punishment in South African schools: a neglected explanation for its persistence. *South African journal of education*, 21(4):292-299.

Mothemane, K.D. 2003. How do principals manage misconduct in public schools? Pretoria: University of Pretoria. (Dissertation - MEd.) 79 p.

Motlanthe, K. 2012. Kgalema Motlanthe's keynote address. <http://mg.co.za/article/2012-03-20-kgalema-motlanthes-keynote-address> Date of access: 18 January 2014.

Mouton, J. 2009. How to succeed in your master's and doctoral studies: a South African guide and resource book. Pretoria: Van Schaik Publishers. 280 p.

Myers, M.D. 2004. Qualitative research in information systems. <http://qual.auckland.ac.nz/> Date of access: 30 August 2012.

Naong, M. 2007. The impact of the abolition of corporal punishment on teacher morale: 1994-2004. *South African journal of education*, 27(2):283-300.

Nasson, B. 2002. History: the meaning and role of history in human development. <http://www.eolss.net/sample-chapters/c04/e6-22-00-00.pdf>. Date of access: 25 August 2014.

Naylor, N. 2010. Seksuele teistering en die gewysigde kode van goeie praktyk oor die hantering van seksuele teistering in Suid Afrika. Kaapstad: Women's Legal Centre. 40 p.

NCSBN (National Council of State Boards of Nursing.) 2009. Practical guidelines for boards of nursing on sexual misconduct cases. Chicago, Ill.: National Council of State Boards of Nursing. 59 p.

Nieuwenhuis, J. 2010a. Introducing qualitative research. (*In Maree, K., ed. First steps in research. Pretoria: Van Schaik Publishers. p. 47-69.*)

Nieuwenhuis, J. 2010b. Qualitative research designs and data gathering techniques. (*In Maree, K., ed. First steps in research. Pretoria: Van Schaik Publishers. p. 70-97.*)

Olivier, M. 2009. Shrink stel onnie se tugverhoor uit. *Beeld*: 8, 5 Mei.

Oosthuizen, I.J. 2009. The essence of education law. (*In Oosthuizen, I.J., ed. Aspects of education law. Pretoria: Van Schaik Publishers. p. 3-24.*)

Oosthuizen, I.J., ed. 2008. Safe schools. Pretoria: Centre for Education Law and Policy (CELP).

Oosthuizen, I.J., Mentz, P.J. & Van der Walt, J.L. 2002. Die geborgenheid van die onderwyser as voorwaarde vir opvoedende skoolonderwys. *Koers*, 67(1):27-44.

Oosthuizen, I.J., Roos, M.C., Smit, M.H. & Rossouw, J.P. 2009. The South African Constitution. (*In Oosthuizen, I.J., ed. Aspects of education law. Pretoria: Van Schaik Publishers. p. 25-57.*)

Oosthuizen, I.J., Roux, J.M. & Van der Walt, J.L. 2003. A classical approach to the restoration of discipline in South African schools. *Koers*, 68(4):373-390.

Oosthuizen, I.J., Wolhuter, C.C. & Du Toit, P. 2003. Preventative or punitive disciplinary measures in SA schools. *Koers*, 68(4):457-479.

Ospina, S. 2004. Qualitative research. http://wagner.nyu.edu/leadership/publications/files/Qualitative_Research.pdf Date of access: 30 August 2012.

Oxford Dictionary. 2014a. Colonialism. <http://www.oxforddictionaries.com/definition/english/colonialism>. Date of access: 29 August 2014.

Oxford Dictionary. 2014b. Racism. <http://www.oxforddictionaries.com/definition/english/racism> Date of access: 29 January 2014.

Oxford Dictionary. 2014c. Tribe. <http://www.oxforddictionaries.com/definition/english/tribe> Date of access: 4 September 2014.

Paton, C. 2013. Court strikes down use of racial quotas in Renate Barnard case. <http://www.bdlive.co.za/national/2013/11/28/court-strikes-down-use-of-racial-quotas-in-renate-barnard-case> Date of access: 31 January 2014.

Penguin Concise English Dictionary. 2002. London: Penguin Group. 1045 p.

Peterson, K.D. & Deal, T.E. 2009. How leaders influence the culture of schools. *Educational leadership*, 56(1):28-32.

Rehm, J. & Shield, K.D. 2012. Alcohol consumption, alcohol dependence and attributable burden of disease in Europe. Potential gains from effective interventions for alcohol dependence. Toronto: Centre for Addiction and Mental Health. 146 p.

Rettner, R. 2011. Six ways sexual harassment damages women's lives. <http://www.livescience.com/16949-sexual-harassment-health-effects.html> Date of access: 27 July 2013.

Right to Education Project. 2013. Education and the four A's. <http://www.right-to-education.org/node/228>. Date of access: 29 October 2013.

Ronfeldt, D. 2006. In search of how societies work: tribes - the first and forever form. *RAND Pardee Center*. http://www.rand.org/content/dam/rand/pubs/working_papers/2007/RAND_WR433.pdf Date of access: 3 September 2014.

Roos, M.C. 2003. Legal requirements for school rules and disciplinary sanctions. *Koers*, 68(4): 413 – 435.

Roos, M.C. & Oosthuizen, I.J. 2009. Case law. (*In Oosthuizen, I.J., ed. Aspects of education law. Pretoria: Van Schaik Publishers. p. 128-144.*)

Roos, M.C., Oosthuizen, I.J. & Smit, M.H. 2009. Common law. (*In Oosthuizen, I.J., ed. Aspects of education law. Pretoria: Van Schaik Publishers. p. 105-127.*)

Rose, L. 1996. Swazi. Encyclopaedia of world cultures. <http://www.encyclopedia.com/topic/Swazi.aspx> Date of access: 21 August 2014.

Rossouw, J.P. 2001. Decentralisation in South African public schools: a labour law perspective on the role of the principal in managing staff misconduct. *Perspectives in education*, 19(4):123-136.

Rossouw, J.P. 2003. Learner discipline in South African public schools: a qualitative study. *Koers*, 68(4):413-435.

Rossouw, J.P. 2007. The effect of learner discipline on educator security: an international qualitative enquiry. (*In Oosthuizen, I.J., Rossouw, J.P., Russo, C.J., Van der Walt, J.L. & Wolhuter, C.C. Perspectives on learner misconduct. Proceedings of the International Conference on Learner Misconduct, North-West University, Potchefstroom, April. p. 212-227.*)

Rossouw, J.P. 2007. The public school as employer and role of the governing body. (*In Joubert, R. & Bray, E. Public school governance in South Africa. Pretoria: Interuniversity Centre for Education Law and Education Policy. p. 79-92.*)

Rossouw, J.P. 2009. Employment of educators. (*In Oosthuizen, I.J., ed. Aspects of education law. Pretoria: Van Schaik Publishers. p. 244-276.*)

Rossouw, J.P. 2010. Labour relations in education: a South African perspective. Pretoria: Van Schaik.

Rossouw, J.P. 2012. The feasibility of localised strike action by educators in cases of learner misconduct. *South African journal of education*, 32:133-143.

Rossouw, J.P. & De Waal, E. 2004. Employer tolerance with educator misconduct versus learners' rights. *South African journal of education*, 24(4):284-288.

Rossouw, M. & Van Vollenhoven, W. 2011. Die werksvervulling van die graad R opvoeders en die beste belang van die kind: 'n onderwysregtelike perspektief. *South African journal of education*, 8(2):43-52.

Rossouw, M.C. 2011. 'n Arbeidsregtelike perspektief op die werksvervulling van die graad R-opvoeder. Potchefstroom: North-West University. (Dissertation - MEd.) 218 p.

Rutherford, R.M. 2009. A creativity development model to enhance educator security: a labour law perspective. Potchefstroom: North-West University. (Thesis - PhD.) 323 p.

Ryan-Nicholls, D. & Will, C. 2009. Rigour in qualitative research: mechanisms for control. *Nurse researcher*, 16(3):70-75.

SAHO. 2014a. The first 1820 British settlers arrive in South Africa. <http://www.sahistory.org.za/dated-event/first-1820-british-settlers-arrive-south-africa> Date of access: 26 August 2014.

SAHO. 2014b. The Republic of South Africa is established. <http://www.sahistory.org.za/dated-event/republic-south-africa-established> Date of access: 9 January 2014.

SAPA. 2012. 11 teachers struck off roll. *Mail & Guardian online*. <http://mg.co.za/article/2002-01-01-11-teachers-struck-off-the-roll> Date of access: 9 April 2012.

SAPA. 2013 a. DA disgusted by school racism. <http://www.news24.com/South-Africa/News/DA-disgusted-by-school-racism-20130606> Date of access: 6 February 2014.

SAPA. 2013 b. SA teachers set absentee record. <http://www.news24.com/> South Africa/News/SA-teachers-set-absentee-record-20130226 Date of access: 9 February 2011.

Sarkar, N.N. & Sarkar, R. 2005. Sexual assault on women: its impact on her life and living in society. *Sexual and relationship therapy*, 20(4):407-419.

Say, B.E.D. 2010. What is teacher misconduct? <http://www.fldoe.org/edstandards/pdfs/educatormisconductbrochure> Date of access: 9 February 2011.

Scallion, S.E. 2010. The voice of elementary schools' principals on school climate. Amherst, Mass.: University of Massachusetts. (Thesis - DEd.)

SECTION 27. 2012. Open letter to learners, teachers and school governing bodies in Limpopo from Section 27. <http://www.section27.org.za/dedi47.cptl.host-h.net/2012/08/17/open-letter-to-learners-parents-teachers-and-school-governing-bodies-in-limpopo-from-section-27/> Date of access: 21 August 2014.

Sincero, S. M. 2014. Ecological systems theory. <https://explorable.com/ecological-systems-theory> Date of access: 6 October 2014.

Skiba, R.J. & Peterson, R.L. 2000. School discipline at a crossroads: from zero tolerance to early response. *Exceptional children*, 66(3):335-347.

Smit, M.H. 2009. A model for the improvement of democratic school governance in South Africa: an education law perspective. Potchefstroom: North-West University. (Thesis - DEd.) 516 p.

Smit, M.H. & Oosthuizen, I.J. 2011. Education, children and social security. (*In* Fundamentals of human rights and democracy in education: a South African perspective. Potchefstroom: Platinum Press. p. 291-322.)

South Africa. 1996. South African Schools Act 84 of 1996. Pretoria: Government Printer.

South Africa. 1998. Employment of Educators Act, 76 of 1998. Pretoria: Government Printer.

South Africa. 2003. Personnel Administration Measures. (Government Notice 267 of 2003) *Government Gazette* no 24948.

South Africa. Department of Basic Education. 2009. Integrated quality management system Q & A. <http://www.education.gov.za/LinkClick.aspx?fileticket=JJr4X%2BgtLX0%3D&tabid=447> Date of access: 16 January 2014.

South Africa. Department of Basic Education. 2012. IQMS Annual report, 2011/2012. Pretoria: Government Printer. 216 p.

South Africa. Department of Basic Education. 2013a. Report on the annual national assessments 2012, grades 1 to 6 and 9. Pretoria: Department of Basic Education. 312 p.

South Africa. Department of Basic Education. 2013b. Annual report, 2012-2013. Pretoria: Government Printer. 130p.

South African Council for Educators. 2012. Annual report, 1 April 2011 to 31 March 2012. Centurion: South African Council for Educators. 80 p.

South African Council for Educators. 2013. Annual report, 2012-2013. Centurion: South African Council for Educators. 90 p.

Sparks, S. 2013. Dependence, discipline and the morality of consumption: an intellectual history of the SASOL project. <http://wiser.wits.ac.za/system/files/seminar/Sparks2013.pdf> Date of access: 1 September 2014.

Strydom, K. 2013. Teistering. <http://www.regsdienste.co.za/faqs/teistering-in-die-werkplek-deel-1/> Date of access: 20 July 2013.

Taunyane, T.P. 2006. An educational law perspective on educator professionalism. Potchefstroom: North-West University. (Dissertation - MEd.) 166 p.

Taylor, N. 2006. Focus on: challenges across the education spectrum. *Jet bulletin*, 15:2-11.

Teleki, C.J. 2002. Juridical aspects of teacher misconduct: a management perspective. Pretoria: University of Pretoria. (Thesis - PhD.Ed.) 318 p.

Tyler, K. 2004. One bad apple: before the whole bunch spoils, train managers to deal with poor performers. *H.R. magazine*, 49(12):77-86.

US Legal. 2013. Sexual misconduct law and legal definition. <http://definitions.uslegal.com/s/sexual-misconduct/> Date of access: 27 July 2013.

Van der Westhuizen, P. & Van Vuuren, H. 2007. Professionalising principalship in South Africa. *South African journal of education*, 27(3):431-455.

Van Wyk, N. 2001. Perceptions and practices of discipline in urban black schools in South Africa. *South African journal of education*, 21(3):195-202.

Victorian Equal Opportunities and Human Rights Commission. 2013. Victimization in the workplace. <http://www.humanrightscommission.vic.gov.au/index.php/victimisation>. Date of access: 20 July 2013.

Visser, W. 2004. Trends in South African historiography and the present state of historical research. (Paper read at the Nordic Africa Institute, Uppsala, Sweden, 23 September 2004.) http://sun025.sun.ac.za/portal/page/portal/Arts/Departemente1/geskiedenis/docs/trends_sahistoriography.pdf Date of access: 29 August 2014.

Wilson, L. 2014. How people are influenced mentally and emotionally for mind control and manipulation. <http://www.drlwilson.com/ARTICLES/MENTAL%20INFLUENCE.htm> Date of access: 6 October 2014.

Wolhuter, C.C. & Oosthuizen, I.J. 2003. Preventive or punitive disciplinary measures in South African schools: which should be favoured? *Koers*, 68(4):457-479

Woods, P. 2006. Qualitative research. <http://www.edu.plymouth.ac.uk/resined/qualitative%20methods%202/qualrsh.htm> Date of access: 30 August 2012.

World Health Organisation. 2011. Substance abuse. http://www.who.int/substance_abuse/publications/global_alcohol_report/profiles/zaf.pdf Date of access: 6 February.

Zuzile, M. 2005. School's out for six teachers: Eastern Cape suspends randy educators for sexual encounters with pupils. *City Press*: 7, 21 August.

7 LIST OF COURT CASES

Beuvalon Secondary School and 36 Others v Minister of Education for the Western Cape ??

Christian Education South Africa v ??

De Kock NO v Departementshoof van die Onderwysdepartement, Provinsie Wes- Kaap

Despatch High School v The Head of the Department of Education, Eastern Cape and others. 2003 (1) SA 246 (CkH)

George v Member of the Executive Council, Eastern Cape Education Department ??

Governing Body, Tafelberg School v Head, Western Cape Education Department??

J v M [1989] 19 ILJ 755 (IC)

MITUSA obo Clarke v National Ports Authority [2006] 9 BALR 861

Matukane v Laerskool Potgietersrus [1997] JOL 102 (T)

NEHAWU obo Matsha v Department of Social Services. 2007 (case PHS 290-05/06)

Nuwe Republiek Skool v Mnguni and others Natal Provincial Division (NPD 4143) [2004]

Phenithi v Minister of Education and others. 2005 (case 3831/03)

S v Mohlakane 2003 (2) SACR 569 (O)

S v Ndaba (425/92) [1993] ZASCA 133 (24 September 1993)

S v R [1995] 2 SACR 590 (A)

Schoonbee and others v MEC for Education, Mpumalanga and another 2002 (4) SA 877 (T)

Solidarity obo Renate Barnard v South African Police Service 2013 JDR 2673 (SCA)

South African Democratic Teachers' Union (SADTU) v Minister of Education & Others (J5396/00) [2001] ZALC 144

South African Transport and Allied Workers Union and another v Garvis and others [2011] 12 BLLR 1151 (SCA)

Van der Walt and others v MEC for Education, Gauteng and others. 2004 (case 18733/07)

Wium v Independent Mediation Service of South Africa

Addendum A: Letter to participants

Dear PARTICIPANT

Re: CONSENT FOR PARTICIPATION IN RESEARCH

I am currently enrolled as student for the M.Ed. degree in Education Law at the North West University. My research is one sub-project within the NRF funded project under the title *Educator Rights and Educator Security*, of which professor JP Rossouw is the project leader as well as my co-supervisor. Ethics clearance for the overarching project has been granted by the North West University under the number NWU-00018-11-A2.

The main objective of the overarching project is to gain, through empirical investigation and comprehensive literature and legal analyses, insight into selected elements of educator security. This insight will guide the researchers involved to a better understanding of the phenomenon of educator security in a variety of educational settings. A further aim is to provide service to a number of schools and groups of educators, focused on empowerment and based on the findings of the research project.

I hereby invite you to take part in the research. The topic of my research is: *An Education Law Perspective on Educator Misconduct and Educator Security*. The main objective of my research is to determine the influence of educator misconduct on the security of educators.

The following specific aims are set to achieve the main objective:

- i. To determine the nature and extent of educator misconduct.
- ii. To determine the nature, extent and possible reasons for insecurity among educators.
- iii. To determine how legislation applies to educator misconduct and educator security.
- iv. The legal measures attempting to address the insecurity of educators caused by educator misconduct.

I would like to involve principals and educators who were affected by the misconduct of their colleagues. I intend to conduct a short interview of

maximum 30 minutes with you. I undertake not to disrupt your program or interfere with your regular duties. If necessary I will visit you after regular teaching hours. I have already gained the official permission of the North West Department of education as well as that of your school principal.

I would like to assure you of the following ethical considerations:

- The participants will not feel threatened or intimidated and will not be pressurised to answer any specific question on a matter that they might regard as confidential, for example their feelings about their relationship with their principals or employer.
- Participation is voluntary and optional. Participants will be informed beforehand that they may withdraw at any stage during the discussions. Precautionary measures will be taken to ensure that participants will not feel upset or uncomfortable and that their rights to privacy or dignity will not be infringed during the interviews.

Due to the specific research design and methods of data collection the project can be regarded as one where the element of risk is low. You and your school will remain anonymous in the analysis and the reports arising from the research. The data gathered will only be used for scientific purposes.

If you are satisfied, willing to participate and adequately informed about the objectives and nature of the research, please read and sign the attached "Form for informed consent".

Yours sincerely

Susan Mans

Addendum B: Letter to Department

Letter to the Department of Education

Dear Dr. Mvula

Re: PERMISSION FOR RESEARCH

I am currently enrolled as student for the M.Ed. degree in Education Law at the North West University. My research is one sub-project within the NRF funded project under the title *Educator Rights and Educator Security*, of which professor JP Rossouw is the project leader as well as my co-supervisor. Ethics clearance for the overarching project has been granted by the North West University under the number NWU-00018-11-A2.

The main objective of the overarching project is to gain, through empirical investigation and comprehensive literature and legal analyses, insight into selected elements of educator security. This insight will guide the researchers involved to a better understanding of the phenomenon of educator security in a variety of educational settings. A further aim is to provide service to a number of schools and groups of educators, focused on empowerment and based on the findings of the research project.

I hereby apply to your office to conduct the research in five primary schools and five combined or secondary schools in the Matlosana area as well as the Maquassi Hills area within the Dr. Kenneth Kaunda district in Potchefstroom. The topic of my research is: *An Education Law Perspective on Educator Misconduct and Educator Security*. The main objective of my research is to determine the influence of educator misconduct on the security of educators.

The following specific aims are set to achieve the main objective:

- v. To determine the nature and extent of educator misconduct.
- vi. To determine the nature, extent and possible reasons for insecurity among educators.
- vii. To determine how legislation applies to educator misconduct and educator security.
- viii. The legal measures attempting to address the insecurity of educators caused by educator misconduct.

I would like to involve principals, deputy principals, Heads of Departments and educators, on post levels ranging from PL 1 to PL 4. I would also like to involve

two Departmental Officials. I intend to conduct short interviews of maximum 30 minutes per person. I undertake not to disrupt the programs or interfere with the regular duties of any staff member. If necessary, staff members will be involved after regular teaching hours. I will gain the official permission of the respective school principals before proceeding actively with any data collection.

Furthermore, I undertake to give you feedback of the result of the studies.

I would like to assure you of the following ethical considerations:

- The participants will not feel threatened or intimidated and will not be pressurised to answer any specific question on a matter that they might regard as confidential, for example their feelings about their relationship with their principals or employer.
- Participation is voluntary and optional. Participants will be informed beforehand that they may withdraw at any stage during the discussions. Precautionary measures will be taken to ensure that participants will not feel upset or uncomfortable and that their rights to privacy or dignity will not be infringed during the interviews.

Due to the specific research design and methods of data collection the project can be regarded as one where the element of risk is low. All participants and schools will remain anonymous in the analysis and the reports arising from the research.

The data gathered will only be used for scientific purposes.

I trust that you will agree to this. Will you be so kind as to send your answer via e-mail as well as ordinary post?

Yours sincerely

C S Mans

Addendum C: Departmental permission

Departmental permission to conduct research

05/03 2014 11:12 FAX 0182948234

CES OFFICE OF DIRECTOR

001



education

Lefapha la Thuto la Bokone Bophirima
Noord-Wes Departement van Onderwys
North West Department of Education
NORTH WEST PROVINCE

Ternanu Building
8 O.R. Tambo Street, Potchefstroom
Private Bag X1256,
Potchefstroom 2520
Tel.: (018) 299-8216
Fax: (018) 294-8234
Enquiries: Mr H. Motara
e-mail: hmc.tara@nw.gov.za

DR KENNETH KAUNDA DISTRICT

SENIOR PROFESSIONAL SUPPORT MANAGER

05 March 2014

Mrs C S Mans
NWU-00018-11-A2
North West University
Potchefstroom Campus

PERMISSION TO CONDUCT RESEARCH ON "EDUCATOR RIGHTS AND EDUCATOR SECURITY" IN FIVE (5) PRIMARY SCHOOLS AND FIVE (5) COMBINED OR SECONDARY SCHOOLS IN MATLOSANA AREA OFFICE AND MAQUASSI HILLS AREA OFFICE - DR KENNETH KAUNDA DISTRICT

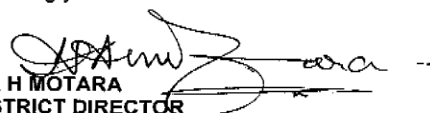
The above matter refers.

Permission is hereby granted to you to conduct your research in five (5) primary schools and five (5) combined or secondary schools in Matlosana Area Office and Maquassi Hills Area Office - Dr Kenneth Kaunda District under the following provisions:

- **The activity you undertake at the schools should not tamper with the normal process of learning and teaching; and will take place after school hours.**
- **You inform the principals of your identified school of your impending visit and activity;**
- **Your interaction with Departmental Officials, can take place, after you have arranged a formal meeting with them.**
- **You provide my office with a report in respect of your findings from the research; and**
- **You obtain prior permission from this office before availing your findings for public or media consumption.**

Wishing you well in your endeavour.

Thanking you


MR H MOTARA
DISTRICT DIRECTOR
DR KENNETH KAUNDA DISTRICT

cc Mr S S Mogotsi – Area Manager: Matlosana
Mr A J Engelbrecht – Area Manager: Matlosana

Addendum D: Interview schedule

Interview schedule

1. Introductory

- a. Are you currently experiencing security and contentment in your post as educator?
- b. Did this experience change over the past years? Please motivate.

2. Law and policy

In my research, I want to determine the levels of knowledge concerning education-specific legislation among teachers.

- a. Can you name the supreme law of the Republic of South Africa?
- b. In your opinion, why is this law important to education and educators?
- c. Can you name any number of other education-specific laws?
- d. Have you ever received information or attended workshops on legislation specifically pertaining to education or educators?
- e. In your opinion, how does legislation govern the conduct of educators? Briefly describe.

3. Educator misconduct

One of the specific research aspects of my study is educator misconduct and how it is handled at school level.

- a. How would you describe educator misconduct?
- b. Are you aware of any acts of misconduct that are committed at your school? Briefly describe.
- c. How often is misconduct committed at your school?
- d. Which forms of misconduct are committed on a more regular basis than others?
- e. How are these acts of educator misconduct handled at your school? Please elaborate.
- f. Do you think that the way in which educator misconduct is handled at school level is sufficient to prevent it from happening again? If not, can

you suggest an alternative way to effectively reduce the repetition of misconduct?

- g. In your opinion do teacher unions play an active role in reducing teacher misconduct? Motivate your answer.

4. Educator security

Another research aspect of this study is educator security and more specifically the impact that educator misconduct has on fellow educators.

- a. Please describe how the misconduct of your colleagues makes you feel.
- b. Do you think that there are factors other than educator misconduct that will contribute towards feelings of insecurity? If any, please explain.
- c. In your opinion, what can be done by the different role players in education to enhance the feelings of security among educators?

5. Departmental measures

The Department of Education has implemented quality measures, like the ANA and IQMS, as well as incentives, like the NTAs, that might have an impact on educator security.

- a. In your opinion, what is the impact of the Annual National Assessment on educator security? Explain briefly.
- b. What is your experience of the Integrated Quality Management System (IQMS)? Please refer to the administering and effectiveness of the system as well as the impact it might have on educator security.
- c. The National Teachers' Awards is a Departmental incentive to acknowledge and award teachers. Do you think that it might have an impact on educator security? Please motivate your answer.

Addendum E: Form for informed consent

Form for informed consent

Every human participant in any project for the purpose of research or education must be fully informed about the project and must sign a form for informed consent, before any participation may take place.

NWU Ethics number:

The overarching ethics number granted by the North West University is NWU-00018-11-A2.

General Project Information

The part below provides you – as participant in the project – with more information, so that you can make an informed decision about your voluntary participation or not.

1. Title of the Project:

An Education Law perspective on educator misconduct and educator security.

2. Institution / School / Subject group / Institute:

North-West University, Potchefstroom

3. Names & contact details of project leader:

Project leader

Prof JP Rossouw
Faculty of Education Sciences
North-West University
Potchefstroom
Tel: 018-2991851

Supervisor:

Prof. M. H Smit
Faculty of Education Sciences
North west University
Potchefstroom
Tel: 018- 299 4325

4. You are approached to take part in this project and may now have the following questions:

4.1. What is the purpose of this project?

The project is undertaken to gain insight into selected elements of educator security. This is a joint endeavour of colleagues at respectively the North-West University, Potchefstroom and the Westminster University in London.

4.2. What will be expected of me as participant? What exactly will it involve?

An individual interview will be conducted with you. During the interview it will be expected from each participant to answer questions pertaining to:

1. Law and Policy

- National policies and legislation that impact on educator security and educator misconduct.
- Levels of applicable knowledge concerning law and policy amongst educators, for example Employment of Educators Act, South African Council for Educators Act, South African Schools Act.

2. Educator misconduct

- The nature, extent and frequency of occurrences of educator misconduct.
- How educator misconduct is handled at school level.

- Recommendations to reduce educator misconduct.
3. Educator security
- Factors impacting the security of educators
 - Levels of feelings of security among educators.
Supportive measures / Recommendations to improve educators' feelings of security.
4. Departmental measures
- Annual National Assessment
 - Integrated Quality Management System
 - National Teachers' Awards

Initials of participant:

- 4.3. How will the findings of the project (general results, as well as individual about me) be made available or conveyed to me?
After the analysis and writing of the report, a summary of the findings will be presented to your school. Your individual inputs will not be made available to the school or any person outside the researcher group. The school will receive a copy of any academic article after it has been published.
- 4.4. What measures have been taken to handle and store my data confidentially?
All data is for scientific purposes only. Confidentiality is guaranteed for individual participants and their respective schools – no person or school will be disclosed in the final report. Sound recordings will be handled with confidentiality, and will be stored for a certain period of time, as prescribed by the ethics committee of the NWU.

As project leader, I confirm to participants that the above information is complete and correct.

	Signature of Project Leader	Date
Signed at	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>

PART 2: General Principles

To the signatory of the consent contained in Part 3 of this document:

You are invited to take part in the research project as described in Part 1 of this informed consent form. It is important that you also read and understand the following general principles, which are applicable to all participants in our research projects:

1. Participation in the project is completely voluntary and no pressure, however subtle, may be placed on you to take part.
2. It is possible that you may not derive any benefit personally from your participation in the project, although the knowledge that may be gained by means of the project may benefit other persons or communities.
3. You are free to withdraw from the project at any time, without stating reasons, and you will in no way be harmed by so doing. You may also request that your data no longer be used in the project.
4. By agreeing to take part in the project, you are also giving consent for the data that will be generated to be used by the researchers for scientific purposes as they see fit, with the qualification that it will be confidential and that your name will not be linked to any of the data without your consent.
5. You will be given access to your own data upon request, unless the Ethics Committee has approved temporary non-disclosure (in the latter case, the reasons in Part 1 will be explained to you).
6. A summary of the nature of the project, the potential risks, factors that may cause you possible inconvenience or discomfort, the benefits that can be expected and the known and/or probable permanent

consequences that your participation in the project may have for you as participant, are set out for you in Part 1 hereof.

7. You are encouraged to ask the project leader or co-investigators any questions you may have regarding the project and the related procedures at any stage. They will gladly answer your queries. They will also discuss the project with you in detail, if requested.

Initials of participant:

8. If you are a minor, the written consent of your parent or legal guardian is required before you participate in this project, as well as (in writing if possible) your voluntary assent to take part – no coercion may be placed on you.
9. The project objectives are always secondary to your well-being and actions taken will always place your interests above those of the project.
10. No project may be commenced before it is approved by the Ethics Committee. Furthermore, the project leader must report any detrimental effects experienced during the implementation of the project in full and without delay to the chairman of the Ethics Committee. If any unforeseen serious detrimental effects are observed during the project, it may be necessary to terminate the project immediately.

PART 3: Consent

Title of the Project:

An Education Law perspective on educator misconduct and educator security.

I, the undersigned

Full names & Surname

have read the preceding premises in connection with the project, as discussed in **Part 1** and **Part 2** of this informed consent form, and have also heard the oral version thereof and I declare that I understand it.

I have also initialled every page of **Part 1** and **Part 2**. I was given the opportunity to discuss relevant aspects of the project with the project leader and I hereby declare that I am taking part in the project voluntarily.

2	0			-			-		
c	c	y	y		m	m		d	d

Signature of Participant

Signed at

Place of Signature

Addendum F: Excerpt from Interview 6

Excerpt from Interview 6 (Principal)

Participant: Yes, yes, yes. We would ... at all material times, be informed by the national office of any new information, through their newsletters. So, as leaders of SADTU, and as members of SADTU, we are aware of all those ...by-laws as and when you picket, and as and when you go on strike. What is expected of yourselves.

Interviewer: Are you a member of the top-structure of SADTU in this branch?

Participant: I'm actually a member of the top-structure of SADTU in the province.

Interviewer: In the province?

Participant: Yes

Interviewer: So ... you are aware of it that the misconduct of the educators – when they picket – many times go unpunished?

Participant: E ...yes... to a larger extent, yes it does. Because our view ... our view is that ... you see, the Department has a tendency of generalising, instead of picking up individuals that might have transgressed. Instead of doing that, they would want to generalise that ...e.. as if all the members of SADTU, during the pickets or during strikes, were doing that. What we usually say as SADTU is that 'Can we then identify those particular individuals during that particular strike action, have actually transgressed some of the by-laws'.. You see?

Interviewer: Yes.

Participant: But I don't think the Department is doing enough in trying to identify such members, so that such members must be disciplined.

Interviewer: Would you say, then, that the Department is pointing fingers without doing the action?

Participant: It's pointing fingers without doing what they are supposed to be doing. Instead, they would rely, entirely, on the media, without necessarily looking into what actually happened.

Interviewer: Just to conclude the part on the unions: You would say then, that SADTU is able to speak to educators about misconduct?

Participant: Of course, of course. SADTU is conducting workshops throughout the province, throughout the country, and making sure that it educates its own members

about different misconducts. That is why, from where I'm seated, I know for a fact that every teacher who is a member of SADTU, knows about those sections, section 17, section 18. That, when you have transgressed this particular law, when you have done 'This', it is section 17, when you have done 'That', it is section 18. But, over and above, we also, through SACE have requested, or actually persuaded SACE, to give each and every educator registered with SACE, what is called an ELRC file. And that is what has actually happened, and I think that is what has actually assisted most of the teachers to be aware of certain laws in the Department of Education.

Interviewer: So, you would say then, that no teacher has an excuse, no teacher can say 'I am not aware of what is stipulated by these and these laws'?

Participant: No, from where I am seated, in principle, on the basics of the transgressions, there cannot be any person, any teacher in this country, who can say he is not aware of the basics of a misconduct. That one, I can put my head on the block.

Interviewer: Good. Thank you, Meneer. But now, misconduct is not always very easy to pinpoint. The saying is 'One bad apple spoils the whole barrel'...

Participant: Mmm

Interviewer: ... have you ever experienced it that, say for instance, one educator who does not come to the school on time, who does not arrive punctually, can also influence the others to be late?

Participant: I can agree. If that behaviour is not kept well enough, or prevented well enough, it can spread like wildfire, obviously. Like I'm saying ... you see, as the principal you also have to have this particular knowledge. Of course other people think that coming late cannot be a dismissible offence. Other people think that. But, from where I'm seated, I have always warned teachers that dodging class, coming late ... perpetually or habitually, it leads sometimes, to you being dismissed. You see?

Addendum G: Excerpt from interview 15

Excerpt from interview 15: Deputy Principal

Participant: Sometimes it is for the people not to know the laws ... you know, sometimes it would be as if you are not the culprit, sometimes. If you are the culprit, you will be forced to know the law, because you will be forced to defend yourself. Because, sometimes you know that this law is going to – sort of – put you in a corner. So, if you know that ‘I do not know the law’, you’ll be forced to ... just like studying – a person would never study, until maybe someone would say ‘There is an examination’, so, that is why sometimes people are ignorant. And also sometimes people are not ambitious: Some of them – they are comfortable where they are. Because you’ll find that people say ‘No, I don’t want stress’ ...

Interviewer: Can we also term it as ‘A lack of enthusiasm’?

Participant: Ja! You are fine by saying a lack of enthusiasm.

Interviewer: In the hypothetical situation of the educator having sexual relations with the girl, you said that you wouldn’t involve the union. Why not?

Participant: No, I wouldn’t involve them in the initial stage.

Interviewer: Why not?

Participant: Because sometimes they ... sometimes, people are friends outside ... You wouldn’t know, because they are friends, sometimes, and the union is there to defend someone, you see?

Interviewer: In other words, the union would rather defend the educator and protect the educator?

Participant: I mean, its sexual intercourse with a learner. What if the parents have a problem with this thing? So, sometimes, it will be between the learner and the educator ... maybe talking to the parents in their ... somewhere, where people don’t see them. But now the union come in and stop the process before it continues ... because we’ll be setting our own precedent, sometimes. Because, really, it is bad for an educator to have intercourse with a learner.

Interviewer: Ja, ja. Are you aware of situations where the union has protected the members? Where the member should have been disciplined and he or she was not disciplined because the union protected him or her?

Participant: Otherwise, the union is like a lawyer ...they are representing us, and by representing us – even if you have done something wrong – they have to represent us for doing something wrong. Because, otherwise, we would go and join other unions that would protect us. So, people would protect other people. There are so many instances where sometimes people are wrong – the union has to come. And then, eventually a person goes scot free, because the union represented you. Or sometimes the presiding officers who were there, they did not know some of the technicalities of the law, and the union would .. e.. take advantage of this particular person not knowing what the law says, and that person would be free. You see? And maybe the learner who was affected physically, emotionally and whatever ... the learner would be sitting there, thinking ‘No, it is of no use reporting an educator who has done this.’ And some people of course, would copy those things. What is important, Ma’am, is that people should not do things wrong, but we acknowledge the fact that people are not guilty until they are found guilty by the court.

Interviewer: Have you ever hear of, or are you aware of any situation where a dispute was declared for appointment in a certain position, and then the union interfered to have someone of *their* choice appointed?

Participant: Yes. There are instances that happened in the past.

