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Mokgalane, Mapula Ella

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UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

THE ROLE OF THE SOUTH AFRICAN COUNCIL FOR EDUCATORS IN REGULATING THE TEACHING PROFESSION

By

Mapula Ella Mokgalane

A research report submitted in partial fulfilment of the requirements for the degree

Masters of Management in Public Policy

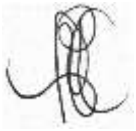
in the FACULTY OF COMMERCE, LAW AND MANAGEMENT at the

UNIVERSITY OF THE WITWATERSRAND

Supervisors: Dr Jacqui Poltera and Dr Caitlin Mapitsa

DECLARATION

I declare that this thesis on **THE ROLE OF THE SOUTH AFRICAN COUNCIL FOR EDUCATORS IN REGULATING THE TEACHING PROFESSION** is my own, unaided work. It is being submitted for the Degree of Master of Management in Public Policy at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination at any other University.



_____

M.E. Mokgalane

04th day of February 2021 at Pretoria

DEDICATION

I dedicate this report to my Almighty God for the sufficient grace, enduring mercy and relentless love throughout my life and studies. It has been a long and difficult journey of studying and working simultaneously, yet his sufficient grace has carried me through to the finishing line. I am eternally thankful for that.

Secondly, this report is also dedicated to the memory of my late grandmother, Ella Mokgalane Senior, who has been my pillar of strength in growing up. She contributed enormously to building my early childhood solid foundation and continuing education and development. Her immeasurable love for education that led to her acquiring her matric certificate in her year of retirement as a teacher in 1976, influenced how I view life and education immensely. It gave me a true meaning of lifelong learning and self-development. Sound knowledge, experiences and lessons learned from her have remained my permanent valuable footprints that I emulate every day in my life. May her beautiful soul rest in eternal peace knowing that she left an unforgettable legacy to her children, grandchildren, great grandchildren, as well as the many families she took under her wing wholeheartedly.

Lastly, I dedicate my humble effort to my mother, Mologadi Martha Mokgalane, who ensured against all odds that this report was completed to attain the Master of Management qualification. As a mother and lifetime professional teacher, I am eternally grateful to her continuing to care about my education and being supportive throughout my lifelong learning process. Her encouragements, prioritisation of education, and enduring support have not gone unnoticed. They have taught me that basic and continuing education matter.

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To all my research participants, your sound experiences and insights enhanced my understanding of the research topic from various perspectives. Your contributions to the accomplishment of this report are acknowledged.

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ABSTRACT

As a professional self-regulatory body, the South African Council for Educators (SACE) has a responsibility to set, protect and maintain ethical standards in the teaching profession. In doing so, it ought to safeguard the interests, rights and welfare of the public and children alike. Nevertheless, numerous studies, the public, media and parliament's Portfolio Committee on Basic Education criticised SACE for its dependency, as well as incoherent, overlapping and multiple systems and processes in its endeavour to regulate the teaching profession through the enforcement of the code of professional ethics in Gauteng. Equally, past and recent studies have failed to understand the dynamics and complexities in professional regulation discipline when enforcing the code of professional ethics in the teaching profession.

To investigate SACE's enforcement regulatory role in Gauteng, a qualitative approach has been followed to collect data through semi-structured interviews with 15 participants representing SACE and Gauteng stakeholders in the basic education sector, and the teaching profession. The study findings revealed complexities and a paradox in SACE's regulation of the teaching profession in Gauteng, based on identified regulatory enforcement enablers, as well as internal and external barriers. Some of the enablers identified included SACE's legal regulatory framework, its establishment as professional self-regulatory body, compliance monitoring processes, and existence of the legislated administrative and punitive sanctions. On the other hand, the identified internal barriers were: limited enforcement scope and jurisdiction; ineffective sanctioning; insufficient financial and human resources; and contraventions to principles of good governance, good regulation and enforcement. Additionally, external barriers identified were: weak institutional arrangements and network in enforcing the code; and multiple regulatory processes and overlaps.

Key Words: SACE, Professional Regulation, Professional Self-Regulation, Code of Professional Ethics, Regulatory Enforcement, Teacher Behaviour, Teaching Profession.

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ABBREVIATIONS AND ACRONYMS

ANC	African National Congress
CALS	Centre for Applied Legal Studies
CDE	Centre for Development and Enterprise
CEO	Chief Executive Officer
CET	Community Education and Training
DA	Democratic Alliance
DBE	Department of Basic Education
DHET	Department of Higher Education
DOE	Department of Education
DOJC	Department of Justice and Constitutional Development
DSD	Department of Social Development
EEA	Employment of Educators Act
ELRC	Education Labour Relations Council
ETHCOM	Ethics Committee
FEDSAS	Federation of Associations of Governing Bodies of South African Schools
GDE	Gauteng Department Education
GET	General Education Training
GTCS	General Teaching Council of Scotland
HRPA	Human Resources Professionals Association
IFTRA	International Forum for Teaching Regulatory Authorities
NAISA	National Association of the Independent Schools of South Africa
NAPTOSA	National Professional Teachers' Organisation of South Africa
NASGB	National Association of School Governing Bodies
NCPR	National Child Protection Register
NRSO	National Register of Sexual Offences
OECD	Organization for Economic Co-operation and Development
OSCE	Organization for Security and Cooperation in Europe
OTC	Ontario Teachers College
PED	Provincial Education Department
PELRC	Provincial Education Labour Relations Council
PERSAL	Personnel Salary System

PFMA	Public Finance Management Act
SACE	South African Council for Educators
SACSSP	South African Council for Social Services Professions
SADTU	South African Democratic Teachers Union
SAPA	South African Principals' Association
SAPS	South African Police Services
SGB	School Governing Bodies
STCW	South African Teachers Council for Whites
TRCN	Teacher Registration Council of Nigeria
TVET	Technical Vocational Education and Training
ZTC	Zambian Teaching Council

GLOSSARY OF TERMS

Educator	Any educator registered or provisionally registered with the SACE
Teacher	Any SACE-registered professional teaching Grades 0–12 in public and independent schools, including Heads of Departments and Deputy Principals and principals
Fitness-to-Teach/Practice	Status given to the professionally registered educators who have screened and cleared against the South African Police Services Criminal Record System and their qualifications have been verified against the South African Qualifications Authority
Learner	Any pupil or a student at any early learning site, school, Technical and Vocational Education and Training institutions and Community Education and Training centres
Child	Any person under the age of 18
Code of Conduct	The teacher disciplinary code as administered by the Department of Basic Education and the nine Provincial Education Departs as employers
Code of Professional Ethics	the SACE code as contemplated in Section 5(c) (i) of the *South African Council for Educators Act, 2000 (Act 31 of 2000)*
Parent/ Guardian	Any person legally entitled custody of a learner and any person who undertakes to fulfil the obligations of a parent/guardian towards a learner's education at school
Panellists	People appointed by SACE on a contractual basis to investigate and prosecute teacher misconduct cases, and preside over the disciplinary hearings
Professional Body	Any professional body of expert professionals in a profession, and it includes a professional statutory and professional regulatory bodies, such as, the South African Council for Educators
The Code	The Code of Professional Ethics for the South African Council for Educators
The Council	The Council for the South African Teaching Profession established in terms of the South African Council for Educators Act no.31 of 2000
The Portfolio Committee	The Portfolio Committee on Basic Education in the Republic of South African Parliament

CHAPTER 1: INTRODUCTION TO THE STUDY

1.1 Introduction and Background

The literature underscores professional self-regulatory bodies' role in regulating the teaching profession in the public and children's interests (Myers, 2005; Schultze, 2008; van Nuland, 2009). Likewise, Jayamma and Sumangala (2012) maintain that any profession that is worthy of existence must be self-regulatory and self-governing. This is to ensure that the profession governs itself rather than relying on government to do so.

Accordingly, professional self-regulatory bodies are established through enabling legislation that mandates them to, amongst others, set ethical standards, monitor compliance by the profession, and uphold these through enforcement processes (CDE, 2017; Kimathi & Rusznyak, 2018; OECD/Korea Development Institute, 2017); RSA, 2002; Schultze, 2008). These ethical standards are realised through the Code of Professional Ethics for the South African Council for Educators (referred to hereafter as, *the code* or *the code of professional ethics*), and are fundamental to the governance and regulation of professional teachers who are key to the delivery of quality education in schools (CDE, 2017; Darling-Hammond, 1988; Kimathi & Rusznyak, 2018; Schultze, 2008; Page, 2013). Hence transgressions of the code result in enforcement of varied sanctions that are preceded by application of compliance persuasions and compliance monitoring processes (Ayres & Braithwaite 1992; Baldwin & Cave; 1999; Murphy 2017).

Just like other professional self-regulatory bodies defined in the literature, the SACE plays this role in the country's teaching profession. SACE was initially established in 1994 as the first non-racial professional regulatory body; previously, South Africa's racially segregated teaching profession had only regulated white teachers (Maile, 2002, Mosoge & Taunyane, 2009; Taunyane, 2006). During these initial stages, SACE existed under the auspices of the Educational Labour Relations (ELRC) Act (1993), ELRC Collective Resolutions of 1994 and 1998, and the Department of Basic Education (DBE) Employment of Educators Act (RSA, 1998). Consequently, Maile (2002) argues that SACE was seen as an appendage of the Education Labour Relations Council (ELRC), and other institutions and policies. This appendage appears to have influenced and carried through the drafting of the SACE Act in

terms of its continued reliance on other institutions regulating teachers, as reflected in Chapter 2, Section 2.6.

Furthermore, SACE acquired its statutory professional self-regulatory body in August 2000 and became established in terms of the SACE Act no.31 of 2000. This Act mandates SACE to set, protect and maintain ethical standards which are reflected in the code of professional ethics developed through a collective process in 1997.

Notwithstanding the role of statutory professional self-regulatory bodies and SACE's legislative mandate as highlighted in the paragraphs above, SACE seems to be experiencing some impediments in regulating the teaching profession effectively through enforcing the code in Gauteng. These barriers appear to be because of, amongst others, SACE's historical dependence on other institutions in and outside Government and their regulatory laws, policies and frameworks in enforcing the code in Gauteng (CALS et al., 2014).

Effective regulation of the teaching profession by SACE is vital because the literature underscores that public puts extreme trust in the teaching profession since it is viewed as ethical and inherently caring (Graham et. al, 2018). Thus, its members (teachers) have a duty of care, as well as professional responsibility to safeguard the public and children's welfare, and to protect them from harm (Graham et. al, 2018). This needs to be done through the maintenance of the ethical standards (Alcorn, 2004; de Clercq, 2013; Iacovino, 2002; Rusznyak, 2018; Schultze, 2008; van Nuland, 2009). Iacovino (2002) views this duty of care as an "altruistic motivation of public duty" (p.63) by the professions.

Thus, when the teaching profession fails to protect the children from harm, abuse and risk it becomes attacked publicly (Graham et al, 2018; Munro & Fish, 2015) for breaking the social contract it has with the public (Darling-Hammond, 1990; Horsley & Thomas, 2003). The profession also gets condemned because it would have failed to act in the best interests of the child, in line with Section 28 of the Constitution of the Republic of South Africa, 1996, which is a ruler used to measure any matter affecting the child (RSA, 2005; RSA, 1996a).

Against this background, this study focused on the role of SACE in regulating the teaching profession through the enforcement of the code of professional ethics in Gauteng, from 2015 to 2019. In doing so, it explored the barriers and enablers to SACE enforcing the code of professional ethics in Gauteng.

Also, as the second largest provincial public education system, Gauteng has been selected, amongst others, due to its critical mass of stakeholders who represent schools, learners, parents and teachers in diverse locations such as, suburbs, city, semi-rural villages, townships and growing informal settlements that enhanced the data collection and study findings. Coupled with this, Table 1 in Section 2.4 demonstrates that Gauteng has the biggest independent schooling sector in the country, which has been valuable in the study's data collection process. Due to its schooling size and shape, Gauteng accounts for many teacher misdemeanours in the public space (media) that contribute to regulatory challenges and complexities faced by SACE in enforcing the code of professional ethics.

Moreover, Gauteng seems to be the first province that "leads the way in the ethics arena" and has launched the Sub-Forum on ethics (Haynes, 2017). This was announced publicly through its provincial legislature, on 27 March 2017, by the honourable Uhuru Moiloa, deputy speaker and chairperson of the standing committee on ethics and privileges, who urged everyone to take ethics in governance seriously.

In delivering the message of support to the Gauteng legislature and underscoring the significance of the ethics culture, the South African Ethics Institute Chief Executive Officer (CEO) said:

> It is easy to get standards on paper but much more difficult to get standards in people...In King IV it is [a] very clear governance imperative that ethics should not be left to their own devices, but managed and monitored to become ingrained in the organisational culture" (Haynes, 2017, para.18).

The prioritisation and promotion of ethics in governance and culture by the Gauteng government is a step in the right direction. While issues of ethical culture are not a direct focus of the study, they can assist in understanding how the Gauteng stakeholders in the teaching profession are driven or not driven by them.

1.2 Problem Statement

As reflected in Section 1.1 above, professional self-regulatory bodies have a responsibility to, amongst other aspects, set the ethical standards, monitor compliance and enforce them in order to protect the interests of the public and children (Baldwin & Cave, 1999; Christensen & Lægreid, 2006; Gaffikin, 2005; OECD, 2002; Schultze, 2008). Consequently, these bodies

use the set ethical standards reflected in the code, to define the breached professional behaviour, along with accountability measures which are viewed as an intangible contract (Darling-Hammond, 1990) or social contract (Horsley & Thomas, 2003). The profession then shares these with the public, parents and learners. Equally, the social contract is used to instil confidence and trust, commitment, respect and assurance to the public and parents of quality professional behaviour by teachers along with sanctions of unprofessional behaviour (Darling-Hammond, 1990; Horsley & Thomas, 2003; Rich, 2012).

Nevertheless, empirical studies conducted by CALS et al. (2014), Human Rights Watch (2001), OECD (2008), and Veriava (2014) reveal complex, dynamic and uncoordinated processes and systems for SACE's monitoring and enforcement of the code in the teaching profession, owing to its dependence on other institutions and tensions amongst them. Some of these institutions have a mandate to regulate teachers' conduct from an employment and labour perspective, whereas others play a role in protecting children and vulnerable people's rights and in the country (RSA, 1993; RSA, 1998; RSA, 2005; RSA, 2007). These dynamics have been reported to be contributing to SACE's persisting failure to regulate the profession to protect innocent and vulnerable children (Parliamentary Monitoring Group, 2018.; CALS et.al., 2014; South African Human Rights Commission [SAHRC], 2002; Veriava, 2014).

In addition to the complex issues raised in Section 1.1 above, the South African research reports and parliament's Portfolio Committee on Basic Education meeting proceedings reveal that the conflicting institutional mandates and lack of coordination between SACE and other institutions appear to be weakening and undermining the regulatory authority of SACE further (CALS et.al., 2014; Parliamentary Monitoring Group, 2018; Veriava, 2014). They also argue that, lack of coordination and cooperation among these institutions results in unavoidable but ineffective sanctioning, wasteful use of resources and time, and an enforcement system that is not fool proof. In her study on teacher codes and some lessons from experience, OSCE (2012), and van Nuland (2009) maintain that an effective system to enforce sanctions is central to the legitimacy and meaningful professional regulatory system and its regulatory tools, such as the code.

These complexities are aggravated by the fact that SACE has to deal with issues that cut across the jurisdiction of other institutions in enforcing its all-encompassing code. As such, this research also examined amongst others, whether these weak enforcement mechanisms

are (a) at play in Gauteng province, and (b) examines whether they are the main barriers to SACE enforcing the code.

From a governance and professional regulatory perspective, the SACE governance complexities and weaknesses in enforcing the code are challenging to navigate. The challenge for SACE includes (a) depending on a complex institutional network to collaborate effectively and comply with the code, while also (b) being mandated, as a statutory professional body, to regulate the profession and enforce the code. In this context, SACE has the statutory authority to regulate the teaching profession and enforce the code of professional ethics, without the accompanying legal authority to have the final say on the enforcement processes. This is owing to SACE's dependency on other institutions and teacher employers. At face value, the absence of legal authority makes it challenging for SACE to "enforce" the code effectively. This echoes critiques in the literature on the weak code enforcement systems (OECD/Korea Development Institute, 2017; van Nuland, 2009).

Overall, the problem for this study is that SACE has ineffective and uncoordinated code enforcement systems and processes along with governance complexities that impacts on its professional regulatory role in enforcing the code. Hence this study's investigation of the barriers and enablers to SACE in enforcing the code in Gauteng becomes imperative. The literature reviewed and data collected from stakeholders can assist in understanding factors contributing to these weak enforcement processes and systems and the governance complexities, along with the enablers.

1.3 Purpose Statement

The purpose of the study was to explore the role of SACE in regulating the teaching profession through enforcing the code of professional ethics. In doing so, first, the study applied interpretative and qualitative research design to explore barriers and enablers in SACE enforcing the code effectively in Gauteng, as part of its professional regulatory role. Second, given the regulatory and governance complexities of SACE, the research reviewed literature on professional and professional self-regulation, together with, public interest and responsive regulation theories to derive a conceptual framework for analysing data. Third, data for the study was collected through the semi-structured interviews in Gauteng and at SACE, as well as, analysing of documents. Lastly, the study's analysed findings were used to

reach conclusions on the role of SACE in regulating the teaching profession through the code of professional ethics, with some recommendations.

1.4 Research Questions

The study answered the following primary question*: **What are the barriers and enablers to SACE enforcing the code of professional ethics in Gauteng?***

In unpacking the main research question, the following secondary or sub-questions were explored:

Secondary Questions

- *How does SACE regulate the teaching profession through the code of professional ethics in Gauteng*?
- *In what ways does SACE respond to breaches of the code of professional ethics by teachers in Gauteng*?
- *What is the nature of the relationship between SACE and institutions responsible for supporting the enforcing of the code of professional ethics in Gauteng*?

1.5 Assumptions Underlying the Study

This research moves from the assumption that effective enforcement of the code of professional ethics by SACE, as a statutory professional self-regulatory body, will protect the children from abuse and harm by the teachers (Baldwin & Cave, 1999; Corwin, 1965 cited in Banter, 2003; de Clercq, 2013; Schultze, 2008). In doing so, SACE should have regulatory systems and processes in place to monitor adherence to the code, reporting non-adherence, administering disciplinary procedures, determining verdicts and enforcing sanctions effectively.

1.6 Research Scope

First, it is important to note that the SACE Act uses an encompassing concept of an educator as opposed to a teacher due to its regulatory scope and application of the Act to the following educator categories:

- **Early Childhood Development (ECD) practitioners** in and outside the schooling sector (catering for the 0–5year olds);
- **Educators/teachers** in the schooling sector responsible for teaching Grade O (reception year) to Grade 12 (matric);
- **College lecturers** in the post-schooling sector in terms of the Technical and Vocational Education and Training (TVET) and Community Education and Training (CET) colleges (catering for post-schooling technical and vocational fields, adult education and training, and community-related studies).

While the concept of the educator has been used interchangeably with that of the teacher in South Africa, for the purpose of this study, the concept of a teacher has been used to refer to all schooling sector teachers professionally registered with SACE, including deputy principals, and principals.

1.7 Literature Overview

The literature review was conducted to derive the study's conceptual framework which is based on three interrelated components. The first component analysed the research's physical context comprising Gauteng at provincial level and SACE at national institutional level. Key to the study's physical context, is SACE's evolution from 1994 as a non-statutory professional regulatory body to 2000 when it was established as a statutory professional regulatory body. This was achieved with the promulgation of the SACE Act No.31 of 2000. Moreover, SACE's existence is dependent largely on various institutions, such as the ELRC and DBE, and their legal frameworks—ELRC Act (1993), ELRC Collective Agreements (1995—1998), and EEA (1998) (Cross & Sehoole, 1997; Hartell & Steyn, 2015).

Second, the study's academic field was based on social regulation, and more specifically on social regulation, professional regulation and professional self-regulation, with enforcement of the code as a unit of analysis. Based on a number of empirical and conceptual studies and the literature reviewed, key factors impeding and enabling professional regulatory bodies in enforcing the code effectively were revealed. As highlighted in this study's problem statement in Section, 1.2, these enforcement barriers and enablers, assisted in determining whether they are at play in the Gauteng province, and are they fundamental to SACE's ineffective or effective enforcement of the code.

Lastly, the study's theoretical framework consisted of the theory of public interests, theory of responsive regulation, and pyramid responsiveness model.

1.8 Research Design

A qualitative research paradigm was followed, and it contributed to the collection of rich and in-depth data through semi-structured interviews. The study's sample consisted of 15 respondents who were purposefully sampled from the SACE stakeholders, as the research population. The respondents enhanced the richness of the collected data in terms of interpreting research questions from their various perspectives and natural contexts (Creswell, 2013; Wagner, Botha & Mentz, 2012).

Based on the selected qualitative research paradigm, the research was underpinned by the social constructivism or interpretivist framework which was useful in informing this research's focus, problem and questions as well as methods to follow in collecting data to respond to the primary and secondary questions. In doing so, the research findings were used to analyse a variety of documents and primary data from the respondents at macro (provincial) levels in the Gauteng province, including SACE at the national institutional level.

1.9 Rationale for the Study

The literature claims that professional self-regulatory bodies have a responsibility to maintain ethical standards in the teaching profession. However, little is known about how the South African teaching profession's regulatory bodies conceptualise professional self-regulation and seek to uphold the ethical standards mandate. To address this gap, this study explored the role of SACE in regulating the teaching profession through enforcement of the code of professional ethics in Gauteng. A limited number of past and recent national and provincial studies that have been conducted on the regulation of teachers, have focused largely on other institutions such as the DBE, Provincial Education Departments (PEDs); they have brought in SACE as a small add-on sub-component of the study or part of the interview process for purposes of illustrating lack of coordination between SACE and other institutions in the regulation process (CALS et al., 2014; Maile, 2002; Mosoge & Taunyane, 2009; Salmon Sayed, 2016; van Nuland, 2009, van Nuland & Khandelwal, 2006; Veriava, 2014).

Even though these previous studies have raised challenges, dynamics and complexities regarding SACE and its ability to enforce the code as a professional regulatory body, there is a gap in understanding of the theoretical frameworks on responsive regulation in enforcing the code. There has further been exclusion of the independent or private schooling sector in the research population. Consequently, this study uses the theory of responsive regulation to understand how the pyramid of sanctions impacts on the enforcement of the code. Similarly, this study includes Gauteng independent school stakeholders in addressing the methodology gap.

The majority of the reviewed studies were one-dimensional in that they only paid special attention to factors inhibiting SACE's maintenance of the status of the teaching profession within the context of teacher professionalism and professionalisation of the teaching profession (CALS et al., 2014; Maile, 2002; Mosoge & Taunyane 2009; Veriava, 2014). More so, the barriers were largely identified to be external in nature and did not look into the SACE internal institutional barriers and enablers. In their studies, Mosoge and Taunyane (2009), and Maile (2002) came closer to focusing on SACE's regulatory enablers and inhibitors however, they failed to focus on professional regulation through the lens of enforcing of the code, particularly in Gauteng.

Studies conducted in OECD countries, namely Canada and Asia, and to a lesser extent in Africa, provide some enabling and inhibiting factors to the enforcement of the code (Golubeva & Kanins 2017; OECD, 2013; Ouellet, 2004; Schneider, 2011). Nevertheless, none of the identified enablers and barriers have taken the regulatory enforcement of the code in the South African teaching profession into account. In addressing the knowledge gap, this study looked at enablers and barriers to the enforcing of the code of professional ethics in Gauteng, from an internal perspective at SACE institutional level and externally in terms of other institutions and regulatory frameworks that might have a bearing on the enforcement processes.

It was noted in section 1.1 above that professional regulatory bodies are essential because they play a significant role of protecting the public and children from abuse and harm (Schultze, 2008; Baldwin & Cave, 1999; Corwin, 1965, cited in Banter, 2003). Accordingly, the existence of only four (7.40%) statutory professional regulatory bodies (teaching councils) out of a total of 54 African countries, shows how unregulated the teaching profession is on Africa. This may also imply that the code of professional ethics, if at all, is

being imposed in the remaining 50 African countries where the regulation of the teaching profession is in the hands of the state (Darling-Hammond, 1988; van Nuland, 2009). Knowledge created from this study might influence these countries' policy shift and agenda on the role of statutory professional self-regulatory bodies in Africa's teaching profession.

Lastly, most of the past and recent studies conducted on the code of professional ethics in the teaching profession have concentrated on (a) content analysis (Banter, 2003; Hargreaves & Goodson, 1996; Khandelwal & Biswal, 2006) and (b) micro level issues in terms of the analysis of teachers' ethical behaviour and some contributory factors (Coetzee, 2011, Graham et al., 2018; Human Rights Watch, 2001; Munro & Fish, 2003; SACE, 2017). The current study looks at the enforcement of the code from a macro governance, systems and processes perspective.

1.10 Limitation and Delimitation of the Research

As part of data collection through document analysis process, only sampled files with Gauteng secondary and primary school breaches of the code reported to SACE and finalised with verdicts and sanctions, were analysed for the purpose of the study. The completed cases were chosen because they provide a comprehensive case management life cycle from reporting a case on breach of the code, investigations and hearings, verdict, sanction and appeal process.

However, a limitation of the study is that valuable information might have been lost owing to incomplete cases not being analysed. Further, cases reported to the Gauteng Department of Education (GDE) but not forwarded to SACE in terms of Section 26 of the SACE Act were not analysed Some of these incomplete files might have shed additional light on the study's research questions. The breaches of the code that were not reported to SACE at all, might also have reflected ineffective compliance-seeking and monitoring systems on the part of SACE, or worse, some hidden information on the side of the Gauteng schooling system.

A further limitation of the study was that, while it is proved meaningful to engage the teachers and school management teams on their perceptions and experiences regarding the enforcement of the code, this was limited to the SACE stakeholders for the purpose of this study. This restriction was applied since on the study focused at the macro level, as detailed

out in Chapter 3. The significance of the information gathered from this high-level group of stakeholders thus set limitations on how the study could clarify issues at the micro level.

Third, this study focused on the SACE code of professional ethics for teachers as one of the professional regulatory tools flowing from Section 5(c) of the SACE Act. It was not the intention of this study to focus on the content of the code, but its enforcement in the teaching profession, as a regulatory instrument.

SACE regulates the teaching profession across the schooling (basic education) and post-schooling (Technical, Vocational and Higher) education systems. In spite of this, the study was limited to the schooling sector in Gauteng's basic education system.

1.11 Chapter Organisation

Chapter 1 introduces the research study and problem statement. Coupled with this, is the research scope that defines the study's areas of focus and boundaries, rationale, as well as the limitations. **Chapter 2** focuses on the study's literature review with the aim of deriving the conceptual framework. **Chapter 3** uses the qualitative data collection instruments to gather data through a sample of 15 respondents drawn from various stakeholders. The chapter describes how respondents were interviewed and various documents were analysed. **Chapter 4** presents the research findings based on the three identified themes. **Chapter 5** provides the interpretation and analysis of the research findings as reflected in Chapter 4. **Chapter 6** summarises the research study and provides conclusions and recommendations.

1.12 Definitions and Operational Terms

Regulation: "The diverse set of instruments by which governments set requirements on enterprises and citizens. Regulation includes laws, formal and informal order and subordinate rules issued by all levels of government, and rules issued by non-governmental bodies or self-regulatory bodies to whom governments have delegated regulatory powers" (OECD, 2002 p.20).

Professional regulation: Professional regulation is a form of governance that serves the purpose of regulating the profession through the application of various regulatory instruments or tools such as legislation, regulations, rules, policy and criteria. These are used to

determine: entry into the profession; professional and ethical standards that serve as benchmarks for compliance; the code of professional ethics that governs and guides expected professional behaviour; education, communication and advocacy; and monitoring of compliance, enforcement rules and sanctions, and sanctions for non-compliance (Baldwin & Cave, 1999; OECD, 2002; Schultze, 2008).

Professional self-regulation: Baldwin and Cave (1999) and Schultze (2008) view professional self-regulation as one of the regulation strategies; this involves a process whereby a professional body or regulators are given delegated authority by parliament through legislation. This is done to set the professional and ethical standards for the profession and to enable implementation, monitoring and enforcement when regulations are breached.

Enforcement: According to the OECD (2009), the concept of enforcement refers to the activities that government or entities engage in to actualise the code of professional ethics. Enforcement also involves processes of promoting compliance among teachers with the goal of achieving the code of professional ethics outcomes. The enforcement of the code is viewed by researchers to be the hallmark of any profession.

Code of professional ethics: Lawton (2004) defines the code of professional ethics from an integrity approach by stating that it describes the profession's overall aspirational values as well as encouraging good behaviour from professionals. It is within this context that the code may be regulatory, guiding and aspirational.

Profession: The Australian Council of Professions (2003) defines a profession as "a disciplined group of individuals who adhere to ethical standards and uphold themselves to, and are accepted by, the public as possessing special knowledge and skills in a widely recognised and organised body of learning derived from high-level education and training. They are prepared to exercise this knowledge and their skills in the interest of others".

CHAPTER 2: REVIEW OF THE LITERATURE TO DERIVE A CONCEPTUAL FRAMEWORK

2.1 Introduction

This study explores the role of SACE in regulating the teaching profession through the lens of enforcing the code of professional ethics. It does so by examining enablers and barriers to enforcing the code. Accordingly, the literature was reviewed with the goal of determining the theoretical framework for interpreting and analysing the research findings, along with deriving the conceptual framework (Wotela, 2017).

Thus, this chapter begins with the analysis of the physical research setting and context in Sections 2.2–2.6 to introduce the South African and Gauteng education systems, as well as, unpacking the professional regulation of the teaching profession in the country by SACE. Sections 2.7–2.11 discusses regulation and professional regulation as academic fields driving this study, as well as enforcement of the code as the unit of analysis. Section 2.12 pays special attention to the study's theoretical framework for purposes of analysing the research findings, while Section 2.13 concludes with the conceptual framework.

2.2 South African Teaching Profession and its Regulation in Context

The context of the research is analysed in this section to provide the physical setting and context for professional regulation. This also serves the purpose of enhancing understanding of other parts in this chapter (Wotela, 2016; Wotela, 2017). In doing so, it provides an overview of the South African and Gauteng province's pre- and post-1994 educational background, since SACE operates within the education system. Coupled with this is the examination of the South African teaching profession and its regulation history, together with SACE's historical professional regulation phases.

2.3 South African Education System Background

The history of education in South Africa shows how the concept of regulation has been used to segregate certain groupings from benefitting equally from educational opportunities.

Legislated discriminatory laws enabling Bantu Education and Christian National Education regulated the colonised and inferior education system for the Blacks, as well as making them submissive labourers disenfranchised from the political and economic systems (Christie, 1998; Kallaway, 1990; Kallaway, 2002; Rakometsi, 2008). Both Hartshorne (1992), and Rakometsi (2008) argue that these laws, related policy instruments and legislative frameworks also divided South Africans according to race, class, ethnicity and religion in the country as a whole, and education in particular.

In moving towards a transformed South African education system, the democratic government used the public education regulatory policies, legislation and systems to address the past inequalities and Constitutional imperatives post-1994 (Christie, 1998; Hartshorne, 1992; Kallaway, 2002). Thus, a unitary national Department of Education (DOE) was established to govern both the schooling and post-schooling sectors until 2009 when the DOE was split into the Department of Basic Education and Department of Higher Education and Training (GICS, 2002). According to the 2001/2002 Yearbook, the schooling sector catered for basic education which consisted of: (a) Grade 0 (commonly known as Grade R) to Grade 12 (matric), and (b) Adult Basic Education and Training (now CET). On the other hand, the post-schooling sector was made up of the following: (a) Further Education and Training (now TVET), (b) Colleges of Education for training teachers, and (c)Higher Education and Training (GICS, 2017).

In addition to the national education department, the nine PEDs were established in line with the National Education Policy Act (RSA, 1996c). In 2009, the department was split into the DBE responsible for the schooling sector from Grade 0/R–12, and the Department of Higher Education and Training (DHET) focusing on the post-schooling—TVET, CET and Higher Education and Training (GICS, 2010).

2.4 An Overview of the Gauteng Province Education System

South Africa has nine provinces of which Gauteng is the smallest, covering just 1.5% of the country's area. However, the province is highly populated and urbanised with approximately 14.7 million people (StatsSA, 2018). In the last five years, the DBE School Realities Report (DBE, 2019) revealed that Gauteng Department of Education (GDE) had a fluctuating number of learners, teachers and schools as reflected in Table 1 below.

Table 1: Gauteng Province 2015–2019 public and independent schooling learner, teacher and school profile (DBE, 2016; DBE, 2017; DBE, 2018; DBE, 2019; DBE, 2020).

PUBLIC			**INDEPENDENT**		**PUBLIC AND INDEPENDENT COMBINED**		
Year	**Learners**	**Teachers**	**Learners**	**Teachers**	**Learners**	**Teachers**	**Schools**
2015	1 998 640	61 597	263 679	17 757	2 262 319	**79 354**	2 780
2016	2 048 558	63 092	278 026	18 986	2 326 584	**82 078**	2 813
2017	2 261 935	71 263	151 290	17 336	2 413 225	**88 599**	3 067
2018	2 109 890	69 180	292 686	20 062	2 402 576	**89 242**	2 836
2019	2 151 095	70 344	296 282	17 384	2 447 377	**87 728**	2 813

Despite the variations in the number of teachers, learners and schools in both the independent and public sectors, the province has consistently been the second largest basic education system in the country over the last five years. Its teacher and learner cohorts have accounted for an average of 19% and 20% of the national teacher and learner population respectively (DBE, 2019). Additionally, the 2016–2020 DBE School Realities (DBE, 2020) data has consistently shown that Gauteng has the highest number of independent schools.

According to Table 1, between 2015 and 2019 SACE regulated 79 354–87 728 teachers in both the public and independent schooling system in terms of their professional relationship with 1 998 640–2 151 095 learners.

Furthermore, Gauteng has three main teacher employers. First, the GDE is responsible for the employment and discipline of teachers in the public schools. Second, the public schooling system also has teachers that are employed by the School Governing Bodies (SGB) in terms of the South African Schools Act of 1996; it should be noted that data on these teachers is not coordinated in any centralised information system. In terms of the conduct of the teachers, the GDE is empowered by Schedule 2 and Sections 17 and 18 of the Employment of Educators Act, Act No. 76 of 1998 to discipline its teachers whose misconduct is cause for concern.

Third, the independent school associations and 742 individual independent schools (DBE, 2019) are responsible for the employment and disciplinary measures for the 17 384 teachers as reflected in Table 1. In terms of the SGB-employed teachers, Schedule 8 of the Labour

Relations Act (RSA, 1993) and the contract of a teacher's employment is used during investigations and disciplinary hearings.

2.5 Historical Disparities in the Regulation of the Teaching Profession

The regulation of the teaching profession was historically racially segregated and targeted mainly at White teachers. Consequently, the White teaching profession was regulated by the South African Teachers Council for Whites (STCW) as mandated by the South African Teachers Council for Whites Act (Act 116 of 1976) (Taunyane, 2006). The object of the STCW was to promote the prestige and status of the White teaching profession in the country. This Act was repealed by the National Education Council Amendment Act of 1986 that established the National Education Council for Whites, along with the Federal Councils that were divided into the four apartheid colonies, namely the Cape, Orange Free State, Transvaal and Natal. The White teachers in the area now known as Gauteng province were regulated by the Transvaal Federal Council for White teachers. The then Cape, Orange Free State and Natal Teachers councils were also only open to White teachers in those provinces.

2.6 Transformation of the South African Teaching Profession and its Regulation.

As indicated in Section 2.2.1, with the advent of the new South African education system, a unitary non-racial professional council was initiated through the African National Congress (ANC)'s ready-to-govern policy framework for education and training (1994). The ANC envisioned the desirability of having:

> . . .an additional regulatory mechanism such as professional council, which might deal with such matters as the regulation of entry into the profession, professional norms, standards and code of conduct will be reviewed and negotiated with the organised teaching profession. (ANC, 1995, p.62 cited in Maile 2002)

In applauding the ANC's proposal, Sayed and Jansen (1996) reasoned that it would ensure that all the South African teachers were brought into one kraal to be regulated by the newly conceptualised professional regulatory body—SACE.

In further making provision for the existence of SACE, Section 12 (5) (a) (xiv) of the ELRC Act empowered the ELRC to effect "the registration of professional educators, and the keeping of a register or roll of such educators for the purpose of regulating qualifications, standards and professional discipline of teachers, and their admission to the education profession". In October 1994, a notice was published through Government Gazette No. 16037 to establish SACE. Thus, SACE existed under the ELRC Collective Agreement No. 4 of 1994, signed by the employer (that is, DBE and nine PEDs) and employee (represented by the teacher unions) parties in the ELRC (ELRC, 1994; Taunyane, 2006). This implied that the initial existence of SACE became a collectively negotiated matter between the employer and employee parties in the ELRC bargaining chamber.

The signed 1994 ELRC collective agreement No. 4 of 1994 was intended to lapse on 10 May 1998, but provided for (a) the establishment of SACE which focused mainly on the professional registration and discipline of teachers through the code of professional ethics, (b) funding of SACE through teachers' monthly levies collected by the ELRC, (c) SACE accounting annually to the ELRC on the allocated funds and (d) SACE's development of its constitution for functioning purposes (ELRC, 1994; ELRC, 1998; Motala, 1998 cited in Kaabwe, 2003). The 1994 collective agreement expired and was extended through the ELRC Collective Agreement No.3 of 1998, signed in July 1998. Through the signed 1994 and 1998 collective agreements, the ELRC collected R2.00 monthly levies from teachers and paid 40 cents of the R2.00 to SACE, as enabled by the agreements.

Notwithstanding the country's transformative processes in the regulation of the teaching profession, the hasty move to provide for the country's professional regulatory functions under the ELRC Act that deals specifically with the conditions of service and labour relations matters for teachers, appeared to have undermined the authority, power and distinct role of professional regulatory bodies. Horsley and Thomas (2003), Schultze (2008), and Steele and Nimmer (1976) maintain that the profession and professional regulatory bodies derive their establishment power and authority from their enabling legislation. Therefore, this unprecedented and indirect transfer of the powers, authority and role of professional regulatory body to another institution's legislation appeared to be an anomaly that may contribute to a dependency syndrome and strained power relations between SACE and the ELRC. The notion of developing teaching as a matured self-governing and self-regulating profession through a professional regulatory body that is autonomous and independent was undermined (Banter, 2003; Jayamma & Sumangala, 2012; van Nuland & Khandelwal, 2006)

Equally, Maile (2002) maintains that inevitably, SACE became an appendage of the ELRC until 1998 when it existed under the EEA (RSA, 1998) as outlined below. While the establishment of SACE enhanced the requirement for greater accountability by teachers (Thurlow, 2003), it appeared to have limited powers and authority to enforce the code of professional ethics between 1994 and 1998 because of its non-statutory professional regulatory status. This was caused by secondary legislation and conditions under which it was established.

Following the publishing of a notice to establish SACE in October 1994, the Minister of Education launched the organisation in September 1995 and it was officially recognised in January 1997. Initial functions were professional registration and discipline of teachers through the negotiated code of professional ethics by various stakeholders (Kaabwe, 2003). Although the code of professional ethics was developed in 1997, SACE's mandate to regulate the teaching profession through the enforcement of the code remained behind due to the absence of its own founding legislation which was supposed to provide it with direct authority and mandate to enforce the code as a professional regulatory body (Banter, 2003). In this case, SACE was seen as a professional regulatory body without statutory authority, hence the implementation and enforcement of the code commenced in 2000 (GICS, 2001; GICS, 2002) following the promulgation of the SACE Act in August 2000.

In 1998, SACE's governance shifted to Section 6 of the EEA (1998) with the functions of registering teachers, developing and maintaining the code of professional ethics, and promotion of continuing professional development. Once again, SACE continued to exist as a professional regulatory body under the legislation of the Department of Education that focuses specifically on teachers' employment and labour matters.

2.6.1 SACE as a statutory professional regulatory body in the teaching profession

As it evolved, SACE shifted from its non-statutory professional regulatory status where it was established as an appendage of other institutions without enabling legislation, to a professional statutory body with power, authority and mandate from parliament as an autonomous and independent body, operating at arm's length from the Ministry of Education.

On the 2 August 2000, the South African Council for Educators Act (Act No.31 of 2000) was promulgated to: (a) provide for the mandatory professional registration of teachers; (b) promotion of continuing professional development; (c) setting, protecting and maintaining

professional and ethical standards; and (d) provide an advisory role to the Minister of Education and the teaching profession at large. These functions resonate with other international professional statutory regulatory teaching councils, such as the Zambian Teaching Council (ZTC), Ghana National Teaching Council, Teacher Registration Council of Nigeria (TRCN), General Teaching Council of Scotland, Ontario Teachers College (OTC) (Taunyane, 2006; van Nuland, 2009).

Relevant to this study, Section 5 (c) of the SACE Act stipulates that the council has the statutory powers and duties to compile, maintain and from time-to-time review, a code of' professional ethics for educators who are registered (or provisionally registered) with the council. Also, it must determine a fair hearing procedure and may apply the following prescribed sanctions following a fair hearing: (a) caution or reprimand; (b) impose a fine not exceeding one month's salary; (c) remove from the register for a specified period or indefinitely, subject to specific conditions, the name of an educator found guilty of a breach of the code of professional ethics; and (d) suspend an imposed sanction for a period and on conditions determined by the council.

Also, in line with its Act, SACE has a governance structure which is the professional body's accounting authority. Its members are nominated by the various constituencies, nonetheless, appointed by the Minister of Basic Education as SACE's Executive Authority. Section 6(1) of the SACE Act also dictates that the Council should be made up of the following constituencies:

- The chairperson
- Eighteen members from the organised profession[1]
- Two members from the National School Governing Bodies Association
- One member from the independent schooling sector
- One member from the Council on Higher Education
- Five members from the Department of Education
- One member from the Technical and Vocational Education and Training sector; and
- A CEO.

[1]According to the SACE Act **"organised profession"** means all trade unions or federations of trade unions which are members of the Education Labour Relations Council.

2.7 Constructing the Study's Theoretical Framework in the Field of Regulation

2.7.1 What is regulation?

The growing body of knowledge reveals that the field of regulation is broad, complex, inter- and multidisciplinary, and it is evolving and highly contested (Baldwin, Cave & Lodge, 2012; Koop & Lodge, 2013; May, 2007; OECD, 2002, OECD/Korea Development Institute, 2017; John, 2011). Thus, there is no single approach in defining regulation because the context of countries and sectors, political ideologies, regulatory institutions, professions and cultures differ (Levi-Faur, 2010; OECD/Korea Development Institute, 2017; Windholz & Hodge, 2012). More so, the shift of government to governance in the regulation field, implies that the conceptualisation of regulation should be changing too. With that in mind, this section defines the concept of regulation from various perspectives and then narrows the definition for the purpose of this study.

The literature specifies that regulation consists of two main components, namely economic and social regulation (Baldwin et al., 2012; Levi-Faur, 2010; OECD/ Korea Development Institute, 2017; Windholz & Hodge, 2012). This study focuses broadly on social regulation, a process that uses control to protect the public and individuals' rights, welfare and interests. It sets out to prevent the public and clients from any harm and risks, including health and environmental hazards (Baldwin et al.; 2012; Baldwin, Scott & Hood, 1998, cited in Windholz & Hodge 2012; Maxwell, 2016; Ogus 2002). Therefore, social regulation is driven by social outcomes, giving rights and equal opportunities to people, and restricting some behaviours (Better Regulation Task Force, 2011). It also advances the values of justice, fairness, equity, social cohesion and trust within the regulatory environment (Windholz & Hodge, 2012).

Moreover, Selznick (1985, cited in Baldwin & Cave,1999, p.2, and Koop & Lodge, 2015, p.4), defines regulation as "sustained and focused control exercised by a public agency over activities that are valued by a community". Christensen and Lægreid (2006) argue that Selznick views regulation from a narrow sense in terms of setting rules, standards and establishing agencies for monitoring compliance and enforcing them. In this case, regulation is also viewed from a state-centred approach as a public function and intervention with a

responsibility to protect the welfare of the communities by controlling certain activities and individuals.

In contrast, Baldwin and Cave (1999) view regulation as a mode of governance in terms of three different perspectives and levels, from wider to narrower, as reflected in Figure 1.

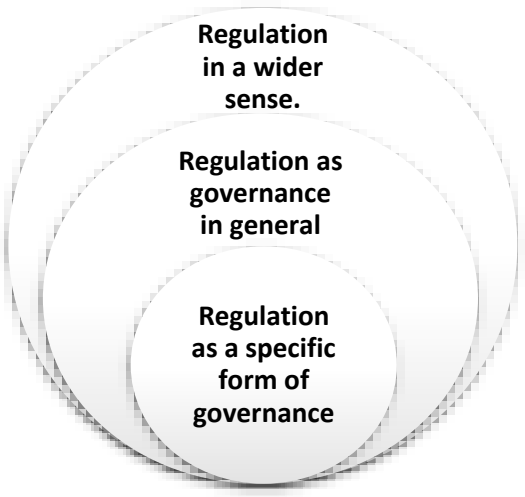


Figure 1: Regulation from widest to narrower sense (Source: Baldwin & Cave, 1999)

First, the outer level referred to as governance in a wider sense in Figure 1, views regulation widely as a mechanism by public agencies to exercise external social control on people, business and other activities.

Second, Figure 1's middle level referred to as, regulation in a *general* sense, is a process that happens through government's regulatory activities that have an effect and control on the individual and social behaviour with the goal of steering the economy or social activities in a particular direction (Baldwin & Cave, 1999). Regulation in this case is seen as inclusive, because it goes beyond the rules and standards and begin to take into account taxations, subsidies and public ownership (Baldwin & Cave, 1999; Christensen and Lægreid, 2006). Lastly, regulation as a *specific* form of governance, in the inner circle of Figure 1, takes place through the social control of behaviour based on various regulatory instruments, that are monitored for compliance and enforced by the relevant designated public bodies (Baldwin & Cave 1999; Baldwin et al., 2012).

While Baldwin et al. (2012) view regulation as a form of governance, it remains conceptually flawed due to its dominance by the state and public agencies as regulators. Braithwaite

(2017) argues that state-centred regulation tends to have negative connotations given that it overlooks other role players outside the government space.

Notwithstanding its criticism, Baldwin's three conceptions of regulation as a form of governance are also echoed by OECD (2002, cited in Treasury Board of Canada Secretariat, 2007 p.3) who define regulation as "diverse set of instruments by which governments set requirements on enterprises and citizens. Regulation includes laws, formal and informal order and subordinate rules issued by all levels of government, and rules issued by non-governmental bodies or self-regulatory bodies to whom governments have delegated regulatory powers"

First, the OECD's definition in the preceding paragraph looks at government as the main regulator controlling citizens and businesses through various regulatory instruments, such as, laws and rules. In this context, regulation emphasises the policy instruments and regulatory regimes of rules, regulations, standards, protocols and administrative practices and procedures that are prescriptive, proscriptive and enabling for purposes of provisioning public goods and services to the public (Ansell & Gash, 2007; John, 2011), as well as steering social behaviour in the interest of the public's well-being (Fukuyama, 2016; John, 2011).

Second, the definition highlights an inclusive approach to regulation where other role players outside the government sphere are recognised and could be delegated the task of regulating using instruments like those of government. For instance, this could involve non-governmental organisations, professional bodies and public agencies and entities regulating through rules and standards, monitoring compliance and enforcing the set rules and standards.

Unlike the definitions of Selznick (1985 cited in Koop & Lodge, 2015), and Baldwin and Cave (1999), Baldwin, et al. (2012) broaden the characterisation of regulation to include other actors outside government in the regulation arena. This is done for purposes of working collaboratively (Ansell & Gash, 2007; Drahos & Krygier, 2017; Haines, 2011).

As an opponent of state-dominated regulation, Haines (2011, p.8) provides an alternative definition of regulation, noting that "regulation is better conceptualised as a form of governance that encompasses private and public actors in its controlling function". She further emphasises that regulatory tools go beyond laws, rules and standards, and therefore, should also include "private agreements, implementation of non-government standards, and other control mechanisms", in order to move away from the state's instrumental goal in regulation and be influenced beyond government in order to strive for higher level standards.

This definition fits neatly into the growing body of knowledge that relates regulation and governance and views it as a subset of governance (Baldwin and Cave (1999). Consequently, this study aligns itself more with this latter definition.

Additionally, researchers in the regulation field underscore the significance of principles and values underpinning good regulation (Schmulow, 2015; Windholz & Hodge, 2012). Better Regulation Task Force (2011), and Maxwell (2016) highlight the centrality of fairness and affordability of any regulation system to encourage public confidence. Coupled with this, the Better Regulation Task Force (2011) advances key principles that are pivotal in the regulation process as follows: proportionality, accountability, consistency and agility, transparency and targeting.

Even though there may be some variations for certain enterprises and professions, various conceptions of regulation in the referred literature seem to be shared across disciplines. This present study is thus informed and guided by the conceptual shift from government to governance (Christensen & Lægreid, 2006; Haines, 2017) in terms of the concept of regulation that is all-encompassing. This concept includes other actors outside the government sphere, along with rules, standards and agreements outside government. Christensen and Lægreid (2006) advocate regulation with a complex combination of vertical and horizontal inter-organisational specialisation regulators. Equally, the developed regulatory tools should be followed by processes of monitoring compliance and enforcement which are fundamental to the entire regulation process.

2.7.2 Professional regulation in the teaching profession

2.7.2.1 Introduction

In line with the focus area of this study, as well as the knowledge gap to be addressed and the study purpose, professional regulation has been chosen as a sub-component of social regulation. As defined in Section 1.12, professional regulation takes place through government and government agencies or professional regulatory bodies (Gaffikin 2005; van Nuland, 2009; van Nuland & Khandelwal, 2006). The absence of a professional regulatory body in a country leaves the responsibility of the profession in the hands of government's Teaching Service Commissions and Education Ministries as seen in many countries (OECD, 2013; van Nuland, 2009). This status quo de-professionalises and de-regulates the teaching

profession, and imposes a code of professional ethics on the profession (Darling-Hammond, 1988; van Nuland, 2009). The practice of professional regulation by government is evident in many countries in Africa, South Asia, Europe and America which continue to lack professional teaching regulatory bodies (van Nuland, 2009). This has been confirmed by the International Forum of Teaching Regulatory Authorities (IFTRA, n.d.) which indicates that there are only twenty fully-fledged professional statutory regulatory bodies with responsibility to regulate the teaching profession. There are just four in Africa, eight in Australia, four in the United Kingdom, and two in Canada, Jamaica, New Zealand and Malta respectively. For the purposes of this study, professional regulation will be examined from the perspective of an existing professional regulatory body, where the profession is regulating itself—that is, professional self-regulation as reflected in the next section.

2.7.2.2 Professional self-regulation in the teaching profession

The concept of professional self-regulation is explored in this study from the teaching profession perspective, as indicated earlier on.

2.7.2.3 What is professional self-regulation?

According to Baldwin and Cave (1999), Baldwin, et al., 2012, and Scott (2004, cited in Christensen & Lægreid ,2006), professional self-regulation, emerged during the post-regulatory state as one of the alternatives to state's command-and-control form of regulation that dominated the field of regulation prior to the 1960s. Consequently, Baldwin and Cave (1999), Koop and Lodge (2015), and Myers (2005) view key attributes of professional self-regulation as being: governance by a legally constituted professional body, development of rules by members of the profession, monitoring the set rules and enforcing them accordingly. Both Myers (2005) and van Nuland (2009) argue that this is a fundamental shift from government's top-down and command-and-control approaches to a peer review one where teachers as members of the teaching profession are entrusted to regulate themselves.

It is also argued by Baldwin and Cave (1999) together with Gaffikin (2005), Ogus (2002), and Schultze (2008), that the model of self-regulation is dominant in the professions, occupations and trades and it operates at arm's length from the government for purposes of independence.

In echoing the professional self-regulation attributes above, Schultze (2008) defines professional self-regulation as a process where a professional body is given delegated regulatory authority through parliament's founding legislation, to set the professional and

ethical standards for the profession and be able to implement, monitor and enforce them when standards are breached. In doing so, it points out the significance of the enacted *ex-ante* legislation that comes with the professional body's statutory status, delegated power to administer professional regulation and procedures that have status of the law and distributed authority by parliament in regulating the profession (Horsley & Thomas, 2003).

Furthermore, Bald and Cave, 2012 and Schultze (2008) maintain that the founding legislation provides the professional self-regulatory body with an exceptional delegated privilege on the grounds that the government trusts that the profession would put its interest aside and promote the protection of interests of the public and clients. Delegated privilege could be revoked from the professional regulatory body on occasions where the interests of the public and clients are not served satisfactorily (Schultze, 2008; Mosoge & Taunyane, 2009).

England, had the same professional-self regulation privilege and authority through the establishment of the General Teaching Council of England through legislation promulgated in 1997. However, this privilege and authority was revoked in 2011 due to an outcry by the public, media and the profession, that the professional body was not serving the interest of the public. This followed the abolition of the same professional body (Page, 2013) owing to constraints in fulfilling its self-regulatory mandate. The abolition of the General Teaching Council of England raises questions about the self-regulation of professional and ethical standards in the English teaching profession. The abolition also placed doubts on the need for professional teaching councils, since it further reduced the already limited number of such councils. Since April 2018, a new Teaching Regulation Agency has been established in England under the Ministry of Education to regulate the teaching profession; it further registers teachers and enforces the code of professional ethics, amongst others (Teaching Regulation Agency, 2019). However, this structure has moved many steps back in terms of professional self-regulation goals because it is controlled directly by government.

Baldwin and Cave (1999) also equate professional self-regulation with self-administered command-and-control, and argue that professional regulatory bodies' autonomy and their arm's length separation from the government should not be equated with pure independence. Equally, Baldwin and Cave (1999), Ogus (2002), Schmulow (2015), and Thornhill (2015) argue that, in line with their enabling legislation, professional regulatory bodies may be subjected to accountability and *ex-post* control by their executive authority in terms of: (a) approval of certain regulatory activities; (b) ongoing reporting processes; (c) influence from

government decisions and laws; (d) governance structures appointed by the executive authority; and (e) government representatives on the professional regulatory body's governance structure.

In taking the executive authority oversight powers further, Ogus (2002) indicates that extended government control of professional self-regulatory bodies is seen also in the high number of ministerial representatives sitting in the professional body's governance structures. This over-representation by government defeats the principle of professional self-regulation, where representation on the professional regulatory structure of the professional body should be professional teachers (Myers, 2005; Salmon & Sayed, 2016; van Nuland & Khandelwal, 2006).

Although the principle of teachers being part of the professional self-regulation governance structures appears advantageous, it may unintentionally turn the profession to being self-serving and capturing the professional regulatory body. It is for this reason that in establishing the governance structure of the Canadian Ontario College of Teachers (OCT), while teachers are in the majority, a substantial number of places was allocated to non-teacher members of the public (The Ontario Royal Commission of Learning, 1995). Notably, as a professional statutory professional regulatory body, the OTC has a standing public interest committee made up of public appointees. This committee plays an advisory role to the governance structure (The Ontario Royal Commission of Learning, 1995).

2.7.2.4 Purpose of professional self-regulation

At the heart of the positive theories of regulation, and public interest theory in particular, lies the overarching goal of promoting and protecting the interest and welfare of the public and clients (Baldwin & Cave, 199; Baldwin, et al., 2012; Christensen & Lægreid, 2006; Gaffikin, 2005; Levi-Faur, 2010). More specifically for the current study, as an advocate of professional self-regulation, Schultze (2008)'s definition of self-regulation (Section 2.9.1) denotes that the public and children's interests and safety are paramount in self-regulation processes. In this case, the public trust and confidence are earned by protecting the public and children from unethical teachers who practice in schools (British Columbia Ombudsman, 2003; Corwin, 1965, cited in Banter, 2003; Frymier, 1969, cited in Banter, 2003; The Ontario Royal Commission of Learning, 1995; Schultze, 2008; van Nuland, 2009).

In safeguarding the public and children's welfare and interests, professional regulatory bodies also use developed ethical standards through the code of professional ethics. These form the basis for defining the breached professional behaviour along with accountability measures which are viewed as an intangible contract (Darling-Hammond, 1990) or social contract (Thornh & Thomas, 2003). The profession shares the contract with the public and clients (school children or learners in the case of the teaching profession). Equally, the professional regulatory bodies use the social contract to instil confidence and trust, commitment, respect and assurance for the public and parents; this involves assurance of quality professional behaviour along with sanctions of unprofessional behaviour by the teachers (Darling-Hammond, 1990; Horsley & Thomas, 2003; Rich, 2012).

As a reciprocal declaration, Corwin (1965, cited in Banter, 2003), Darling-Hammond (1990), Horsley and Thomas (2003) contend that in return, the public, societies and parents bestow a high degree of status and respect to the teaching profession and expect sound professional and ethical decisions and conduct by members of the teaching profession. Consequently, the professional regulatory body has an obligation to monitor the maintenance of the profession's ethical standards and ensure that members abide by the intangible social contract. It is through the process of being accountable to the public that a statutory professional body keeps its self-regulation privilege, authority and responsibility.

Although serving the interests of the public should be at the heart of professional self-regulation, a growing body of literature on theories of regulatory capture shows that there is a growing tension. This relates to the profession serving their own interests, and mostly due to corruption (Baldwin & Cave, 1999; Gaffikin, 2005; The Ontario Royal Commission of Learning, 1995). In this scenario, the professional regulatory body tends to listen more to the needs of the profession as opposed to those of the public and children. This problem also arises owing to little or no public representation in most of the professional regulatory bodies' governance structures**.**

2.7.2.5 Code of professional ethics as a regulatory instrument

A code of professional ethics is one of the regulatory instruments or tools designed to support policy outcomes (Cloete, Wissink & de Coning, 2006; John, 2011; OECD, 2002). While the literature acknowledges that the concepts of code of ethics, code of conduct and the code of professional ethics are used interchangeably, in this section, the focus is particularly on the

code of professional ethics. Thus, first, Bayler, (1981, cited in Rich, 2012, p.21), defines professional ethics as, “all issues involving ethics and values in the roles of the profession and conduct of the professionals in the society”.

Again, the Bayler ’s definition (in section 2.7.2.5 above) of the code has aspirational and non-disciplinary elements in terms of promoting certain values (Alcorn, 2004; Foster, 2012; Gilman, 2005, Lawton, 2004). Foster (2012) also argues that its focus is on upholding ethical standards because certain codes of professional ethics combine the two approaches into one. In supporting Bayler’s definition, Sherpa (2018) also defines the code of professional ethics from an aspirational, symbolic and integrity-based approach (Alcorn, 2004; Gilman, 2005, Golubeva & Kanins, 2017; Lawton, 2004; van Nuland, 2009). These need to form guiding principles to be followed by teachers in their professional relationships; they further need to be committed, honest and truthful, sincere, dedicated and have integrity. Van Nuland (2009) adds service, duty, equity, professionalism, equity and accountability to the principles that underpin teachers’ professional ethics and the code of professional ethics.

The code principles are also vital in protecting the interests and rights of children in the teacher’s professional practice (Vongalis-Macrow; 2007; van Nuland, 2009). This needs to signal to society the high standards the profession is aspiring to achieve. More so, teaching is inevitably a relationship-focused profession between a teacher and children, colleagues, parents, communities and others (Alcorn, 2004; Banter, 2003; Foster, 2012; Graham, Bahr, Truscott, & Powell, 2018; Mosoge &Taunyane, 2009, van Nuland, 2009; Vongalis-Macrow; 2007). Thus, ethical dilemmas are inevitable and, in this context,, a code of professional ethics becomes key in providing guidance in dealing with ethical dilemmas and making informed ethical decisions (Graham et.al., 2018; Gilman, 2005; Mosoge & Taunyane 2009; van Nuland, 2009).

Thus, the code of professional ethics can be being looked at from a compliance, disciplinary and regulatory stance due to its rule-based approach (Foster, 2012; Golubeva & Kanins, 2017). Golubeva and Kanins (2017) add that regulatory codes have compliance monitoring systems, with accompanying sanctions. Gilman (2005) also views it as prescriptive in terms of defining the kind of behaviour teachers should adhere to (“the do’s”), as well as, proscriptive in terms of the behaviour to be avoided (“the don’ts”) (Lawton, 2004).

Vongalis-Macrow; 2007 and van Nuland look at the code of professional ethics as a profession-led written document produced by both statutory and non-statutory professional

bodies with the aim of guiding members of the teaching profession, protecting the children from any harm, as well as protecting the profession's image and enhancing teachers' professional identity (Schneider, 2011; Taunyane, 2006; Vongalis-Macrow; 2007; van Nuland, 2009). The code also plays the role of holding teachers, as professionals, responsible and accountable for their actions. This creates and maintains professional identity and enhances the status and image of the teaching profession in the interests of the public (Taunyane, 2006; Mosoge and Taunyane, 2009; van Nuland, 2009;). Thus, Foster (2012) advocates for a code that is not seen as rules to be followed, but a framework and guideline for teachers to think and take informed decisions about their ethical behaviour.

In another view, Lawton (2004), agrees that codes are necessary instruments for guiding the profession. However, in their view, codes on their own are inadequate for invoking compliance and ensuring ethical behaviour amongst teachers. This is because code is unable to provide guidance to teachers in all circumstances; factors contributing to teachers' ethical and unethical behaviour are more complex than that. Codes are also criticised for contradicting other rules and instruments, and consequently this inhibits their effective enforcement. The harmony between the code and other legislation, policies and regulatory instruments is important because Lawton (2004) underscores the use of various laws, rules and policy instruments in regulating teacher behaviour in many countries.

Codes of professional ethics are viewed by Maxwell (2016) and Thornhill (2015) as weak, voluntary compliance instruments or soft legislation that serve as teachers' guidelines and are not enforceable. Similarly, in looking at various policy instruments, Cloete, Wissink, de Coning (2006) agree that some instruments are stronger and more authoritative than others. The weaker instruments rely on persuasion for implementation and enforcement. They argue that as a result, this requires voluntary compliance. While this might be true with some codes, particularly in non-statutory professional regulatory bodies, it is not the case in instances where codes are embedded in the legislation (Thornhill, 2015). In his argument, Thornhill states that, "some codes are viewed with the same trepidation by society as transgression of the law" (p.88). This implies that a teacher "could be dismissed or sanctioned for violation of the code" (p.89), particularly because under the circumstances it has the same weight as the law. Thornhill (2015) argues that in this case, the state delegates the accountability function to the profession through the legislation.

2.7.2.6 Enforcement of the code of professional ethics

This section looks at the enforcement of the code of professional ethics within the context of professional self-regulation. In doing so, it also provides some of the code enforcement barriers and enablers as reflected in the literature and empirical studies.

According to Hood, Rothstein and Baldwin (2001, cited in Christensen and Lægreid, 2006) enforcement in the professional regulation context refers to the systems, laws, rules and strategies put in place to ensure that set standards, codes and self-regulatory activities are actualised in the regulatory process. It also involves processes of promoting compliance among teachers with the goal of achieving a code of professional ethics outcomes (OECD/Korea Development Institute, 2017). According to Baldwin and Cave (1999), the kind of regulatory laws and rules and strategies selected may have an effect on the extent to which the enforcement process is achieved. Some of the enforcement strategies and activities referred to by Ayres and Braithwaite (1992), Baldwin and Cave (1999), and Gunninghan and Sinclair (2017), include revoking licence to practice, criminal conviction, administrative sanctions and persuasion.

Similarly, Gilman (2005) looks at enforcement as a process embedded within the broader application and implementation of the code of professional ethics. Therefore, the following key elements become important for broader application and implementation of the code since they serve as enablers and have impact on enforcement of the code of professional ethics in many ways: (a) promoting the code through advocacy, education, training, support and counselling systems and processes; (b) transparency and conflict of interest systems; (c) control measures; and (d) independence of the agency implementing and enforcing the code, observing the due process and being objective (Gilman, 2005).

Gilman's key elements for effective implementation of the code reaffirm the principles and values of good regulation as highlighted by the Better Regulation Task Force (2011) and OECD/Korea Development Institute (2017) in Section 2.7.1 of this study. Again, Gilman's elements look at the code implementation and enforcement from a proactive perspective which involves awareness, advocacy and communication, education and support, watchdogs, whistleblowing, hotlines and helplines. This proactive perspective is viewed by Baldwin and Cave (1999) as one of the key enforcement styles that promotes persuasion to the compliance of the law, as discussed further in the succeeding paragraph below. Second, Gilman's key

elements to implementing the code could be understood from a reactive perspective in terms of the *ex-post* professional violation where the code is monitored and enforced through administrative disciplinary processes and accompanying sanctions.

In echoing Gilman (2005)'s proactive approach to implementation and enforcement of the code, Hutter (1988, cited in Baldwin & Cave, 1999), indicates that there are two sub-approaches to compliance, namely: (a) persuasion, which is based on education, advice, knowledge, advocacy and communication, negotiation, cajoling and others; and (b) an insistence sub-approach that is harsher and less flexible in terms of increasing pressure, with various levels of sanctions when compliance is not forthcoming (Ayres & Braithwaite, 1992; Baldwin & Cave, 1999; Murphy, 2017). Advocates of the persuasive approach to compliance and enforcement of the law and code view penalties and sanctions as the last resort (Baldwin & Cave, 1999; Murphy, 2017). However, John (2011) warns that any number of increased sanctions will not make people to obey the law because the reasons for people obeying versus not obeying the law are more complex than can be dealt with by increased sanctions and penalties.

The enforcement of the code discussion above also indicates that enforcement is a disciplinary and punishment function that ensures consequences to the transgression of the code through sanctions and penalties; these provide some deterrence to future breaches of the same code (Baldwin & Black, 2007; Baldwin & Cave, 1999; Maxwell, 2016; United Nations, 2016). In contrast, some statutory professional regulatory bodies, such as the GTCS and Victoria Institute of Teachers, highlight conceptual differences by arguing that in enforcing the code from a deterrence approach, their aim is not to punish but to maintain the standards of the teaching profession. While this may sound reasonable, van Nuland (2009) rejects the claim by stating that, in such instances, there is no need for a code since it would have failed to play its professional regulatory role.

While it has been shown that enforcement has punitive measures, the literature also indicates that enforcement can both be negative and positive. Ouellet (2004) argues that positive enforcement mechanisms include, activities such as, dispute resolution, mediation, incentives and others. Negative enforcement mechanisms include, amongst others, sanctions as informed by administrative discipline procedures and processes which include hearings, imposition of sanctions as prescribed in policies, and appeals (CALS 2014; Ouellet, 2004; OSCE, 2012). According to Ouellet (2004), both mechanisms need to be taken into account

in a carrot-and-stick manner, when applying the compliance monitoring and enforcement mechanisms.

Lastly, detection of code transgressions can take place through reactive and proactive compliance monitoring and enforcement processes (Baldwin & Black, 2007). According to Baldwin and Black (2007), regulatory systems that rely on third parties to report breaches of the code follow a reactive approach. While it is difficult to know and plan in advance for a reactive enforcement approach, Baldwin and Black (2007) argue that the advantage of the approach is that the burden of the detection of transgressions is on the public allows professional regulatory bodies to be seen as serving the interests of the public. On the contrary, Baldwin and Black (2007) state that the proactive approach to detection and reporting applies to regulatory areas where inspection, policing and auditing are generally used.

2.7.3 Enablers for enforcing the code of professional ethics

This section analyses enabling factors for the enforcement of the code of professional ethics, from the perspective of the literature. As enablers, the existence of the statutory professional regulatory body and legal framework are critical in ensuring that the developed code of professional ethics is effectively enforced (Baldwin & Black, 2007; Banter, 2003; de Clercq 2013; Hargreaves 2000; John, 2011; Schultze, 2008; van Nuland, 2009.

Linked to the legal framework above, is the well-functioning governance mechanisms for effective compliance monitoring and enforcement of the code (United Nations, 2016). Lessons from statutory professional bodies, such as the GTCS, Victorian Institute of Teachers in Australia, TRCN and the Ontario College of Teachers have governance mechanisms with internal controls and check and balances for compliance monitoring and enforcement processes in the form of various committees at investigation, disciplinary hearings, appeals and reinstatement levels (GTCS, 2019, van Nuland, 2009; van Nuland & Khandelwal, 2006). These committees ensure the separation of powers that avoids conflicts of interest in performing their investigating, discipling, adjudicating, sanctioning and appealing functions (Koop & Lodge 2015; Levi-Faur, 2010; OECD 2002; Steele & Nimmer, 1976).

Notably, some professional bodies' governance mechanisms have the public interest committees that play an advisory role to the governance structure in promoting the principles of public interests in the delivery of their mandate. Other professional bodies hold their

governance structure meetings publicly and publicise the names of the sanctioned teachers in the public interest.

Furthermore, according to John (2011), institutions are pivotal in enabling the regulation process because they are seen as the vehicle or "wings and wheels" that ensure that policy instruments' objectives are enforced. Also, Burns (2006) uses institutional theory to conceptualise and analyse social institutions and their complexities. In doing that, he argues that it is through the social rule regime that individuals, groups and societies are organised into complex relationships, roles and orders where their interactions are regulated as well. As a result, Burns (2006) refers to the social rule regime and its related relationships and interactions, as institutional arrangement. He also argues that institutional arrangement is made up of complex of institutions which may be in or outside government, cluster of social relationships, regulatory instruments, norms and beliefs, and rules of the game" (Burns, 2006, p.417). These elements are important in defining who the actors and individual institutions in the policy or regulation process are, what their roles are, how they are organised and coordinated for interaction on areas of interests, and how do they use the rules of the game to define their relationships, along with access to and control of the available resources (Burns, 2006; Laegreid et.al., 2014 Rhodes, 2007).

Institutional arrangements also, can correct the single purpose organisation or institution approach to regulation that is state-centred, elitist, vertical and hierarchically controlled (Börzel, 2011; Ewalt, 2001; Lægreid, et.al., 2014; Salancik, 1995). In doing so, institutional arrangements look more at the interactive, collaborative, cooperative, horizontal and decentralised relationships between various institutions, individuals and actors in regulating and enforcing rules at various levels (Salancik, 1995). Drahos & Krygier (2017) look at this process as redistributive regulation in the process of enforcing the rules. Thus, regulatory institutions are looked at from a governance perspective which promotes governing where public and private sectors, along with civil society, join-up and collaborate in regulation and enforcement of rules and mobilising resources (Ansell & Gash, 2008; Christensen & Lægreid, 2006; Ewalt, 2001; Haines, 2011; Lægreid et.al., 2014; Rhodes, 2007; Salancik, 1995)

In conducting investigations and disciplinary hearings, the literature underlines the significance of observing conflicts of interest, principles of good regulation and key principles for compliance monitoring and enforcement mechanisms. Such principles include

confidentiality, transparency, independence, proportionality and most importantly, integrity (Better Regulation Task Force, 2011; OECD, 2017; Ouellet, 2004; United Nations, 2016).

Other enforcement enablers include appropriate human resources since these are critical for enhancing the professional body's internal capacity (Golubeva & Kanins, 2017, United Nations, 2016; van Nuland, 2009). According to the United Nations (2016) human resources implementing the enforcement mechanisms need sound knowledge of ethical standards and code of professional ethics, investigation and disciplinary procedures and laws, and the ability to contextualise the presented evidence against other legislation and regulatory instruments. These requirements call for the recruitment of people with good expertise, knowledge and experience, and accompanying continuing professional development.

Equally, the financial resources and exploration of various funding models are critical for the success of the compliance monitoring and enforcement mechanisms by professional self-regulatory bodies (Golubeva & Kanins, 2017; OECD, 2002; United Nations, 2016; van Nuland, 2009). In the context of professional bodies, many such structures source of funding comes from members' fees which are insufficient to cover the already costly compliance-monitoring and enforcement mechanisms (United Nations, 2016). However, the United Nation (2016) and theorists of regulatory capture warn professional self-regulatory bodies against being captured and compromising their independence in a quest to seek additional financial resources and exploring various funding streams.

2.7.4 Barriers in enforcing the code of professional ethics

In addition to these enforcement enablers highlighted in Section 2.7.3, studies conducted in European, OECD, African, and Asian countries, as well as in the USA and Canada confirm that the problem of weak enforcement of the code is prevalent in many countries across the world. Nevertheless, inhibiting factors appear to be context-bound in certain countries, and universal in others (Banter, 2003; Golubeva & Kanins, 2017; Sakyi & Bawole, 2009; van Nuland, 2009; van Nuland & Khandelwal, 2006).

In further examining the barriers to enforcement, many countries were found to have codes of professional ethics; however, the majority failed at enforcing them because they were imposed on the profession through top-down and command-and-control approaches without any stakeholder involvement (OECD, 2012; van Nuland, 2009; van Nuland & Khandelwal, 2006).

Moreover, in presenting the report on the experiences of the Canadian professional self-regulatory professions, the British Columbia Ombudsman (2003) highlighted some of the challenges impeding effective monitoring of compliance and enforcement. These included inconsistencies in systems for reporting, receiving and addressing complaints from the public. This resulted in the exposure of the public and clients to harm and risks.

Similarly, findings from studies in Europe, Asia and Africa showed that ineffective systems for reporting the transgressions of the code, as well as reluctance in the reporting the same transgressions (Banter, 2003; Golubeva & Kanins, 2017; Sakyi & Bawole, 2009) contributed to failure in the code enforcement systems. In Canada, it is mandatory for the employers to report non-compliance of the code to the Ontario College of Teachers (OCT), a professional regulatory body for teachers (OCT, 1996). However, there is a need to be clear on the scope of the reporting obligation by the teacher employers. Dynamics in the relationship between the OCT, employers, school boards and children aid societies hamper enforcement of the code. Concurrent and multiple reporting, investigations and sanctioning on one transgression by various bodies can also be problematic.

Overall, sections 2.7.3 and 2.7.4. provide insights into enablers and barriers for enforcing the code of professional ethics based on different perspectives, lessons and experiences from various studies globally. Therefore, figure 2 below summarises enabling factors that facilitate successful enforcement of the code of professional ethics, whereas figure 3 below categorises barriers for enforcing the code of professional ethics.

Table 2: Enforcement activities and enablers

ENFORCEMENT ACTIVITIES	**ENFORCEMENT ENABLERS**
Code of Professional Ethics	• The existence of the code as a legal instrument enacted by government is important in the professional body's statutory status and authority to make the code mandatory in the profession; • Involvement and consultation of key stakeholders, such as, parents, learners, communities and the public at large in developing the code; • Periodic consultative and stakeholder-driven review of the code to keep it current; and • The importance of determining code typologies in terms of whether the code's purpose is (a) aspirational in terms of stating the principles and guiding values of the profession; (b) educational in providing guidance; and (c) regulatory in terms of having monitoring systems, disciplinary procedures and sanctions for non-compliance. **Source**: Gilman, 2005; Golubeva & Kanins 2017; van Nuland & Khandelwal, 2009; Khandelwal & Biswal, 2006; United Nations, 2016.

Compliance Detection	• Effective systems and processes to report code breaches. **Source**: Gilman, 2005.
Compliance-seeking Strategies	• Education, guidance and support at various levels of the profession through integration of the code into the teacher education and continuing professional development continuum with the professional body leading the process in teacher training institutions for student teachers, schools for practising teachers and induction of newly qualified teachers, department of education for officials supporting teachers. **Source**: Gilman, 2005; van Nuland & Khandelwal, 2009; Khandelwal & Biswal, 2006; United Nations, 2016.
Compliance Monitoring	• Adequate disciplinary procedures and processes; • Transparency and conflict of interest systems. **Source**: Gilman, 2005; van Nuland & Khandelwal, 2009; United Nations, 2016.
Sanctioning	• Availability of both administrative and punitive sanctions; • enforcement and control. **Source**: Baldwin & Cave, 1999; Gilman, 2005; van Nuland, 2009.

Table 3: Enforcement activities and barriers

ENFORCEMENT ACTIVITY	**INHIBITORS / BARRIERS**
Code of Professional Ethics	• Imposed on the profession through top-down and command-and-rule approach, without any stakeholder consultation; • Codes enforced by government without ownership and support of teachers; • Implementation of the code in isolation of other processes and policies; • Difficulties in understanding and applying the language of codes; • Codes being too idealistic not addressing daily moral issues confronting teachers; • Too vague, too long and complex to understand or to enforce; • Lack of clear implementation framework and plan; • Some form of leniency in applying the code on teachers; • Codes not embedded into the professional culture; • Outdated code that is not reviewed frequently by the professional regulatory body collaboratively with the stakeholders; • Dearth of knowledge about the code of professional ethics in the profession; and • Codes not backed up by an enforcement mechanism. **Source**: OECD, 2008; van Nuland, 2009; van Nuland & Khandelwal, 2006.
Compliance-seeking Strategies	• Weak compliance promotion strategies; • Lack of education, support, guidance, advocacy and advocacy and communication processes for teachers, at various levels of the profession, in terms of understanding and interpretation of the developed code; • The absence of training of the student teachers on the code by many higher education institutions was also raised as a serious concern; and • Reluctance to report violation of the code at various levels. **Source:** Golubeva & Kanins, 2017; OECD, 2002; van Nuland & Khandelwal, 2009; Khandelwal & Biswal, 2006.
Non-compliance Detection Strategies	• Ineffective systems for reporting non-compliance with the code;

	• Clear direction on what constitutes violation of the code by the professionals; • Scope and jurisdiction of reporting non-compliance with the code; • Inconsistencies with regard to systems for reporting, receiving and addressing complaints from the public; • Ineffective systems for reporting the transgressions of the cod; • Reluctance in the reporting transgressions; and • Multiple and overlapping reporting, investigations and sanctioning on one transgression by various bodies. **Source**: Banter, 2003; British Columbia Ombudsman, 2003; Golubeva & Kanins, 2017; OECD, 2002; Sakyi & Bawole, 2009.
Compliance Monitoring	• Absence of strategies for compliance monitoring; • Inadequate disciplinary procedures and processes; • Costly investigations and disciplinary hearings; and • Multiple and overlapping investigations and disciplinary hearings. **Source**: OECD, 2008.
Sanctioning	• Weak and Ineffective sanctioning systems and processes; • Too much emphasis on the deterrence approach; and • Politics and corruption surrounding the sanctioning processes. **Source**: Golubeva & Kanins, 2017; John, 2011; OECD, 2008; OSCE, 2012; van Nuland, 2009; van Nuland & Khandelwal, 2006.
Institutional / Professional Regulatory Body Level	• The profession being regulated by government and other regulatory agencies attached to Ministries of Education; • Lack of statutory power and legitimate authority to regulate the profession; • Institutional capacity to implement and enforce the code; • The Professional Regulatory Body's integrity not intact; • Inadequate human and financial resources; • Leadership, management and structure weaknesses; • Professional regulatory body's independence and possible conflict of interest in the investigations, disciplinary hearings, adjudication and appeals processes; • Poor organisational culture; • Poor administration; and • Top-down and command-and-control approach to the enforcement process. **Source**: Golubeva & Kanins, 2017, Murphy, 2017; OECD, 2012; Schultze, 2008; Steele & Nimmer, 1976; van Nuland, 2009; van Nuland & Khandelwal, 2006.
Others	• Teachers' attitude towards the enforcement process; • Pressure from teacher unions; • Unwillingness to use the code by the profession; • Passive compliance and cooperation, as well as passive resistance; • Defiance and ignorance of the code, attitudes to self-enforcement; • The role of teacher unions in protecting teachers rather than disciplining them; and • Undue societal pressure and bureaucrats. **Source:** Golubeva & Kanins, 2017; John, 2011; van Nuland & Khandelwal, 2009; Khandelwal & Biswal, 2006.

2.8 Key Theoretical Frameworks for the Enforcement of the Code in the Teaching Profession

In this section the study's interpretative theoretical frameworks and models underpinning the fields of regulation are analysed. These theories are also informed by the theoretical knowledge gap identified by review of past and recent studies.

2.8.1 Theory of public interest

Based on social and professional regulation perspectives, the theory of public interest is important for understanding the theoretical underpinnings of the regulation of the teaching profession through the enforcement of the code of professional ethics. Other aspects relevant to public interest theory include safeguarding of safety, health, education and social services (Christensen, 2011; Levi-Faur, 2011). With that said, public interest theory is based on the assumption that regulation takes place to serve the public interest. Relevant to the current study, the public, consumers and children are protected against market and professional failures, harm, hazard and risks (Baldwin et al., 2012; Maxwell, 2016; Schultze, 2008; Shleifer, 2005) that may emerge from the conduct of the regulated institutions, individuals and business.

The protection of interests is also viewed by Christensen (2011), and Baldwin et al. (2012) as a way of placing limitations and social controls on individuals, firms and institutions. This can be done through what Levi-Faur (2011) calls the "regulation regime", that is via setting rules, standards and codes; monitoring the rule and gathering data from deviations from the set rule; and the enforcement of the rule. In accordance with regulations limiting private activities, such as behaviour of teachers, Mitnick (1980, cited in Christensen,2011, p.96) defines regulation as "the public administrative policing of a private activity with respect to a rule prescribed by in the public interest". From Mitnick's definition of regulation within the public interest theory context, there is a direct relationship between regulation and rules which are designed, through administrative policing process, to restrict private activities in the public interest (Baldwin & Cave, 2012; Christensen, 2011).

In arguing from a social regulation perspective, proponents of public interest theory maintain that it also protects the public and children against failures, harm, risks and unequal bargaining powers of the market and professionals (Baldwin et al., 2012; Christensen &

Lægreid, 2006; Levi-Faur, 2010; Windholz & Hodge, 2012). They maintain that in instances where the market is uncontrolled or unregulated, there is a tendency of failure to produce goods and services in line with the principles of public interest. Therefore, in such cases, consumers and vulnerable people are prone to exploitation. It is for such reasons that Baldwin et al. (2012), and Shleifer (2005) contend that the state also uses regulation to correct market power in competition, excess profit or windfall, monopoly, externalities and information inadequacies. Schleifer (2005) states that this is done because of an assumption that government has the power and authority to correct the market failure; hence it imposes regulatory standards on the market in the process of exchanging good and services with the consumer.

While the laws, legislation and related instruments might be valuable in the regulatory environment, they only serve as guidelines for the regulated business, individuals and enterprises. Again, Braithwaite (2008, cited in Haines, 2011) warns against the instrumental approach in reducing regulation to policing which is tightened to enforcement. The growing body of knowledge in compliance and enforcement of these rules and standards, underscore that regulatory processes are more complex and dynamic than just using the laws, rules and standards for controlling or protecting (Haines, 2011; Human Rights Watch, 2001). They also criticise the theories of regulation for exaggeration of the market failure and Maxwell (2016) emphasises that they are not the panacea that that will succeed in preventing the market and system-wide failures, harm and risks. Schleifer (2004) emphasises that litigation is available to address such problems emerging from the market failure. While this is correct, Schleifer (2004) does not acknowledge societies and consumers' inequalities in accessing litigation processes.

Gaffikin (2005) criticises the public interest theory for undermining the political power and influence on the professional self-regulators. Studies conducted in the teaching profession by Salmon and Sayed (2016), and de Clercq (2013) reveal how teacher unions, as part of the professional regulatory body's governance structure, dominate decision-making processes and interfere with their independence. This may also lead to conflict of interest among the same teacher unions who represent the profession in the governance structure of the professional regulatory body (OSCE, 2012). The situation might also be viewed from a power relation among the governance structure members in the professional self-regulatory body, impacting on the serving the interests of the public and children. Regulatory capture

theories warn of the extent at which public interest theories have political and economic power over regulation, which may lead to some capture and deviation from their intentions.

Moreover, the theory of regulatory capture condemns the public interest theory of regulation for advocating for the needs and interests of the people and firms they are regulating; they end up losing independence and focus on the mandate to serve in the public interest Christensen, 2011). Because of being captured by individuals, groups and the firms they are regulating, regulators end up being controlled by these groups, individuals and firms' needs, and being corrupted as well.

In making a relationship between professional self-regulation and Sachs (2000)'s teacher professional identity, de Clercq (2013) points out that the concept of self-regulation gets lost in the profession because of passive and complacent professional self-regulatory bodies that put too much reliance on the state's understanding of teaching as state workers and functionaries who have little or no power in controlling their work. She argues that this leads to a narrow and poor form of self-regulating of the profession that is also more self-serving. The latter is owing to concentration on the teachers' conditions of service and less on the social agency role it is supposed to play (de Clercq, 2013; Lahey, 2009). In such instances, Lahey (2009) adds that professional self-regulatory bodies tend to associate more with members of the profession than the public and children they are supposed to protect, leading to more emphasis on internal regulation.

In continuing with key debates on the roles of professional regulatory bodies in education in New Zealand, Canada, Australia, New Zealand, England and Scotland, Alcorn (2004) draws conclusions on some of the debates on the ambiguous role of professional regulatory bodies in education. For example, in his findings, Alcorn (2004) states these bodies find themselves between a rock and a hard place in that they operate in between Ministries of Education on the one hand, and teachers as their members on the other. He also states that, while their close association may be opportunistic on their side, professional bodies may be viewed as compromising themselves by aligning themselves to government and lose their identity in the end. Also, Alcorn (2004) contends that the teaching profession argues that professional bodies interfere in their lives when they enforce the code of professional ethics because of teachers' unethical behaviour.

The dilemmas and paradox highlighted above indicate that sometimes it might be difficult for professional regulatory bodies to balance their acts and navigate their way through the regulatory process. In addition to regulating in the public interest, Steele and Nimmer (1976) insists that some professional self-regulatory bodies manage to hide behind regulating activities. They do this for purposes of improving the public image of the profession. However, in doing that, they tend to shift away from sanctioning teachers who are transgressing the code, and moving towards what Steele and Nimmer (1976) calls, the intra professional protectionism. This is where the professional self-regulatory body is concerned more with the protecting the public image of the profession by hiding the public's knowledge of teachers' transgressions.

2.8.2 Theory of responsive regulation

The theory of 'original' responsive regulation emerged in 1992 through Ayres and Braithwaite. This theory was a response to the rational theory and criticism of what Reiss (1980, cited in Ayres & Braithwaite, 1992) dubbed deterrence and compliance models of regulatory enforcement (Baldwin & Black, 2007; Baldwin & Cave 1999; Murphy, 2017). The understanding of this theory as an "original" responsive regulation is important because other theories such as smart regulation, risk-based regulation and really responsive regulation build on the work of Ayres and Braithwaite (1992), as highlighted later in this section.

Regarding deterrence and compliance models for enforcement, the deterrence model argues that people will only adhere or comply with the law and rules when enforcement has sanctions and penalties to punish or discipline non-compliance (Ayres & Braithwaite, 1992; Baldwin & Cave, 1999). In the words of Holmes who is cited in Ayres & Braithwaite (1992, p.20), "...the law needed to be tailored with a mind not toward 'good men' (who would look to law as a guide for proper action), but with a mind toward 'bad men' (who would try to evade the legal strictures of society. This approach is based on punishment and discipline, and it has been viewed by Baldwin and Cave (1999) as harsh and strict. It is largely applicable in regulatory environments where mandatory sanctions are determined upfront.

The deterrence approach has been criticised for not being cost-effective since it requires extensive human and financial resources that could more fruitfully be spent in promoting compliance (Ayres & Braithwaite, 1992; Baldwin & Cave, 1999). It is also viewed as a waste

of time and playing a cat-and-mouse game because regulated people and industry tend to look for the loopholes in the law and spend more time with litigation processes than the actual work. In arguing from the perspective of the regulated individuals, Baldwin and Cave (1999) condemn it further for alienating people and contributing to people's unemployment.

In contrast, Ayres and Braithwaite (1992), argue that the compliance approach advocates for persuasion, support and capacity building which are necessary for securing compliance with the law from the regulated individuals. In this case, it is argued by Holmes that, "the law needs to be tailored with a mind toward (good men) who look at law as a guide for proper action" (Ayres & Braithwaite, 1992, p.20). Despite tensions between proponents of the deterrence approach versus those supporting compliance, Ayres and Braithwaite (1992) argue the approaches should be combined in compliance-seeking and enforcement strategies and processes. It is through their combination that they raise two questions—when to punish and when to persuade? In this case, responsive theory moves from the premise that government and regulatory bodies alike should be responsive to the regulated conduct and regulatory environment and culture. This is important in deciding on when to punish and when to persuade (Baldwin & Black, 2007; Baldwin & Cave 1999; Murphy, 2017; Wood, Ivec, Job & Braithwaite, 2010). They also referred to the responsive approach as being tit-for-tat (Ayres & Braithwaite, 1992; Baldwin & Black, 2007). Thus, this section focuses on pyramid responsiveness since it is more relevant to the enforcement issues in the current study.

2.8.2.1. *Pyramid responsiveness model*

In the literature, the concept of pyramid responsiveness is also called the enforcement pyramid of regulation (Ayres & Braithwaite, 1992). In responding to the challenges posed by the deterrence approach above, amongst others, the pyramid responsiveness argues for a model that combines persuasion in a form of support and capacity building with variety of sanctions. Because of the responsiveness approach to enforcement, persuasion and sanctions will not be pre-determined as in the deterrence approach (Ayres & Braithwaite, 1992; Braithwaite, 2017;). With that said, the pyramid approach always begins with compliance-

seeking through persuasion which consists of support, advice, capacity building, dialogue and others at the base of the pyramid shown in Figure 2 below.

According to Wood et.al. (2010) persuasion takes place at the base of the pyramid, followed by administrative sanctions in the middle (warning and penalties), and punitive sanctions on the top (suspended licence and revoked licence). Even though the pyramid model predominantly advocates for persuasion, it can also be effective with credible enforcement as highlighted at the peak of the pyramid. Put differently, Wood et.al. (2010) contend that that the pyramid responsive regulation emphasises 'soft words before hard words, and carrots before sticks' (p.3). Thus, in line with the enforcement pyramid, escalation to the next level of the pyramid occurs only when all attempts to seek compliance through persuasion fail. Braithwaite (2017), and Murphy (2017) maintain that even in an instance of a serious case of non-compliance, persuasion remains the first option unless there are compelling reasons and to escalate to the top of the pyramid.

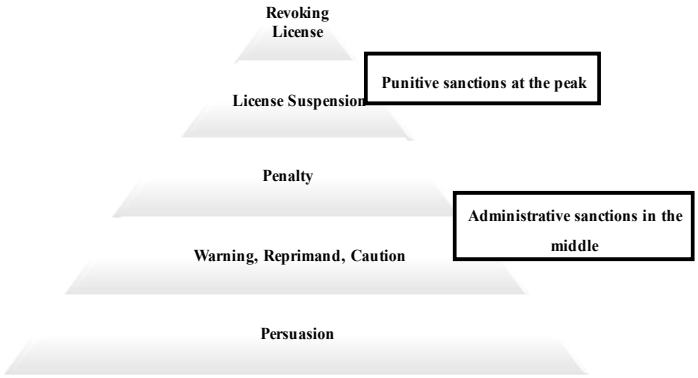


Figure 2::Enforcement pyramid for persuasion and sanctions (Ayres & Braithwaite, 1992)

Coupled with Figure 2 above, are various enforcement strategies that Baldwin and Cave (1999) demonstrate through the same pyramid of enforcement strategies in Figure 3 below:

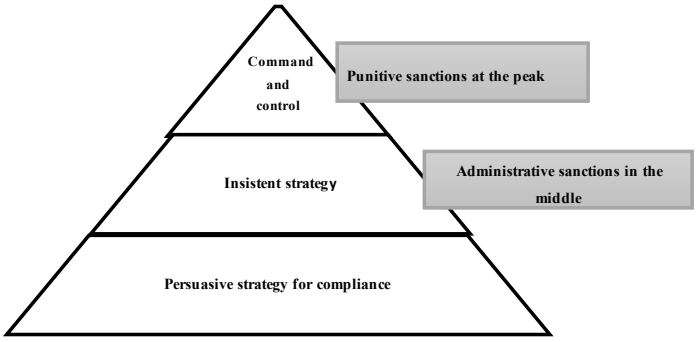


Figure 3: Pyramid of enforcement strategies (Baldwin & Cave, 1999)

As with the lower base of Figure 2, at the base of Figure 3 pyramid there are compliance-seeking strategies that are more accommodating and supportive of compliance. In cases where compliance is not forthcoming from persuasion, there is an escalation to less flexible insistent strategy that is linked to the administrative sanctions in Figure 2. There is less accommodation and intolerance in the enforcement process at this level. Ultimately, a relatively harsh strategy to enhance compliance and deterrence is applied through command-and-control.

Also, as people move up the ladder with escalation process, reform in people's behaviour and compliance with the rules is also provoked. When reform is achieved through compliance at any level of the pyramid, forgiveness takes place through the de-escalation process. It is for this reason the responsive approach to enforcement is regarded as being tit-for-tat, provocative, but forgiving in nature.

The regulatory studies conducted by Wood et. al. (2010) reflects how the pyramid responsiveness to enforcement is used to show the power and authority of the regulatory laws, policies and instruments in the implementation of monitoring compliance and enforcement processes. These occur up and down the ladder through escalation and de-escalation, as shown in Figure 4 below. Likewise, Baldwin & Cave (1999) argue that certain kinds of regulatory laws and instruments used have a negative impact on the enforcement process because of their low level of legal status, authority and force as reflected in Figure 4.

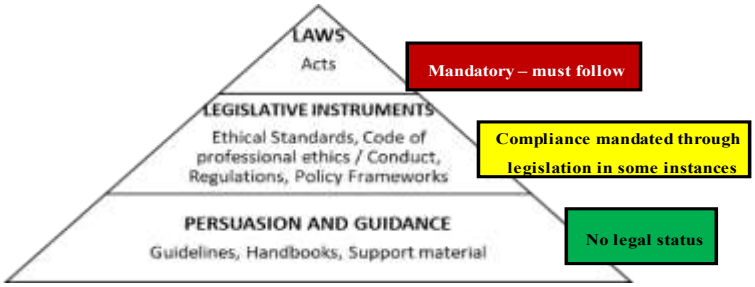


Figure 4: Pyramid of responsiveness enforcement in terms of the laws and regulatory instruments (Wood, et.al., 2010)

Comparison of Figures 2 and 4 shows that the instruments are used largely to guide and persuade compliance with the legislative instruments and laws up the enforcement escalation ladder. Again, the administrative sanctions in Figure 2 are linked to the soft law legislative instruments that do not allow for harsh punitive measures in Figure 4. At the peak of the pyramid, in both Figures 2 and 4, all the enforcement sanctions are harsh and punitive; these can be applied with more power and authority based on the enacted Acts of parliament. Overall, the theory of responsive regulation uses the pyramid of enforcement laws and legislative instruments, pyramid of enforcement strategies and pyramid of sanctions to demonstrate enforcement process that is also linked to compliance monitoring and seeking processes.

In critiquing the pyramid responsiveness model to enforcement, Baldwin and Black (2007), and Baldwin and Cave (1999) argue that attempting to move stepwise up the ladder by seeking compliance might waste time and resources. More so, the step-by-step upward movement might not work in situations where there are harmful or disastrous situations, and an immediate top-level sanction is required. While the model might be acknowledged for its element of forgiveness, it may not be practical to move up then downwards without interfering with interpersonal relationships. Additionally, Baldwin and Black (2007) maintain that pyramid enforcement is unlikely to provide alternative strategies for addressing challenges faced by the regulators in terms of the enforcement function owing to: difficulties in detecting transgressions where there is non-compliance of rules, resource constraints, limitations in the power of the legislation, as well as the distribution of enforcement function

and responsibilities across various regulators resulting in overlaps and coordination difficulties.

2.9 Conceptual Framework

The study focuses on the role of SACE in regulating the teaching profession. Accordingly, this section interrogated the literature with the goal of deriving the conceptual framework, illustrated through Figure 5 below. The literature reviewed and evaluated covering past and recent studies served to enhance the researcher's understanding of the current study's physical context, the context of the study problem in, and the relevant theoretical frameworks.

In summing up the reviewed literature, first, the study's physical research context was analysed in terms of Gauteng as one of the country's highly populated urban areas; despite being the smallest province. SACE was identified as the professional regulatory national institution for teachers which has evolved as an institution, and via the collective agreements and laws by which it is governed.

Second, the field of regulation relevant to the study was interrogated with social and economic key components. With the study focusing specifically on social regulation, further sub-components were identified in terms of professional regulation, non-statutory and statutory professional self-regulation. Ultimately the literature research paid special attention to statutory professional self-regulation, with enforcement of the code of professional ethics as the unit of analysis. Based on the enforcement of the code of ethics as a unit of analysis, enablers and barriers were also identified.

Lastly, the reviewed literature or regulation of the teaching profession and enforcement of the code of professional ethics, played an immense role in determining and informing the theoretical framework for the study. Thus, in looking at the purpose of professional self-regulation and the enforcement of code from the reviewed literature, the theory of public interest and theory of responsive regulation became relevant for the theoretical framework. These two theories enhanced the process of analysing and interpreting this study's findings.

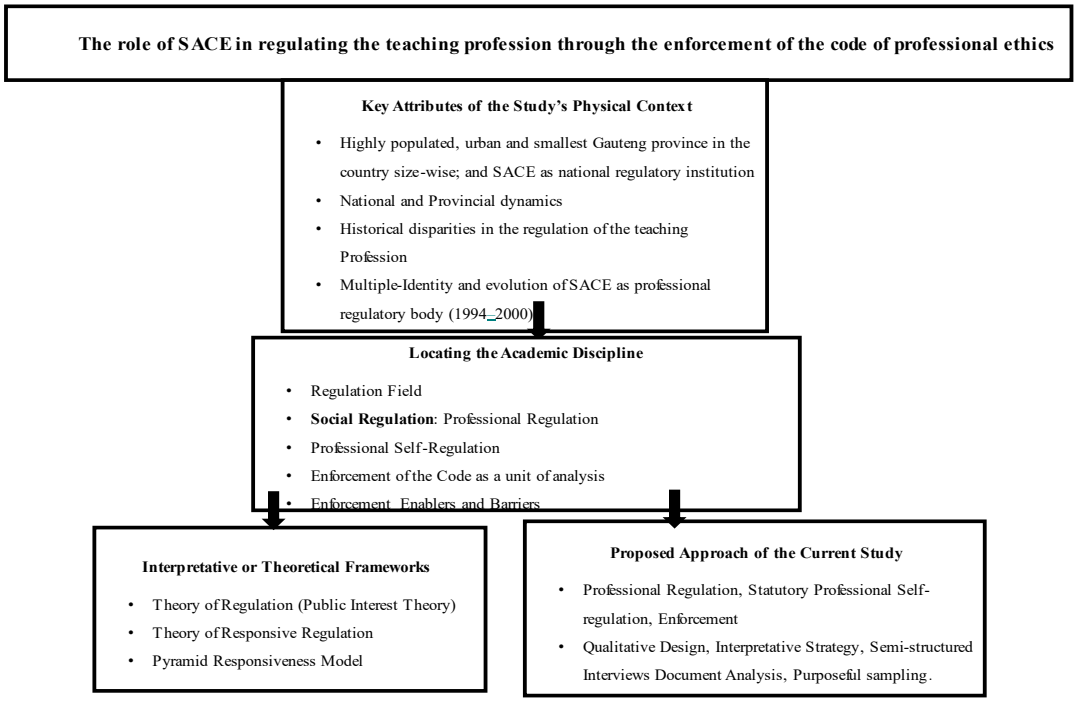


Figure 5: Conceptual Framework for the Role of SACE in Regulating the Teaching Profession through the Enforcement of the Code of Professional Ethics.

2.10 Conclusion

This section focused on the literature review to derive a conceptual framework for the study. Accordingly, the first section analysed the context within which the research took place in terms of analysing the history of the regulation of the teaching profession and establishment of SACE, as well as, providing background to the South African and Gauteng province education. This context assisted in informing the study's research problem. Again, literature was reviewed in the field of regulation, with special focus on professional self-regulation, enforcement of the code of professional ethics, along with enforcement enablers and barriers. Lastly, the reviewed literature in the field of regulation and related areas, informed the theoretical framework which paid special attention to the theory of public interest and theory of responsive regulation.

CHAPTER 3: RESEARCH STRATEGY, DESIGN AND METHODOLOGY

3.1 Introduction

This section details the process undertaken to conduct the research study. In doing so, it explains the research design along with its paradigm and the data collection methods used in responding to the research and interview questions. Also, the research population and sample are clarified, and the profile of various research stakeholders is provided. The section is concluded with issues of reliability and validity in the data collection process, ethical considerations, and research limitations.

3.2 Research Design

This study followed qualitative research design which brings together the following interconnected components in conducting the study: purpose, conceptual context, research questions, methods and validity (Maxwell, 1996). Geertz (1976, p.235, cited in Maxwell, 1996) views qualitative research as "an iterative process that involves 'tacking' back and forth between the different components of the design, assessing the implications of purpose, theory, research questions, methods and validity threats for one another." In this way, qualitative research design is not seen as a linear process with sequential steps in conducting a research study.

In supporting the definition of qualitative research design above, Creswell defines it as a process that:

> ...begins with the assumption and use of interpretive theoretical framework that inform the study of research problem addressing the social or human problem. To study this problem, quality research uses an emerging quality approach to inquiry, the collection of data in a natural setting sensitive to the people and places under study (context) and data analysis that is both inductive and deductive and establishes patterns of themes. The final written report or presentation includes the voices of participants, reflexivity of the researcher, a complex description and interpretation of the problem and its contribution to literature or call for change. (2013, p.44)

All the definitions above put strong emphasis on the interactive research process that moves from assumptions, beliefs and experiences to an interpretive frame and procedures involved in researching social and human problems. It is for this reason, amongst others, that Maxwell (1996) argues that qualitative research draws its strength from the inductive approach that pays special attention to specific situations or people and emphasises words as opposed to numbers.

The qualitative research approach was used to collect rich and in-depth data from various research participants interviewed. The research participants' perspectives and experiences of the professional regulatory role of SACE through the enforcement of the code, became the reality that I tried to understand and interpret as a researcher. More importantly, interviewing of stakeholders also assisted in how they make sense of the SACE professional regulatory role through the enforcement of the code. It also allowed me to get insight into how their understanding and their natural context influenced their behaviour (Creswell, 2013; Wagner, Botha & Mentz, 2012; Maxwell, 1996), particularly with the teacher unions. This is reflected clearly in Chapter 5 (data presentation) where their voice is dominant throughout.

3.3. Research Strategy

Based on the qualitative research approach, the research was underpinned by the interpretivist research paradigm. In this context, paradigm is defined by Guba and Lincoln (1994, p.105) as "the basic belief system or worldview that guides the investigator, not only in choices of method but in ontologically and epistemologically fundamental ways". From this definition, "paradigm" could be understood as the framework, philosophical assumptions and beliefs influencing the researcher's views along with practices and the position they take in the research study (Creswell, 2013). These beliefs and philosophical assumptions also informed this research's focus, problem statement and questions as well as methods to follow in collecting data to respond to the primary and secondary questions.

Interpretive research paradigm views reality as relative and subjective (Guba & Lincoln, 1994) as well as "understanding the world as others experience it" (Wagner, Botha & Mentz, 2012, p.55). This paradigm, unlike the positivist one, argues that knowledge is socially constructed and reality and multiple realities are informed by individuals or shared group of individuals beliefs, values, principles, assumptions and context that ultimately inform the

research process (Creswell, 2013; Maxwell, 1996; Wagner, Botha & Mentz, 2012). From an epistemological perspective, knowledge is known through gathering first-hand information through the subjective experiences and evidence based on the research participants' context. Also, researchers use their own experiences and background to inform their interpretation of the information, evidence and research findings. This assists in interpreting the meaning of what the research participants have about your research questions. Accordingly, the collected data and evidence from interviews and document analysis will firstly be described, then interpreted according to various emerging common themes that cut across the analysed data.

3.3 Research Procedure and Methods

3.3.1 Research sample

The study followed purposeful sampling to select 15 research participants from the diverse groups in the research population comprising Gauteng educational stakeholders as shown in Table 4.

Table 4: List of the research participants and their stakeholder organisations

STAKEHOLDER ORGANISATION	NUMBER OF PEOPLE
South African Council for Educators (SACE)	5
South African Democratic Teachers Union (SADTU) Gauteng	2
National Professional Teachers Organisation of South Africa (NAPTOSA) Gauteng	1
National Association of the Independent Schools of South Africa (NAISA) Gauteng	1
Federation of Associations of Governing Bodies of South African Schools (FEDSAS) Gauteng	1
National Association of School Governing Bodies (NASGB) Gauteng	1
South African Principals' Association (SAPA) Gauteng	1
Provincial Education Labour Relations Council (PELRC) Gauteng	1
Gauteng Department of Education (GDE)	2

Wagner, Botha and Mentz. (2012) maintain that purposive sampling can be seen as the most useful type of non-probability sampling. Wagner, Botha and Mentz (2012) also argue that purposeful sampling is often influenced by the researcher's previous experiences and research. Equally, my choice of this sampling method in this study was influenced particularly by my experience of working closely with all the educational stakeholders nationally and in Gauteng province in particular. To ensure that the sample was representative, the criteria used to select the participants was based on the available database of all relevant Gauteng educational stakeholders playing a role in the teaching profession, as reflected in Annexure B and Table 4 above. This assisted in addressing the contention of Creswell (2013) that purposeful sampling has limitations in terms of its representativity.

All in all, 15 participants were interviewed. It is important to note that while the participants' organisations and institutions were mentioned in the thesis, in line with their signed consent form and the research study's ethical consideration, their individual identities were not revealed. The respondents from GDE were drawn from both the provincial head office and one of the 12 educational districts.

The respondents from other stakeholder groups consisted of people who work in the labour relations portfolios in their respective organisations and those who had frequently represented teachers in the disciplinary hearings of the employers and/or SACE. The respondents from SACE consisted of two people from the national office, each from a different level in the organisational structure. Three contracted panellists made up of an investigator, prosecutor and presiding officer were also respondents.

Thirteen (86.66%) out of 15 research participants had worked with the SACE code of professional ethics, teacher disciplinary procedures and labour relations matters over a period of 10 years and more, in various capacities in the teaching profession. These 13 respondents had been employed or elected in positions where they oversee, manage or administer disciplinary enforcement processes within and outside their organisations. Some had been representing teachers in various disciplinary hearings, while others presided over and had prosecuted teacher misconduct cases. Additionally, their professional experiences and expertise meant that they had sound knowledge of the code of professional ethics as a regulatory tool and had been exposed to the challenging and enabling conditions associated with its enforcement.

3.3.2 Profiles of the Research Participants

The research participants were made up of various education stakeholders in the teaching profession. Further details about each of these participating stakeholders is provided below.

3.3.2.1 South African Democratic Teachers Union

The South African Democratic Teachers Union (SADTU) is one of the five recognised national teacher unions in the country. A total of 60% (261 000) of the public-school teachers in all nine provinces are SADTU members and this makes it the majority union in the teaching profession. SADTU is one of SACE's constituency and forms part of Council. Twelve (40%) out of the 30 SACE Council members are from SADTU.

3.3.2.2 National Professional Teachers Organisation of South Africa

The National Professional Teachers Organisation of South Africa (NAPTOSA) is the second-largest teacher union in South Africa. It is also one of the SACE constituencies and has two (6.66%) out of 30 members on the SACE council.

3.3.2.3 National Association of School Governing Bodies

The National Association of School Governing Bodies (NASGB) represents most parents for schools in townships, informal settlements and rural areas through the SGBs, in line with the South African Schools Act (RSA, 1996b). The SGBs also serve as employers of those teachers that are not employed by the government in the public schools. Similarly, the NASGB forms part of the SACE Council and is represented by one member.

3.3.2.4 Federation of School Governing Body Association of South Africa

The Federation of School Governing Body Association of South Africa (FEDSAS) represents most parents through the SGBs in affluent urban schools and former model C schools that historically catered for the White children. The SGBs forming part of FEDSAS are also employers to teachers employed in terms of the South African Schools Act (RSA, 1996b) in the public schools. FEDSAS is also one of the SACE constituencies and it is represented by one out of the 30 SACE council members.

3.3.2.5 National Association of the Independent Schools of South Africa

The National Association of the Independent Schools of South Africa (NAISA) is an umbrella body that represents various independent school associations, such as the Independent School Association of South Africa, Catholic Institute of Education, Muslim and

Jewish Schools. These associations and/or their schools are employers of teachers in the independent school sector. While NAISA is a national body, it has provincial versions (such as NAISA Gauteng). The organisation is represented by one person on the SACE council.

3.3.2.6 South African Principal Association

The South African Principals' Association (SAPA) is a voluntary professional association for principals and deputy principals. The overwhelming majority of its members are in the public schools. SAPA is not one of the SACE constituencies in terms of the composition of Council.

3.3.2.7 Provincial Education Labour Relations Council

The Provincial Education Labour Relations Council (PELRC) is the provincial version of the ELRC that deals with teachers' conditions of service, dispute management and arbitration processes, largely on labour matters. The ELRC/PELRC's guilty arbitration awards (with dismissal sanctions) are forwarded to SACE for purposes of removing a teacher from the roll of professionally registered teachers in line with Section 23 of the SACE Act (2000). In such instances, as an independent self-regulatory body, SACE follows its due processes prior to removing a teacher's name from the roll.

The PELRC is also made up of the public employers and employees parties. "Public employers" in this case refers to the national DBE and the nine provincial departments. The five national teacher unions make up the employee parties in the ELRC. Both the employee and employer parties are signatories to the ELRC resolutions and agreements.

3.3.2.7 Gauteng Department of Education

The Gauteng Department of Education (GDE) is an employer of teachers in the province's public schools. This number does not include teachers appointed by the School Governing Body in public schools. The Department's head office is located in Johannesburg and the province is divided into 12 educational districts.

3.4 Data Collection Methods

In responding to the research and interview questions, the study collected data through interviews and document analysis. The in-depth primary data was collected through interviewing the 15 research participants. The use of both interviews and document analysis assisted with the triangulation of data collected. Cohen, Manion and Morrison (2000) explain

triangulation as the use of two or more data collection methods to confirm research findings and gain the understanding of the researched phenomenon from different perspectives.

3.4.1 Primary data: interviews

The primary data for this research was collected through the face-to-face semi-structured interviews. An interview instrument (Annexure F) was developed with a list of questions based on the study's interview questions. In all cases, written request for interviews was timeously sought in advance of interviews. While the researcher had intended to conduct all the interviews face-to-face, four of them were done telephonically owing to the researcher or the interviewee not being in Gauteng province during the data collection period, due to other competing priorities. Consequently, telephone interviews became more convenient for respondents and the researcher.

As SACE is a body directly responsible for implementing the code and enforcing it, five participants from the organisation were interviewed. Additional information was gathered from interviewing three SACE panellists involved in the day-to-day administrative disciplinary procedures and processes made up of investigations of misconduct cases, prosecuting and presiding over the disciplinary hearings and recommending of sanctions to the SACE governance structures.

The full enforcement of the code of professional ethics in terms of the reporting and application of sanctions is dependent largely on stakeholders such as the GDE, independent school associations, SGBs, DSD and the ELRC. It was therefore prudent for the officials in these institutions to be interviewed from the perspective of complexities in governance of the code of professional ethics and coordination and collaboration on enforcement mechanisms. Further, these stakeholders were interviewed on the regulatory role of SACE. Teacher unions as representatives of the teachers, and SAPA as a representative of the principals were also interviewed.

Hockey (1993, cited in Hellawell, 2006), and Chavez (2008) argues that one of the advantages of being an inside researcher is that it provides the researcher with familiarity with the organisation and its people, and establishes rapport and acceptance with interviewees. As the CEO of SACE, my access to the interviewees was facilitated by my existing professional relationships and networks. It also assisted to know both the formal and informal power relations in these organisations. However, it was important that formal

requests be made prior to interviews and agreements be reached in terms of access to the respondents and their availability.

In all the interviews, a recorder and supplementary notes were used to record information from the interviewees, with their prior permission. Recorded data was stored safely and confidentially for further transcription and analysis. The recordings will be destroyed once the final research is submitted and approved.

3.4.2 Secondary data: document analysis

Document analysis was used as a secondary data collection method. It was used to review reports, policies, legislation, agreements and teacher misconduct files from SACE and other organisations (Annexure C**)**. The advantage of applying document analysis was that the data sources were readily available off- and online and most of the documents were easily accessible public documents.

Formal written permission was sought to research SACE as an institution, as well as to access the available SACE teacher misconduct case files (Annexure A). All efforts were made to protect the anonymity of the teachers and schools in terms of the accessed misconduct files and such documentation was treated with confidentiality. A representative sample of 5% of the 20 Gauteng teacher misconduct files was reviewed. All information was coded and deidentified to mitigate the risk of any threats to confidentiality and anonymity.

Supplementary data was also collected through online document analysis from the following national and international professional regulatory bodies: TRCN, ZTC, Seychelles Teaching Council, GTCS, Victorian Institute in Australia, Ontario Teachers College in Canada and Jamaican Teaching Council, South African Nursing Council, South African Legal Practitioners Council, and the South African Council for the Project and Construction Management Professions.

Document analysis also assisted in supplementing, triangulating, validating and verifying data and information collected through other data collection methods such as the interviews (Cohen et al., 2000).

3.5 Data Collection Process

3.5.1 Piloting the interview instrument and inside researcher status

Prior to conducting the actual research interviews, the interview instrument was piloted to assess the level and suitability of the questions. The pilot for the interview instrument was carried out with three research participants—two at SACE and one from a teacher union. While many of the questions in the interview schedule were tailored to specific stakeholders, there were some overlaps in others.

Also, the pilot was intended to assess the extent to which the respondents would be open to responding to me as a researcher during the interview process, without being influenced by my positionality. This aspect is reflected in the ethical considerations and limitations sections (Sections 3.6 and 3.8). In terms of the pilot outcomes, the three participants were comfortable in the interview and even raised unanticipated issues. Once I clarified the purpose of the study and my position as a Wits Masters of Management student, the respondents felt comfortable and responded to the best of their ability without any fear or favour.

3.5.2 Collecting primary data through interviews

Formal emails requesting the date and time to conduct interviews were sent to each participant (**Annexures D–F)**. Face-to-face interviews were conducted at the interviewee's chosen time and place. In all the interviews, a recorder and supplementary notes were used to record information from the interviewees, with their prior permission. Recorded data was stored safely and confidentially in a password-protected computer for further transcription and analysis. The collected data was transcribed verbatim and categorised according to themes. Direct quotations were drawn from the transcribed data. The recorded data will be destroyed once the final research report is submitted and approved.

Additionally, the evaluation of past papers identified the absence of the independent schooling voice in many of the evaluated past and present studies. This issue was identified as a research population gap for this study. As a result, a research participant from the independent schooling sector formed part of this study. Nevertheless, the voice of this sector is not vocal enough in this study because of the extremely low percentage of cases reported in the independent schools. Also, many of independent schools have their own individual instruments to regulate the teachers; employees in this sector rarely send their dismissed

cases to SACE nor other sanctioned cases in terms of Section 26 of the SACE Act. As part of the recommendations in section 6.6, a separate study in this area should be conducted to understand the dynamics and trends in the enforcement of the code in the independent schools' sector.

3.5.3 Response Rate

The requests for interviews were carried out formally through letters and emails. Overall, the respondents were eager to be interviewed and enthusiastic about the research. Eleven research participants were interviewed face-to-face in their respective institutions, while four were interviewed telephonically due to diary clashes and their unavailability in the province at the time.

3.6 Ethical Considerations

Ethical considerations are important for any research in order not to harm the research participants. To ensure that the study was undertaken in an ethical manner several steps were taken by the researcher. First, at the institutional level, research approval and a consent letter to conduct research at SACE was obtained from the professional body. As an internal researcher, the approval assisted in ensuring that the sensitive and confidential information and documents on processed educator misconduct cases, structures involved in the investigation and disciplinary hearings, and enforcement of the sanctions were accessed procedurally.

Additionally, individual research participants were given the information sheet (Annexure D) that briefly outlined the purpose of the study, details of the interview session, and informed participants of their right to withdraw from the research study process at any time. Participants were also informed that participation in the research study was voluntary. Since the research study had the potential to be dealing with sensitive matters pertaining to the breaches of the code of professional ethics by teachers, the content of the study was explained to the participants. All participants signed the consent form provided in Annexure E.

In order to protect participants' identities and sensitive information shared, teachers and schools remained anonymous where applicable and their information was kept confidential

throughout the study. The collected data and information will be destroyed subsequent to the finalisation and approval of the research report.

As an important ethical consideration, I want to declare that I am the CEO of SACE. As an insider researcher, my position thus poses a possible conflict of interest between personal institutional interests versus academic ones. My positionality may have presented limitations to the data collection process. The literature views an insider researcher as a person who possesses a priori intimate knowledge of their work environment or organisation (Breen, 2007; Hellawell, 2006). They also argue that this might be seen as a challenge and disadvantage in that it may bring the elements of subjectivity, bias and power relations in the research's data collection process. Chavez (2008) takes this further by maintaining that over-reliance on the insider positionality status may bring complications in that it could overpower the researcher role, bring conflicts of interest and has potential to compromise research ethics.

In mitigating this conflict of interest, I piloted the interview instrument with three identified interviewees to assess their level of openness. Initially, I intended to use this to test the perceived conflict of interest so that I could employ a proxy to mitigate possible biasness and conflict of interest, if it happened to be there. However, the use of a proxy was not necessary because all the pilot and subsequent research participants responded to the questions openly and comfortably; in fact, the openness was to the extent of overwhelming me with too much information at macro, meso and micro levels. I also ensured that I did not include any of the senior managers reporting directly to me into the research sample.

While the challenges and disadvantages of being viewed as an insider researcher are realistic and acknowledged, I want to argue that positionality worked to my advantage in terms of the rapport that had already been created between myself and the teaching profession, as well as with SACE as an organisation. Because of the established rapport, it was my perception that there was an equal relationship between myself and the respondents, especially during the interview sessions. I also ensured a conducive and objective environment to mitigate possible challenges. I worked professionally, assuming that most of the respondents had vested interest in providing frank feedback on the topic for the benefit of the teaching profession.

Additionally, as an insider researcher, I had an advantage in terms of knowledge of the organisation (SACE) and its people, inside politics and culture, and rapport. It was, however, important to guard against over-familiarity with people which may have led to loss of

objectivity and bias in data collection, interpretation and analysis. Hellawell (2006) contends that insider knowledge further assists the insider researcher through knowing how to approach people for interviews and information, as well as gauging honest and accurate responses during the interview sessions.

Finally, the insider researcher status assisted with accessing information, data and the research participants for the interviews. Because of this, data collection continuity was possible. I nevertheless found it important that at all stages, access and consent should be formally requested. Insider researchers are, however, warned against accessing sensitive and confidential organisational data and exposing it to third parties. In such instances, Breen (2007), and Hellawell (2006) underscore the significance of respecting ethical issues in terms of anonymity of research participants, organisations, teachers and schools.

On the basis of the highlighted ethical considerations and mitigating factors, an ethical clearance certificate for the study was provided by the University's Ethical Clearance Committee. Also, permission was provided my organisation to access the information as reflected in Annexure A.

3.7 Reliability and Validity

Literature indicates that issues of reliability and validity of research are important in any study. Similarly, Mentz and Botha (2012) contend that instruments used in the research to collect data, must be reliable and valid in order to verify the study's credibility and trustworthiness. Reliability is defined by Kelly (1997, cited in Mentz and Botha, 2012, p.80) as "the degree to which an instrument measures a construct the same way each time it is used under the same conditions with the same respondents." Therefore, reliability measures consistency of the data collected and ultimately the study findings and conclusions. Also, Mertler (2012) defines validity as the extent at which the study's results and conclusions can be transferable, generalised and declared accurate.

In this study, credibility and reliability were ensured through the process of triangulation in that interviews collecting primary data and document analysis gathering secondary data were used. In terms of validity, this study findings can only be generalised in the Gauteng province. As argued by Mentz and Botha (2012) to be important for measuring content

validity, the data collected through the two instruments was also measured against the reviewed literature.

3.8 Limitations

Primary data collection though telephonic interviews with four of the study respondents limited the richness of physical interaction, engagements and reactions that come with a face-to-face interview session.

Only Gauteng secondary and primary school cases that had been reported to SACE and finalised with a verdict and sanctions were used in secondary data collection through document analysis. The study may also have been strengthened if valuable information had been included from incomplete cases and GDE cases not forwarded to SACE (carried out in terms of Section 26 of the SACE Act).

3.9 Chapter Conclusion

This study followed a qualitative approach and was underpinned by the thematically based interpretivist research paradigm. Fifteen respondents were purposefully selected as the study's research sample drawn from the larger education and teaching profession stakeholders in Gauteng. In addition, semi-structured interviews and document analysis instruments were used to collect data in Gauteng and at SACE.

CHAPTER 4: PRESENTATION OF FINDINGS ON SACE'S REGULATORY ENFORCEMENT

4.1 Introduction

The purpose of the study was to explore the role of SACE in enforcing the code of professional ethics. In doing so, it examined barriers and enablers to SACE's enforcing of the code which are outlined in Chapter 5 as informed by the findings in this chapter. As highlighted in Chapter 3, the primary data for this study was collected through semi-structured interviews with a pre-determined interview schedule. In terms of the size of the study's sample, Chapter 3 also indicated that 15 research participants were selected, from various stakeholders, for semi-structured interviews. Profiles of the research participants' organisations/stakeholders were provided in the same chapter.

The respondents were practitioners and managers who had experience and knowledge of (a) SACE's regulatory role, (b) the code of professional ethics as a regulatory tool in the teaching profession, (c) enforcement mechanisms and processes for the code of professional ethics, (d) SACE, GDE and other teacher employers' disciplinary procedures and processes, and (e) institutions that influence the enforcement of the SACE code of professional ethics. This prior knowledge and experience were necessary and key to appropriately responding to the research questions.

- Thus, the main purpose of this chapter is to present the qualitative primary data gathered through the semi-structured interviews which were used to respond to the study's secondary research questions: *How does SACE regulate the teaching profession through the enforcement of the code of professional ethics in Gauteng*?
- *In what ways does SACE apply its enforcement mechanisms in responding to breaches of the code of professional ethics by teachers in Gauteng*?
- *What is the nature of the relationship between SACE and institutions responsible for supporting the enforcing of the code of professional ethics*?

The collected data is presented in the next section through the following key themes that are aligned to the study's research questions mentioned above: (a) *regulatory enforcement of the code of professional ethics*; (b) *application of the compliance and enforcement mechanism*;

and (c) *uncoordinated institutions, regulatory instruments and systems for enforcing the code of professional ethics*. Also, each theme is linked to sub-themes. Data presented on these themes are used to draw and conclude on enablers and barriers in SACE enforcing the code of professional ethics in Chapter 5.

4.2 Regulatory Enforcement of the Code of Professional Ethics by SACE

This section presents findings on how SACE regulates the teaching profession through the enforcement of the code of professional ethics in Gauteng. The research findings on this theme, were further divided into various sub-themes.

From the interviews conducted, there was an emerging consensus, at face value, that SACE's existence as the first non-racial professional body in the country brought some hope to the status and standing of the teaching profession. Similarly, the availability of the code of professional ethics was valued with an understanding that it will ensure that the profession's ethical standards are maintained. Interestingly, in line with the theory of public interest, very little was said explicitly about the role of SACE in regulating the profession in the interests of the public and learners. The focus was on the profession's self-interest as revealed in the succeeding sections.

4.2.1 SACE code enforcement scope and jurisdiction

The SACE Act (2000) defines SACE's code enforcement scope and jurisdiction in terms of: first, teachers that are professionally registered with the council in line with Section 3 of the Act; and second, transgressions or acts of misconduct regulated through the code of professional ethics. Thus, SACE has a regulatory framework and instruments that restrict entry into the teaching profession on the one hand, and on the other hand, determine exit from the profession based on sanctions resulting from non-compliance with the code. In accordance with this function, the data collected indicated that the second area of jurisdiction has a bearing on the effectiveness of the enforcement of the code by SACE. In this case, SACE's scope, and jurisdiction in enforcing the code were reflected through transgressions of the code by teachers in the teaching profession.

As shown in Figure 6 below, the code of professional ethics determines the professional relationship between a teacher and various school communities. These relationships become

important in clarifying SACE's scope and jurisdiction for prioritising transgressions to deal with.

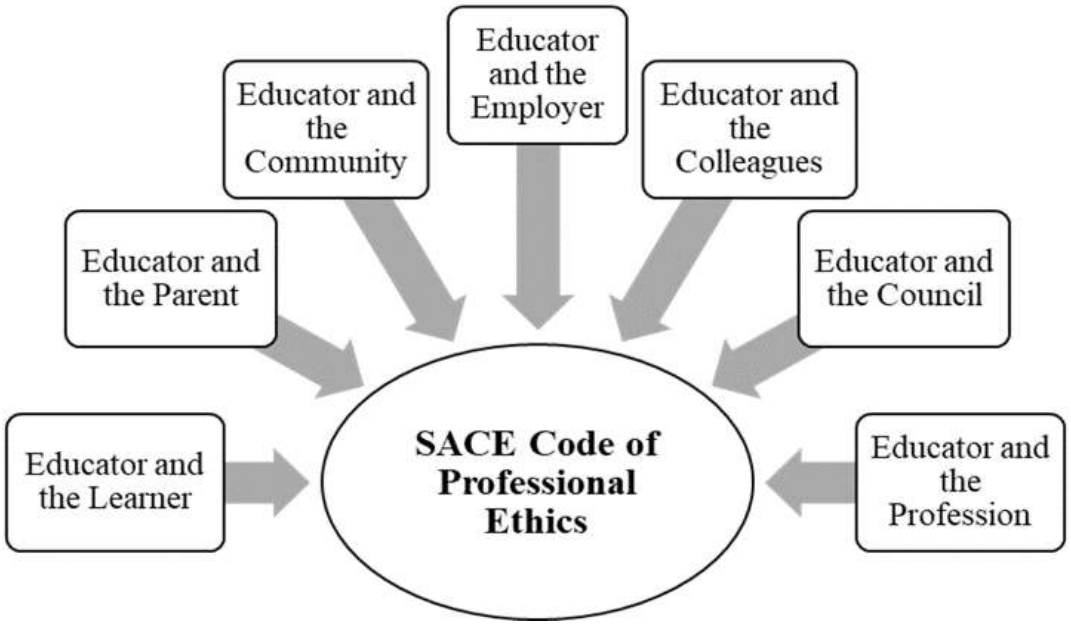


Figure 6: illustration of the relationship between the teacher and various stakeholders

According to information from the respondents whose jobs involved the enforcement of the code, together with secondary data from the document analysis, Figure 6 assists in determining the relationship between a teacher and various components in terms of ethical conduct. Most respondents indicated that the SACE code is too general and creates confusion and duplication in the reporting of breaches of the code in the profession. Unlike the EEA's Sections 17 and 18 which spell out serious and less serious acts of misconduct respectively, the SACE code does not differentiate between the two. One teacher employer respondent said:

> Perhaps there is a need to have a relook at the code of professional ethics because it appears to be all-encompassing. Also, from a code of professional ethics point of view, what does it mean to put the teaching profession into disrepute? Most importantly where does SACE and the employers start and end on these matters and where do they need to complement one another? If SACE is focusing on the relationship between an educator and the learner, employer, profession, community, parents, colleagues, and council, then it means SACE is dealing with all the

> breaches, including the ones from all employers. In this case, you are bound to have duplication in prosecuting teachers and this amounts to the wasteful expenditure of the thin resources that are already scarce.

Regarding the same issue, another respondent argued that:

> ...perhaps SACE is biting more than it can chew with regard to its scope as reflected in the code of professional ethics as it stands. It also appears that there are blurring lines between SACE professional matters as reflected in the all-encompassing code and employers' employment and labour relations matters.

The voice of many respondents underscored that SACE should only focus on those serious professional misconduct cases that violate the code of professional ethics and put the teaching profession into disrepute. Examples of such professional misconduct were provided as follows:

> ...sexual abuse of learners by the teachers, sexual abuse of colleagues, corruption, administering of corporal punishment on learners, physical assault of colleagues and parents, murder and other related matters.

It was said by another respondent that:

> In order to be effective, have biting teeth, and play its role meaningfully, SACE should leave other simple, ordinary and petty teacher misconduct to the employers, for example, teachers shouting at each other, victimisation, alcohol and substance abuse, absenteeism from work, failure to mark scripts and others. Otherwise, you become all over as a professional council.

Another respondent argued that:

> Even if SACE has a mandate to regulate the teaching profession through the code of professional ethics, it must not forget that it is a council **FOR** teachers, and therefore it should stand for the elevation of the teaching profession and not for the discipline of teachers because it is known for that.

This respondent was of view that:

> SACE should explicitly define the kind of code breaches it should be handling and not be seen as the "disciplinary arm and extension of the DBE and the GDE. This confusion of who does which cases leads to people reporting cases to SACE and GDE at the same time with the hope that one of the two organisations will respond. As teacher unions we continue to run between employers and SACE on the same teacher and same matter over and over again.

An important point made was that SACE should rethink and clarify its code jurisdiction space in order not to continue being seen as overstepping its scope into the labour relations and employment issues that belong to the employers and the ELRC.

Many respondents perceived that SACE is viewed by the profession to be primarily concerned with punitive measures for big and small transgressions of the code by the teachers. One of them substantiated this view by saying:

> SACE is a big stick policing teachers' behaviour, prosecuting them and discipling them rather than protecting them and the profession as whole. SACE is also well-known in schools and media to be 'cracking the whip', in terms of those teachers that fail to behave themselves in the teaching profession. It dismisses our members and thereby perpetuating the country's problem of high rate of unemployment. So, as teachers we are paying R 15 monthly to SACE to contribute to our own downfall This might really be showing that SACE is really applying the code but we are, however, we are still not sure how effective it is in doing that.

Generally, the teacher unions' voice was dominant in this section, given their prominent role in representing and defending many of their errant members during SACE investigations and hearing processes.

4.2.2 Persuasion and compliance-seeking strategies

The reviewed literature emphasised the importance of communication, advocacy, education, capacity building and support for teachers as being critical for persuading compliance, before the intense and punitive enforcement of the code is implemented. As a result, this sub-theme

presents findings of SACE's persuasion and compliance-seeking strategies in code enforcement.

4.2.2.1 SACE's invisibility regarding supportive advocacy, communication and continuing development

The respondents were unanimously of the view that SACE is invisible both in the public domain as well as in the teaching profession. This was seen to negatively impact on the understanding of its regulatory role by the teachers and the public alike. Nevertheless, some respondents appreciated SACE's establishment as a first non-racial unitary professional regulatory body in the country. However, they generally associate the body with punishment and a big stick.

Certain respondents also acknowledged the limited work done by SACE in conducting advocacy sessions for teachers on the code in certain districts and schools in Gauteng. However, the sessions were criticised for their short duration and inconvenient timing. As one respondent said:

> ...the sessions conducted by SACE on the code were two to three hours microwave workshops that took place in a rather more threatening approach, worse of them all, they took place after school when teachers were tired and thinking of going home with less concentration.

It was also said by the respondents from the independent school sector that:

> ...there has been little or no effort by SACE to ensure that the independent schools are also serviced in terms of raising awareness on the code and its enforcement processes and mechanisms. We have our own one disciplinary procedure either at Association or school level. Sometimes we become confused and frustrated on the role that we are supposed to play in relation to SACE, as employers, when it comes to the disciplinary matters.
>
> In one instance, a teacher in one of our big schools was accused of racism. The next day we were surprised to see SACE in our school unannounced to conduct the investigation even though we were also busy with the same process. This is because were not aware of the SACE's processes".

Some respondents said in cases where the code awareness is done, it is limited to the teachers and not the public, parents and learners whose interests are supposed to be protected by the enforcement of the code. This respondent from the employers said:

> ...not even parents are aware of SACE. They don't even know that they can report teachers' violation of the code to SACE as well. It is not our responsibility as employers to tell them because of the jurisdiction issues.

The issues raised by the respondents appear to be contributing to the low level of reporting errant teachers to SACE by the public, parents, employers and communities. On another point, an employer respondent underscored that:

> Other professions publicise sanctions taken against teachers who breached the code in the public gazettes and websites. However, SACE's sanctions on such teachers are not publicised to deter them from misconducting themselves. Because of lack of information, there are no mechanisms for schools and teachers to know teachers who have been struck off from the register of teachers, and the kinds of breaches linked to those sanctions. Worse, for us as employers, there are no systems and mechanisms to automatically check if a teacher is struck off the roll of the teaching profession before we employ him of her.

Also, a different employer respondent stated that:

> ...as employers we do not have any communication or information from SACE on how many of teachers breached the code, nature of the breaches and outcomes in terms of verdicts and sanctions. This information is needed for purposes of understanding the trends and being able to develop the relevant intervention and continuing professional development for our teachers to persuade them to comply to the code. Hence, I feel that it is prudent for SACE to publicise the breaches and sanctions trends to its constituencies, employers and stakeholders more often.

It was also noted that Gauteng does not have a SACE provincial office because the SACE national office is located in the province. However, even though SACE is in the proximity, it was argued by the respondents that SACE is not adequately advocating the application of the code of professional ethics and related processes in the province.

4.2.2.2 Capacity building and continuing professional development

A positive comment made by some respondents indicated that the existence of the code of professional ethics was a step in the right direction; it was seen to be attempting to restore the dignity of the teaching profession. There was also acknowledgement that a few capacity building sessions had previously been held in collaboration with the teacher unions. However, there was general agreement that SACE can perform better regarding developing dedicated programmes that capacitate the teaching profession on the code to enhance understanding and implications of non-compliance.

In making a plea to SACE to increase education of teachers, the comment was made:

> ...we see SACE too much in the media commenting on various teacher misdemeanours. But, we don't hear follow-up on these cases in terms of what SACE has done. We need to see and hear SACE's action and outcome being exposed more publicly so that the teachers can be educated on how their professional body is dealing with these matters.

A concurring comment form a respondent was:

> ...of utmost importance is that if the public, parents and teachers could know the type of cases SACE receives and how SACE deals with and finalises them, this could be a useful resource that could be seen and referred to as '**SACE CASE LAW'** or even **precedence** that people can refer to in the education system and teaching profession in particular. This could also serve as a resource material for training prospective teachers in universities and practising teachers in schools respectively.

Furthermore, input was made on how the SACE code of professional ethics could be actioned practically as part of developing and being supportive of teachers. This respondent's argument was that:

> ...currently the code is flowing from SACE Act as a document with the **Dos** and **Don'ts** clauses. It needs flesh in terms of practical scenarios emerging from the real cases SACE is dealing with on a daily basis. This will strengthen the development of teachers on the ground because SACE is not

> just a body of issuing the professional registration certificates but of promoting the development of teachers as well as outlined in its Act.

Another comment was that SACE needs to educate teachers in the independent schools on its role in enforcing the code and the impact of its verdicts and sanctions in the profession and public. This public employer said:

> ...what surprises me in most cases is that if the [GDE] dismisses a person and SACE struck him or her off, you will find that person teaching in a private school, and clearly this renders the role of SACE in enforcing the code of professional ethics ineffective.

Notably, data from the document analysis indicated that SACE developed a handbook for the code of professional ethics in 2002, in collaboration with the University of Natal's (now University of KwaZulu-Natal) Unilever Centre for Ethics. The purpose of this handbook was first to address the ethical dimensions of an educator in the education system and workplace, and second, to capacitate teachers in understanding ethical issues, being ethically competent, and be able to act ethically and make ethical decisions in their professional practice and lives.

Evidence shows that the handbook on code of professional ethics was used in preparing student teachers by the universities and continuing professional development by the employers and various providers; however, it had been left to gather dust in the SACE offices. In gathering information from the SACE respondents on their silence on this handbook, one said:

> This handbook helped teachers immensely in understanding ethical issues. However, it has not been updated for sometimes. Worse, the change in management and leadership in the SACE Division that manages and implements the code contributed to the handbook falling into the cracks and this is a waste of money and time and doing injustice to the teachers out there.

Respondents provided two generally opposing views, first, in terms of the invisibility of SACE regarding the role it is supposed to play in persuasion and compliance-seeking processes among the teachers. Further, the role should include advocating the regulatory role of SACE in the teaching profession, higher education institutions and public. Suggestions were provided on how to effectively use SACE data and information on the breaches of the

code. Suggestions were also given on how to advocate for the application of the code, and how to disseminate information to the public, parents and teachers on the code and its disciplinary procedures and sanctions. More importantly, there were also suggestions on how to use the same data and information to develop material, pseudo scenarios and SACE case laws and precedence to train student teachers in higher education institutions and provide continuing professional development to teachers. There were a few respondents who believed SACE was indeed playing its role in advocating the code and conducting sessions in developing teachers on the code and implications for non-compliance. However, SACE was criticised for its ineffectiveness and limited scale in carrying out these functions.

4.2.3 Sanctioning Teacher Miscreants

The data from document analysis, and which was confirmed by the SACE respondents, flagged the following as the legislated SACE sanctions:

- Receiving of a caution;
- Receiving of a fine not exceeding two months' salary which may be payable in full, half a salary, or being suspended;
- Name be removed from the roll of council (struck off);
- Potential indefinite removal from the roll, removal from the roll for a certain period, or being suspended for a certain period.

It was further pointed out that the most severe sanction is the removal of a teacher's name from the roll of professionally registered teachers for an indefinite period, especially for breaches such as sexual abuse, indecent assault, severe physical assault, racism and murder. According to the SACE officer presiding over disciplinary hearings, removal from the roll of professionally registered teachers means the teacher will not be employed anywhere in South Africa or the world because of not being suitable to work with children.

While respondents in section 4.2.2.2. commended SACE's code of professional ethics for restoring the dignity of the teaching profession, there was also the general perception that its sanctions are too harsh and create animosity between the teachers and the professional body. In justifying this view, one teacher union respondent was emphatic that:

> Remember for us as teacher unions, dismissal of a teacher by an employer and subsequent [striking]off from the register of teachers by SACE means

> losing a member, having a drop in membership confidence, and unemployed member. Therefore, SACE should be developing our members and protecting them instead of contributing to their joblessness.

This response continued by noting that the profession thinks about safeguarding its interests more than those of the learners.

4.2.3.1 Deviation from the legislated sanctions

SACE staff members, employers, principal associations, and teacher union respondents were unanimously of the opinion that the administering of corporal punishment on learners by teachers was rife in schools despite its being outlawed. In confirming this finding, document analysis data shows that corporal punishment continues to be the number one breach of the code in the teaching profession nationally. This conclusion was also based on the fact that for 2014/2015–2018/2019, a total of 1 333 (42.23%) out of 3 156 cases and incidences of corporal punishment were reported to SACE nationally, despite the punishment being outlawed by the country's Constitution, South African School's Act, and Children's Act. More so, corporal punishment has been declared a professional misconduct and a possible dismissible offence for teachers in line with Section 18 of the Employment of Educators Act and Section 3 of the SACE code professional ethics.

Remarkably, Table 5 below reflects the same trend in Gauteng where corporal punishment is the second-most frequent breach of the code reported to SACE. It also indicates that 133 (29.10%) out of 453 cases reported from the province were reported to SACE during the same year.

Table 5: Number and categories of Gauteng cases reported to SACE against teachers for 2014/15–2018/19 (SACE Annual Reports 2014/15–2018/19).

Year	Verbal abuse	Corporal punishment	Improper conduct	Sexual abuse	Fraud	Racism	Murder/attempted murder	No jurisdiction	TOTAL
2014/15	25	22	13	22	3	2	0	0	**87**
2015/16	16	19	12	13	2	1	0	7	**70**
2016/17	20	23	12	9	3	0	2	2	**71**
2017/18	19	21	12	13	0	4	0	6	**75**
2018/19		28	41	21	19	2	1	4	**153**
TOTAL	**118**	**113**	**90**	**78**	**27**	**9**	**3**	**19**	**457**

Considering the high prevalence of corporal punishment nationally and in Gauteng, respondents found the SACE sanctions to be too lenient when it comes to corporal punishment. A comment made by one of employer respondents indicated that:

> SACE is also ineffe**ctive at times because, for example, over 90% [of] corporal punishment** cases reported to them by employers are given advisory note or letter with no sanctions. So, in this case, the enforcement of the code depends on the context and reporter, and for me this amount to inconsistency and contradictions on the sanction enforcement process.

Another respondent dealing daily with the reported cases, mentioned that in line with one of the SACE Council decisions:

> An advisory letter came into effect in 2013. It is a letter that is forwarded to an accused teacher at the discretion of Council instead of proceeding with a disciplinary hearing against such a teacher. Most of these letters are issued in breaches of corporal punishment. Once an advisory letter is issued by SACE and ratified by the Ethics committee, the file is then closed with the proviso that the same teacher does not repeat the misconduct. Should the teacher repeat the misconduct; disciplinary proceedings get instituted and the file with the advisory letter gets reinstated and prosecuted. Advisory letters are issued only in instances where an educator has already been disciplined by a provincial department of education and a sanction imposed against such a teacher by the employer. This also only happens in instances where the corporal punishment was not severe in nature, maybe just few lashes or clapping a learner with no injuries.

In clarifying the advisory letter or note, another respondent underscored the fact that:

> It does not form part of the SACE legislated sanctions or the schedule of mandatory sanctions. They can be referred as ‘grandmother or grandfather talks and not sanctions at all.’ Also, the advisory letter is not included in any SACE formal policy or disciplinary procedure.

One respondent picked up the fact that the issue of corporal punishment and advisory letters is a contradiction in terms for enforcement. They advanced the reason that:

> All other breaches of the code that are sent by employers to SACE in line with Section 26 of the SACE Act, except for the corporal punishment, already have sanctions but do not get advisory letters. For example, sexual abuse, verbal abuse, fraud and others. These cases come to SACE with sanctions, however, they still go through SACE's independent disciplinary processes, with verdicts and another relevant sanctions by SACE.

In conceding the leniency on dealing with corporal punishment breaches, a respondent argued that it contributes to the weakening of the SACE's regulation tools and enforcement of the code. They maintained that now they understood why corporal punishment will never go away in this country because:

> It is protected by the same professional body that is supposed to protect the interests of the children. This is contributing to SACE enforcing the code of professional ethics ineffectively and inconsistently. It can also be viewed as selective enforcement of the code. We are also noting with concern that SACE is not even reporting these corporal punishment cases to the Department of Social Development's National Child Protection Register. SACE is doing this because its council is ruled by fear of destabilising the teaching profession in terms of the teacher demand and supply.

Some respondents also mentioned that the decision taken by the SACE council to give teachers who administer corporal punishment advisory letters appears to be undermining the fact that corporal punishment is violence, degrading and violating children's human dignity. However, an employer respondent said:

> Corporal punishment is a dismissible offence in terms of the Employment of Educators Act, and outlawed by the constitution and Corporal Punishment Act, various national legislation, policies and international declarations. As a regulatory body, SACE is in contradiction with its own legislation and the other national laws.

SACE was also seen as perpetuating violence in administering the advisory letters on corporal punishment breaches. One respondent went to the extent of saying:

> SACE does not view slapping a child on the face or giving him or her some few lashes as breaches that deserve some punishment on the part of

> teachers. In doing so, it means SACE is looking at the effect of corporal punishment from a naked eye in terms of physical injuries that could be seen. It forgets about the psychological and emotional implications of that beating. SACE is treating the corporal punishment breaches superficially to an extent of accommodating what it should not be accommodating, especially because the bulk of breaches in the country are in this area.

The respondent went on to give an example of a teacher who gave three lashes to a Grade 2 learner, who then fainted and died immediately. In another case in the media, a Mpumalanga principal gave a Grade 6 boy some lashes for stealing R100, whereafter and the boy was paralysed and he died two weeks later. Both cases were litigated by the respective families.

Another respondent mentioned that:

> Initially it was proposed to the SACE council that teachers who were reported to SACE by their employers for administering the code of professional ethics should be given the caution sanction in line with the SACE Act as it was the case prior to 2013. However, council refused because it would mean that SACE should use its resources to apply the disciplinary processes independently and there were far too many teachers in this category. Also, council felt that the resources would be utilised better for the sexual abuse and severe physical assault breaches where there are injuries.

In registering their disapproval of this council decision, this respondent had the following to say:

> We register our disappointment in the manner in which the issuing of the advisory letters is handled. The professional council is bending the rules because of the circumstances. This is where council started to make mistakes in regulating the profession by enforcing its own code of professional ethics. One can say this is a political game, although it is not a nice statement to make. I want to say this on record that, our Masters in council are conflicted in terms of their union members who are likely to lose their jobs. We should go back to council and say no to corporal punishment.

In providing reasons for deviation from the legislative sanctions, disciplinary procedures and schedule of mandatory sanctions regarding corporal punishment transgressions, another respondent maintained that it involves a great number of teachers. Therefore, if SACE Council were to enforce the disciplinary processes and related sanctions for corporal punishment, it would affect the country's teacher supply and demand. It appears that the effective endorsement of the code is also affected by internal governance structure politics, resource constraints and concerns around destabilising the teacher supply and demand in the teaching profession.

A school governing body interviewee contended that:

> SACE chooses to protect the destabilisation of the teaching profession at the expense of the children when it is supposed to protect them. In looking at corporal punishment as not severe when a child is clapped or given few lashes, SACE reduces it to a physical activity only. In doing so, it forgets about the emotional and psychological implications of corporal punishment on the children.

The respondent further recalled the fact that one judge sent a strong message to the teaching profession by sending one teacher to jail who caned a child in Gauteng, for a period of six months.

4.2.3.2 Enforcement of the sanctions by fining

Fines form part of SACE's legislated administrative sanctions. Both primary and secondary data indicated that the fine sanction is applied in two different ways to those teachers found guilty of transgressing the code of professional ethics. First, it is applied in most of the reported cases that fall under a category of professional misconduct with incidences such as, being drunk on duty, victimisation, using foul language, absenteeism, ghost marks for students, fraudulent qualifications, falsifying documents, examination leakages and others. Second, it is also applied in instances where a sanction may remove the teacher from the register of teachers. However, the removal might be suspended for a **certain period** with the understanding that the educator must not be found guilty of a similar breach in future. If they are found guilty of a similar breach, a harsher sanction will be applied. A fine payable over a period of 12 months is also issued. From the information shared by the SACE respondents

and documents analysed, 51 (25.12%) out of 203 teachers sanctioned in Gauteng, were fined. Their fines ranged from R5 000 to R25 000 as shown below in Figure 7.

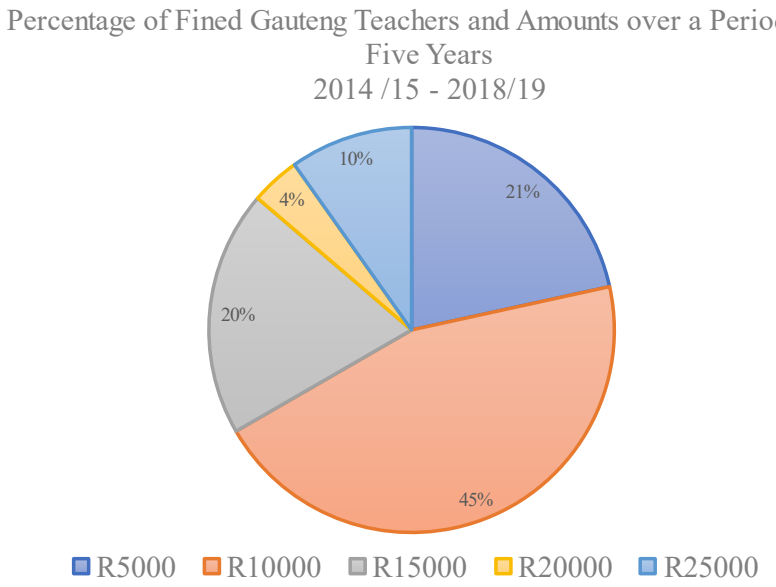


Figure 7: Percentage of Fined Gauteng Teachers and Amounts over a Period of Five Years 2014/15–2018/19

According to Figure 7 above, 45% (23 out of 51) of teachers were fined R10 000. This was followed by 11 (21%) who were fined R 5 000 each, 10 (20%) fined R15 000, 5 (10%) fined R25 000 and 2 (4%) fined R20 000. The 51 Gauteng teachers were jointly fined R550 000 over a period of five years. The overwhelming majority of these teachers were fined for breaches such as severe physical assault of learners and colleagues. Others were fined for intimidation, threatening colleagues with guns, employing unregistered teachers, passing racist remarks, and using foul language. The majority of those who were fined R20 000 and R25 000 had fostered a love relationship with one or more learners or had kissed learners. Although SACE issues sanctions in the form of fines, two of the SACE respondents underscored the fact that they are difficult to enforce for the following reasons:

a) Lack of consequences for the teacher in case of non-payment;

b) Absence of the debt collection policy, strategies and systems;

c) Failure to put in place systems that will ensure that teachers sign a debt acknowledgement form in order to commit themselves to pay their fines;

> d) The mail used to send the fine sanctions to teachers is not registered through the post office. As a result, many teachers claim that they did not receive fines letters and do not know anything about paying the fine.

Another respondent had the following to say:

> Fines are difficult to collect. Teachers who are fined pay for few months, but stop along the way. There have been no consequences for non-payment, as a result many fined teachers do not feel obliged to pay.

Yet another respondent said:

> The majority of teachers who are fined are in public schools. So, SACE should consider entering into a Memorandum of Agreement [MOU] with the Gauteng Education Department [GDE] for purposes of deducting teachers' fines through the Personnel Salary System (PERSAL) as a matter urgency. This will make SACE's processes of implementing the sanctions easier.

4.2.3.3 Punitive sanctioning of teacher miscreants

As indicated earlier, removal or being struck-off the register of teachers has been viewed as one of the severest sanctions by SACE. The findings revealed two types of sanctions related to the removal of the teacher from the register of teachers (see Table 6).

*Table 6: Two types of SACE's punitive sanctions (SACE, 2020)***.**

Indefinite removal from the Register of Teachers	**Removal from the Register of Teachers for a period with the possibility of conditional readmission into the profession**
Removal from the register of teachers indefinitely without an option of readmission into the profession anymore because the teacher is not suitable to work with children.	Removal from the teacher's roll for a minimum of 5 to 10 years, of which the teacher can reapply for readmission and his or her admission shall depend on the documents of evidence of rehabilitation. The SACE Council reserves the right to readmit such an educator back into the profession.

Struck-Off Indefinitely

As stated earlier by the SACE respondents, "struck-off indefinitely" means a teacher is removed for SACE's register of professionally registered teachers indefinitely and will not be allowed to teach anywhere in the Gauteng province, South Africa or the rest of the world. This sanction also confirms that the teacher is not suitable to work with children.
A respondent alluded to the fact that:

> In order to declare a teacher not fit to work with children, SACE is required by the Children's Act to further report such teachers to the Department of Social Development (DSD) for purposes of including their names into the National Child Protection Register (NCPR), in cases where a minor (child below 18 years of age) is involved.

Some respondents noted it was evident that SACE started reporting the Gauteng struck-off sanctions to the DSD's NCPR in 2016. According to the SACE records, and as confirmed by this respondent:

> Only five teachers from Gauteng had been reported to the DSD by March 2019. The inclusion of the names of these teachers in the NCPR will ensure that they are not suitable to work with children anywhere in the country.

Likewise, three respondents insisted that SACE has a legislated obligation to send all sexual abuse cases with "struck off indefinitely" sanctions to the South African Police Services (SAPS) for criminal justice processes. In instances that these reported cases are convicted, the concerned teachers' names will then go into the Department of Justice and Constitutional Development (DOJC)'s National Sexual Offenders Register.

"Struck Off for a Period" with Possibility of Conditional Readmission into the Profession

In explaining this sanction, the collected data from some respondents revealed that there are instances where the merits of the case of teacher misconduct dictate that the teacher be struck off the roll of teachers for a particular period (2, 5, 10 or 15 years). Unlike the "struck off indefinitely" sanction, this sanction has possibility of readmitting the teacher back into the profession. The final decision on the readmission will be based on the fulfilment of certain conditions such as, rehabilitation or developmental programme, anger management and the

same offence is not repeated again. If the breach reoccurs, then an indefinite striking off sanction will be applied.

According to the SACE record presented by the respondent in a follow-up interview session, 27 (13.30%) out of 203 Gauteng teachers with misconduct cases reported to SACE, were struck off the roll with possibility of conditional readmission into the profession. In addition, SACE has reinstatement hearings for those teachers who fall under this category and want to return to the teaching profession after their rehabilitation process and struck-off period has ended.

4.3 Application of the Compliance Monitoring and Enforcement Mechanism

The theme on the application of the compliance monitoring and enforcement mechanisms is aligned to the secondary question: “In what ways does SACE apply its enforcement mechanisms in responding to breaches of the code of professional ethics by teachers in Gauteng?” From the gathered data, the following sub-themes emerged: *non-compliance detection and reporting of the breaches of the code to SACE*, *evidence gathering processes and procedures*, and *resources to handle compliance monitoring and enforcement processes*.

4.3.1 Non-compliance detection and reporting of the breaches of the code to SACE

Respondents indicated that the detection of non-compliance with the code, by teachers, is dependent on reporting of such transgressions to SACE by the third parties, such as, the general public, media, parents, learners and colleagues. Additionally, respondents representing employers and SACE further indicated that Sections 26 of the SACE Act dictates that employers must report their finalised and sanctioned cases and supporting documents to SACE, except where the sanction is a caution or reprimand. Another employer representative referred to the 2017 DBE Protocol on Incidences of Corporal Punishment in schools and indicated that, it also requires that teachers that are found guilty of physical assault of children with intent to do grievously bodily harm must be reported to SACE for the evaluation of their professional standing and status.

One respondent raised the following concern:

> While it is mandatory for the employers to report cases of teacher misconduct to SACE, they do not comply because SACE does not have the mechanisms and legal authority to enforce that. It does not have the legislative powers and sanctions to compel the employer to report these breaches. Therefore, who do you hold accountable and with what consequences? Hence, they treat reporting of the breaches to SACE as a voluntary exercise.

Because of non-compliance and the low level of reporting generally, another respondent mentioned that:

> There is a general perception in the teaching profession that SACE as a statutory regulatory body does not demonstrate that it has teeth. It is for this reason that the code of professional ethics continues to be violated by the teachers and, there is no reporting. We are not even sure if SACE has some mechanisms to monitor these violations and ensure that they are dealt with.

A considerable number of respondents supported the comment above, maintaining that there is under-reporting in the province. Some of the reasons for under-reporting were:

- Political and administrative directives not to report certain cases in order to protect the image of the province;
- Selective reporting by the employers;
- The public not clear on the protocol and processes to report to SACE;
- Lack of awareness of SACE and its role in the public space and as a result parents and communities fail to report breaches accordingly;
- SACE failing to define the jurisdiction of cases it deals with;
- Absence of Gauteng and national periodic reports from SACE indicating the reported breaches and how they were finalised in terms of the verdicts and sanctions; and
- General failure by the independent schooling sector to report teachers' violation of the code of professional ethics.

4.3.2 Evidence gathering procedures and processes

Following the detection and reporting of breaches of the code, interviewed investigators, prosecutors, presiding officers and respondents who defend teachers during investigations and hearing processes, were in unison that SACE handles the Gauteng reported transgressions in line with the procedure as outlined in Figure 8.

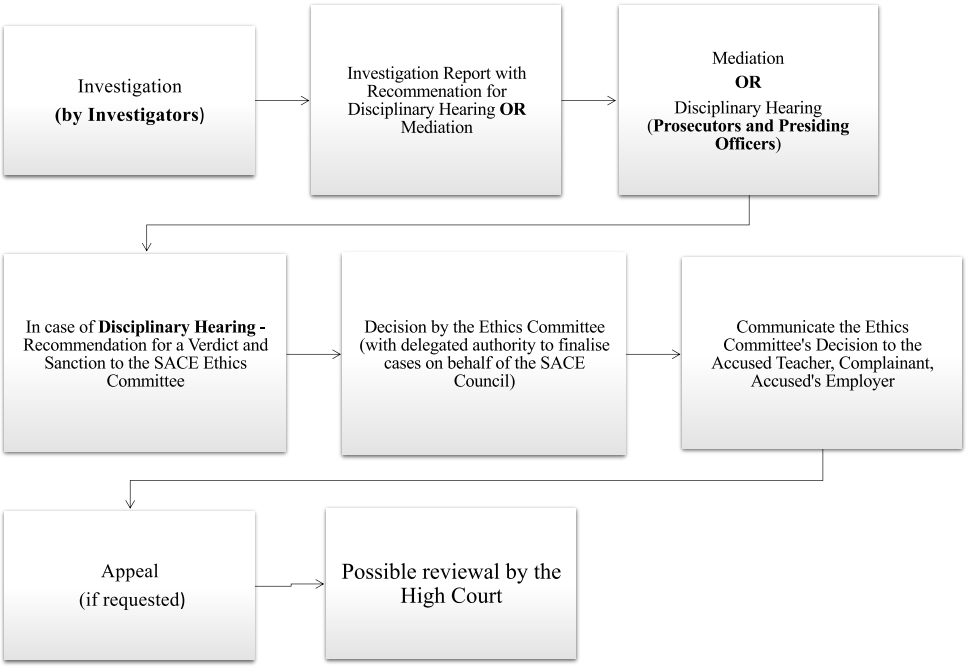


Figure 8: SACE procedures in handling breaches in the code of professional ethics

In explaining processes and procedures in Figure 8 above, as corroborated by data from the document analysis, and mentioned that:

> Evidence collected from the investigation process may lead to one of the three processes. Firstly, dismissal of the case because there is no evidence, Secondly, proceed with the case to hearing because there is evidence for a case to be answered, and thirdly, conduct mediation or dispute resolution at a school level and close the case on mutual agreement.

In looking at the role that SACE plays in mediating some of the cases where the code is breached, one of the investigators said:

> While the mediation process is good, it does not work at all times, nor is it liked by all the teachers. At times, even though the issue can be resolved amicably and stabilise the situation at school, some complainants feel adamant that charges must be preferred against the accused no matter what because the complainant's interest is to see the accused going down. Hence lack of interest in solving the matter.

Furthermore, in terms of the governance structures for handling investigations, hearings and appeals processes, it was confirmed by three respondents that SACE has an Ethics Committee (ETHCOM) that approves both investigations and hearings. One of the respondents registered her discomfort by saying that:

> I am worried about what is known as, the 'double dipping' by one Committee on two separate functions of investigations and disciplinary hearings which are supposed to be conducted separately. This one Committee is a player and a referee at the same time because it adjudicates on recommendations for investigations, reports and verdicts from the hearings, including the issued sanctions. Are they not supposed to be having two different committees with separation of powers?

Also, the governance structure of SACE (the Council) has been criticised for lack of independence and being dominated by the teacher unions. Therefore, a respondent argued that:

> This one teacher-union-dominated council has an impact on the independence of the SACE's [ETHCOM] which adjudicates on investigations and hearings on the breaches of the code. Teacher unions play a double agenda here. They form part of the SACE council and its [ETHCOM]. At the same time, the very same unions also play a part of defending teachers, in their respective unions, on the breaches of the code of professional ethics.

4.3.3 Resources to Handle Compliance Monitoring and Enforcement Processes

Data-gathering revealed that there were 14 temporary or contracted panellists and six permanently employed SACE legal officers that handle between 500 and 700 nationally reported breaches of the code of professional ethics yearly, inclusive of Gauteng's ones, with the latter ranging from 65–80 breaches. Notably, four out of the 14 contracted panellists were employed full-time in GDE as labour relations officers responsible for handling the same cases reported to SACE—however, from an employer perspective.

According to this respondent:

> The idea of using temporary panellists was informed by the concept of peer review mechanism where teachers' breaches of the code of professional ethics are investigated and prosecuted by other teachers. This is part of the profession regulating itself.

Speaking on behalf of the principals in Gauteng, this respondent also argued that:

> It is important that SACE explore the inclusion of principals and deputy principals as part of panellists dealing with investigations and hearings so as to represent them from an informed position when dealing with breaches committed by them. For example, where principals and deputy principals are charged for financial mismanagement in schools, those panellists will understand the dynamics much better.

On the other hand, some of the respondents did not support the idea of having different SACE panellists who are employed on a temporary basis. In fact, this respondent strongly believed that:

> All panellists should be employed permanently by SACE in order to do quality work, prepare in time and increase SACE's internal capacity to regulate the teaching profession thorough the code of professional ethics.

One of the two respondents argued that:

> The current system of SACE panellists is open to corruption and manipulation because it is operating on an ad hoc basis, worse some of the temporary panellists are employed by the [GDE] and this raises eyebrows.

A respondent raising a similar concern went to the extent of saying:

> Our ears are on the ground and we often hear rumours about these SACE panellists. SACE is using different people from schools, law firms, Gauteng Department of Education to deal with the breaches of the code of professional ethics. Some of these people are not honest and the process is open for corruption. I have just heard some people saying 'I have paid R2 000 so that a guilty verdict is not pronounced'. You can see that the process is compromised is so many ways with ad hoc people that are coming from different angles in the system.

This comment may resonate with the regulatory capture issues.

4.4 Code Enforcement Relationship Between SACE and Other Institutions

In this section the collected data and related theme were based on the following research question: "*What is the nature of the relationship between SACE and institutions responsible for supporting the enforcing of the code of professional ethics*?"

4.4.1 Uncoordinated Institutions, Regulatory Instruments and Systems for Enforcing the Code

The respondents were unanimous in saying that there were no formalised working relations between SACE and other institutions that regulate the teacher behaviour in the teaching profession. Data from the document analysis indicated that the DBE had attempted to develop protocols mainly on how to report and handle sexual abuse and corporal punishment transgressions (however, this was from the employer's side). The same document analysis evidence also showed that in 2018, the DBE, SACE, DSD, ELRC, DOJC and PEDs attempted to develop a protocol and memorandum of understanding on the reporting of cases and sharing of data and information only. However, follow-up with the respondents during the interviews indicated that this memorandum of understanding has not been implemented. Other respondents highlighted the limitations of the MOU owing to only being focused on the reporting of cases and sharing of data/information.

One SACE respondent indicated that:

> The reporting of sexual abuse cases involving minors, to the SAPS, has not taken place so that teachers who end up being convicted through the criminal justice system can be taken to the sexual offenders' register. Effectively it means that the DOJC will not have included cases of sexual abuse by teachers in its sexual offender's register. It's a pity the developed protocols by the DBE and partners are gathering dust while abused children are suffering.

In adding to this comment, the respondent said, "by the way, the SACE sexual abuse cases involving minors were reported to the DSD's child protection register only since 2016".

Furthermore, in unpacking the dynamics and complexities around the uncoordinated nature of enforcing the code, several issues were raised. Various respondents flagged the issue of multiple and overlapping reporting, investigations and hearings. Teacher unions view these multiple hearing and sanctioning processes as stressful and too much for the teachers. As a result, they refer to them as:

> ...triple or quadruple prosecution of teachers. This is unfair for our members and there is just too much duplication, waste of resources and time. A teacher is put in this predicament three to four times and it becomes enduring for up to a year or two. Remember this is the same teacher, same process over and over again, same witnesses and same documents. For us it becomes difficult and it means pulling as many children to come and witness. Again, this means more witnesses, more work and more unreliability in terms of what it is to be disputed.

A union respondent noted:

> As a union representative, I find it even difficult to work with these many disciplinary processes. Also, SACE has too many charges on one case. In this one case, the employer charged a teacher for the alleged sexual misconduct. But in terms of SACE, he was charged for everything that the child might have said during the investigation process. It looks like SACE is fishing and looking for catching a fish in one of these many charges. I don't think it should be like that because we are looking at the breach of the code of professional ethics. The breach is either committed or not. There

> should be no expedition where someone like SACE is going to look for something. So, in defending a teacher, I may start with his case which has one or two charges from the employer's side. While I am busy with the defence, I must run and represent the same teacher on six other charges on the same case by SACE.

Furthermore, the data pointed conflicting verdicts and sanctions being rife in the process of enforcing the code. A respondent provided the following example:

> In one sexual abuse case scenario, the employer may find the teacher guilty and SACE may find the same teacher not guilty on the same case. In this instance, the teacher will be unemployed because of the employer's dismissal sanction. However, the same teacher remains a bona fide professionally registered teacher in the SACE's roll of teachers because SACE's independent processes did not find him or her guilty since the parents chose to withdraw their child as a witness. In my experience, this withdrawal is made because of the secondary trauma to the child and not that the breach was not committed by a teacher. In this case the teacher may find another teaching job in a public school in another province or in an independent school.

In expressing the frustration by the GDE officials, the same respondent had the following to say:

> Recently the Gauteng Department dismissed a teacher, but SACE processes did not find him guilty on technicality grounds. This gives the teacher an impression that the Department is harsh and SACE is lenient. There are many cases of this nature and the Departmental officials are suspicious that the SACE panellists are being bribed.

Another respondent said:

> I am really disappointed with a situation where the teacher is found guilty by us in the Gauteng Education Department [GDE] but not guilty by SACE, especially after working so hard in preparing the case and doing my best in the prosecution process.

Some respondents indicated the ongoing frustration from unresolved tension between Section 3 of the SACE code of professional ethics and Section 17 of the EEA. In venting their frustration, a respondent said:

> I am responsible for managing and implementing Section 17 acts of misconduct in my workplace on behalf of the employer. It has been long that this confusion between the code saying teachers must not have any sexual relationship with a learner at any school, and the EEA limiting that sexual relationship with a learner at a school where the teacher is working. This issue is confusing us as implementors and teachers who read Section 17 of the EEA and get surprised when SACE charge them for having that sexual relationship with a learner in another school where they are not teaching.

Another respondent asked the following:

> Really! What will it take for SACE and [GDE] or even DBE to come together and correct this confusion created by their policies and code, especially because this is affecting sexual abuse of learners in schools?

Lastly**,** evidence revealed that there are instances where a breach of the code of professional ethics is reported directly to SACE only and not to other bodies. If the SACE disciplinary hearing process finds a teacher guilty with a struck-off sanction, he or she is deemed to have resigned from their employment. However, data highlights the tension where SACE does not have the power and authority to dismiss a teacher from employment; it can only strike them off the roll of teachers. In quoting Section 15(2) of the Employment of Educators Act verbatim one respondent said:

> The Employment of Educators Act 1998 Section 15 (2) directs that if the name of an educator is removed from the register of educators kept by The South African Council for Educators, the Educator shall, notwithstanding anything to the contrary contained in this Act, be deemed to have resigned with effect from the day following immediately after the day on which the Educators name was struck off.

Therefore, this respondent underscored that:

> In line with the Employment of educators Act, the enforcement of the SACE sanction is dependent on the Gauteng Education Department [GDE] and other independent school employers in terms of the dismissal of the teacher after receiving the struck-off-the-roll sanction from SACE.

In highlighting the challenge with enforcing employer dismissal sanctions at times, one respondent pointed out that:

> I have seen many teachers who are dismissed by the Gauteng Department of Education but working in other provinces and sectors, which means SACE did not remove them from the register of teachers. Currently, it seems as if nothing precludes you from teaching in another school or province or even private school especially if I am not barred from PERSAL satisfactorily. I am telling you; no one can follow me from province to province because of the cracks in the system. Also, if there is communication breakdown between the Gauteng Department and SACE, I will be removed from the register of teachers on paper but remain employed somewhere else. We know of these cases on the ground, they are existing.

4.4.2 Tension in Implementing of the ELRC Collective Agreement and Enforcing the Code of Professional Ethics

The data gathered from the Gauteng PELRC respondents revealed that the ELRC employer-employee parties have signed an agreement (**ELRC Resolution 3 of 2018**) that takes over the process of dealing with sexual abuse misconduct cases between a teacher and a learner in the public schooling sector. One respondent was adamant that:

> The ELRC overstepped its mandate of focusing on the dispute resolution and arbitration of teacher dismissal cases from the public employers on investigations and prosecution of the sexual abuse acts of misconduct. ELRC does not have a mandate to prosecute cases and in doing so, it has complicated the existing multiple investigations, prosecution and sanctions processed in the education system and teaching profession. This shows the undermining of the SACE mandate by the ELRC because it was only consulted after the decision on this collective agreement was reached.

Another respondent, feeling disappointed by the ELRC's collective agreement on the sexual abuse cases, said:

> ...the ELRC collective agreement gets even more interesting because, the very same ELRC teacher unions and employer parties that are signatories to this collective agreement are also sitting in SACE playing governance role and some as members of the SACE's [ETHCOM] overseeing the investigations and disciplinary hearings on the same sexual misconduct cases.

In defending the ELRC decision, a respondent argued that:

> ...the collective agreement was signed with an aim of protecting children who are victims of sexual abuse against secondary trauma as witnesses in one case with various disciplinary hearing platforms that take place in various institutions first, in terms of teachers' public employer (GDE) where the disciplinary hearing involves a learner is a witness. Second, if a teacher chooses to refer a dispute to the ELRC arbitration process upon dismissal by the employer, the learner will have to testify again. If the ELRC arbitration awards confirm the dismissal of a teacher, his or her name will be entered into the Department of Social Development's National Child Protection Register to declare the teacher as a person who is not suitable to work with children. This action means that you cannot work with children in whatever capacity.

In expressing their disapproval of the ELRC resolution 3 of 2018, one teacher union respondent said:

> ...while the teacher has an option of taking the case for review at the labour court in terms of this resolution, it has taken away the teacher's right of appeal". It may make sense in terms of protecting the best interest of the child, but it does not make justice sense on the part of the teacher. I also believe that in current climate learners can frame you and you do not have a recourse. Therefore, there is need to balance the interests of the child and justice for the teachers, otherwise this resolution is going to put many people out of the job.

Lastly, the same sexual misconduct case may be referred to SACE directly by any complainant or through the employer. The latter is done upon dismissal of a teacher or by an ELRC dismissal arbitration award for a teacher for the purposes of SACE striking off the same teacher from the roll of teachers. In terms of the ELRC Resolution No. 3 of 2018, the dismissed teacher's name will be sent to SACE after the DSD has included his or her name into the child protection register.

The concerned respondent argued that:

> For SACE, that will be an after-effect process because, SACE will go through the independent hearing process in order to hear the case again prior to enforcing the struck-off sanction. It is important to note that the same learner will testify again, possibly, for the third time. While this agreement has good intentions in terms of looking at the best interest of the child, it also has tensions, power play and governance issues that need to be examined closely by SACE.

Another respondent raised the concern that:

> the ELRC process took away SACE's independence and stole SACE's legislated mandate to deal implement the code as a professional regulatory body, as well as, the powers of the employer to enforce Sections 17 and 18 and Schedule 2 in the EEA. If the teacher is taken to the DSD's child protection register, then the whole process done by SACE become a paper or academic exercise as the ELRC calls it. Technically, SACE is forced to rubber stamp the ELRC arbitration award and just struck the teacher off the roll without following its independent process. Therefore, this implementation of ELRC Resolution 3 of 2018 undermines and weakens the SACE regulatory role and enforcement of the code of professional ethics if I may say.

All the findings presented in this chapter are analysed further in Chapter 5.

4.5 Chapter Conclusion

This section responded to the purpose of the study by presenting findings in line with the study's research questions and related interview questions as reflected in the semi-structured interview schedule.

Accordingly, findings from the collected data were categorised into three key themes as follows: (a) *regulatory enforcement of the code of professional ethics*; (b) *application of the compliance and enforcement mechanism*; and (c) *uncoordinated institutions, regulatory instruments and systems for enforcing the code of professional ethics*.

From the *regulatory enforcement of the code of professional ethics* theme, the effectiveness of SACE in enforcing the code of professional ethics was discussed. Key issues highlighted included, the need for SACE to clarify its code enforcement scope and jurisdiction given its all-encompassing code; SACE's inadequate visibility in the profession, inadequate continuing professional development on the code; challenges and constraints in enforcing the administrative sanctions (fines), punitive sanctions (Struck-off from the roll of teacher for a period or indefinitely; and deviation from the legislated sanctions in terms of the corporal punishment transgressions.

The second theme examined was on the *application of the compliance and enforcement mechanism*. SACE's processes and procedures for compliance detection and monitoring, as well as enforcement were presented. This included the mechanisms for reporting non-compliance with the code, investigations to gather evidence and facts on non-compliance through investigations and disciplinary hearings. Findings on the processes of possible mediation after investigation, as well as appeals following sanctioning from the disciplinary hearing were highlighted. Inherent in all these compliance monitoring and enforcement aspects were the limitations of SACE's internal capacity and governance structures in the enforcement of the code.

The last theme looked at *the uncoordinated institutions, laws and regulatory instruments that impact on the effective enforcement of the code*. The recurring lack of coordination among institutions responsible for regulating teacher behaviour / conduct; duplication in reporting teacher misdemeanours, as well as multiple investigations and disciplinary hearings between SACE, ELRC, employers of teachers, and other were among some of the findings around this theme.

CHAPTER 5: INTERPRETATION AND DISCUSSION OF FINDINGS

5.1 Introduction

Following the presentation of the findings in Chapter 4, this section uses the chosen theoretical frameworks and models to interpret and discuss them. The findings are outlined according to the three key themes that respond to the secondary research questions: (a) *SACE's effectiveness in enforcing the code of professional ethics*; (b) *application of the compliance and enforcement mechanism*; and (c) *uncoordinated institutions, regulatory instruments and systems for enforcing the code of professional ethics*. In doing so, this chapter draws on the purpose of the study which explores the role of SACE in enforcing the code of professional ethics in Gauteng. It then interprets the findings by categorising the discussions according to key enablers and barriers to SACE enforcing the code of professional ethics.

Findings from similar evaluated past and present studies have placed more focus on barriers in SACE's role; the current study closes the gap in following a balanced approach that explores both barriers and enablers in enforcing the code. It is also worth noting that exploring both the barriers and enablers comes with challenges of some contradictions, since certain factors might simultaneously be enabling and inhibiting, even though from different perspectives.

5.2 Discussion

In drawing from the data presented in Chapter 4, this section responds to the study's primary research question and purpose by discussing and analysing enablers and barriers to SACE enforcing the code of professional ethics in the Gauteng teaching profession. Instead of discussing them according to each of the three identified themes as was done in Chapter 4, they are divided into two main areas—*enablers* and *barriers*.

5.3 Enablers in Enforcing the Code of Professional Ethics

Even though factors and enablers in enforcing professional codes of ethics, as reflected in Table 2 and the literature review, they are not all based on the South African teaching profession. More importantly, they are not necessarily applicable to SACE's regulating of the teaching profession through the enforcement of the code in Gauteng. From the findings in

Chapter 4, it can be concluded that some of the enablers are unique to the South African and Gauteng context. Others mirror the ones identified in the literature generally and Table 2, and they are discussed below.

5.3.1 Regulatory Legal Framework

Empirical and document analysis evidence confirm that the SACE legal framework is made up of the SACE Act No.31 of 2000, the code of professional ethics flowing from the SACE Act, and a disciplinary processes and procedures document. This legal framework provides an enabling policy environment for SACE's regulatory enforcement of the ethical standards in the teaching profession. The need for any professional regulatory body to have legal framework, is echoed by Baldwin and Cave (1999), John (2011), Levi-Faur (2010), OECD (2002), United Nations (2016), and van Nuland (2009) who maintain that the availability of the legal regulatory framework in any professional regulatory body is a prerequisite and enabler for regulatory process and enforcement function as opposed to the profession being regulated by government (John; 2012; OECD, 2017, Schultze, 2008; van Nuland, 2009, van Nuland & Khandelwal, 2006).

The SACE legal regulatory framework provides power and authority to perform the regulatory enforcement function, conduct investigations and disciplinary hearings, apply sanctions based on the verdicts, build internal capacity and secure required resources to enforce the code (Baldwin & Cave 1999; John, 2011; OECD, 2002; Schultze, 2008; van Nuland, 2009). Moreover, Thornhill (2015, p.188) argues that a legislated code of professional ethics carries ". . . the same weight as legal condition set in the Act of parliament regarding corrective measures following abuse".

In consistent with Baldwin and Cave (1999) and John (2011), SACE is seen as an institution with the required wings and wheels for the enforcement of the code as mandated in the SACE Act. More importantly, the specific mandate and function of enforcing the code is realised when the goal of regulation of the profession is performed in the interests of the protection of the public and children, and not in the service of the profession itself (Levi-Faur, 2010; Ogus, 2002; Schmulow, 2015). According to Schultze (2008), such ethical professional regulation is advocated by the theory of public interests.

5.3.2 Processes and systems for compliance monitoring and enforcement.

Findings in Section 4.3 indicate how SACE: (a) applies systems and processes for reporting breaches of the code, (b) carries out investigations and disciplinary procedures, and (c) applies sanctions in compliance monitoring and enforcement processes. These systems and processes are an integral part of SACE's role in enforcing the code.

5.3.2.1 Systems and processes for detecting and reporting non-compliance with the code of professional ethics

First, in terms of the systems and processes for detecting non-compliance with the code and reporting breaches to SACE, the collected data reveals that SACE has systems and processes for detecting and reporting non-compliance with its code of professional ethics that follows the reactive approach. According to Baldwin and Black (2017), a reactive approach depends on non-compliance detection and reporting by third parties, such as, media, parents, learners, public, employers, whistle-blowers and others. Similarly, findings have shown that SACE depends on the public, employers as per Section 26 of the SACE Act, media, learners, fellow teachers and others for the reporting of code transgressions.

Unlike the proactive systems of detecting non-compliance and reporting breaches, Baldwin and Black (2007) hail the reactive approach for being cost-effective since it puts the detection burden on the third party. More importantly, in keeping with the theory of public interest, when third parties referred to above are provided an opportunity and space to detect non-compliance with the code by teachers and reporting to SACE, it accordingly ensures that the public and children's interests are served, and their rights are protected. Consequently, SACE is seen as correcting ethical failures by teachers in the teaching profession (Christensen & Lægreid, 2006; Gaffikin, 2005) and upholding the intangible social contract between the public and the teaching profession (Darling-Hammond, 1990; Horsley & Thomas, 2003; Rich, 2012).

5.3.2.2 Investigations and disciplinary procedures as part of compliance monitoring process

Second, as part of monitoring compliance with the code of professional ethics, SACE has disciplinary procedures that investigate transgressions to the code of professional ethics and how disciplinary hearings should be conducted. The purpose of the investigation process is to establish facts about the alleged acts of misconduct and present the findings to the relevant

internal governance structure, Ethics Committee, for decision-making purposes. While the study findings demonstrate that in many instances, the investigation decisions recommended for continuation with the disciplinary process, there are situations where mediation and dispute resolution process is recommended. The recommendation of the mediation and dispute resolution process, through the Ethics committee, demonstrates that SACE recognises the significance of applying positive enforcement of the code in Gauteng schools, as advocated by Ouellet (2004) and OSCE (2012). Positive enforcement mechanisms create a conducive regulatory environment and assist in removing hostility (Ouellet, 2004) between the teachers and the public/children.

5.3.2.3 Compliance-seeking and persuasion strategies

Third, the theory of responsive regulation from Ayres and Braithwaite (1992), and its related responsive pyramid of enforcement sanctions illustrated in Figure 2, underline the importance of compliance-seeking to the code, prior to applying negative enforcement (Baldwin & Cave, 1999; CALS, 2014; Ouellet, 2004; OSCE, 2012) and intensifying sanctions (Baldwin & Cave, 1999). This thinking is aligned to the normative compliance approach (Ayres & Braithwaite 1992; Baldwin & Cave, 1999; Murphy 2017) to the enforcement of the code. This in turn promotes benefits including improved awareness, communication and advocacy, continuing professional development and capacity building. From the collected data, there have been attempts for SACE to align to the base of the responsive pyramid of enforcement sanctions in terms of the persuasion strategy for compliance. Data from Chapter 4 shows that, despite SACE's limited and sporadic teacher capacity building and communication and advocacy sessions on the code of professional ethics in Gauteng, some effort has been put into persuading teachers to adhere to the code.

Additionally, the data indicates that SACE has a 2002 handbook for the code of professional ethics produced in 2002 in collaboration with the University of Natal. It is however, regrettable that these persuasion strategies are minimal and exclude the public, parents and learners. Even more discomforting is that, despite time, energy and resources put in the development of the 2002 handbook, it has been gathering dust since it has not been utilised in the last eight years. Therefore, even if compliance-seeking and persuasion strategies have been developed, they have not made a significant and material impact in the Gauteng schools.

5.3.2.4 Legislated sanctions

Fourthly, SACE has legislated sanctions for errant teachers. After the investigation process, one of the two routes followed is a disciplinary hearing that results in various verdicts and sanctions. Literature and various theorists underline the significance of the availability of a sanctioning system to enable effective code enforcement process by the professional regulatory body (Banter, 2003; Maxwell, 2016; Maxwell, 2017; van Nuland, 2009). Equally, advocates of the deterrence approach to enforcement argue for intensified punitive sanctions to deter teachers from contravening the code (Ayres & Braithwaite 1992; Baldwin & Cave, 1999; Baldwin et al., 2012: Murphy, 2017).

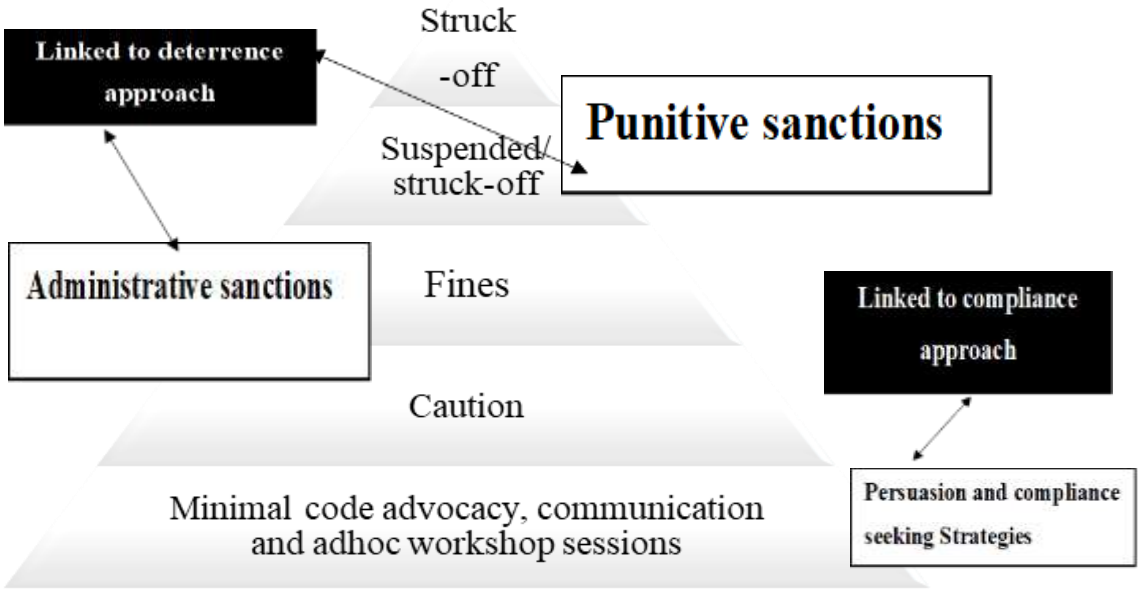


Figure 9: The SACE pyramid of sanctions

Similarly, just like the pyramids of responsive regulation in Figures 3 and 4 (Chapter 2), the results reflect that SACE has legislated administrative sanctions (cautions, and fines) and punitive sanctions (*suspended struck-off* and *struck-off from the register of teachers*) as reflected in Figure 9 above, consistent with Ayres and Braithwaite's (1992) pyramid of sanctions. Unlike Ayres and Braithwaite's pyramid of sanctions (1992), SACE does not apply its sanctions progressively up the levels of the pyramid. Sanctions are applied to any level of the pyramid based on the merits of the case and the extent to which there is threatening harm to the child or any other victim.

In line with the reviewed literature and enforcement enablers in Table 2, the application of both the legislated administrative and punitive sanctions signals that the code enforcement process is being is implemented by SACE. Even though Figure 9 illustrates that SACE follows both the compliance and deterrence approaches to sanctioning errant teachers (Ayres & Braithwaite, 1992; Baldwin & Cave, 1999, Murphy, 2017), evidence shows that it leans more on deterrence and red-light approaches (Baldwin et al., 2012). It was confirmed by many respondents (with strong voice and views from the teacher unions in particular), that SACE is well-known in the teaching community for administering punitive sanctions.

Baldwin and Cave (1999) argue that while the deterrence approach is necessary in enforcing the code, it also creates animosity between the regulators and those who are regulated. While many respondents view SACE as too punitive, others view it as a "toothless body" that cannot bite because of its ineffectiveness in sanctions as reflected in sanctioning barriers in Section 5.4.1.3. below. These contradictions appear to be context-bound and emotive, depending on the respondent. They also seem to be dependent on whether SACE is seen as removing many teachers from the register of teachers due to breaches of the code and bringing some discontent in the profession, or whether SACE is seen as failing the children and public in its perceived ineffective sanctioning processes.

Also, in applying the deterrence approach and enforcing *struck off the register of teachers'* sanctions, SACE gets viewed by the teacher unions as contributing to the country's unemployment and reduction in their membership. This interpretation of SACE by the unions brings tension and contradictions between SACE regulating in the interests of the abused and harmed learners by teachers in line with the public interest theory on the one hand, and self-centred teacher unions who are pursuing self-interest and advocating for SACE to regulate in the interest of the profession at the expense of children on the other, as argued by the regulatory capture theory.

It is also apparent from these discussions and evidence in Chapter 4 that, teacher unions and teachers alike appear to lack conceptual understanding of the professional self-regulation role of SACE. This is despite the fact that, 18 out of 30 members of the SACE governance structure are members of the organised teaching profession (five National Teacher Unions), as shown in Section 2.6. Since its inception, the Chairperson of the SACE Council has been a President, Vice-President or Deputy President of a teacher union. This might also be regarded as a conflict of interest between regulating for public interest or the profession's self-interest.

There is further poor understanding that SACE is a professional self-regulatory body for teachers by teachers. Many of the respondents were safeguarding the interests of the teachers or the profession as opposed to those of the children and public. In doing that, they are going against the principles of the theory of public interest, as explained by Baldwin and Cave (1999) and Schultze (2008). Inadequate knowledge and understanding of professional self-regulation concept are also demonstrated by respondents' questioning of teachers' payment of R15.00 monthly levies to SACE, as part the profession funding its professional regulatory body. Instead, they accuse SACE of using their monthly levies to prosecute teachers and struck-them off the register of teachers.

Furthermore, just like mediation and dispute resolution processes, SACE's sanctioning process also has an element of what Ouellet (2004) calls "positive enforcement" whereby a sanction is issued with the possibility of readmission into the profession after a stipulated period that is attached to the sanction. This process of possible readmission into the profession is applied through SACE's reinstatement hearings. However, it is important to note the positive awarding of reinstatement into the profession does not equal re-employment in schools, because that is a separate employment matter which is not influenced in any way by SACE's independent reinstatement hearing outcome. Again, as evidenced by the data, in instances where the employer fails to report the dismissed teacher to SACE for purposes of conducting independent process for striking e off teachers from the register, SACE is not able to conduct reinstatement hearings.

It is also important to note that the above-mentioned enabling factors for the enforcement of the code by SACE resonate with the many of the ones identified in Table 2 and the literature review. However, there is an observed deviation for one enabling factor on the support of teacher unions in implementing and enforcing the code. While secondary data collected through document analysis indicates that all the teacher unions have codes of conduct, there is neither coordination nor collaborative support for SACE in implementation and enforcement.

Remarkably, the same evidence indicated that the SACE code of professional ethics is similar to that of the biggest teacher union in the country—SADTU. Based on the interview data in Chapter 4, this tension might be due to the adversarial relationship between SACE and teacher unions, with the latter regarding SACE as a "big stick, police and enemy" who is all out to punish them and ensure their joblessness through the enforcement of the code. Worse,

teacher unions avoid acknowledging that the establishment of SACE and development of the code of professional ethics were negotiated by them in the ELRC through the collective bargaining process. This point will be elaborated on in Section 5.4 dealing with barriers to code enforcement.

5.4 Barriers to Enforcing the Code of Professional Ethics

Notwithstanding the study findings identifying SACE's enforcement enablers, the data in Chapter 4 revealed mixed reactions on the extent of SACE's effectiveness in playing its regulatory enforcement role. Likewise, evidence shows that there is some ineffectiveness linked to barriers in enforcing the code, based on two main categories, namely internal and external barriers.

5.4.1 Internal Barriers

5.4.1.1 Enforcement scope and jurisdiction

Evidence presented demonstrates that teacher behaviour is regulated by both SACE and institutions in and outside the teaching profession. This form of regulation fits neatly into the functional model (Ogus, 2004; Schmulow, 2015) where there are multiple regulators for certain regulatory activities. In consistent with the functional regulation model that is prone to cross-jurisdictional and overlaps, the interviews have proven that SACE is experiencing all-encompassing challenges with its code; the organisation is operating outside its scope and jurisdiction. This results in reporting of transgressions that in fact fall under the employers' ambit. Unlike the General Teaching Council of Scotland, DBE's EEA, the Victorian Institute for Teachers in Australia, and others, SACE does not have a threshold policy that defines to the public the kind of transgressions it prosecutes. Further, clarity on what counts as a serious versus less serious transgression is not available. In contrast, Sections 17 and 18 of the EEA provide this clarity to the DBE. These failures have historically had a negatively impact on multiple reporting of transgressions and duplication; this in turn puts pressure on the institution's limited human and financial resources. All these challenges also have a ripple effect, including exacerbating the backlogs in processing. Ultimately, it is the children who suffer the consequences of delayed justice.

According to Lægreid et.al. (2014), and Schmulow (2015), cross-jurisdictional and overlapping reporting issues need to be addressed via a formal and consensus-oriented collaboration model (Ansell & Gash, 2007; Lahey, 2009; McCarthy, Zuber, Kelley, Verani & Riley, 2014). Improved inter-relations and application of various collaboration typologies between SACE, DBE, PEDs and other teacher employers are also necessary. Collaboration typologies across different sectors may also be valuable between SACE, DSD, SAPS, the independent schooling sector and ELRC in reporting breaches. These would bring coherence to the reporting of acts of misconduct and synergising processes of handling them without interfering with each institution or actors' independence and accountability (Lahey, 2009; McCarthy et.al., 2014).

5.4.1.2 Ineffective sanctioning

Section 4.3 indicated that SACE has compliance monitoring processes that lead to verdict outcomes and various administrative and punitive sanctions. Notwithstanding the importance of sanctions in any code enforcement process, the conducted interviews revealed three critical factors that inhibit SACE from enforcing these sanctions effectively, results in children and the public being unprotected. First, SACE has deviated from its professional regulatory mandate by not sanctioning corporal punishment transgressions accordingly, as shown in section 4.3.2.1. In doing so, SACE contravenes its own Act and perpetuates a never-ending cycle of physical assault and emotional abuse.

Second, many of the administrative sanctions issued to Gauteng teachers by SACE are not enforceable. According to Figure 7 in Chapter 4, 51 Gauteng teachers were jointly fined R550 000 over a period of five years, and that amount was not paid. Lack of payment on the part of teachers and SACE's ineffective strategies, along with SACE's poor systems for collection of fines render administrative sanctioning a futile exercise and the related investigations and disciplinary hearings a waste of time and resources. This failure also suggests that SACE does not have the necessary power, authority and stick to compel teachers to pay. Interviews with SACE respondents have confirmed that the organisation does not want to bring in debt-collectors who will ruin the already tarnished image SACE has within the teaching profession.

In addition, failure to enforce administrative sanctions defeats the purpose of both the compliance and deterrence code enforcement approaches and the escalation processes of Ayres and Braithwaite (1992) from warnings and caution to fines as displayed in Figures 3

and 4 of the pyramids of responsive regulation. Many of the respondents recommended that this barrier could be resolved through SACE working collaboratively with the employers in order to deduct fines via their salary payment system.

Lastly, SACE's reported over-emphasis on the deterrence approach in enforcement of the code has been seen as a paradox as indicated in the enforcement enablers (Section 2.7.3). Teacher unions were unequivocal in the view that SACE's emphasis on punitive sanctions and its deterrence approach were alienating the teaching profession. It was further observed to be creating animosity between the professional regulatory body and teachers who refer to it as the "big stick". The unintended consequence of this punitive approach by SACE saw teachers' negative attitude towards the code and subtle defiance through non-compliance. Respondents repeatedly reported that, this was the reason for teachers to use tricks such as, bribery and *inhlawulo (*paying money to the parents for having sexual relationship with their child or impregnating her*)* to frustrate the SACE enforcement processes. More so, the teacher unions also retaliate and frustrate the enforcement process by using their resources to protect teachers' interests in disciplinary hearings at the expense of the child's interest. (Baldwin & Cave, 1999; Golubeva & Kanins 2017; OSCE, 2012; van Nuland, 2009; van Nuland & Khandelwal, 2006).

The above discussion might be seen to negate theorists and proponents of the instrumental approach who believe that teachers will normally obey the ethical standards in the code of professional ethics when (a) there are compliance systems facilitating higher probability of the professional regulatory body detecting non-compliance on their part; and (b) the professional regulatory body publicises increased sanctions and penalties for non-compliance. The latter is done to secure compliance by deterring teachers from transgressing the code (Baldwin & Cave, 199; Drahos & Krieger, 2017; Murphy, 2017). John (2011) also argues that increased sanctions will not necessarily make people to obey the law because the reasons why people obey or not obey the law is more complicated and complex than increased sanctions and penalties.

5.4.1.3 Financial and human resources

While evidence in Chapter 4 showed that SACE uses permanently employed staff to administer systems and processes for enforcing the code, human resource capacity is inadequate to deal with the annually reported number of breaches in the code in Gauteng. Even more importantly, a number of respondents pointed out that the limited expertise

displayed by many of the employees may hamper effective enforcing of the code. This finding is consistent with conclusions in the literature, including studies conducted in the European, OECD, Asian and Canadian countries by Golubeva and Kanins (2017), OECD (2002), OECD (2012), United Nations (2016), and van Nuland (2009). These authors argue that for competent compliance monitoring and enforcement mechanisms, capacitated and knowledgeable human resources with the relevant expertise are required.

The capture theory warns against self-regulated professional bodies being captured and corrupted in enforcing professional ethics codes (Baldwin & Cave, 1999; Gaffikin, 2005). Issues of possible corruption in the enforcement process emerged from a few respondents in terms of contractual panellists who were reportedly being bribed in exchange for not guilty verdicts. While corruption/attempted corruption was acknowledged by relatively few respondents, SACE needs to monitor this concern closely as might be symptomatic of more widespread corruption.

Moreover, the United Nations (2016), and Golubeva and Kanins (2017) stress the importance of the financial resources and various funding streams, particularly for the compliance monitoring and enforcement activities that are costly and time consuming. It is evident from the findings that there is a mismatch between the volume of cases received and the financial resources available to process them. This is evident in in the high number of corporal punishment cases that could not be processed like other cases, owing to financial and human constraints, amongst others. Again, this barrier was shown to have resulted in a deviation from the legislated sanctions which then led SACE to overlook the purpose of regulating in the public interest in the first place as promoted by the public interest theory (Baldwin et al., 2012; Christensen, 2011; Levi-Faur, 2011). Two different studies in 2014 by (a) OECD's evaluating the South African educational policies, and (b) Veriava's study showing SACE's contribution to teacher impunity and failure to sanction teachers who breach the code (by practising corporal punishment on learners in schools and harming children). Sadly, this barrier has continued for a further 6–10 years despite having been identified as a problem. Christensen and Lægreid, (2006), Levi-Faur (2010), and Windholz and Hodge, 2012 postulate that failure in protecting the welfare of children results in their continued exploitation, along with breaking the social contract between the public and the teaching profession (Darling-Hammond, 1990; Horsley & Thomas, 2003).

The issues discussed above resonate with a study by Salmon and Sayed (2016) that concluded institutional barriers contributing to SACE's weak enforcement processes include: internal capacity, weak financial resources, dominance of teacher unions, overlapping and conflicting rules, and the code not being directive enough to allow for the administering of sanctions.

5.4.1.4 Contravening good governance and effective regulation

It is apparent from the findings that SACE has contracted part-time panellists. A contradiction and conflict of interest exists when SACE contracts people who are employed permanently by the GDE to handle teacher misconduct cases on the GDE side. This is viewed as being "double dipping" into one matter by the same person. A linked conflict of interest was picked up from the teacher unions who govern SACE as part of the accounting authority, and who simultaneously serve on theETHCOM to ratify the investigations hearing decisions, and cross the floor to defend teachers in the SACE disciplinary hearings. These identified enforcement barriers contradict the principles of good regulation as advocated by Better Regulation Task Force (2011) and OECD/Korea Development Institute (2017) and key principles of compliance monitoring and enforcement mechanisms such as independence and integrity (Ouellet, 2004; United Nations, 2016). The enforcement barrier echoes the observations of de Clercq (2013), and Salmon and Sayed (2016), who also criticise the South African teacher unions for their dominance in SACE's decision-making processes and interference with its independence. It is also situations like this, that Gaffikin (2005), criticises public interest theory and professional self-regulatory principles for undermining the political power and influence of professional self-regulatory structures.

According to the data collected on the procedures for investigations and hearings, SACE was reported to not be observing principles of good governance and regulation in terms of internal control measures, checks and balances and separation of powers as promoted by GTCS and United Nations. Data shows that the principle of all-in-one applies, where the ETHCOM evaluates and ratifies all the investigations and hearings as one committee and therefore acts as a player and a referee. This might be confirming the distinctive nature of SACE as a professional regulatory body, and which was born out of a collective agreement between the employer and teacher unions (employee parties). The same kind of arrangement applies to the code of professional ethics which is a product of a collective decisions between the same parties (van Nuland, 2009).

Again, the independence of the SACE governance structure (that is, the SACE Council) was criticised for displaying double standards in terms of being signatory to an ELRC Resolution No. 3 of 2018 which centralised the processing of all acts of sexual misconduct reported to the public employers. This was seen as the SACE governance structure playing a double role and thus further weakening SACE's mandate to enforce the code of professional ethics as a professional regulatory body. The playing of double standards in both SACE and the ELRC by the SACE governance structure could also be seen as power play between the two institutions. Gilman (2005); HEBRG (2011), and the United Nations (2016) argue that institutions and professional regulatory bodies enforcing the code must be credible, independent and have some integrity. From the evidence presented in Chapter 4, SACE seems to be lacking in some of these areas.

5.4.2 External Barriers

In this study, external barriers refer to those factors that are beyond SACE's control in enforcing the code of professional ethics. Interviews in Chapter 4 and some evidence from the analysed documents demonstrated that SACE is dependent on other institutions and legal regulatory frameworks to effectively enforce the code. Linked to this, there is evidence that the dynamics and incoherence of these regulatory frameworks and institutions also contribute to barriers in SACE enforcing the code, as discussed below.

5.4.2.1 Weak institutional arrangements and network in enforcing the code

Several respondents indicated that various compliance monitoring and enforcement activities of SACE are dependent on the systems and processes of other institutions in and outside the education system. The interpretation and analysis of the findings in Chapter 4 reveal informal, ad hoc and weak institutional arrangements and network that inhibit successful enforcement of the code in various situations.

First, in accordance with Section 4.2.3.2 above, to enforce the administrative sanctions worth half a million-rand as reflected in Chapter 4's Figure 7, SACE is largely dependent on the DBE and nine Provincial Education Departments for deducting the owed money directly through government's Personnel Administrative Salary (PERSAL). This might work only for those teachers that are employed in the public schooling system. This reflects on SACE's weak and ineffective internal processes and systems for enforcing administrative sanctions.

Second, one of the SACE code enforcement enablers above revealed that SACE is completely dependent on the reactive model of compliance detection and reporting of breaches of the code by third parties. Consequently, SACE is dependent on the nine PEDs (Gauteng included) in the reporting of cases of teacher misconduct. This mandatory reporting is based on Section 26 of the SACE Act which requires that all employers of teachers must report their completed sanctioned cases of teacher misconduct to SACE, except where there is an administrative sanction of warning and reprimand.

However, there are huge disparities and uneven levels of compliance by employers, particularly in the other six PEDs, independent schooling sector and SGBs as employers. As a result, document analysis, interviews evidence and this incumbent report show a skewed picture and findings that are based mainly on the public schooling sector. Such analysis also showed Gauteng to be one of the very few provinces complying with Section 26 of the SACE Act. Even with Gauteng complying to a certain extent, the reporting has been unsatisfactory and described to be selective. This is an important contributor to under-reporting. Without compliance detection and reporting of such to SACE, it will be difficult to have cases to process through investigations and hearings and the enforcing of sanctions issued by SACE.

Third, all the employers who dismiss professionally registered teachers from employment are required by the SACE Act and the code of professional ethics to report the dismissal sanction to SACE for purposes of independent hearing of the case and possible removal from the register of teachers. While it is important for the process to happen in order to bar teacher from teaching in other in-country schools, if found guilty by SACE, the reporting of such cases to SACE is minimal. This non-compliance by employers weakens SACE's regulatory purpose of safeguarding children's welfare.

Fourthly, just like the third barrier above, when SACE strike teachers off the register, it is incumbent on the employers to ensure that they are finally dismissed, because they are deemed to have resigned from their employment in terms of Section 15 (2) of the EEA. SACE's enforcement processes and protection of the public and children is negatively impacted on when the struck-off teachers continue to practice in schools despite the issued sanction, because it is reliant on the employers for dismissal from employment.

Lastly, respondents confirmed that teachers that are removed from the register of teachers because of the sexual abuse breaches of the code are not reported to the SAPS so that they can then be convicted. Their names are also not entered into the DOJCD's National Sexual

Offenders Register. Without the reporting of these teachers to the Justice and Constitutional Development Department by SACE, employers will continue to employ them in schools because they will not find them in the Register when they vet them against it, prior to employment. SACE's weak persuasion and compliance-seeking strategies which impact on the enforcement of the code are also affected by lack of collaboration with the 24 public and 14 private higher education institutions that should be assisting SACE in training both student teachers and practising teachers on the code of professional ethics and related activities.

5.4.2.2 Multiple regulatory processes and overlaps

Sections 4.2.1. and 4.4.1 highlight multiple overlaps and uncoordinated reporting to SACE of breaches of the code, investigations and hearings, as well as, sanctioning through SACE and the code enforcement and various institutions and their policies. These external barriers are consistent with some of the reviewed literature, particularly on the evaluated past and recent studies (Martin, 2005; Mnguni, 2016; Salmon & Sayed, 2016; Veriava 2014).

SACE's failure to publicly define and declare serious breaches of the code it investigates, has opened flood gates where the public, parents, learners and teachers report similar cases to the professional body, employers, ELRC and criminal justice systems simultaneously. This multiple reporting results in what the respondents refer to as "triple" and "quadruple" systems and processes of investigations and hearings which may lead to multiple overlapping and contradictory sanctioning of the same teacher.

Similar duplication and overlaps have been experienced through the mandatory reporting of completed and sanctioned cases by the employers to SACE in line with Section 26 of the SACE Act. In line with the same Act, due to SACE's independence it must hear the reported cases from the employers *de novo* prior to repeat sanctioning by SACE from a professional regulatory perspective. The respondents indicated that in most cases, the verdicts and sanctions may be similar or different and may end up confusing teachers, parents and the public.

These overlaps and multiple processes were said to be time consuming and costly both for SACE and teachers. Baldwin and Cave (1999), and Steele and Nimmer (1976) also criticise them for the same reasons and argue that they hamper the effectiveness in enforcing the code. The multiple and overlapping enforcement processes and procedures barrier was reported by the British Columbia Ombudsman (2003), Golubeva and Kanins (2017), OECD (2002), and to be common in the professional regulatory processes as seen in Table 3 of Chapter 2.

In addressing and preventing similar multiple and overlapping compliance-seeking, monitoring and enforcement processes and procedures, professional self-regulatory bodies such as the GTCS, have a Fitness-to-Teach Threshold Policy that explains explicitly the types of breaches to be reported and investigated by the GTCS. This policy minimises overlaps because is deals with relevant breaches that are within the GTCS's power and authority; the caseload thus becomes manageable and resources are used effectively (GTCS, 2019).

5.5 Chapter Conclusion

Based on the findings in Chapter 4, this section responded to the study's main research question by presenting factors that enable/bar SACE in its regulatory role through the enforcement of the code of professional ethics in Gauteng. Accordingly, various enforcement enablers were identified in line with the two main categories: (a) existence of the legal regulatory framework made up of the SACE Act and code of professional ethics and (b) existence of processes, systems and activities for compliance monitoring and enforcement. Second, the analysis of barriers to the enforcement of the code was based on two categories: (a) internal barriers that were linked to SACE as an institution and professional regulatory body; and (b) the external barriers that looked at factors that are beyond SACE's control.

Many of these factors enabling and barring the enforcement of code mirror enforcement enablers in Tables 2 and 3 and the literature review (Chapter 2).

CHAPTER 6: SUMMARY, CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

Chapter 6 provides a summary, conclusions and recommendations based on the study's overall aim of exploring the role of SACE in regulating the teaching profession through the enforcement of the code.

6.2 Summary of the Study

This study explored the role of SACE in regulating the teaching profession through the enforcement of the code of professional ethics. More specifically, it was intended to respond to the primary question on what SACE's enablers and barriers in enforcing the code of professional ethics are.

Chapter 1 introduced the study and its background by briefly outlining the role of professional regulatory bodies in setting, protecting and maintaining ethical standards in the teaching profession. SACE is mandated to perform a similar role; however, as per the problem statement, there are prevailing dynamics, weaknesses and complexities in SACE's enforcement of the code. The study, therefore, looked into the main research question on identifying SACE's barriers and enablers to enforcing the code of professional ethics. This question was linked to the three secondary research questions that assisted in further framing the semi-structured interview questions. This chapter also defined the research scope, limitations and delimitations. It further outlined the rationale of study and identified the knowledge gap to be addressed.

Based on the literature review in Chapter 2, SACE was examined in national and provincial physical contexts. This context revealed SACE's historical evolution and dependence on institutions such as the ELRC and DBE for interim residence. The temporary legal basis for SACE in the ELRC Act of 1993, ELRC Collective Agreements and EEA were also examined. SACE was shown to be a non-statutory regulatory body during these years and enforcement of the code was delayed until 2002 despite being developed in 1997. SACE eventually became a statutory professional self-regulatory body in 2000 and was listed as a public entity as per the Chapter 6 of the PFMA.

The literature review further presented regulation and social regulation in the context of the broader academic field of study. More specifically, it depicted professional regulation and professional self-regulation as regulation sub-components aligned to the area of focus for the study. Enforcement of the code of professional ethics was the unit of analysis for the study. Both code enforcement enablers and barriers were analysed from a literature and previous studies evaluated perspective. Moreover, theories of public interests, theory of responsive relation, and pyramid responsiveness model were used as theoretical frameworks to interpret the findings. The output of the literature review was the conceptual framework for the study, reflected in Figure 5 of Chapter 2.

In Chapter 3, the study followed a qualitative research design and interpretivism paradigm. Accordingly, qualitative data collection instruments, in the form of semi-structured interviews and document analysis were used to investigate the following research questions as highlighted in Chapters 1 and 4: (a) *how SACE regulates the teaching profession through the enforcement of the code of professional ethics in Gauteng*; (b) *ways in which SACE applies its enforcement mechanisms in responding to breaches of the code of professional ethics by teachers in Gauteng;* and (c) *the nature of the relationship between SACE and institutions responsible for supporting the enforcing of the code of professional ethics*. The 15 respondents drawn from various public and private stakeholders and teacher employers provided the study with in-depth primary data. This was presented to reflect their views in responding to the research questions. This data was triangulated through document analysis.

In Chapter 4, the study findings were presented in line with the following three key themes that responded to the study's primary research questions: (a) *regulatory enforcement of the code of professional ethics*; (b) *application of the compliance and enforcement mechanism*; and (c) *uncoordinated institutions, regulatory instruments and systems for enforcing the code of professional ethics*. Based on the findings emerging from these key themes and related sub-themes, SACE's enforcement enablers and barriers were discussed in Chapter 5.

6.3 Conclusions to the Study

The key findings in the study reveal a regulatory paradox in SACE's enforcement of the code of professional ethics for Gauteng's teaching profession. Based on its legal regulatory framework, existence as a first non-racial professional self-regulatory body, compliance monitoring processes, and legislated administrative and punitive sanctions, it is concluded

that SACE is indeed performing the role of regulating the teaching profession through enforcing the code in Gauteng. Notwithstanding this confirmed role with its enablers, a number of internal and external barriers to enforcing the code have hampered SACE's regulatory enforcement role. Consequently, SACE's weaknesses in enforcing the code were revealed. Consistent with the study's overall conclusion, the SACE's regulatory paradox is briefly outlined through the professional body's enablers and barriers below.

Based on the identified SACE regulatory enablers, SACE has the required legal regulatory framework, in the form of the SACE Act no.31 of 2000 and legislated code of professional ethics developed in 1997 (and which is periodically reviewed). The regulatory legal framework lays the basis for SACE's independent statutory power and authority to regulate the teaching profession through the enforcement of the code of professional ethics. Additionally, the statutory power comes with its professional self-regulatory status whereby the profession governs and regulates itself. Hence, the SACE governance structure is made up of 18 out of 30 members from the organised teaching profession to give meaning to professional self-regulatory body.

It is concerning, however, that the study findings reveal lack of conceptual understanding of professional self-regulatory role on the part of the teacher unions. The lack of conceptual clarity by teacher unions and teachers alike, resonates with findings on SACE's invisibility with regards supportive advocacy, communication and continuing development role for the profession. Linked to SACE's invisibility in these roles, is SACE's limited, ad hoc and sporadic compliance-seeking and persuasion strategies which are seen to be contributing to the breaches of the code.

Again, from the governance perspective, SACE's governance structure has seen to be dominated by teacher unions who are conflicted in terms of (a) sitting as governors or Council members at both the ELRC and SACE yet make contradictory decisions in regulating teacher behaviour; (b) compromising SACE's independence; and (c) taking decisions in the SACE Council on the sanctioning of the same teachers they defend in SACE disciplinary processes.

Numerous studies have shown that sanctions are at the heart of any process of enforcing a code. Accordingly, this study also concludes that SACE's regulatory enforcement role has been enhanced by its legislated pyramid sanctions, ranging from caution to removal from the register of teachers. It is for this reason that SACE is viewed by the profession as a "big

stick"; the organisation is thus seen to be leaning heavily on the punitive deterrence approach of sanctioning. While this view confirms that SACE is indeed seen as enforcing its punitive sanctions, there is a contradictory conclusion that argues that SACE is a "toothless tiger" in the profession. This conclusion is based on weak and ineffective sanctioning flagged by some respondents. This contributes to the barriers to SACE's regulatory enforcement. The identified barriers include, first, uncoordinated internal regulatory frameworks between Divisions that issue sanctions and the one that is responsible for the actual removal of the struck-off teacher from the register of teachers.

SACE's heavy punitive deterrence has been seen to alienate the profession and contribute to teachers' tricks to frustrate the sanctioning processes. Failure to enforce the administrative sanctions in the form of fines was also seen as a failure on the part of SACE. More importantly, the findings conclude that SACE is contributing to impunity in the profession by deviating from sanctioning corporal punishment administered by teachers on learners.

Moreover, the discovered external barriers have shown that SACE continues to be dependent on other institutions for effective enforcement of the code. The tension and power relations between SACE and the ELRC in regulating sexual misconduct cases by teachers need urgent attention. Additionally, the absence of formal institutional arrangements and networks, as well as lack of coordination and the absence of a collaborative framework for bringing these regulatory institutions together for purposes of heightening effective enforcement of the code remain a challenge. More so, recurring impediments show lack of will to address the repeated legislative and institutional gaps, complexities and incoordination contributing to ineffective sanctioning, overlaps, cross-jurisdictional issues, duplication and multiple processes in enforcing the code. The lack of will to address the constraints is also based on the number of protocols that have been developed but which have not been implemented. These highlight internal and external barriers that dampen SACE's regulatory enforcement role.

Nonetheless, SACE's pyramid of sanctions depicts that the professional body has elements both of compliance and positive approaches to sanctioning. This positive approach is linked to SACE's mediation at the school level and processes of reinstating teachers back into the profession on the basis of the outcome of the reinstatement hearings.

6.4 Limitations of the Study

One of the limitations of the study was the dominant voice of the teacher unions. This dominance came from their daily work in defending teachers from various breaches of the code on the ground, and this is largely what allows them to survive through membership. While this study focused on the macro level, the data collected through the teacher union participants brought in a mixture of issues at various levels. As part of closing the methodology gap identified in previous studies, the research population consulted in this study included the independent schooling sector. However, owing to the extremely low level of breaches of the code reported to SACE by that sector, the voice of the independent schooling sector is not heard.

Although it is significant to engage teachers on their views regarding the enforcement of the code, teachers were not involved as research participants in this study. Notwithstanding the significance of the information to be gathered from the high-level group of stakeholders interviewed in this study, it has limitations in terms of being unable to provide feedback from teachers at the coalface of the teaching profession.

A further limitation is that this study was restricted to Gauteng province, and therefore the findings and conclusions reached on the role of SACE in enforcing the code, along with the code enforcement enablers and barriers, cannot be generalised to the other nine provinces.

6.5 Recommendations

Based on the findings and conclusions reached, first, this study recommends that SACE commission a project to evaluate its Act and related regulatory instruments in relation to other relevant laws and policies for regulating the teaching profession. This is vital since the SACE Act was enacted in 2000, and 20 years later it has not been reviewed or evaluated to relook at its theory of change, learn for failures, partial success and success. This process will also play an immense role in informing the process of establishing new professional self-regulatory bodies in Africa since the literature review has indicated that the teaching profession is regulated by government in 50 out of the 54 countries on the continent.

From practice level, the evaluation study will also enable SACE to be inward-looking and enhance its internal processes, systems, regulatory frameworks, internal capacity, funding streams and governance structure with the goal of re-engineering and repositioning the organisation in performing its professional self-regulatory role and acting as the voice of the profession.

Further, there is conclusive evidence from findings that SACE, together with other regulatory institutions, must establish formal institutional arrangements and networks, along with structured collaborative framework for regulatory enforcement of the code of professional ethics and other related regulatory laws and instruments. The establishment of institutional arrangements, collaborative regulation and a governance framework should be grounded in the relevant theories, models and frameworks discussed in this study and other professional regulation literature. Additionally, various collaboration typologies and collaborative governance elements should be taken into consideration—for example, leadership, resources and institutional design. International and regional lessons could also be learned from the nursing and accounting professions in that they have been shown to have strong examples of best practice and in which they are experienced. Key institutions that may be critical in forming this collaborative regulation and governance, along with institutional networks, might include the following institutions and actors in and outside government: Teacher employers, Department of Basic Education, Department of Higher Education and Training, Department of Social Development, Department of Justice and Constitutional Development, Education Labour Relations Council, Education Deans Forum, National School Governing Bodies Associations, and Independent Schools Associations.

Employers of teachers are key collaborators in enforcing the SACE's administrative and punitive sanctions and clarifying the enforcement scope between themselves and SACE in the reporting, investigations and disciplinary hearings of various acts of misconduct. For teachers to be declared unsuitable to work with children, collaboration with the DSD, SAPS and DOJCD is important. Partnership with ELRC will minimise tensions and power relations between SACE and ELRC, particularly on the sexual abuse breaches of the code, while the independent schooling sector which includes NAISA, Curro Holdings and ADVETECH could assist in unearthing breaches of the code in that sector. In order to deal with compliance-seeking and persuasion strategies, collaboration with Department of Higher Education and Training, Education Deans Forum and Higher Education Student Formations

become important for dealing with the code, ethics and values programmes, and activities for student teachers and practising teachers' continuing professional development.

Equally, as the Executive Authority for SACE and the PEDs, the Minister of Basic Education is critical in showing the political will to lead and support the establishment and implementation of the institutional arrangements and network. Collaborative regulation and an appropriate governance framework also require such support from the Minister. The South African Institutional Arrangement and Collaborative Model in the teaching profession will contribute to knowledge in the international literature.

Strong and ethical governance, together with effective regulation and sound enforcement principles are fundamental to any regulation and institutional governance processes. Therefore, SACE should evaluate its governance processes and systems to ensure that its independence, internal control regulatory systems and separation of powers are in order. Equally, ongoing capacity-building and support for the SACE corporate governance structure, theories behind regulation, professional self-regulation and these relate to the role of SACE in practice, is required.

Enforcement processes are also often compromised by inadequate resources. Similarly, SACE needs to build its funding streams and financial resources to ensure that its mandate and breaches of the code of professional ethics are not compromised, thus aiding teacher impunity.

Lastly, professional self-regulation is about, amongst other aspects, the profession regulating itself in the best interests of the public and children. The study findings have shown that this understanding is missing from the teaching profession. Therefore, SACE should shift from its confrontational and adversarial relationship with the profession and its image as a "big stick" for the profession to acknowledge itself as belonging to a professional body. As with SACE's governance structure, the teaching profession needs structured and ongoing continuing professional development; it also requires an advocacy campaign gain a stronger conceptual understanding of social and professional regulation and the mandate of SACE.

6.6 Areas for Future Research

This study achieved its intended purpose of exploring the role of SACE in regulating the teaching profession through the enforcement of the code. Therefore, the following areas are recommended for future studies:

1. A similar study/studies should be conducted in the other eight provinces in order to have a national picture of the role of SACE in regulating the teaching profession through the enforcement of the code of professional ethics. This research might also assist SACE in identifying provinces that need more resources and interventions to heighten SACE's regulatory role. Its findings will also be generalised in the country.
2. Comparative study between SACE and international professional self-regulatory bodies in the teaching profession should be carried out for benchmarking purposes and identifying possible future areas of collaboration.
3. SACE has been regulating the teaching profession since 1995 as a non-statutory professional regulatory body, and since 2000, as a statutory professional self-regulatory body. An impact study on SACE and other teacher regulatory institutions and actors would be beneficial to the entire South Africa education sector and the teaching profession.
4. Since this study focused on macro level issues, a teacher perception and experience study could be conducted to understand micro level issues that impact on the regulation of the teaching profession and enforcement of the code.
5. The independent schooling sector has generally been under-researched, and as a result little is known about teacher regulatory issues. In line with this concern, the role of SACE in regulating the teaching profession through the enforcement of the code in the independent schooling sector will be worth undertaking.

6.7 Chapter Conclusion

The study successfully explored the role of SACE in regulating the teaching profession through the enforcement of the code of professional ethics in Gauteng. Through the literature review and collected data, the study's research questions were responded to and consequently, three key themes emerged (a) *SACE's effectiveness in enforcing the code of professional ethics*; (b) *application of the compliance and enforcement mechanism*; and (c)

uncoordinated institutions, regulatory instruments and systems for enforcing the code of professional ethics. The data collected was presented in Chapter 4. It brought some reflections, experiences, insights and lessons from the responses of different research participants on the role of SACE in regulating the teaching profession through the enforcement of the code. More, importantly, interpretation and analysis of the presented data highlighted the enforcement of the code enablers, along with internal and external barriers to the code. The findings and conclusions will contribute to addressing the knowledge gap and can broadly inform theory and practice in the field of regulation, particularly regarding professional regulation.

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ANNEXURE A: LETTER OF APPROVAL TO CONDUCT RESEARCH AT SACE



DATE:	12 March 2019	**FILE:**	PMERR
TO:	Ms. ME Mokgalane	**FROM:**	TV Sophethe Manager: Planning, M&E Reporting & Research
SUBJECT: PERMISSION TO GRANT ACCESS TO SACE FILES FOR RESEARCH PURPOSES			

Dear Ms Mokgalane

Your request to access data for the research titled: "The role of the South African Council for Educators in Regulating the Teaching Profession", dated 27 February 2019 has been received.

The council is hereby giving access to the files and data as required. Please note that all information about the institution, schools, teachers and students must remain confidential. And, information about schools, teachers, and students' identity must be protected at all times.

Yours in Profession

Tuzana Sophethe

Manager: Planning, Monitoring & Evaluation Reporting and Research

ANNEXURE B: LIST OF RESPONDENTS PER STAKEHOLDER

Interviewee	**Institution / Policy Actor**	**Interview Type**
2 x SACE Ethics Division Staff Member	SACE	Face-to-face
3 x SACE Educator Misconduct Cases Panellists (*people employed by SACE on a part-time / contractual basis to assist with investigations, disciplinary hearings*) 1 x Investigator 1 x Prosecutor 1 x Presiding Officer	SACE	Face-to-face
1 x Labour Relations Senior Official 1 x Labour Relations Staff Member at District level	Gauteng Department of Education	Telephonic Face-to-face
1 x Gauteng Provincial Secretary Education Labour Relations Council	PELRC Gauteng	Face-to-face
3 x Teacher Union Representatives from the Gauteng (2 SADTU and 1 NAPTOSA)	SADTU Gauteng, NAPTOSA Gauteng	Face-to-face
2 x School Governing Body Associations	FEDSAS Gauteng and NASGB Gauteng	Face-to-face Telephonic
1 x Independent Schools National Association General Secretary	NAISA Gauteng	Telephonic
1 x South African Principals Association	SAPA Gauteng	Face-to-face

GRAND TOTAL = 15

ANNEXURE C: LIST DOCUMENTS ANALYSED

Document	Organisation	Type
SACE Act, 31 of 2000	SACE	Secondary
SACE code of professional ethics	SACE	Primary
SACE Annual Reports 2012/13–2017/2018	SACE	Primary
ETHCOM, Executive Committee and Council Minutes 2012/2013–2017/18	SACE	Primary
SACE Strategic Plan 2014/15–2019/20	SACE	Primary
SACE Annual Performance Plans 2012/13, 2014/2015, 2015/16, 2016/17, 2017/18	SACE	Primary
SACE Educator Sexual Misconduct Cases Files / Reports for Gauteng Secondary School 2011/12–2016/17	SACE	Primary
SACE Ethics Research Reports 2012/13 and 2016/17	SACE	Secondary
Gauteng Schools Education Act no.6 of 1995		
Gauteng Department of Education Annual Reports 2012/13–2017/18	GDE	Primary
Minutes of the Portfolio Committee on Basic Education in the Gauteng Provincial Legislature 2014–2018	Provincial Legislature	Secondary
Minutes of the Portfolio Committee on Basic Education–where SACE, Department of Basic Education, ELRC appeared (April 2012–October 2018)	Parliament–Portfolio Committee on Basic Education	Primary
Employment of Educators Act	DBE	Secondary
ELRC Annual Reports 2012/13–2017/2018	ELRC	Primary
ELRC Collective Agreement, no. 3 of September 2018–providing for compulsory inquiries by educators in cases of disciplinary action against educators charged with sexual misconduct in respect of learners	ELRC	Primary
ELRC Dispute Resolution Procedures and Reports 2012/23–2017/2018	ELRC	Primary
Children's Act	DSD	Secondary

Criminal Law (Sexual Offences and Related Matters Act)	DOJC	Secondary
Online documents on the selected national and international teaching councils		Secondary

ANNEXURE D: PARTICIPANT INFORMATION SHEET



Dear Sir/Madam

I am Mapula Ella Mokgalane, a Masters of Management in Public Policy student in the School of Governance at the University of the Witwatersrand, Johannesburg. In order to fulfil the requirements for my studies I have to undertake a research project, and I am investigating the role of the South African Council for Educators (SACE) in regulating the teaching profession through the code of professional ethics as one of its regulatory tools. Overall, the research aims to explore the barriers and enablers to SACE enforcing the code of professional ethics in Gauteng.

As part of this project, I would like to invite you to take part in an interview. This activity will involve a once-off face-to-face interview session to answer questions on the role of SACE in regulating the teaching profession and enforcing the code of professional ethics in Gauteng. The interview will take around 50 minutes. With your permission, I would also like to record the interview using an audio digital device. The recording and transcribed information will be stored safely on a password protected device.

You will not receive any direct benefits from participating in this study, and there are no disadvantages or penalties for not participating. You may withdraw at any time or not answer any question if you do not want to. The interview will be completely confidential and anonymous as I will not be asking for your name or any identifying information, and the information you give to me will be held securely and not disclosed to anyone else. I will be using a pseudonym (false name) to represent your participation, in my final research report. However, if you are speaking in an official capacity, as a General Secretary/Director/Head of your institution, you may be identifiable based on your official role. In this case, you will be given a consent form be anonymous or not anonymous.

If you have any questions afterwards about this research, feel free to contact me on the details listed below. This study will be written up as a research report which will be available through the university library. If you wish to receive a summary of this report, I will be happy to send it to you upon request. If you have any queries, concerns or complaints regarding the

ethical procedures of this study, you are welcome to contact my supervisor, Dr Jacqui Poltera telephone + 27(0)11 717 3807, email jacqui.poltera@wits.ac.za.

Yours sincerely,

Mapula Ella Mokgalane, ella.mokgalane@sace.org.za, 083 380 9879

ANNEXURE E: PARTICIPANT CONSENT FORM

TITLE OF PROJECT: The Role of the South African Council for Educators in Regulating the Teaching Profession.

Name of Researcher: Ella Mokgalane

Please tick the relevant box.

I …….. agree to participate in this research project. The research has been explained to me and I understand what my participation will involve.

I agree that my participation will remain anonymous: **YES** **NO**

I agree that the researcher may use anonymous quotes in his research report: **YES** **NO**

I agree that where I respond in my official capacity my title could be revealed: **YES** **NO**

I agree that the interview may be audio recorded: **YES** **NO**

I agree that the information I provide may be used anonymously by other researchers following this study: **YES** **NO**

Participant's Name: ……

Signature: …… **Date**: ……

ANNEXURE F: INTERVIEW GUIDE/SCHEDULE

This interview schedule is geared towards all the 15 interviewees as reflected in Annexure A.

How does SACE regulate the teaching profession through the enforcement of the code of professional ethics in Gauteng?

1. Does SACE effectively enforce the code of professional ethics in Gauteng? Give reasons for your answer.
2. In your experience, how has SACE used the code of professional ethics to regulate the teaching profession in Gauteng? Use examples where relevant.
3. How do you think regulation of the teaching profession, through the code, could be improved in Gauteng? Give reasons for your answer and provide examples where relevant.
4. Any other comments?

In what ways does SACE apply its enforcement systems and processes in responding to breaches of the code of professional ethics by teachers in Gauteng?

1. What are the enablers to SACE enforcing the code of professional ethics in Gauteng?
2. What are the barriers to SACE enforcing the code of professional ethics in Gauteng?
3. What is your opinion on how SACE is enforcing the sanctions to guilty verdicts?
4. Any other comments?

What is the nature of the relationship between SACE and institutions responsible for supporting the enforcing of the code of professional ethics?

1. Please share the nature of the relationship (if any) between your institution and SACE in enforcing the code of professional ethics in Gauteng?
2. In what ways (if any) is SACE's application of verdicts and sanctions impacting on your institution and vice versa?
3. Any other comments?

ANNEXURE G: THE CODE OF PROFESSIONAL ETHICS

DEFINITIONS

In this Code, unless the context indicates otherwise any word or phrase defined in the South African Council for Educators Act, 2000 has that meaning and:

1. **'Code'** means the code of professional ethics for educators contemplated in Section 5(c) (i) of the Act;
2. '**Council**' means the South African Council for Educators;
3. '**Educator**' means any educator registered or provisionally registered with the Council means any educator registered fully, provisionally or conditionally with the Council;
4. '**Learner**' means a pupil or a student at any school, further education and training institution or adult learning centre;
5. '**Parent**' means:
   - any natural parent or guardian of a learner;
   - any person legally entitled to custody of a learner; and
   - any person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) or (b) towards the learner's education at school.

GENERAL

2. The educators who are registered or provisionally registered with the South African Council for Educators:

2.1 acknowledge the noble calling of their profession to educate and train the learners of our country;

2.2 acknowledge that the attitude, dedication, self-discipline, ideals, training and conduct of the teaching profession determine the quality of education in this country;

2.3 acknowledge, uphold and promote basic human rights, as embodied in the Constitution of South Africa;

2.4 commit themselves therefore to do all within their power, in the exercising of their professional duties, to act in accordance with the ideals of their profession, as expressed in this Code; and

2.5 act in a proper and becoming way such that their behaviour does not bring the teaching profession into disrepute.

CONDUCT: THE EDUCATOR AND THE LEARNER

3. An educator:

3.1 respects the dignity, beliefs and constitutional rights of learners and in particular children, which includes the right to privacy and confidentiality;

3.2 acknowledges the uniqueness, individuality, and specific needs of each learner, guiding and encouraging each to realise his or her potentialities;

3.3 strives to enable learners to develop a set of values consistent with the fundamental rights contained in the Constitution of South Africa;

3.4 exercises authority with compassion;

3.5 avoids any form of humiliation, and refrains from any form of abuse, physical or psychological;

3.6 refrains from improper physical contact with learners;

3.7 promotes gender equality;

3.8 refrains from courting learners from any school;

3.9 refrains from any form of sexual harassment (physical or otherwise) of learners;

3.10 refrains from any form of sexual relationship with learners from any school;

3.11 refrains from exposing and/or displaying pornographic material to learners and or keeping same in his/her possession;

3.12 uses appropriate language and behaviour in his or her interaction with learners, and acts in such a way as to elicit respect from the learners;

3.13 takes reasonable steps to ensure the safety of the learner;

3.14 does not abuse the position he or she holds for financial, political or personal gain;

3.15 is not negligent or indolent in the performance of his or her professional duties; and

3.16 Recognises, where appropriate, learners as partners in education.

CONDUCT: THE EDUCATOR AND THE PARENT

4. An educator, where appropriate:

4.1 recognises the parents as partners in education, and promotes a harmonious relationship with them;

4.2 refrains from offering a bribe in any form to parents; and

4.3 does what is practically possible to keep parents adequately and timeously informed about the well-being and progress of the learner.

CONDUCT: THE EDUCATOR AND THE COMMUNITY

5. An educator

5.1 recognises that an educational institution serves the community, and therefore acknowledges that there will be differing customs, codes and beliefs in the community;

5.2 Conducts him/herself in a manner that does not show disrespect to the values, customs, and norms of the community.

CONDUCT: THE EDUCATOR AND HIS OR HER COLLEAGUES

6. An educator:

6.1 refrains from undermining the status and authority of his or her colleagues;

6.2 respects the various responsibilities assigned to colleagues and the authority that arises there from, to ensure the smooth running of the educational institution;

6.3 uses proper procedures to address issues of professional incompetence or misbehaviour;

6.4 promotes gender equality and refrains from sexual harassment (physical or otherwise) of his or her colleagues;

6.5 uses appropriate language and behaviour in his or her interactions with colleagues;

6.6 avoids any form of humiliation, and refrains from any form of abuse (physical or otherwise) towards colleagues.

CONDUCT: THE EDUCATOR AND THE PROFESSION

7. An educator:

7.1 acknowledges that the exercising of his or her professional duties occurs within a context requiring cooperation with and support of colleagues;

7.2 behaves in a way that enhances the dignity and status of the teaching profession and that does not bring the profession into disrepute;

7.3 keeps abreast of educational trends and developments;

7.4 promotes the ongoing development of teaching as a profession;

7.5 accepts that he or she has a professional obligation towards the education and induction into the profession of new members of the teaching profession;

7.6 refrains from any contravention of the statutes and regulations of the Republic of South Africa, relevant to the Code;

7.7 refrains from indulging and/or being in possession of intoxicating, illegal, and/or unauthorised substances including alcohol and drugs within the school premises and/or whilst on duty;

7.8 refrains from carrying and/or keeping dangerous weapons in the school premises without any prior written authorisation by the employer; and

7.9 refrains from engaging in illegal activities.

CONDUCT: THE EDUCATOR AND HIS OR HER EMPLOYER

8. An educator:

8.1 recognises the employer as a partner in education;

8.2 acknowledges that certain responsibilities and authorities are vested in the employer through legislation, and serves his or her employer to the best of his or her ability;

8.3 refrains from discussing confidential and official matters with unauthorised persons; and

8.4 must inform and declare his or her business interests to the employer prior executing them.

CONDUCT: THE EDUCATOR AND THE COUNCIL

9. An educator:

9.1 Makes every effort to familiarise him/herself and his/her colleagues with the provisions of the Code;

9.2 complies with the provisions of this Code;

9.3 discloses all relevant information to the Council;

9.4 informs Council and/or relevant authorities of alleged or apparent breaches of the Code within his/her knowledge;

9.5 co-operates with the Council to the best of his or her ability;

9.6 accepts and complies with the procedures and requirements of the Council, including but not limited to the Registration Procedures, the Disciplinary Procedures of the Council and the payment of compulsory fees.