

Accountability under the coach-athlete relationship in sport

by

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B.Proc

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Introduction and Background

Over the past decades sport has changed dramatically with regard to, amateurism to professionalism, the abolition of racial segregation in sport, equality in sport on all levels, media coverage of sport; just to mention a few. Athletes have become bigger, stronger and quicker, including the impact of science, technology and training in sport.

The revolutionising of sport has put immeasurable pressure on stakeholders involved in sport, such as sports organisations and federations, sports committees, coaches, agents, managers, sponsors, the media and the diversity of sports stakeholders and athletes.

This evolution has initiated stringent measures to control and regulate the existing laws in sport by sports governing bodies. Sports bodies have to adapt and be alert to newly formed legislation relating to the sport they are associated with, to satisfy the new demands amidst the rapid growth of sport.

The challenge will be to implement practical and functional policies and/or new laws. The appointment of competent people (who accept these new responsibilities to regulate and develop the sporting culture) can be problematic and good corporate governance is vital.

In this study the main focus is on the coach-athlete relationship, the liability and implementation thereof. It also refers to how other countries have successfully promulgated policies and other initiatives to advance the interests of sport, especially to the welfare of children and women, and the prevention of sexual abuse. It further suggests practical procedures that can be followed, such as training programs and the monitoring thereof. Most people around the world acknowledge that children are the future of our sport and should be protected against all odds. Without any dispute, most people worldwide will also agree that there is a problem relating to sexual abuse (especially young girls and boys) in the realm of sport.

This leads to the question, what about young adult athletes and older athletes? If any of these anomalies can be prevented at a young age, the chance that it will occur in the athlete's adulthood is slim, but is not absolute and cannot be excluded entirely. There is not enough focus on adult athletes. As stated, the main focus is on the coach-athlete relationship and should include young and adult athletes. The improvement of the coach-athlete relationship should not be for a particular group such as women and children, but for all athletes on all levels, amateur and professional. The objective of this study is to focus on the essence of the relationship between a coach and his athlete and what can be done to improve this relationship. This will lead to better communication and understanding and inevitably minimise irregularities that might occur.

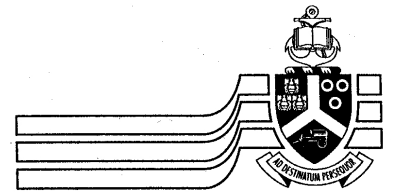
In this study it is fundamental to discuss the unlawfulness in our sport, to present examples and how policies, rules and laws have been promulgated to regulate certain controversies in sport and to ensure effectiveness. Presently there is an urgent need to establish effective policies and laws, which will certainly be helpful to researchers and lawmakers to implement policies to ensure an efficient relationship between a coach and his/her athlete.

This study inquires analytically into why the coach-athlete relationship is special and the importance to improve this relationship for the interest of sport. The study is also descriptive of nature and based on the premise that problems can be solved and practices improved through observation, analysis and description, to pursue what is necessary to achieve a successful coach-athlete relationship. Investigating rules and principles of governing bodies and commissions, sports organisations and federations, clubs, and everybody involved in a regulatory capacity regarding sport on all levels, internationally and in South Africa, is substantial to establish a reformative collaboration between coach-athlete relationships, not only for personal advantage and satisfaction, but also to the sports industry as a whole.

The enactment of new laws and principles, and to discipline those who violate these principles, will never resolve this dilemma entirely. Rules, laws and principles improve consistency, attempting to regulate sport for equality and fairness, and

punishment act as a deterrent to remove the culprits from sport by suspension and also contribute to the well-being of the sports industry; but only temporally.

There will always be sports people involved in the violation of the laws, which are often driven by: greed, wealth, celebrity status, sponsorships, renewing of contracts and to be the best. This dilemma should be approached differently to seek a solution behind the motive and cause of these actions that violate the integrity of the sports industry. To deviate from the focus point and pretend there is nothing wrong and enforcing the laws across all sectors of the sporting sphere, implementing more effective principles/rules/programs to enhance communication and the well-being between coach-athlete relationships, is a step closer in resolving this dilemma.



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CHAPTER 1

MODERNIZATION OF SPORTS LAW

1.1 *Globalisation of Sport in the 21st Century*

1.1.1 *Introduction*

Global sport has grown into a multi-billion dollar industry. Everybody is competing for a bigger slice of the pie and due to this volatile market, it has led to tremendous tension and pressure, especially between athletes and management. Therefore, it is understandable that things will go wrong and continue to spiral out of control and it is difficult to stop this aberration. Sport worldwide has turned into disorder. Lawsuits related to sport have increased tremendously over the past decade. Drug abuse, sexual offences, discrimination, corruption, match fixing and cheating is widespread. In addition, there is the transgression of unethical behaviour, such as the unscrupulous conduct against minors in sport, sexual abuse, discrimination, harassment and the abuse of position of trust within sport.

During the opening ceremony of the 28th Summer Universiade in Gwangju, South Korea, the FISU¹ President, Claude-Louis Gallien² expressed his concern regarding the current position of world sport and stated that:³

“The world of sport is currently in trouble and the whole world goes bad. During this Universiade, let us dream together, because when dreaming together we can change the world and this world certainly needs to be changed. It is not only politicians,

¹*Fédération Internationale du Sport Universitaire* (International University Sports Federation). FISU is responsible for the organisation and governance of worldwide competitions for student-athletes between the ages of 17 and 28. It includes a summer and winter Universiade and 32 World University Championships. The headquarters is based in Lausanne, Switzerland.

² Professor Gallien graduated from the University of Paris (1965), PhD in Biology (1967) and State Doctorate in Natural Sciences (1969). He made his sports career in sailing and track & field (hammer and discus). He was FISU Vice-President from 1995 to 1999, FISU Executive Chairman from 1999 to 2003 and FISU First Vice-President from 2003-2007. He was elected as President in 2011.

³http://www.livefisu.tv/live/clip/1274708/title/Opening_Ceremony_Claude_Louis_Gallien_SU_Gwangju_2015_ [accessed 17 July 2015]. Sport has the power to change the world, the power to inspire, the power to unite people; it is more powerful than government in breaking down barriers; Mitten and Opie (2011) *Sport and the Law Journal* 29.

scientists, lawyers or businessmen who can change the world, but also athletes and students. Have ambition and dream big. During this Universiade, let us be ambitious together, because when competing together and not against the other, we can achieve true victory.”

Who is to blame for this turmoil? There are a large number of rules, policies and regulations, but sporting people continue to disobey them, regardless of the consequences. How can we prevent further injustice, without discrediting sport as a whole? Do we need to implement more laws and policies? What can be done to manage the sports industry more effectively?

1.1.2 What is Global Sports Law?

“Global sports law may provisionally be defined as a transnational autonomous legal order created by the private global institutions that govern international sport.”⁴ Globalization typically refers to the process by which different economies and societies become more closely integrated, and concurrent with increasing worldwide globalization.⁵ Thibault uses the interpretation of Robertson, describing *globalization* as “the compression of the world and the intensification of consciousness of the world as a whole,” which means the consolidation of the world into a whole space; a global community.⁶ The world is increasingly interconnected culturally and economically, including sport and society; seeking an interdependent world pursuing freedom across national borders. Laws, economies and social movements are forming at the international level.⁷ Civil society organizations act globally forming alliances with organizations in other countries and because of modern technology they can connect directly with other international organizations, causing it to be more effective than working through their national governments.⁸

⁴ Foster *Lex Sportiva: What is Sports Law?* 37.

⁵ Irani and Noruzi (2011) *International Journal of Humanities and Science* 216.

⁶ Thibault (2009) *Journal of Sport Management* 2.

⁷ Irani and Noruzi 216.

⁸ *Ibid* 217.

It is undeniable that sport has globalized and there are some positive objectives where globalization has been beneficial to sport.⁹ Some of these examples are: the participation of athletes around the globe, the increasing numbers of countries participating in international events, the growth of international sport management firms and their involvement in all facets of sport, transnational corporations in the sport industry producing sportswear and sport equipment, international sport federations increasingly finding new sources of capital from the sale of broadcasting rights, the increasing flow of athletes and coaches all around the world to participate and coach, etcetera.¹⁰

Thibault's article depicting the globalisation as an inconvenient truth indicates on the other hand that apart from the positive movement in sport, globalization has not been favourable for all.¹¹ Some argue that sport globalization has been achieved at the expense of individuals, organizations, and countries with limited resources.¹² Especially athletes and the workforce of poor countries are exploited by rich people and organisations in this regard. The negative side regarding the globalisation of sport needs to be identified, analyzed, treated, and monitored and to implement a feasible strategy for everyone and to the benefit of sport, involving all stakeholders.¹³

1.1.3 Expanding the Geographical Boundaries of Sport

Due to the modernization of sport and competitiveness of sports people around the world, sport offences have increased and led to the emergence of various sport governing bodies, organisations and federations, such as: Fédération Internationale de Football Association (FIFA), International Association of Athletics Federations (IAAF), International Olympic Committee (IOC), Child Protection in Sport Unit (CPSU), United Nations Children's Emergency Fund (UNICEF), etcetera.¹⁴ These world federations and organisations possess a lot of power and authority, controlling

⁹ Thibault 3 and 4.

¹⁰ *Ibid* 4.

¹¹ *Ibid* 4.

¹² *Ibid*. For a more detailed discussion about some negative effects of globalisations, see Thibault 5-12.

¹³ *Ibid* 14.

¹⁴ Gardiner *et al Sports Law* 77.

various sports internationally, such as deciding upon the laws, policies and rules which are applicable to the sport industry worldwide. The Olympic Games, the Commonwealth Games, various world championships and other world tournaments have gained in economic and political importance.¹⁵ Sport offences and disputes affect sport relationships and the development of an 'international sports law' is becoming a practical necessity.¹⁶ Since sport has started to become more professional and organised, there has been a dramatic shift in the balance of power that exists between the players, the clubs and the governing bodies.¹⁷ The dominant position of the national governing bodies has been gradually eroded, first by the rising financial power of their more successful club members and more recently by the rise of 'player power'.¹⁸ The globalisation of sport demands the need to re-evaluate many of the relationships that exist within it.¹⁹ The commercialisation of sport is new and fast-paced and demands bias control and sustainability and therefore the need for legal regulation.²⁰ Legal regulation of national and international sports competition has become extremely complex and has entered a new era.²¹ The transitional demands of sport cause uncertainty among sports people and their rights have to be protected and supported.²² Globalization should be more responsive to public needs.²³

An example of globalisation is evident with child protection in sport. After the emergence of sexual assault of children, especially the Hickson case,²⁴ policies and laws have erupted globally to protect and safeguard the well-being of children, especially its origins in developed nations, such as the UK, Canada and Australia, where only a few sport organisations acknowledged or addressed child abuse and protection.²⁵ In the beginning the focus was on the individual perpetrators and the victims, but has changed positively over the years to a wider interest in athlete health

¹⁵ *Ibid* 78.

¹⁶ *Ibid* 77.

¹⁷ James *Sports Law* 221.

¹⁸ *Ibid*.

¹⁹ *Ibid* 222.

²⁰ Gardiner 86.

²¹ Mitten and Opie 18.

²² Gardiner 86. See Ch 4.3 for information on policies and the protection of sport and its athletes.

²³ Irani and Noruzi 217.

²⁴ *Op cit* fn 101, Ch 3.3.3 for more information on the *Hickson* case.

²⁵ Brackenridge and Rhind 2014 *Social Sciences* 327 and 330.

and welfare, human rights and integrity in sport.²⁶ Due to the commercialisation and cultural growth of organised sport around the world, the continuation of offences and disorder in sport, global sport was pressurized to affiliate with other established major social institutions, such as education and health, to pursue its own fair and impartial policing.²⁷ Child protection and safeguarding is fairly new in the development on both policy and practice in sport.²⁸ Another example is the international anti-doping measures in sport that form an impressive system of global law and regulation.²⁹

The media and advanced technology have made a major contribution to the globalization of sport, dispersing sport to all corners around the world and followed by millions of fans. Sport is not only watched and practiced locally anymore. There is an increased participation of sport around the world, creating international heroes who are role models for the young and old. Athletes compete internationally, which has led to the construction of sports stadiums and sport shops. The world trade in sportswear and equipment is flourishing, especially brands such as Adidas and Nike.³⁰ Except for athletes who are sponsored by different brand names, the majority purchases of these brand names are by the fans, people who don't even participate in sport.³¹ The internationalisation of sports employment indicates that athletes now compete a great deal of their sporting career abroad and that there are no geographical boundaries to sport.³² To consolidate the above mentioned regarding the increasing movement toward globalisation, Thibault includes factors such as, pressure from transnational corporations, international capital, neoliberal economics and trade relations among countries have increased.³³

²⁶ *Ibid* 327.

²⁷ *Ibid* 328. See also 330-331 for more information on child protection and globalisation in sport. Thibault also referred to the various contexts where globalisation occurs, namely: politics and international governance, economics, business, media and technology, health, education, development, environment, culture, etc. (Thibault 2).

²⁸ *Ibid*.

²⁹ Mitten and Opie 19.

³⁰ Gardiner 78. This is confirmed by Irani and Noruzi, stating about the industrial emergence of worldwide production markets and broader access to a range of foreign products for consumers and companies (Irani and Noruzi 216).

³¹ *Ibid*.

³² James 243.

³³ Thibault 2.

1.2 Sport Federations and Governing Bodies

1.2.1 Governance of Modern Sport

The modernisation of sport is fast paced and complex and causes tension and uncertainty among sports people. The revolutionising of sport has inevitably led to the implementation of new laws and policies, governed by regulatory authority. Sport federations, sport organisations and governing bodies came to power with the main goal to regulate and control sport without prejudice and harm to anyone, pursuing fairness, the integrity of sport and the development of sport for the benefit of all. Sport is rapidly growing bigger and bigger every year and creates enormous wealth and power. Blackshaw is of the opinion that sport is now a multi-billion dollar global industry and can no longer be left to self-regulation by the international sports federations, which are responsible for organising and developing these events on a global scale and have become very rich and powerful.³⁴

The statement of Gallien in Chapter 1.1.1 about the current position of world sport that it is in trouble and lacks creativity; is confirmed by Bell-Laroche and Corbett, stating that the world we live in now is complex and turbulent.³⁵ “Sport organizations face many challenges including rapid changes in communication technologies, diminishing funding sources, increasing expectations from the public, and a demand for system-wide reform in the form of aligning sport development with the principles of Canadian Sport for Life and Long Term Athlete Development.”³⁶ This resonates with the proposition of Blackshaw that the sport industry can no longer be left to self-regulation by international sport federations. Sport has grown tremendously over the past decade, causing turmoil in the realm of sport. Sport leaders and lawmakers are overwhelmed by the rate at which sport is accelerating, causing sport administrators and organisations to fail to keep or maintain proper control and development over

³⁴ Blackshaw (2000) *New Law Journal* 617.

³⁵ Bell-Laroche and Corbett 2010 *Legacies Now* 42 (http://www.tribc.org/uploads/files/Risk_Management_Guide.pdf) [accessed 07 July 2016]. *Legacies Now* was an innovative not-for-profit organisation that leveraged the 2010 Olympic and Paralympic Winter Games to create tangible community legacies throughout British Columbia.

³⁶ *Ibid* 42. *Canadian Sport for Life and Long Term Athlete Development* fall under ‘Sport for Life’, a non-profit organisation in Canada, which consists of leaders from various sectors in society; promoting quality sport and physical activity and aiming to improve the health and lives of its citizens.

sport. One person or an organisation alone can no longer bear all the responsibilities and duties regarding its specific sport.

1.2.2 *Can the Globalisation of Sport be Successful in the Future?*

The globalisation of sport has moved the focus of legal regulation increasingly onto international sports federations, who control and govern international sport.³⁷ These autonomous organisations are independent of national governments.³⁸ An autonomous perspective sometimes leads to corruption, greed, unjust enrichment, unfairness, etc. It also indicates adverse and limited vision in decision-making, no transparency and especially in this context, it is evident that autonomous power affects cohesion and limits creativity. Human resource management could be beneficial in this regard, to play a supporting role in achieving success in the realm of sport. The continuation and history of the Court of Arbitration in Sport (CAS) demonstrates how civil and common law legal systems can function effectively together within an international tribunal to resolve a wide variety of complex, time-sensitive disputes between parties of different nationalities.³⁹ CAS arbitration awards are globally respected and usually accepted by national courts.⁴⁰ This is an indication that successful globalisation in sport is possible, seeking acceptance and co-operation of everyone in the realm of international sport. Sports are an important cultural phenomenon in all countries of the world and have a unique ability to attract, entertain, inspire, and challenge a global populace.⁴¹

The main purpose of Human Resource Management (HRM) in an organisation is to increase and improve employee performance. HRM deals with the management of

³⁷ Foster 36. International sporting federations legislate and create their own general norms, and operate a discrete independent regulatory regime globally, (Foster 38). It has social and legal force and show that they can create their own norms, (Foster 42).

³⁸ *Ibid.* International sporting federations cannot be regulated by national courts or governments, (Foster 37).

³⁹ Mitten and Opie 23.

⁴⁰ *Ibid.* Mitten and Opie suggested that it might be appropriate for national courts to consider, compare, and/or adopt CAS jurisprudence in resolving purely domestic sports law disputes, (Mitten and Opie 31). CAS is an international body that was established in 1984 to settle disputes related to sport through arbitration. The headquarters are in Lausanne, Switzerland.

⁴¹ *Ibid.* 29. Across geo-political boundaries, sports provide a forum for increased understanding, appreciation, and respect for mutually agreed upon rules, fair play, and resolution of disputes among diverse cultures and societies, (Mitten and Opie 29).

the people in an organisation, focusing on policies and systems in the organisation, conforming to various regulations. It helps employees in an organisation to reach its full potential and how to work together towards the same goal. Research undertaken on HRM practices regarding the management of sport, has contributed to this field and help organisations to manage the expectation of their employees.⁴² Managing student-athletes is an important task for the universities.⁴³ This concept can also be applied to various sport organisations, including professional and amateur athletes from all age groups. The bulk of the responsibility regarding the management of athletes and the coach-athlete relationship rests on the shoulders of the coach, setting the desired tone through policies and practices.⁴⁴

Effective communication in the coach-athlete relationship is essential. The coach should make sure the athlete is well informed of important matters and that the athlete understands what is expected from him or her.⁴⁵ The universities should provide the required infrastructure and enable the coaches to reach these objectives.⁴⁶ A harmonious coach-athlete relationship, where there is effective communication, understanding, trust, mutual respect, care, and concern are some of the factors that contribute to the success of this relationship and essential for the management of sport.

1.3 Conclusion

The above supports the viewpoint of this study that sport worldwide is in distress. Sport bodies need to get together and address the new demands of sport of the 21st century. It is time for setting a standard for sport worldwide, accepted by everyone as fair, feasible and in the best interest of sport as a whole, including the athlete, coach, lawmakers and spectators.

⁴² Rezania and Gurney 2014 *SpringerPlus* 3:383.

⁴³ *Ibid.*

⁴⁴ *Ibid.* Ch 2.2 and 2.3 described comprehensively the role and impact of the coach, and the effect it has on the coach-athlete relationship. In general, Ch 2 deals with the coach-athlete relationship.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

The aberration experienced in sport demands creativity, unification and impartial leadership. Sport needs collaboration in all spheres of sport, uniting sport nations, pursuing fair treatment, the development of sport, sharing knowledge and striving for unanimity. Connecting sport with other sectors of society, such as education, recreation, health, etc. is helpful to create awareness and co-operation among everyone, aligning community, provincial and national programming. It is now the time for sport federations, sport organisations, government bodies, sport clubs, sport leaders and law makers to get together creating policies and rules for the development of sport, which is applicable to everyone around the globe. International sporting federations can by their rules, regulations and policies create global law to be recognised as binding by national courts.⁴⁷

⁴⁷ Foster 48. Mitten and Opie are also in favour for the need of a specialised international tribunal, (Mitten and Opie 21).

CHAPTER 2

THE COACH-ATHLETE RELATIONSHIP

2.1 Introduction

The relationship between an athlete and a coach is a special relationship, based *inter alia* on trust, communication, responsibility, discipline and plays an important role in the development of an athlete. The strong bond of the coach-athlete relationship should be carefully managed with great responsibility. Unfortunately this position of authority and trust is sometimes breached by the coach, which could lead to detrimental consequences.

Lawsuits related to sport have increased because of miscommunication and mismanagement. Implementing additional laws and principles will not solve the numerous offences related to sport, but would at least help to minimise them. Regulatory bodies for coaches and laws controlling the coach-athlete relationship need to amplify the coach-athlete relationship and implement training programs and workshops. The ultimate goal is to gain control and maintain law and order without prejudice to sport and all the people involved, pursuing equality, fairness and safety. There is also not sufficient counselling for athletes, especially to deal with personal problems.

The focus of this chapter is on the relationship between a coach and his athlete and the legal aspects thereof and what is important to focus on in such a relationship. It is also important to look at how these legal aspects are enforced and in relation to any regulating laws or rules and if any of these laws and rules are mandatory. This is also the core section of this study; analysing and discussing this special relationship, together with a comparative narrative focusing on the coach-athlete relationship, primarily in a sporting context. It will also focus on the significance of communication in this relationship, the *essentialia* of it and how to improve communication and the relationship in general. Finally the study will look at the violation of rules and laws of the coach-athlete relationship and any shortcomings and breach of trust pertaining to

this relationship. This leads to the question whether training programs and/or regulatory bodies are necessary to control this special relationship? The end objective and goal is to improve or change the coach-athlete relationship to benefit sport in general.

2.2 What is a Coach-Athlete Relationship?

2.2.1 Introduction

The main question for this research is: How can the laws of sport, legal rules, policies and principles that apply to sport, be utilised to support and ameliorate the relationship between an athlete and his coach? The definition of *relationship* according to the Free Online English Dictionary is defined as:

The mutual dealings, connections, association, involvement, or feelings that exist between two parties, countries, people, etc: a business relationship, or the relationship between teachers and students.¹

Nevertheless, is this relationship between a coach and athlete the same as pointed out in the definition? One can argue that it is similar, or that some corresponding elements are present, but it goes beyond the basic and ordinary form that we use in our daily conversations; the relationship is one that is *sui generis*. A special bond exists between a coach and athlete. It is not only a contractual business relationship, but also an emotional, psychological, caring relationship and one of trust.

Williams² refers in her article, 'Government Sponsored Professional Sports Coaches and the Need for Better Child Protection',³ to Radford in his capacity as chairman to the Sports Council's Review Panel, where he identified trust as playing an important part between coaches and their students, stating:

¹ <http://dictionary.reference.com/browse/relationship?s=t> [accessed 05 June 2015].

² Welfare sport researcher at the Department of Law, University of Wales, Aberystwyth.

³ Williams *Entertainment Law*, Vol. 2, No.1, Spring 2003, 59.

Sportsmen and sportswomen of all ages place enormous trust in their coaches, and coaches must be equal to it and never knowingly do anything that would harm their charges physically, psychologically, emotionally and mentally.

Williams states that trust and power is vested in a coach.⁴ Coaches are 'responsible for setting and monitoring the boundaries between a working relationship and friendship', especially where 'the coach and performer are of opposite sex, and/or ... a young person'.⁵ This is primarily to prevent sexual harassment between coaches and athletes and child protection.⁶

Coach-athlete relationships have been defined as an interconnection of emotions, thoughts and behaviours.⁷ It includes appreciation and respect for each other, is both dynamic and complex, and requires discovering and fulfilling needs of both the coach and athlete.⁸ An effective coach-athlete relationship is necessary for a successful coaching outcome and factors that contribute to the coach-athlete relationship include, but are not limited to: planning and designing the coach-athlete engagement, building and maintaining rapport, establishing and maintaining trust, building credibility.⁹

2.2.2 *The Interpretation and Analysis of the Coach-Athlete Relationship*

2.2.2.1 A Healthy Interpersonal Coach-Athlete Relationship is Fundamental for Success

A study conducted by Jowett and Cockerill, investigated the nature and significance of the athlete-coach relationship within the context of the interpersonal constructs of Closeness, Co-orientation, and Complementarity (three Cs).¹⁰ The coach-athlete

⁴ Williams 58.

⁵ *Ibid* 59.

⁶ See the discussion below on sexual harassment in Ch 3.3 and child protection in Ch 3.4.

⁷ *Op cit* fn 42, Ch 1.2.2, Rezanian and Gurney.

⁸ *Ibid*.

⁹ *Ibid*.

¹⁰ Jowett and Cockerill 2003 *Psychology of Sport and Exercise* 313. The study included 12 Olympic medallists, where the participants' responses to open-ended questions were analysed about their athletic relationship with their coach.

relationship is fundamental in the process of coaching because its nature is likely to determine the athlete's satisfaction, self-esteem and performance accomplishments.¹¹

Some great sport athletes have said the following about their experiences, referring to the coach-athlete relationship:¹²

Interviews with 21 Olympic swimmers concluded that “no one can become an Olympic-calibre swimmer without direct support, instruction, and otherwise, of many people” [Kalinowski AG (1985): *The development of Olympic swimmers in Bloom BS (Ed.) Developing talent in young people* 139-192]. Steve Cram¹³ described his relationship with coach Jimmy Hedley as “being supportive ... it goes beyond an athlete-coach relationship. He’s a friend of the family and another sort of father figure” [Hemery D (1986) *The pursuit of sporting excellence: A study of sport’s highest achievers*]. Glynis Nunn¹⁴ coached by John Daly said he was understanding, ‘just as in a father-daughter relationship or in marriage’ [Same article by Hemery D (1986)].

Often coaches’ relationships with athletes are reciprocal, trusting, genuine, and go beyond merely teaching and instructing skills, techniques and tactics.¹⁵ The relationship is underlined by respect, belief in, knowledge of, and contribution to the other’s goals, needs, wants and specifically the element of care on the part of the coach was found to be essential.¹⁶

Werthner¹⁷ further stated that the caring, the honesty, and the respect for each other are the most profound of this coach-athlete relationship. The coach has the skills to

¹¹ *Ibid* 314.

¹² *Ibid*.

¹³ He is a British retired track and field athlete and was one of the world’s dominant middle distance runners during the 1980’s.

¹⁴ She is a former Australian heptathlete and the first Olympic champion in the event.

¹⁵ Jowett and Cockerill 314.

¹⁶ *Ibid*. See also Werthner 2009 *Canadian Journal for Women in Coaching* 4, about having the same goal and mutual respect. Her study was undertaken to analyse the Canadian performances following the 2008 summer Olympic Games in Beijing, China and the primary objective was to identify, from both the athletes’ and the coaches’ perspectives, the key factors that contributed to a successful performance or, in some cases, an underperformance at the Games.

¹⁷ Werthner 3.

teach for example a specific technique which is the critical foundation for competitive success in a new sport, uses clear communication what is necessary and being patient.¹⁸ The coach has the ability to know when to push and when to be gentle, consequently building a trust that in turn, builds a strong relationship and great success.¹⁹

2.2.2.2 The Effect of Coaching Behaviours

Rezania and Gurney²⁰ have examined in a study the impact of coaching practices on student-athlete's behaviour and the impact of commitment to the coach on the coaching outcome of in-role behaviour, and the influence of coaching practices, of information sharing, training, and encouraging teamwork, on the formation of relationships. By showing that coaching practices impact commitment to the coach, and that commitment to the coach impacts student-athlete role behaviour and performance, the findings have important implications for a better understanding of the determinants of coaches' and athletes' performance.²¹ To understand the interpersonal dynamic between the coach and the player, it is important to understand the perceptions of the players with respect to effective coaching behaviours and practices and to understand how players interpret coaching practices and how those practices affect student-athlete performance.²²

Historically, coaching in sport has focused on developing athletes' physical, technical and strategic skills by placing a great deal of time and energy on the technical and administrative aspects of coaching because these components were better defined and more controllable.²³ Coach-athlete research has often focused on interpersonal dynamics between the coach and the athletes from a leadership approach.²⁴ More

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Rezania and Gurney.

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

recently, research has evolved to investigate the effect of coaching behaviours on the coach-athlete relationships and the impact on outcomes, such as satisfaction.²⁵

2.2.2.3 Duty of Care

Traditionally, coaches are expected to exercise a heightened duty of care; a special relationship to their athletes.²⁶ Roberts stated that the general viewpoint is that a “special relationship” exists between a more qualified and experienced coach, than a less qualified and experienced coach and in a relationship with younger athletes.²⁷ This proposition is disputable in the light that not all coaches are similar, do not have the same character, apply different coaching techniques and due to their different personalities, have different relationships with the athletes they coach. The coach’s conduct in the coach-athlete relationship is judged by the standards of conduct and qualifications established within the sport.²⁸

According to Gardiner²⁹ coaches and other supervisors owe a duty to take reasonable care of those whom they are engaging with and where this involves children, the concept of being ‘*in loco parentis*’ will apply and the duty will be more defined. *In loco parentis* is the legal concept indicating a relationship similar to that of a parent to a child. It refers to a person vested with parental status and responsibilities toward another individual, usually a young (minor) person. The person has a duty to take care of the young person the same way as expected from a parent. The most general usage of this term relates to the relationship between teachers and students. In Canada, the courts have equated the duty of a teacher/instructor to the standard reasonably to be expected of a parent.³⁰ This

²⁵ *Ibid.*

²⁶ Roberts 2013 *Techniques Magazine* 37 (<http://www.pageturnpro.com/Renaissance-Publishing/48173>

-Techniques-February-2013/index.html#) [accessed 23 March 2016]. The Techniques Magazine is the official publication of U.S. Track & Field and Cross Country Coaches Association – www.ustfccca.org (USTFCCCA). Their main purpose is to represent the interests of coaches of Track & Field and Cross Country at all levels of competition and to develop student-athlete participation.

²⁷ Roberts 37.

²⁸ *Ibid.*

²⁹ *Op cit* fn 14, Ch 1.1.3, Gardiner 514. See also Ch 4.2 about risk strategies and Cloete’s comprehensive discussion about ‘Risk Management in Sport’ (Ch 8 p 119), Cloete (ed) *Introduction to Sports Law in South Africa* (LexisNexis Butterworths Durban 2005).

³⁰ Lewis and Taylor *Sport: Law and Practice* 739.

concept is illustrated in *Strauss v MEC for Education Western Cape Province*³¹ where the plaintiff was engaged in coaching high school learners the athletic event of discus throw and was struck on the forehead with a discus by one of the learners, resulting in serious injuries. The defendant was negligent in that the discus circle on the sports field was not, at the time of the incident, enclosed with safety nets and the failure to provide safety nets was in fact attributable to an omission by the school, which had a duty to ensure the safety of the persons involved in or present at the coaching session in question.³²

Rezania and Gurney also compare the role of the coach as being the same as a teacher, having the ability to focus on providing student athletes with training on key skills and abilities.³³ The training should be relevant and meet the needs of their role as a student-athlete and help them to perform well in that position.³⁴ The coach should enable and empower the student-athlete to make decisions about sport specific issues and this will enable the student-athlete to perform effectively in the team.³⁵ Synoptically, coaching is essentially teaching.³⁶

Lewis and Taylor are of the opinion that sports coaches can have more influence over child athletes than a teacher.³⁷ A former student-athlete has stated that the coach is someone whom is doing the right thing and who can show how to do the

³¹ 2006 ZAWCHC 41 [8 September 2006] par [5].

³² *Strauss* case par [6]. See also the discussion of the *Duffield* case [*Duffield v Lilyfontein School and Others* 2011 JDR 0039 (ECG)] in Ch 3.4.7.2 about negligence and safety measures, where the plaintiff who was participating in a school activity, fell from a zip-wire and sustained bodily injuries. Another case of interest is the *Roux* case (*Roux v Member of the Executive Council of the Department of Education, Gauteng and Another* 2016 ZAGPPHC 603) in Ch 3.4.7.2 where a rugby coach breached the duty of care towards a student and to ensure correct safety procedures are followed. An example of a sexual nature is illustrated in the *Hewitt* case (*Hewitt v The State* 2016 ZASCA) in Ch 3.3.6.3 where Hewitt who was a tennis coach, had a responsibility to take care of his students (*duty of care*) and abused his position of authority, responsibility and trust to take care of the students entrusted with him by their parents.

³³ Rezania and Gurney.

³⁴ *Ibid.*

³⁵ *Ibid.* Hanson stating that great coaches make it a priority to help their athletes develop strong decision making skills. Hanson 2013 *Athlete Assessments* 19 (http://www.athleteassessments.com/pdf/AA_2012_The_Ultimate_Coach_Handbook.pdf) [accessed 25 June 2015]. Bo Hanson was a four times Australian Olympic Rowing Representative and three times Olympic Medallist. He co-founded and developed Athlete Assessments which focuses on Coaching Consultations and Corporate Training.

³⁶ Allen *Leadership Principles in Coaching Basketball* 4.

³⁷ Lewis and Taylor 788.

right thing, they are like surrogate parents you look up to.³⁸ The student never had the same feeling and experience about a teacher and therefore the relationship and standards are different.³⁹

In loco parentis does not apply to a specific kind of person. This legal doctrine is extensive and basically includes anyone who is entrusted with this duty; either by a parent or by law, to take care of minors and could include an institution, like a school or a university. In the realm of sport; coaches and instructors, sport administrators, sports governing bodies, sport clubs, sport facilities, sport institutions, universities, schools and staff members can fall under this category of *in loco parentis* to the extent of the duty bestowed upon them.

2.2.2.4 Can a Coach also be a Friend in a Coach-Athlete Relationship?

Kelley *et al* defined a dyadic relationship as the situation in which *two people's behaviours, emotions, and thoughts are mutually and casually interdependent*.⁴⁰ This conception of relationship not only identifies the basic constituents of human relationships, but also their interrelations.⁴¹ Subsequently, three interpersonal constructs, namely Complementarity, Closeness, and Co-orientation, were selected from the interpersonal relationship and behaviour literatures in order to operationalise the basic constituents of the coach-athlete relationship.⁴² Coaches and athletes descriptions of their relationship in terms of interpersonal liking, trust, and respect indicate the level and nature of Closeness.⁴³ Open channels of communication allow coaches and athletes to share each other's experiences, beliefs, values, thoughts, and worries and, in turn, facilitate the development of Co-orientation.⁴⁴ Complementarity refers to the type of interaction that the coach and the

³⁸ *Ibid* 788.

³⁹ *Ibid*.

⁴⁰ Jowett and Cockerill 315.

⁴¹ *Ibid*.

⁴² *Ibid*.

⁴³ *Ibid*.

⁴⁴ *Ibid*.

athlete engage in, as well as to motivations and appropriate resources for developing an athletic relationship.⁴⁵

It is natural human behaviour to have a good relationship with someone you like and get along with. Respect does not only derive from one's age, experience, achievements, or standing in society, but how you treat others. The Golden Rule states: "*Treat others the way you prefer to be treated*". This is more than just verbal communication and understanding, but also includes your everyday behaviour, what people see and how you conduct yourself and react towards difficult situations. It goes beyond simply being kind to people, or helpful to those in need. It is really just about adjusting your views and attitude.

Respect, belief and commitment appear to be influential in the development and effectiveness in the coach-athlete relationship.⁴⁶ Personal feelings (e.g. intimacy, trust and liking) may be less influential for the effectiveness of the 'working' coach-athlete relationship, nevertheless important for the establishment of a more personal relationship.⁴⁷ Some athletes viewed their coach as a close friend or a mentor, others as a father or mother figure.⁴⁸ Consequently, feelings such as intimacy, trust and liking may represent elements of an interpersonal relationship that is more personal as in a close friendship.⁴⁹

Athletes are more likely to reveal themselves to coaches whom they like, respect, believe and trust.⁵⁰ The closer the athletes and coaches feel, the more the opportunities occur for the coach to provide support, to spend time and effort and to respond to athletes' needs and wishes, and the more the opportunities are for the athlete to respond positively to their coach's actions and efforts.⁵¹ A baseball player

⁴⁵ *Ibid.*

⁴⁶ Jowett and Cockerill 320.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid* 327.

⁵¹ *Ibid.*

at Southern Arkansas University, Hayden Nichols, said that “a coach should be a coach and a friend, and nothing else.”⁵²

2.2.3 *The ‘Human Relationship’ and ‘Training Relationship’*

A participant in the study of Jowett and Cockerill explained that two relationships developed and existed simultaneously with his coach. One relationship was the ‘human relationship’ and the other was the ‘training relationship’.⁵³ It was further explained that the human relationship was no different from a friendship and it was underlined by ‘trust’ and ‘respect’, whereas the training relationship was strengthened by the coach’s ‘guidance’.⁵⁴ These relationships, like all the others we develop, must grow and alongside them we grow and improve and so these relationships need to allow us to evolve.⁵⁵

The coach–athlete relationship is a unique relationship, which develops specifically during the long, lasting hours of training.⁵⁶ Another participant stated that, “I used to spend a lot of time in the company of my coach and teammates. I remember we used to eat, travel, train and sometimes study together.... My coach knew me even better at that time than my family and close friends.... One of her [coach] many qualities was that she made us feel that she understood us, and she must have done, because she knew all of us like an open book”.⁵⁷ As a consequence of the aforementioned, a special relationship exists between a coach and an athlete in a sport setting, where an athlete is seeking for advice and guidance from his or her coach.⁵⁸

⁵² Johnson 2013 *The Bray Online* (http://www.thebray.com/sports/coach-athlete-relationships-does-a-line-need-to-be-drawn/article_94928c8e-656a-11e2-bcb0-0019bb30f31a.html) [accessed 18 August 2015]. The Bray has been the student voice of Southern Arkansas University, since 1923.

⁵³ Jowett and Cockerill 320.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.* 322. Werthner also mentioned this in her article about the importance of the individual, even within a team sport, on p 4.

⁵⁸ Gibbons and Campbell 2003 *Journal of Legal Aspects of Sport* 13(3) 189.

“Coaches become very attached to their athletes and commit great emotional investments of care and concern for the welfare of their athletes”.⁵⁹ The present data also indicate that athletes, too, develop feelings for their coaches. Thus, mutual feelings, both general and personal, are important in positive and effective relationships.⁶⁰

Evidence suggests that coaches and athletes develop athletic relationships that are athlete-centred and more specifically, such relationships are underlined by mutual respect, trust, care, concern, support, open communication, shared knowledge and understanding, as well as clear, corresponding roles and tasks.⁶¹ It is to be ‘under the wings’ of a coach who is not only competent to provide instructions, but also competent to communicate feelings such as consideration, warmth, care and interest.⁶² Werthner⁶³ stated that a complete understanding of the athlete’s needs developed through listening and sharing information (in other words, effective two-way communication) and finally, patience, caring, honesty, and respect.

The above paragraph basically elucidates what a coach-athlete relationship is based on and confirms the above opinions from various authors. A relationship is to show consideration for others; to think about something thoughtfully and take appropriate action. It is not to be scared to share your opinion, because the other person might react aggressively, showing disrespect, or being humiliating. Other key factors include, listening, problem solving, fair treatment, confidentiality, and acceptance. Analysing the above, it seems that not much is said about the psychological effect of this relationship.

2.2.4 The Psychological Impact of the Coach-Athlete Relationship

Individuals, including athletes, develop and grow through their relationships with other people.⁶⁴ Felton and Jowett did a study examining whether basic needs

⁵⁹ Jowett and Cockerill 321.

⁶⁰ *Ibid.*

⁶¹ *Ibid* 327.

⁶² *Ibid* 321.

⁶³ Werthner 1.

⁶⁴ Felton and Jowett 2013 *Psychology of Sport and Exercise Vol.14* 59.

satisfaction is a mechanism by which athletes' styles are associated with levels of well-being.⁶⁵ The focus was on coaching and parental relational contexts as coaches and parents are considered as pivotal figures in an athlete's growth and development.⁶⁶ Attachment theory is an established framework that aims to promote an understanding of the bonds that are formed in close relationships and was derived through observing how infants interacted with their primary caregiver, usually the infant's mother.⁶⁷

The value of attachment theory in sport psychology has recently begun to emerge in research that aims to understand interpersonal aspects of sport such as friendship quality and coach-athlete relationship quality, intrapersonal aspects of sport such as eating disorders, attention and stress appraisals.⁶⁸ Sport psychology literature has shown support for the proposed association between basic psychology needs and well-being.⁶⁹ Sport psychology showed that athletes reported greater well-being, reflected in heightened subjective vitality, when they perceived their basic psychological needs within their designated sport to be satisfied.⁷⁰ It is also reported that when female gymnasts felt that their basic psychological needs were satisfied during practice sessions, they reported increased well-being in terms of self-esteem, positive affect, and subjective vitality.⁷¹ Individuals with a secure attachment style experienced greater well-being due to their social (with friends) and personal (with parents) relationships providing satisfaction of their basic psychological needs.⁷²

In addition Headley-Cooper stated the importance of the coach-athlete relationship as the foundation of the coaching process and the most meaningful interpersonal relationship in sport, which determines an athlete's development, satisfaction, self-esteem, confidence and performance accomplishments.⁷³ Both the coach and

⁶⁵ *Ibid* 57.

⁶⁶ *Ibid* 59.

⁶⁷ *Ibid* 57.

⁶⁸ *Ibid*.

⁶⁹ *Ibid* 58.

⁷⁰ *Ibid*.

⁷¹ *Ibid* 58-59.

⁷² *Ibid*.

⁷³ Headley-Cooper *Coaches' Perspective on Athlete-Centred Coaching* 1. The meaning of athlete-centred according to the UK Athletics Coaches Manual, Level 1 is:

(a) *Placing the needs of the athlete before the interests of the parents, club, school, or coach.*

athlete need to strive for performance and personal excellence continuously.⁷⁴ This greater balance between performance and personal excellence, have encouraged the fields of sport psychology and coaching to work towards creating sport environments that place equal value on the pursuit of performance and personal excellence.⁷⁵

According to the attachment theory, anxious attached individuals are clingy, needy, and their level of closeness with others may remain unfulfilled despite caregivers or attachment figures (in this case, coaches) best attempts to connect emotionally and behaviourally and therefore, any attempts for proximity on the part of the coaches may go unacknowledged, as anxious attached individuals find it difficult to acknowledge the efforts of closeness and proximity others provide.⁷⁶ Research has shown that coaches who employ autonomy supportive behaviour can create an environment in which the athlete feels that their psychological needs are being satisfied.⁷⁷ This satisfaction of basic psychological needs within the coach-athlete relationship is representative of athletes' experiences of personal growth, mastery, and self-acceptance.⁷⁸ Emotional closeness as a salient aspect of the coach-athlete relationship appears to be consistent with evidence in the sport psychology literature.⁷⁹

2.2.5 Summary

If a coach understands the importance of sport and exercise psychology, it would improve the well-being of an athlete and will present better results on the field.⁸⁰

(b) All athletes are welcome to participate, are valued and encouraged to explore their own potential.

(c) Recognise the importance of providing a fun and safe environment.

Encourage athletes to be involved in their own development and empowered to take greater responsibility for it (Anon <http://www.theinsidetrack.org.uk/womenontrack/Chapter1c.htm>) [accessed 18 September 2015].

⁷⁴ Headley-Cooper 1.

⁷⁵ *Ibid* 5.

⁷⁶ Felton and Jowett 63.

⁷⁷ *Ibid* 62.

⁷⁸ *Ibid*.

⁷⁹ Jowett and Cockerill 321. See also Headley-Cooper about the importance of the coaches' philosophy and coaching behaviours (Headley-Cooper 18).

⁸⁰ Hanson (2013) 42.

Hanson defines sport psychology as “the understanding of how the mind influences an athlete’s performance in their chosen sport.”⁸¹ The importance of sport psychology is not new to coaches and athletes, but unfortunately there is no sufficient emphasisation on it, because the focus is more on the physical aspect of sporting performance.⁸² These physical aspects of sport are critical and they become even more valuable when combined with an effective mental training program.⁸³ Hanson stated that “the coach-athlete relationship is critical to sporting success and there is more and more research being done that shows that this should be a key focus area in sport.”⁸⁴

The first step for a successful coach-athlete relationship should be taken by the coach. In most cases the coach is older than the athletes and also more experienced in the particular sport that he or she teaches, especially on a professional level where the coach might have been a top athlete, when he or she was younger. Athletes admire a coach for his or her knowledge, skills and experience. When an athlete meet a coach for the first time, the athlete might be a little bit nervous, because he or she is not sure if they will get along with the coach, or uncertain about their own ability, or does not want to be a disappointment. The coach should reach out first to make the athlete feel welcome, to facilitate that first connection between the two people. From here on the relationship starts to develop and both the athlete and coach endeavor to pursue success.

2.3 The Legal Aspects of the Coach-Athlete Relationship and the Implementation Thereof

2.3.1 The Foundation of the Coach-Athlete Relationship

What is a legal aspect? *Aspect* means the nature, quality or character of something and *legal* describes things that are related to the law. In this subchapter *legal aspects* will refer to the principles of law that are applicable to a coach-athlete

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ Hanson (2013) 43.

relationship in a sporting context and the implementation thereof. The objective is the understanding of this relationship and how this relationship can be better managed and governed.

Rezania and Gurney stated that:

“The relationship between a coach and athlete has similarities with the relationship between a supervisor and an employee in an organizational setting. Similar to a supervisor, a coach has formal authority and may utilize both influence without authority and influence with authority when engaging with the athlete. This ability to employ both formal contractual and informal influence gives that the coach and the athlete some degrees of control over the type of relationship, or exchange that will exist between them. In the process of organizing their roles, the type of influence the coach employs affect the interpersonal exchange relationship between a coach and his/her athlete.⁸⁵

Developing a high quality relationship is a process that starts with the leader offering a membership in the in-group, followed by a period of “acquaintance” phase. Finally the “partner” phase is reached base on exchanges and development of trust and mutual respect. An outcome of high quality relationship is commitment.”⁸⁶

The commitment and willingness of the athlete to perform well, constitutes a kind of obligation toward the achievement of the coach’s goals and such cohesion and identification with the coach emerges, for instance, when the coach properly demonstrates leadership in leading the team to success.⁸⁷

This confirms what has been said earlier that the coach is the one who determines the relationship with his or her athlete, by initialising the foundation.⁸⁸ When a coach and an athlete engage for the first time, especially on a professional level, it is the commencement of a contractual alliance. Even if the relationship is only for a short period of time (for example on club, or school level), the *essentialia* remains intact

⁸⁵ Rezania and Gurney (2014). See also Roberts who stated that the relationship is almost similar to an employer and employee relationship (*op cit* fn 26, Ch 2.2.2.3, Roberts 38).

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ In the *Summary* see the final paragraph of Ch 2.2.5.

and the coach should treat each individual with similar respect and enthusiasm. The coach uses his or her charisma to instigate the setting, which leads to reciprocal trust and respect. It can also be compared to a contractual transaction, for example where one person is offering something and the other person is accepting. The coach is offering his or her special service (coaching) and the athlete is accepting this service (to be coached). It is the same as a partnership⁸⁹ which is an arrangement where people engage to work together and share something with each other. This special bond between a coach and athlete that is *sui generis*⁹⁰ constitutes a contract between the coach and athlete, which can also be categorized under the law of contract. The basic requirements for a valid contract are:

- (a) *Consensus ad idem*: The parties to a contract have the same understanding regarding the formation of the contract (mutual agreement, or meeting of the minds).
- (b) *Contractual Capacity*: The ability of the parties to a contract to enter into legally binding relations.
- (c) *Legality*: The agreement must be lawful (permitted by law).
- (d) *Physical possibility*: Performance of the contractual obligations must be possible.
- (e) *Certainty of the contract*: The law must be certain, in that it is clear and precise.
- (f) *Formalities*: The format of a contract agreed upon by the parties.

⁸⁹ In a symposium held in Berlin, the speakers Stöckel and Lang indicated in their article about a coach who said that he sees a coach-athlete relationship as a partnership (Stöckel and Lang 'Boundary Transgressions in the Coach-Athlete Relationship' 7). According to article 3 (14) of the *Code of Professional Ethics* of the South African Council for Educators (hereafter *SACE*), the educator should recognise, where appropriate, learners as partners in education. *SACE* is the professional council for educators that aims to enhance the status of the teaching profession through appropriate Registration, management of Professional Development and inculcation of a Code of Ethics for all educators and with its mission to promote excellence in the teaching profession (<http://www.sace.org.za/> [accessed 22 September 2015]).

⁹⁰ See also Ch 2.2.1 p 3 about this special bond that is *sui generis*.

This study does not focus comprehensively on the law of contract. The above mentioned requirements, are just a mere referral to bring it into perspective with the context of sports law.⁹¹

2.3.2 *The Impact of Effective Coaching*

Sports coaches have a preferred coaching style and a coaching style is a way of behaving.⁹² Knowing what your coaching style is and being able to change it, is critical in order to the different types of athletes you coach.⁹³ Using a style that is incompatible with your athlete's needs will result in you becoming frustrated that the athlete is not making any changes and it will also result in the athlete becoming frustrated that they are not being coached effectively.⁹⁴

Interpersonal relationships, in order to be effective, require qualities such as liking, respecting, appreciating, as well as understanding and accepting.⁹⁵ Such relationships create a psychological climate that is self-directing, self-responsible, more creative, more readily adaptable to new problems, more co-operative and less anxious.⁹⁶ The emotional bonding with the coach was also manifested in the athletes' acknowledgements, such as belief in and commitment to each other and to the relationship as a whole.⁹⁷

All the participants (12 Olympic medallists) in their study referred to the importance of 'hard work on both sides' and 'co-operation and responsiveness' and complementary roles, and a sense that both coach and athlete worked equally hard in achieving improved performance.⁹⁸ Two other athletes said, "for me the coach is a

⁹¹ About the Law of Contract in general, see Hutchison and Pretorius (eds) *The Law of Contract in South Africa* (Oxford University Press 2012) and in particular Part 3 that deals with the requirements of a valid contract. See also Van Huyssteen, Van Der Merwe and Maxwell *Contract Law in South Africa* 33-34 about the requirements of a contract. For more detailed information on sports contracts, see Cloete Ch 3 p 15-56.

⁹² Hanson 2009 Creating a High Performance Coaching Style (<http://ezinearticles.com/?Creating-a-High-Performance-Coaching-Style&id=1946322>) [accessed 03 August 2015].

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ Jowett and Cockerill 320.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Ibid* 323.

skilful, knowledgeable and smart teacher and the performer is an ambitious pupil” and “a good coach has got to have a thorough technical knowledge of the sport and be able to convey that knowledge so that the athlete can use it to become a competent performer.”⁹⁹ A successful coach is one who can provide technical instruction in a manner that inspires and nurtures an athlete and coaches who are resourceful and caring are more likely to be perceived by their athletes as a successful coach.¹⁰⁰ The coach has to make it clear right from the start that he or she knows what they are doing at each particular session, when teaching.¹⁰¹ Johnson states that coaches have a responsibility to prepare their athletes physically and mentally for competition and assist the athletes with performance enhancement.¹⁰² Success in athletic competition is primarily dependent upon skill and motivation, which consequently leads to the main responsibility of the coach to motivate their athletes to perform at optimal levels.¹⁰³

In the study of Werthner¹⁰⁴ the athletes stated the importance of a strong coach-athlete relationship as a crucial factor in winning an Olympic medal and how they worked together to create an environment that enabled them to succeed. The athletes also stated the following about how they felt about their coaches:

“The coach had a great deal of international experience, was skilled technically, but kept it simple. My coach is like a mentor¹⁰⁵ to me. We have a good relationship, and are open to learning from each other. We have complete confidence in our coach. With my coach, we knew exactly what I needed, physically, technically, and mentally. The key pieces of success were a very good coach and very good training as a result of good coaching and a good support team.”

⁹⁹ *Ibid* 324.

¹⁰⁰ *Ibid*.

¹⁰¹ Støckel and Lang 7.

¹⁰² Johnson *et al* 2011 *The Sport Journal* Vol 14 unpaginated (<http://thesportjournal.org/article/a-coachs-responsibility-learning-how-to-prepare-athletes-for-peak-performance/>) [accessed 30 June 2015].

¹⁰³ *Ibid*.

¹⁰⁴ Werthner 2. The study also focuses on how an effective coach-athlete relationship is created and how it is maintained.

¹⁰⁵ It is stated in Johnson *et al* (2011) that ‘as a positive athlete-coach relationship develops, many athletes begin considering their coaches to be role models.’

Melody Davidson¹⁰⁶ (one of the coaches in Werthner's study) said:

"In a team sport, it is always a work in progress, and the challenge is that each athlete needs something different. My personal challenge, as a coach, is that I am internally motivated, and that can lead to frustration for me, especially when an athlete does not appear motivated or is not working hard."¹⁰⁷

Hayley Wickenheiser¹⁰⁸ said the following about her relationship with Melody Davidson:

"It's all about mutual respect and I admire her passion and dedication to the game. She values my opinion. She is always open and receptive, if you show you are accountable and professional. She is very organized."¹⁰⁹

Another coach in Werthner's study, Yi Hua,¹¹⁰ stated about her relationship with Emilie Heymans:¹¹¹

"What works with my athletes is an individualized approach. It took about a year to create our relationship. Each day I was trying to understand her better. I am very honest with her – I don't lie – but sometimes we would disagree, so I would say, 'Try to think about my idea,' and I would give her a few days to think about it. We trust each other, and we always tell the truth. We work as a team."¹¹²

Elaine Dagg-Jackson¹¹³ confirmed that it takes time to build each relationship.¹¹⁴ Her current job as national coach is about getting to know each of the teams and their

¹⁰⁶ She was the head coach of the Canadian national women's hockey team.

¹⁰⁷ Werthner 3.

¹⁰⁸ She was a Canadian women's ice hockey player and member of the Canada women's national ice hockey team, who has represented Canada at the Winter Olympics five times, capturing four gold medals and one silver.

¹⁰⁹ Hanson 2008 Coach Athlete Relationships Matter (Canadian Olympic Study) <http://www.athleteassessments.com/coach-athlete-relationships-olympic-study/> [accessed 25 June 2015].

¹¹⁰ National diving coach and former Olympic diver for China.

¹¹¹ A Canadian diver who won four Olympic medals, two bronze and two silver.

¹¹² Werthner 4.

¹¹³ National women's coach for the Canadian Curling Association and coach at the 2006 Olympic Winter Games.

¹¹⁴ Werthner 5.

coaches and working with them to determine what they might need in addition to what they are already doing.¹¹⁵ She said that she spent a lot of time observing and studying the athletes and having discussions with each of the coaches, and with all that information make some suggestions depending on her observations, and anticipates what might help for the world championship or the Olympics.¹¹⁶

Hanson¹¹⁷ said there are five key themes for success:

1. Athlete self-awareness;
2. Strong coach-athlete relationship;
3. Optimal training environment;
4. Strong financial and human resources support system; and
5. Excellent management of the Olympic environment.

Supplementary to what Hanson has said and to stress the importance of the five key elements, Hanson suggests that an effective coach should be able to provide an environment where the athlete continuously grows and encompasses these key elements. The main function of a coach is to educate his or her athlete, providing them with the necessary training for development and growth, and to find the best way helping him or her to be successful and achieving their goals.¹¹⁸

It is also important to note that the coach and/or teacher should always act fairly and offers his or her athletes equal opportunities to participate and to develop.¹¹⁹

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ Hanson 2008. See the article for more information on the different coaching styles.

¹¹⁸ Johnson elaborates on this, that coaches should communicate with their athletes in order to assist them with the development of personal goals [Johnson *et al* (2011)].

¹¹⁹ Doubell *Opvoederskeriteit en sportafrigting by skole: 'n Onderwysregtelike perspektief* 18.

2.3.3 Professional Management and Well-Being of the Athlete

2.3.3.1 The Interpretation of *Educator* by Virtue of South African Legislation

According to the *South African Council for Educators Code of Professional Ethics* (hereafter *SACE Code of Professional Ethics*), an 'educator' means any educator registered or provisionally registered with the Council.¹²⁰ The *South African Council for Educators Act*,¹²¹ defined an 'educator' as any person who teaches, educates or train other persons or who provides professional educational services, including professional therapy and educational psychological services, at an institution.¹²² Under article 2 of *SACE* the educators who are registered with *SACE*:¹²³

- 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;*¹²⁴

As stated earlier and to bring the professional ethics of educators in relation to sport, the above suggests that coaches and athletes develop athletic relationships that are athlete-centred and more specifically, such relationships are underlined by mutual respect, trust, care, concern, support, open communication, shared knowledge and understanding, as well as clear, corresponding roles and tasks.¹²⁵

¹²⁰ Article 1(iii) http://www.sace.org.za/Legal_Affairs_and_Ethics/jit_default_21.The_Code_of_Professional_Ethics.html [accessed 22 September 2015].

¹²¹ Act 31 of 2000 (hereafter *SACE Act*).

¹²² *SACE Act* s 1(iii). An 'institution' means any school, further education and training institution or adult learning centre (*SACE Act* s 1(v)).

¹²³ *SACE Code of Professional Ethics*, article 2 (2.1-2.3).

¹²⁴ Act 1996.

¹²⁵ Stated in fn 59, Ch 2.2.3, Jowett and Cockerill 321.

Article 3 of *SACE* sets out the conduct of the educator towards the learner and includes inter alia, the dignity, beliefs and constitutional rights of the learner;¹²⁶ acknowledges the uniqueness, individuality, and specific needs of each learner; guiding and encouraging each to realise his or her potentialities;¹²⁷ refrain from improper physical contact with learners;¹²⁸ avoids any form of humiliation¹²⁹ and that the educator is not negligent or indolent in the performance of his or her professional duties.¹³⁰

2.3.3.2 The Importance of Monitoring the Athlete Physically and Psychologically

A coach should safeguard the health and fitness level of his or her athlete, because an injured athlete cannot train and therefore the recovery process is essential.¹³¹ For high-performing athletes it is becoming increasingly important to reduce fatigue and enhance performance. The coach should put the interests of the athlete ahead of his own interests.¹³² Caring and monitoring the well-being of the athlete, physically and psychologically will reduce injuries, which influence an athlete's or a team's performance.¹³³

Coach Kriel further stated how difficult it is for an athlete to overcome the psychological barrier in sport and when they do reach that level, success will become easier, but the coach also has to believe in his or her athlete and how to adapt, change and improve training programs to fit the athlete's progress and new role.¹³⁴ Athletic healthcare is of the utmost importance and must be taken care of by professional people.¹³⁵ It is therefore in the interest of a club or franchise to invest in

¹²⁶ *SACE Code of Professional Ethics*, article 3 (3.1).

¹²⁷ *Ibid*, article 3 (3.2).

¹²⁸ *Ibid*, article 3 (3.6).

¹²⁹ *Ibid*, article 3 (3.5).

¹³⁰ *Ibid*, article 3 (3.13).

¹³¹ Van der Walt 2015 *Netwerk24.com* (<http://www.netwerk24.com/sport/2015-07-12-henricho-bruintjies-reg-vir-990s-in-100-m>) [accessed 13 July 2015]. The information was translated from an Afrikaans article by sports journalist Van der Walt, about coach Hennie Kriel who trains Henrico Bruintjies (S.A. 100m athlete) and what he said his approach was about coaching.

¹³² Carfagna *Representing the Professional Athlete* 1, 6. Carfagna's book refers to the relationship between a sports agent and his client, the professional athlete, but the same principles could be applicable in a relationship between a coach and his athlete.

¹³³ Johnson *et al* (2011).

¹³⁴ Van der Walt (2015).

¹³⁵ *Ibid*.

a medical team and healthcare professionals, providing a safe environment for sport participation and be prepared to respond when an injury occurs.¹³⁶

The coach plays the most significant role as the principal figure of an athlete or in a team, as he is the connection and spokesperson between everyone involved, such as the athletes, medical staff, management, directors, etc.¹³⁷

2.3.3.3 The Athlete-Centred Approach

What is the meaning of an athlete-centred approach? Headley-Cooper¹³⁸ states in her research as follows:

“In the complex culture of elite sport, success is traditionally measured by the ability of athletes and coaches to produce technically superior medal-winning results. At this level of sport in Western cultures, athletes and coaches focused primarily on achieving performance excellence. Other attributes such as the athletes’ psychological, physical and social well-being are also important. Miller and Kerr (2002) suggested that both performance and personal excellence can be achieved through an athlete-centred model of sport. Within the athlete-centred system, the athletes’ health, education and moral development are considered to be essential requirements in the pursuit of excellence (Kidd, 2006). Athlete-centred coaching is of significance, as it expands upon the traditional focus on attributes which contribute to athletes’ performance excellence to also recognize the importance of the athletes’ psychological, physical and social well-being.”

With reference to the above mentioned, *athlete-centred* in sport means the focus is on the athlete. The athlete’s needs (physically, psychologically, emotionally and mentally), welfare, opinions, etc. are valued and supported by the coach, the organizational structure and sport infrastructure.¹³⁹ This structure involves the athlete

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Op cit* fn 73 Ch 2.2.4, Headley-Cooper 1.

¹³⁹ Headley-Cooper 12.

as an active participant on and off the field.¹⁴⁰ The psychological and social health of athletes is of equal or greater importance to their physical well-being.¹⁴¹

Coach Xiuli Wang¹⁴² creates an environment where athletes feel they can ask questions within a framework of two-way, open communication and she has a big heart and is supportive.¹⁴³ Hanson mentioned that there are four coaching styles¹⁴⁴ and when coaches do get these styles working for the athlete at the right time and place, it creates a great coach athlete relationship as the athlete feels their needs are being met.¹⁴⁵

Coaches are to have excellent technical skills and knowledge of their sport.¹⁴⁶ Penny Wurthner stated that excellent technical skills and knowledge of the sport is not enough and that competitive sport, particularly at the world and Olympic levels, is so emotional and competitive that athletes also need a coach to support and care about them, both as athletes and individuals.¹⁴⁷ When the athlete requires a dominant style of coaching, effective coaches know when to deliver this and provide honest feedback and input in order to enhance their athlete's performance. When this is done well, an even stronger bond and strengthening of the emotional contract is created.¹⁴⁸ A positive coach-athlete relationship leads to effective communication between a coach and athlete, which will consequently enhance athlete performance and increase the possibility of having a successful athletic program.¹⁴⁹

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid* 13. Sport has long been recognised as a major contributor to positive health and well-being of participants, (Mountjoy, Brackenridge, Arrington *et al* 2016 *British Journal of Sports Medicine* 1019).

¹⁴² She is a former Olympic speed skater for China, a two-time Olympic coach for Canada and a national long track speed skating coach.

¹⁴³ Hanson (2008).

¹⁴⁴ Influencing, Steady, Conscientious and Dominance Style. For more about these styles, see the article of Hanson (2008).

¹⁴⁵ Hanson (2008).

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.* Johnson stated that 'athletes need to feel that their coach cares about them as a person; not just as an athlete who can help them win games and establish a successful athletic program. Players are people first and great coaches make time for the person as well as the player' [Johnson *et al* (2011)].

¹⁴⁸ *Ibid.*

¹⁴⁹ Johnson *et al* (2011).

2.3.3.4 The 'Duty of Care' Responsibility of the Coach

2.3.3.4.1 Introduction

Due to the increased duty of care entrusted to coaches, staff and the organization they are affiliated to, they are responsible for providing reasonable supervision to their athletes and requires that reasonable safety measures should be taken.¹⁵⁰ The main focus of a coach is coaching and teaching, or training athletes to improve their personal ability, but a coach should also ascertain himself with who his athletes are and each athlete's capability.¹⁵¹ Each person is an individual with his or her own unique personality and people react differently to the same situations. A coach should endeavour to find the best possible method to coach each athlete, which is in line with the athlete's ability to achieve success. Finding the most effective method that will fit in with each athlete's character, will lead to trust, respect and understanding in the coach-athlete relationship. Each one in the group should be treated equally, fairly and should be given the same opportunity. A duty to exercise reasonable care exists and coaches are expected to prevent foreseeable risks of harm to participants.¹⁵² This model can be applied to all kinds of sports and includes individual training and not only group related training. Even though there is a dearth of case law on the subject in South Africa, this duty of care is in line with the general approach of the law of delict.¹⁵³ This duty to minimize the risk of injury includes *inter alia* supervision and knowledge of participants.¹⁵⁴

2.3.3.4.2 Reasonable Care

Under duty of care, the duty that is imposed on every coach is to take reasonable care to ensure that they are training the players under their control in a manner that

¹⁵⁰ Roberts 38.

¹⁵¹ The experts who have testified in the *Anderson case* (see the detailed information about this case, *op cit* fn 161, Ch 2.3.3.4.4), all agreed when teaching, leading or guiding a ski group, the instructor's decisions should be based on the needs and capabilities of the weakest members of that group (par 93).

¹⁵² Louw *International Encyclopedia of Sports Law* 378.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.* See also Cloete (2005 par 8.10 p 122) about some of the major areas that categorised under modern risk management.

does not cause them reasonably foreseeable harm. Due to the coach-athlete relationship, the coach has a duty of care towards his or her students as a result of his capacity as a coach and to ensure the reasonable safety of his or her athletes, and will be negligent if this duty is violated.¹⁵⁵ This duty is not absolute; it does not require perfection on the part of the coach. “It requires only that the coach take reasonable care to ensure that those under their tuition are taught how to perform moves relevant to the sport in question and to their level of skill and experience.”¹⁵⁶

2.3.3.4.3 Risk Assessment and Management

Cloete defined risk management as a potential hazard, or the possibility of danger or harm occurring.¹⁵⁷ All sports have some kind of inherent risk, for example contact sports, but another type of risk is unacceptable risk, which results in injury or harm that athletes and their parents or families are not willing to accept.¹⁵⁸ An example is when a coach creates an unacceptable risk if a player is clearly injured and wants to leave the playing field, but the coach insists that he continues playing and the risk is that the injury may be aggravated, and even lead to permanent disability.¹⁵⁹

2.3.3.4.4 The Case of *Anderson v Michel Lyotier*

Another proposition which is corollary to the statement, *duty of care* and contributes to the implementation of the coach-athlete relationship, is that coaches and instructors must ensure that they conduct appropriate risk assessments on all participants and equipment to ensure their suitability for the particular session that they are running, but participants cannot abdicate all responsibility for their personal safety to their coach.¹⁶⁰ The case of *Anderson v Michel Lyotier and Wendy Loytier*

¹⁵⁵ Cloete (2005) par 8.18 p 123.

¹⁵⁶ *Op cit* fn 17, Ch 1.1.3, James 90.

¹⁵⁷ Cloete par 8.06 p 121. See Cloete Ch 8 for a more comprehensive discussion of risk management in sport.

¹⁵⁸ *Ibid* par 8.07.

¹⁵⁹ *Ibid*.

¹⁶⁰ James 107. See also Støckel and Lang 7, about creating a safe environment by the coach. *SACE Code of Professional Ethics*, article 3 (3.11) states that the educator should take reasonable steps to ensure the safety of the learner.

(*t/a Snowbizz*) and *Jerome Portejoie*¹⁶¹ highlighted this issue about breach of duty and the appropriate standard of care as follows:

“The claimant was on a ski holiday with his family, including tuition for a ski instructor. The claimant and his wife were not very good skiers and during the course of the week the claimant had descended a number of slopes of varying difficulty and had skied off-piste on two occasions.¹⁶² He struggled with it and even bumped into a tree on one occasion earlier the week, which was not seen by the ski instructor.¹⁶³ On the day of the accident Mr. Anderson lost control while skiing in an off-piste area of the resort and skied into a tree, sustaining serious injuries.

Justice Foskett said, ‘the central issue is whether the ski instructor to whom the claimant was assigned, should have permitted or encouraged the claimant to ski in an off-piste area where the accident occurred, the essential suggestion being that it was too difficult terrain to negotiate successfully, or whether the claimant was responsible for his own misfortune, or was it just a freak accident’.¹⁶⁴

The court held that the off-piste terrain where the accident had occurred was steeper than any off-piste terrain the group had skied that week and that the snow conditions required more skill to negotiate than the on-piste conditions.¹⁶⁵ The ski instructor had acted in breach of duty by inviting a pupil to ski in an area where there was a foreseeable risk that he would run into a tree if he lost control of his skis and failed to provide his services to the claimant with reasonable skill and care.¹⁶⁶ The court held that every skier is responsible for his or her behaviour and that the responsibility is shared with the instructor and that the skier must make his or her own choice about whether to go with the instructor or not.¹⁶⁷ Justice Foskett held that objectively speaking, it is not reasonable for the skier not to say something in that situation.¹⁶⁸ The claimant was one-third responsible for a subsequent accident, as there was an onus on him to tell the instructor if he believed that it was unreasonable for him to attempt to ski there.”¹⁶⁹

¹⁶¹ [2008] EWHC 2790 (QB); hereafter “*Anderson case*”. See also James 92-93.

¹⁶² James 92.

¹⁶³ *Anderson case* par 36.

¹⁶⁴ *Ibid* par 5.

¹⁶⁵ *Ibid* par 82.

¹⁶⁶ *Ibid* par 118 and 8. It is also held by the court that this was the essential breach by the ski instructor.

¹⁶⁷ *Ibid* par 139.

¹⁶⁸ *Ibid* par 142.

¹⁶⁹ *Ibid* par 145.

Justice Foskett held that the issue of apportionment was not easy. Not all incidents involving a teacher, or a coach, or caretaker will result that they are in breach of duty of care and consequently the athlete, or pupil, or student would not always be able to establish a case for remuneration for injuries sustained, while under the care of those supervisors.

The *Anderson case* is also an example where the instructor had failed to teach the necessary skills and provide an appropriate safe system of learning.¹⁷⁰ Liability would be established where instructors had pushed their trainee beyond the limits of their competence but not if they were teaching skills and techniques that were appropriate to their skill level.¹⁷¹ The common law principle relating to the *in loco parentis* role of every educator is also significant here, to indicate that special skills relating to professional people are vested in them.¹⁷² Professional people are educated with a lot of experience and equipped with the necessary skills to ensure the safety of anyone under their control. The coaching staff is responsible for providing proper instruction and training to their athletes and the training and education must comply with the standards linked to the specific sport that they are teaching.¹⁷³ The coaching staff can expand and preserve their knowledge by educating themselves about their specific sport (e.g. certificate courses, studying, attending seminars and workshops), appointing professionals to assist the team to contribute in the areas they are not trained at (e.g. medical people), which will consequently lead to gain experience.¹⁷⁴ Additionally as pointed out in the *Anderson case*, the coach must competently instruct his or her athletes on the activity, the safety rules and the proper methods of participating.¹⁷⁵

2.3.3.5 Negligence and the *Watson Case*

In the *Anderson case* and similar cases regarding risk management, or lawsuits instituted successfully against international sports federations (ISF), national

¹⁷⁰ James 93.

¹⁷¹ *Ibid.*

¹⁷² Rossouw 2008 *Legal Journal, Anglia Ruskin University, Chelmsford* 1.

¹⁷³ Roberts 40.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

governing bodies (NGB) or coaches for breach of duty of care, a shared legal element that arises is negligence.¹⁷⁶ Negligence is the “failure to exercise the care toward others which a reasonable or prudent person would do in the circumstances, or taking action where such a reasonable person would not.”¹⁷⁷ To be negligent, someone must first have been in a situation that created a duty of care to ensure the reasonable safety of another person and the particular circumstance that gives rise to this duty is the existence of a relationship between one person and another.¹⁷⁸ Some examples are coaches and athletes; teachers towards their students; club managers towards its members; parents have a duty to their children; etc.¹⁷⁹

The duty of care owed by a NGB derives from the need for the safety of the competitors to be its paramount concern and this can be defined as being the duty to take reasonable care to ensure the safety of the participants taking part in the sporting activity.¹⁸⁰ In *Watson v British Boxing Board of Control* (hereafter *Watson case*),¹⁸¹ the boxing governing body was held liable for being negligent towards the claimant. The facts are as follows:

“Watson, the claimant, was knocked out in a professional boxing fight in the final round and suffered a brain haemorrhage (bleeding). He was unconscious and seven minutes elapsed before he was attended by one of the ringside doctors. It took nearly 30 minutes for him to arrive at the hospital after the fight. The North Middlesex Hospital had no neurosurgical department and he was transferred by ambulance to St. Bartholomew Hospital and by this time he had sustained serious brain damage and consequently left him paralysed down the left side and with other physical and mental disability’.¹⁸²

¹⁷⁶ See Ch 1.2 for more information about ISF’s and NGB’s. Actions based on vicarious liability can be brought against NGB’s and ISF’s in their roles as employers, just as they can against sports clubs and education authorities (James 98).

¹⁷⁷ Legal Dictionary for the definition of negligence, by Gerald and Kathleen Hill (<http://dictionary.law.com/default.aspx?selected=1314>) [accessed 28 September 2015].

¹⁷⁸ Cloete par 8.18 p 123. See also Anderson case par 118.

¹⁷⁹ *Ibid.*

¹⁸⁰ James 98.

¹⁸¹ [2001] QB 1134 (<http://www.bailii.org/ew/cases/EWCA/Civ/2000/2116.html>). The British and Irish Legal Information Institute (BAILII) provides legal information and is an on-line database of British and Irish legislation, case law, law reform reports, treaties and some legal scholarship.

¹⁸² *Watson case* par 1.

According to the British Boxing Board of Control Ltd., two doctors should attend a fight and medical inspection should be available.¹⁸³ Mr. Watson sued the Board and claimed that the Board had been under a duty of care to see that all reasonable steps were taken to ensure that he received immediate and effective medical attention and treatment should he sustain injury in the fight and they were in breach of this duty not offering this immediate medical assistance at the ringside that his condition required.¹⁸⁴

The court held where there is a potential for physical injury, it is clearly a foreseeable danger and a duty on the Board to take reasonable steps to try to minimize or control whether by rules or other directions the risks inherent in the sport.¹⁸⁵ The court ruled in favor of the claimant and that the Board was in breach of their duty.”

In the *Watson case* the duty was not to take reasonable care to avoid causing personal injury, but to take reasonable care to ensure that reasonably foreseeable personal injuries sustained were treated properly.¹⁸⁶ The onus weighs heavier on professional people or organisations, due to special skills conferred upon them through their professional capacity and the kind of profession they are associated with. Some examples are the police, teachers, doctors, lawyers, engineers, the government and organisations like the various NGB's of sport whose responsibility it is to manage their specific sport. Risk management strategies and patterns of injury will need to be reviewed in order to determine whether a sport needs to be made safer and if so, how.¹⁸⁷ A person or governing body in a position of care should also ensure that they establish proper supervision for anyone under their control, to refrain from possible injury, or any risk that can cause harm. This possibility of danger or harm also includes that coaches and their staff should ensure the safety of

¹⁸³ *Ibid* par 2.

¹⁸⁴ *Ibid* par 3.

¹⁸⁵ *Ibid* par 6. The “special relationship” between an institution and its recruited student-athletes imposes a heightened duty of care on respective institutions and the coaches and staff should provide for their safety within the context of their sport (Roberts 38).

¹⁸⁶ James 101. See also Lewis and Taylor 737-738 regarding coaches and supervisors expected to exercise reasonable care to avoid injury to anyone affected by their acts or omissions.

¹⁸⁷ James 102. Standard operating procedures are the most efficient and effective way to reduce risks (Cloete 127 par 8.37).

equipment and facilities, to avoid liability for creating a hazardous condition that contributes to an athlete's injury.¹⁸⁸

2.3.4 *Effective Relationship and Connection with the Athlete*

Hanson concluded in his article, *Creating a High Performance Coaching Style*, about creating a coaching style and an effective relationship and connection with the athletes as follows:

“What is interesting in sport today, is the amount of information on topics critical to performance such as nutrition, sports science, bio mechanics, but yet show me the same depth of information on how to build effective relationship and rapport with your athletes. Business has recognized the need to develop the management and leadership skills of its people years ago and in sport many people still seem to be caught up with training programs and sports science. Hanson said what his coach did better than any other coach he has seen, is his ability to build rapport with his athletes, establish enormous credibility and develop the highest level of respect. Personal power, which means your skill in dealing with people, is increasingly crucial to you and your role as coach. If you respect your athletes' individuality, their essential differences, they'll feel like they're on a winning team and will work harder, better for you. But you must empower them rather than just seeking power over them and you can do that by learning to listen, observe, and talk to them, which will build their self-esteem and that will increase their confidence in themselves.”¹⁸⁹

In today's modern world and the revolutionising of sport and all the challenges it presents, it is not enough for the coach just to have excellent technical skills and knowledge. Apart from creating a special rapport with the athlete supported by caring, trust and the emotional and psychological aspects of the athlete, the coach should acquire a working knowledge of all areas affiliated with performance enhancement, specifically the disciplines of sports administration, sports medicine,

¹⁸⁸ Carfagna 191. 'Coaches have some level of responsibility for all aspects of their athletic program, for example where they need to be concerned about the welfare of their players and the maintenance of athletic equipment and facilities' [Johnson *et al* (2011)].

¹⁸⁹ Hanson 2009. See also the discussion of Headley-Cooper (p 20-21) about different “power” approaches in the coach-athlete relationship in Ch 2.5.4.

strength and conditioning and sports psychology.¹⁹⁰ These disciplines include risk management, injury prevention, communication, nutrition, goal setting, and athlete development.¹⁹¹ Especially among professional athletes and teams, the conventional style and methods are redundant and the coach should involve professional assistance. Proper management by the coach is essential and includes what to do and how to solve any problems in the team effectively, which consequently leads to harmony and success for the athletes and the team as a whole.¹⁹² Effective coaches provide a positive and supportive environment, in which their coaching practices significantly enhance the athletes' performance, personal and professional development.¹⁹³

A quality coach-athlete relationship does not happen instantly and needs to develop over time.¹⁹⁴ Creating an effective and successful relationship is about investing the time and resources.¹⁹⁵ This can be compared to building and evolving a business from the beginning. Time, money, hard work, research, patience, etc. are some key factors for building a successful business. Building a better relationship is about conversations, observing and learning about each other within and outside of your sport.¹⁹⁶

2.3.5 Summary

There are many theories to ascertain the legal aspects of a coach-athlete relationship and what it consists of. Chapters 2.2 and 2.3 have shown that there are various aspects that can be followed that will guarantee success, but there is no limitation to this list. Probably the most important aspects are trust, respect and commitment. Coaches around the world are all individuals with their own unique character and personality and the same can be said about the thousands of athletes

¹⁹⁰ Johnson *et al* (2011). Johnson also said that coaches should gain knowledge concerning first aid care and the prevention of injury.

¹⁹¹ *Ibid.* Johnson also indicated that coaches must exert significant effort to monitor all components of their athletic programs.

¹⁹² Johnson *et al* (2011).

¹⁹³ Headley-Cooper 18.

¹⁹⁴ Hanson (2013) 6.

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

around the world. Each coach-athlete relationship is special and unique and will not be exactly similar to another coach-athlete relationship. These different aspects found in a coach-athlete relationship are merely guidelines, but they are all limited to the same corresponding foundations and guidelines. One positive aspect about it is when coaches and other sports people and organisations get together at seminars or conferences and share their ideas and discuss how to enhance sport locally and internationally.

The implementation of the coach-athlete relationship also consists of guidelines and ideas. A practical approach should be considered and what is functional for one coach-athlete relationship does not mean it will be the same for another coach-athlete relationship. It is indubitable that many of these coach-athlete relationships apply the same guidelines as a foundation, but will tailor it for their specific relationship and the specific sport they are involved in. An example of guidelines not related to sport but applicable to sport coaches, is the *South African Council for Educators Act*¹⁹⁷ and the *SACE Code of Professional Ethics*¹⁹⁸ which display specific guidelines to educators concerning their conduct towards students, parents, the community, colleagues, the profession and the employer.¹⁹⁹

2.4 Communication between a Coach and Athlete

2.4.1 Introduction and Definition

The traditional coaching style of technical knowledge and skill has contributed to great success worldwide and produced numerous champions overcoming the physical unreachable, such as running faster, jumping higher, endurance and smashing records. The modernisation of sport is as challenging as ever before, contributing to the pressure of coaches and athletes pursuing success. The scientific approach in sport causes the quality of the coach-athlete relationship to deteriorate, especially communication and better understanding.

¹⁹⁷ *Op cit* fn 121 Ch 2.3.3.1, Act 31 of 2000.

¹⁹⁸ *Op cit* fn 89 Ch 2.3.1.

¹⁹⁹ *Op cit* fn 172 Ch 2.3.3.4.4, Rossouw (2008) 6.

According to Dictionary.com *communication* is defined as:

“The imparting or interchange of thoughts, opinions, or information by speech, writing, or signs.”²⁰⁰

The word communication has originated from the Latin word *communis*, meaning to share. Clark²⁰¹ quoted that “effective communication occurs only if the receiver understands the exact information or idea that the sender intended to transmit, and that many of the problems that occur in an organization are the direct result of people failing to communicate, and processes that leads to confusion that can cause good plans to fail.” Studying the communication process is important, because throughout this process the coach is busy to coordinate, counsel, evaluate and supervise.²⁰² Johnson stated that the communication must be articulated in a fashion that the athletes will not only hear, but also instantly understand.²⁰³

This highlighted the predicament of our current sport industry. Most of the professional athletes are young, without any extensive skills and life experience. They are enticed by devious and experienced sports people to dreams of “*gold*”.²⁰⁴ Their superiors converse with them briefly about the most important conditions about their new life and do not exchange all the information in detail, and/or verifying if the athlete understands. Contracts are signed promptly, but without sharing comprehensive information considering for example, who does the athlete approach with his or her personal everyday problems.

After the star athlete Oscar Pistorius²⁰⁵ shot his girlfriend Reeva Steenkamp and was found guilty of murder, Carte Blanche²⁰⁶ broadcasted a documentary, where some athletes revealed that there are not any counselling available for young athletes. This

²⁰⁰ <http://dictionary.reference.com/browse/communication?s=t> [accessed 08 June 2015]. Dictionary.com is the world's leading online source for English definitions, synonyms, etc.

²⁰¹ Clark 1997 <http://www.nwlink.com/~donclark/leader/leadcom.html> [accessed 24 July 2014].

²⁰² *Ibid.*

²⁰³ Johnson *et al* (2011).

²⁰⁴ My own emphasis.

²⁰⁵ South African paralympic sprinter who became the first amputee to win an able-bodied world track medal and the first amputee runner to compete at an Olympic Games.

²⁰⁶ A production by Combined Artists and is an actuality program on M-Net, a pay-TV channel broadcasting in South Africa. The program was broadcasted on the 24th of February 2013.

kind of example is confirmed by Brake, where she has indicated that coach-athlete relationships are rarely examined for their impact on women's sports and athlete well-being and it is largely because they do not come within the ambit of Title IX, which sets the agenda for conversations about gender equity in sport.²⁰⁷ The relevance between the Pistorius case and the statement by Brake is that coach-athlete relationships and athlete well-being are rarely examined. This confirms the predicament concerning the coach-athlete relationship. Coaches need to be more involved with their athletes, such as the athletes' psychological needs (referred to in Chapter 2.2.4), providing professional assistance, proper management, and creating a positive and supportive environment (referred to in Chapter 2.3.4).

2.4.2 Concussion in the USA: Insufficient Communication

Another example of inadequate communication is found with the former professional wrestler and college football player, Christopher Nowinski and his experiences with sports coaches.²⁰⁸ In his book *Head Games*, he deals with America's concussion crisis in sports. The book is also an educational tool and focuses on the awareness of this dilemma. "A study published in 2003 found that half the athletes at the University of Akron – students between the ages of 17 and 24 – didn't know that a head injury is anything to worry about."²⁰⁹ A 16-year-old football player who was interviewed by Nowinski said that he had never talked to a trainer or doctor about a concussion when it happened.²¹⁰ He has never mentioned his experiences about it to nobody, because he thought it will go away and also wasn't aware of any risks.²¹¹ "Nobody has ever talked to me about anything that could happen if I played through a concussion."²¹² This underlines the dilemma of insufficient communication on the coach-athlete relationship.

²⁰⁷ Brake 2012 *Marquette Sports Law Review* Vol. 22:2 Article 3, 395 (available at: <http://scholarship.law.marquette.edu/sportslaw/vol22/iss2/3>). Deborah L Brake is a Professor of Law at the University of Pittsburgh. See Ch 3.3.5 for a discussion about Title IX.

²⁰⁸ Christopher John Nowinski is a former professional wrestler with World Wrestling Entertainment (WWE), who became the youngest committed and dedicated champion in WWE history and also played college football at Harvard.

²⁰⁹ Nowinski *Head Games: Football's Concussion Crisis* 122.

²¹⁰ *Ibid.*

²¹¹ *Ibid* 123.

²¹² *Ibid.* This was also mentioned by Nowinski himself through his own experiences as a football player and said that nobody has ever warned him about the risks and dangers of the sport.

It is not always easy to have a serious and personal conversation with a coach. It might be that the athlete does not want to disappoint the coach and team mates and does not want to let them down; or that the athlete is scared of ruining the existing relationship that the athlete has with the coach; or if an athlete has an injury or some other serious problem, he or she might be kicked off the team; or being humiliated in front of his or her peers. But inevitably communication is the best option and without communication it is not possible for the coach and athlete to solve any uncertainties. Coaches should always be open and honest with their athletes and make them aware of any risks and dangers. On the other hand athletes should do the same and inform their coaches about injuries, or other problems that need attention.²¹³ This educational effort will be an uphill battle.²¹⁴ In numerous instances athletes do not report minor injuries, or minor problems, because unfortunately, some coaches act biased and unfair in these circumstances and oust athletes from the team. The athlete chooses to avoid any possible conflict and therefore causes on the long term more physical harm to himself or herself and the coach-athlete relationship. Coaches that are not educated about any risks or dangers can be dangerous to their athletes.²¹⁵ It is understandable that the coach cannot know everything or know how to solve a problem and should therefore be willing to seek help from outside the team. This will automatically strengthen the coach-athlete relationship and shows that the coach cares and is willing to solve any matters according to his or her ability relating to the coach-athlete relationship.

²¹³ Most of the time team mates have a strong bond with each other, which causes them to share and tell things they usually do not tell anyone else. Teammates often know more than the coaches and trainers, because they are friends and care about each other (Nowinsky 136).

²¹⁴ Nowinski 129.

²¹⁵ *Ibid* 132.

2.4.3 *The Importance of a Strong Coach-Athlete Relationship and Communication*

2.4.3.1 What is Skillful Communication?

According to Werthner²¹⁶ skillful communication means:

- “1. Listening to the athletes and to the assistant coaches or other coaches, to clearly understand what is needed in any particular situation.
2. Coaches, assistant coaches, staff, etc. need to be open-minded. This means they must be able to listen and to adapt to different circumstances or conditions. When changes occur, explain the reasons for changing and they must be willing to seek help and support from other experts.
3. Coaches should assure at all times that they give clear and understandable feedback to their athletes.²¹⁷
4. The communication has to be an individualized approach.”

Coach Gary Lynagh, Olympian and 3-time World Champion, was quoted in Hanson’s article where he said “to be an effective coach, you need to know your athletes well – which can be difficult and it can take time. You need to find out the best way to communicate with your athletes – what’s the most likely to work and what will get the results we all want.”²¹⁸

2.4.3.2 The Importance of Communication

A compelling research was conducted by Penny Werthner after the 2008 Beijing Olympics for the Canadian Olympic Team about the success of coach athlete relationships. Bo Hanson exemplifies this study in his article about the importance of this relationship. The study consisted of interviewing various Olympic athletes and coaches and then analysed the feedback. Coaches indicated the importance of creating a strong coach-athlete relationship and emphasised the importance of

²¹⁶ Werthner 6.

²¹⁷ Hanson also stated that great coaches know how to give their athletes effective feedback (Hanson [2013] 12).

²¹⁸ Hanson (2013) 5.

communication and trust. A number of athletes pointed out “that their coaches were also open-minded in the sense of being willing to bring other experts into the team, and they cared for them not just as athletes but as individuals and their willingness to listen to what they each needed and thought.”²¹⁹

The coach Melody Davidson²²⁰ said she and her athletes are comfortable with each other and her athletes can come to her with any suggestions; therefore communication is the key.²²¹ Davidson set up meetings with each athlete and allows them to speak first and when they practice she pays attention to their body language and makes sure she is communicating with each player.²²² Davidson has found the fine balancing act of listening well and then leading, either by changing, for example, the power play, or by explaining why it would stay the same.²²³ Davidson admitted that she had to work hard at communicating, because it is a critical component for a team’s success.²²⁴ Hayley Wickenheiser²²⁵ said her coach Davidson is not hard-headed when she brings issues to the table, does not have much ego and said she will look at it or give reasons for her decisions.²²⁶

Hanson states that this is a great example of how to coach individuals within a team structure, paying attention to each individual by way of one-on-one meetings and encourages them to talk first and this leads to development of a firm emotional contract between the coach and his or her athlete.²²⁷ Coaches should keep in mind that communication involves two sides and includes listening and speaking; both from the coach as well as the athlete.²²⁸ If this concept is managed efficiently and to further positive relationships with the athletes, team success will increase.²²⁹

²¹⁹ Hanson (2008). See also Werthner (2009) 2.

²²⁰ *Op cit* fn 106 Ch 2.3.2.

²²¹ Werthner 3.

²²² *Ibid* 3-4.

²²³ *Ibid* 4. Hanson confirms this by saying that a coach-athlete relationship is the foundation of skillful communication, being able to ask effective learning oriented questions coupled with excellent empathic listening skills (Hanson 2008).

²²⁴ *Ibid*.

²²⁵ *Op cit* fn 108 Ch 2.3.2.

²²⁶ Hanson (2008).

²²⁷ *Ibid*.

²²⁸ Johnson *et al* (2011).

²²⁹ *Ibid*.

Emilie Heymans²³⁰ stated that her coach Yi Hua²³¹ listens to her and allow her to do things she thought was right and trying to understand what she was feeling and what she needed.²³² Hua allowed Heymans to create own plans for a competition, discussed it with her and this attributes to her confidence.²³³

2.4.3.3 Respect and an Individual Bond in the Coach-Athlete Relationship

To a great extent conflict can be avoided if people just take time to listen what another one is saying and people reply to each other in a mature and respectful manner. Listening is the key to effective listening and the ability to truly pay attention to what someone else is saying improves not only the quality of what we hear and understand, but also the enthusiasm and engagement of the other person involve in the communication. Great listeners also give the other person a fair chance to speak.²³⁴ A coach should try to be involved and show concern towards his athlete. Athletes, just as coaches, are all individuals who are different and unique from one another with different needs, even if they do the same sport and/or have the same coach. Individuals perceive and analyse data differently and especially in a team context, it is essential for a coach to have an individual relationship with each of his or her athletes.

In the study of Jowett and Cockerill one of the athletes has stated:

“Our coach–athlete relationship was different. I knew and could see it from the way the coach treated the other swimmers in the team. One day I asked my coach why he is different towards me. He said that ‘your goals are different from the other swimmers and so you have to work longer and harder’. I asked him this question again long after I finished my swimming career and he said that he believed in my abilities and knew that I would reach as high as I have done.”²³⁵

²³⁰ *Op cit* fn 111 Ch 2.3.2.

²³¹ *Op cit* fn 110 Ch 2.3.2.

²³² Werthner 4.

²³³ *Ibid.*

²³⁴ See also Jowett and Cockerill 322, about interpersonal communication with the coach, regardless of its content and shared knowledge and understanding.

²³⁵ Jowett and Cockerill 321.

2.4.4 Counselling for Athletes in the Coach-Athlete Relationship

When two people cannot get along and do not share the same viewpoint, communication becomes non-existent and consequently leads to conflict and tension. If coaches converse to their athletes as a *friend*,²³⁶ they will be able to know what they like and do not like, what they are interested in, what they do in their free time, about their family, what is bothering them, etc. In this situation a coach does not always need to give advice. Sometimes a person just needs someone to listen what they are saying, therefore releasing inner tension. In these situations a coach should determine if a serious problem exists and be able to address it accordingly. There are different ways to deal with it and in some instances the coach can probably solve it himself. If the problem is too serious, or personal, the coach should rather seek outside professional help. An attempt from the coach to solve the problem personally without assistance could be disastrous if the advice or help is wrong, or not the outcome the athlete was hoping for and could harm the relationship with the athlete. Inevitably, a harmful coach-athlete relationship influences the performance of athletes individually, or in a team related sport.²³⁷

The coach as the supervisor and superior person in the coach-athlete relationship has to take control of this relationship and *inter alia* has a responsibility to share necessary information with his or her athletes.²³⁸ Displaying this leadership influences performance, satisfaction and retention of the athletes.²³⁹ Due to his position of control, a coach provides his athletes with cues and information regarding what to do and how to do it.²⁴⁰ Rezanian and Gurney²⁴¹ states the following important statements regarding communication:

²³⁶ Friend in this context refers to a relationship of care and concern and not the same as a relationship with your best and closest friend.

²³⁷ Knowledge acquired from communicating with one another aimed to increase performance achievement and a coach's knowledge and understanding enabled him or her to respond sensitively and appropriately to the needs, aspirations, and problems of the athlete (Jowett and Cockerill 323).

²³⁸ Rezanian and Gurney (2014).

²³⁹ *Ibid.*

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.* Article 3.10 of *SACE* confirms this statement about how the educator could (also applicable to a coach) evoke the trust of his or her athletes through effective communication and behaviour, *op cit* fn 126-130, Ch 2.3.3.1.

“Coaching skills are firmly grounded in communication abilities including listening, feedback, and information sharing. Communication is necessary for establishing and sustaining trust, and establishment of psychological contracts. Information sharing reflects the extent to which coaches participate in the mentoring/coaching role to foster each student-athlete’s learning and development.”

Rezania and Gurney’s viewpoint of communication is a great example of the balance of speaking and listening, and establishing the trust between a coach and his or her athlete. Consequently this leads to the development of the athlete, pursuing to bring out the best in the athlete. This principle is clearly illustrated in the coach-athlete relationship of Charl Langeveldt (coach)²⁴² and Kagiso Rabada (athlete).²⁴³ Rabada made his international one day-debut against Bangladesh, in Bangladesh and had a sensational performance as a rookie. He said his focus now is first to be a better bowler and setting goals for himself.²⁴⁴ Back in South Africa and facing New Zealand in a T20-match, he said he will talk to the bowling coach and listen to his opinion of what will be the best way for him to bowl.²⁴⁵ Rabada states that Coach Langeveldt is “a calm person and easy to work with, who shares his experience as a bowler with him and does not force you to do something you feel uncomfortable with.”²⁴⁶

A successful relationship means *inter alia* that a coach understands his or her athlete, investing time and resources to ensure he or she has a deep understanding of his or her athlete.²⁴⁷ “Understanding your athletes gives you a window into how to communicate, build an effective environment for them, assist them to build on their strengths and overcome their weaknesses.”²⁴⁸ The end goal for an athlete is to be successful and to be the best measured to the athlete’s ability. For any athlete to remain at the top of his or her personal best is not easy and there comes a time

²⁴² Charl Langeveldt is a retired South African cricketer, who represented the S.A. National team on all formats of the game. He is currently the bowling coach of the S.A. National team, called the Proteas.

²⁴³ Kagiso Rabada is a young successful S.A. cricketer who represents the National team as a fast bowler and was awarded South African Cricketer of the Year for 2016.

²⁴⁴ Buchner 2015 *Netwerk24* <http://www.netwerk24.com/sport/krieket/2015-08-12-kagiso-rabada-ek-speel-nie-vir-allerlei-rekords> [accessed 12 August 2015]. Netwerk24 is an Afrikaans language online news website.

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

²⁴⁷ Hanson (2013) 7.

²⁴⁸ *Ibid.*

when the athlete's performance decreases, inconsequential of how hard you train and that could cause the athlete to lose self-confidence and put a strain on the athlete's physiological improvement. In these situations the coach's role is of the uttermost importance to communicate effectively and support his or her athlete. A coach should never give up, or show any sign of negativity. It is about coaching athletes to control their nerves so they can compete at least as well as they train, if not better.²⁴⁹ Hanson conducted a survey of elite coaches in 2008 and the top three challenges faced by coaches are:²⁵⁰

1. Understanding individual athlete's personality and how to best motivate them.
2. Personal life balance – managing sport, career, home and social etc.
3. Team/squad dynamics and managing relationships within the team/squad.

The coach in his capacity as enforcer who controls the coach-athlete relationship decides the extensiveness regarding the coaching style, planning, methods, etc. and how it will be executed. However, without proper communication informing the athletes what is expected of them or anything that affects the role of the student-athlete, it will be of no value or purpose and consequently leads to the underachievement of the student-athlete and the athlete becoming disinterested.²⁵¹ It is crucially necessary for a coach to encourage an environment of communication, especially during practice when team mates share ideas, helping and learning to understand each other and finally improving harmony and team success.²⁵²

2.4.5 Conclusion

To conceptualise success for an athlete or in a team related sport amounts to one word, *communication*. Coaches must be exceptional communicators with their athletes in order to be effective teachers, which is a critical component for success and the foundation to build a winning team.²⁵³ Communication is the key to trust, and

²⁴⁹ *Ibid* 14.

²⁵⁰ *Ibid* 8.

²⁵¹ *Ibid*.

²⁵² Johnson *et al* (2011).

²⁵³ *Ibid*. Hanson also stated about the coaches strong communication skills [Hanson (2013) 6].

trust is the key to teamwork in any group endeavor, be it in sports, business, or family.²⁵⁴ An athlete can have the most skilful and knowledgeable coach in the world, but without effective communication which includes trust and care, that special bond in a coach-athlete relationship and the ability of the coach to descend this knowledge upon his or her athletes, asserts that all the effort will be to no avail. The chances of success could be slim.

2.5 The Power and Influence of the Coach

2.5.1 Introduction

Chapter 2.2-2.4 have shown numerous testimonials of athletes about their coaches and what they regard as a good relationship, such as: mutual respect, honesty, trust, effective communication, the coach as a mentor, a father/mother figure, a friend, etc. Athletes need effective coaching to be successful and without proper training and guidance, failure will await. Coaches are aware of this phenomenon, which elevate them to a position where they are almost untouchable and do whatever they like. This arrogance leaves a negative emblem to this prestigious position, where abuse of power can easily appear.

But not all coaches are reprehensible; there are a lot of excellent coaches who have a strong relationship with their athletes who strive for success within accepted moral values in the realm of sport and society. This chapter will focus on the positive and negative effects of the power and influence of the coach on the coach-athlete relationship.

2.5.2 Analysing Power: Position and Personal Power

Coaches have a great influence on their athletes, positively and negatively and are role models for their athletes and the society at large. Sports people around the world (this includes athletes of all ages and all levels, sports administrators, sports governing bodies, etc.) place a huge amount of trust in coaches, which put them in a

²⁵⁴ *Ibid.*

position of power and authority. The coach is the leader in the coach-athlete relationship and has to take control of this special relationship.²⁵⁵ 'A coach is a leader automatically due to the position of authority that comes along with being a coach.'²⁵⁶ As a leader you have certain amounts of power.²⁵⁷ Leadership is 'the process of communication (verbal and non-verbal) that involves coaching, motivating/inspiring, directing/guiding, and supporting/counseling others.'²⁵⁸

According to Hanson the power originates from two sources, "position power" and "personal power."²⁵⁹ "Position power" is where the power is anointed by the Club or Team Management.²⁶⁰ In this situation the coach is approved and appointed by the club or the management. The coach has to abide by the club's constitution and/or policies regarding his or her appointment. In most cases the coach's appointment and compliance of the policies, ethical codes and laws of the club, is contained in signed documents defining the coach's behaviour, integrity, to honour the sport, etc.²⁶¹ This does not mean that the coach has no freedom to his or her coaching style. In most instances the coach is entrusted with a position of power and authority which is not easily influenceable by anyone. Clubs pay a lot of money for good coaches and because of the competitiveness and prestigiousness of the sport, sponsors and image of the club, directors and administrators do not interfere easily, especially if the club is winning with the assistance of the coach. In general, clubs cannot afford any negative publicity, such as to discharge the coach for some kind of violation. This will ruin the survival of the club and it will be difficult to obtain the services of a coach and athletes to be interested in the club. "Personal power" starts with the coach and ends with the coach. It is about the coach in person and how he or she earns and develops this power through his or her conduct, earning respect and credibility among the athletes, the club committee, team management and the

²⁵⁵ This is also mentioned by Hanson in his article 'Creating a High Performance Coaching Style', *op cit* fn 92, Ch 2.3.2, Hanson (2009).

²⁵⁶ *Op cit* fn 36, Ch 2.2.2.3, (Allen 5).

²⁵⁷ Hanson (2009).

²⁵⁸ Allen 18.

²⁵⁹ Hanson (2009).

²⁶⁰ *Ibid.*

²⁶¹ See more about policies, constitutions and codes of practice in Ch 4.3.

public.²⁶² This power enables the coach to consider the needs of the athlete first and then creates and evolves a teaching style that supports those needs of the athlete.²⁶³

Athletes and coaches all over the world are human beings with their own individual personality, style and behaviour. As stated earlier, coaches are different with their own unique style of coaching and athletes are different too.²⁶⁴ Therefore the experienced and skillful coach should be able to adapt to a style that is congruous with his or her athlete.

2.5.3 *The Impact of Power in the Coach-Athlete Relationship*

2.5.3.1 Power and Control in the Coach-Athlete Relationship

When a coach is busy with a structured training session, it involves a certain level of discipline, control and power over the athlete. Confluent with power, Støckel and Lang is of the opinion that it is not power and there should not be something like power over your athletes.²⁶⁵ This means that the “power” which is referred to in the training session, is a mere every day formality which forms part of training sessions and the coach-athlete relationship, where there is mutual respect present. This omnipresent power in a coach-athlete relationship should be utilised positively to the advantage and development of this special relationship, where both the coach and athlete can benefit from it personally.

2.5.3.2 Proper Coaching Methods and Training of Coaches

Globally athletes from all levels, young and old, compete and participate in sports. In some instances athletes just participate for fun where there is no supervision and/or coaching involved. Since millions of young athletes participate in adult organized and supervised activities coaches must gain a solid understanding of performance

²⁶² Hanson (2009).

²⁶³ *Ibid.* A good leader or coach ensures the best for the team and/or athletes, by placing them in positions enabling them to be most successful in. The athlete not only adds value to the team, but also grows as an individual to be the best he or she can be and achieving personal goals (Allen 27).

²⁶⁴ See Ch 2.3.2.

²⁶⁵ Støckel and Lang 7.

enhancement and proper coaching methods.²⁶⁶ This will also include proper risk assessment for the safeguarding of athletes, equipment, facilities, etc. By providing a better sport experience for all participants more children will have the skills and knowledge needed to participate in life-long activity.²⁶⁷ Any coach should be passionate about their job as a coach and about teaching sport skills, training and educating their athletes.²⁶⁸ This passion and skills of sport and the ability to transfer it successfully to their athletes, comes with extensive experience and the willingness to educate themselves about their chosen sport and to lead their athletes to be the best they can be.²⁶⁹

2.5.3.3 Developing an Athlete's Attitude Establishes a Powerful Relationship

An athletic attitude must be clearly defined, taught, expected, and assessed.²⁷⁰ Coaches are more capable to control attitude than the talent of athletes and should focus on this area all the time.²⁷¹ Sports are voluntary (both to play and coach) and no one should ever be forced to participate in sports.²⁷² Effort and attitude are also voluntary and therefore a good attitude will be more helpful than any physical skill.²⁷³ Brown further states that the combination of ability and attitude permit a team to relish the experience of attaining its potential.²⁷⁴ Negativism and bad attitudes are contagious and undermine the motives, strategies and covenants of the team as well as take the joy out of the game for both players and coaches.²⁷⁵

²⁶⁶ Johnson *et al* (2011).

²⁶⁷ *Ibid.*

²⁶⁸ This statement is also reflected in *SACE Code of Professional Ethics*, stating that an educator should exercise authority with compassion, article 3.4.

²⁶⁹ Johnson *et al* (2011). Rezania and Gurney also referred to this, about how athletes can learn about knowledge and skills from training and added that one of the most important responsibilities of a coach, is training student-athletes to attain high levels of performance (Rezania and Gurney [2014]). Headley-Cooper added that coaches must find ways to positively use their power to promote the pursuit of both excellences within the coach-athlete relationship (Headley-Cooper 19).

²⁷⁰ Brown *Teach Attitude First: Developing "Attitude of Gratitude" in Your Athletes* 5.

²⁷¹ *Ibid.* The attitude of the team is the clearest reflection of the leadership, Brown 5.

²⁷² *Ibid.*

²⁷³ *Ibid.*

²⁷⁴ *Ibid.*

²⁷⁵ *Ibid.*

According to Brown the Core Covenants²⁷⁶ of a team are:

- (a) Aggressive: Sports should be played aggressively within the rules. Mental and physical aggressiveness are of equal importance.²⁷⁷
- (b) Enthusiastic: Enthusiasm is both powerful and contagious and it provides energy for athletes to be better workers, who in turn will improve faster. On the contrary, if there is no passion or love for something, it will be hard to transcend in it.²⁷⁸
- (c) Confident: Success, accomplishment and productive preparation build confidence, which is mostly encouraged through the example of the coach.²⁷⁹
- (d) Disciplined: Discipline is present in all team success and best defined as focused attention and effort.²⁸⁰ Without discipline failure is to be expected.
- (e) Compete fearlessly: This is all about preparation and how to react correctly to mistakes. The mental toughness of the team and its members will be tested.²⁸¹
- (f) Listen: It is important for a coach to get the athletes to listen completely and is concurrent with the discipline of a team. Without discipline the prospects of success is slim. Quick attentiveness saves teaching and practice time.²⁸²

2.5.3.4 Utilising Power and Authority Positively by the Coach

Great coaches know they are the most significant determining factor in athletic performance.²⁸³ All coaches have their own individual preferred style of coaching which may not appeal to all of their athletes and might affect the relationship

²⁷⁶ A covenant is a binding agreement, but existing in a team between its members and setting the standards of the team. It is the cornerstones, identity and guiding principles, that include skill and character of a team (Brown 6). Brown further suggests to 'have faith in the people you are working with, don't let your teammates down and always put the team ahead of yourself. Maintain integrity and your sense of humor and give your team an attitude of gratitude' (Brown 6).

²⁷⁷ Brown 6.

²⁷⁸ *Ibid* 7. Athletes who will improve faster means that the athletes will accomplish their goals quicker, because of the commitment and positive attitude of both the coach and athlete in the coach-athlete relationship; and the athlete with his or her teammates.

²⁷⁹ *Ibid*.

²⁸⁰ Brown 8.

²⁸¹ *Ibid* 9.

²⁸² *Ibid*.

²⁸³ Hanson (2013) 4.

between the athlete and the coach.²⁸⁴ This usually result in poor athlete development and leads to poor performances from both coach and athlete and eventually dissatisfaction.²⁸⁵ In time, either the athlete or the coach leaves the program or sport altogether as frustration increases.²⁸⁶ The key to a successful coach-athlete relationship lies with the coach, who has the power to ensure rapport and harmony with his or her athletes, within the team and team management and endeavours for success according to the ability of the athletes and coaching staff. Athletes should train and compete in a collected and an equable environment, administered by the coach and/or sport entourage.²⁸⁷

Whether formal, or informal, training has a positive connection with organizational commitment.²⁸⁸ The student-athlete's understanding of the training received may contribute to the commitment to the coach.²⁸⁹ A coach who emphasizes training may also emphasize enabling the student-athlete to take decisions in a decentralized manner and share with the team.²⁹⁰

Exercise and training is part of an athlete's athletic process with its coach, to improve one's ability and pursuing success. It is the responsibility of the coach to exert this athletic process and to ensure its effectiveness through a variety of coaching techniques. Coaches must be confident and comfortable about their expertise and abide by it and develop this specific skill.²⁹¹ A coach should always endeavor to keep abreast on topics related to his or her sport and have knowledge about the sport he or she is teaching.²⁹² On a professional level it is almost impossible for a coach to operate alone and will it be thoughtful to appoint and make use of additional support staff.²⁹³ Coaches need to be aware of how they use their "legitimate power, by using the title of head coach advantageously to gain additional opportunities, as means of

²⁸⁴ *Ibid* 5.

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*

²⁸⁷ Støckel and Lang 20.

²⁸⁸ Rezania and Gurney (2014).

²⁸⁹ *Ibid.*

²⁹⁰ *Ibid.*

²⁹¹ Headley-Cooper 20.

²⁹² *Ibid.*

²⁹³ *Ibid.* See also Werthner's 2, about the importance of a support team (*op cit* fn 104, Ch 2.3.2 and *op cit* fn 219, Ch 2.4.3.2) and Hanson indicating success when there is a strong support system (*op cit* fn 117, Ch 2.3.2, Hanson [2008]).

providing sporting experiences to their athletes.”²⁹⁴ To have power does not necessarily indicate negativity, unless it is used for personal gain. The recipient of legitimate power like the coach in the sports context has obtained it through his or her experience, education and knowledge brought to the job.²⁹⁵

Power and authority are vested in individuals (including the coach) in leadership positions, to take control over the organization, group, team, or athletes they are leading.²⁹⁶ The leader/coach set the foundation for success, atmosphere and trust of a team/organization, which originates through his or her attitude, values, leadership skills and character.²⁹⁷ The challenge to the coach is to recognise this power and learn how to use it judiciously.²⁹⁸ Coaches and other powerful sports figures hold these unique and special positions of authority and trust and by utilising it positively in their given sports field, would contribute tremendously to society and to combat corruption and other dilemmas that occurs in sport. Unfortunately this power of trust associated with coaches, is abused by some coaches and includes violations such as, bullying, harassment, abuse, discrimination, gender inequality, humiliation, abusive coaching and power control over the athlete.²⁹⁹

2.5.4 Two Styles of Coaching: ‘Power-Over’ and ‘Power-To’

There are two approaches to understanding the imbalance of power which exists between coaches and athletes: “power-over” and “power-to”.³⁰⁰ A dominant coaching style, referred to as “power-over” style, precludes an athlete from freedom and deprives the athlete to evolve and develop in his or her chosen sport. It also restrains the special bond to develop between the coach and athlete in a coach-athlete relationship such as, no open communication, no sharing, no trust, etc. In this kind of

²⁹⁴ *Ibid.*

²⁹⁵ Cornelius and Singh *Handbook on International Sports Law* 302.

²⁹⁶ Allen 18. ‘As the leader of a program, staff, and team, it is the responsibility of a coach to treat the members of his organization as valuable assets to the organization, and to place each member of the organization in positions where success is most possible’ (Allen 28).

²⁹⁷ Allen 29.

²⁹⁸ Cornelius and Singh 302.

²⁹⁹ See also Ch 3.3 and 3.4.3 for more information about sexual assault and sexual abuse and violence against children respectively. See the discussion of ‘breach of trust’ in Ch 2.6.3 and Ch 2.6.4, regarding the power, influence and authority of a coach. Those in positions of authority or trust with the athletes mainly perpetrated the sport-related abuse, Cornelius and Singh 302.

³⁰⁰ Headley-Cooper 20.

coaching style the coach is controlling everything and disempowers the athlete by taking away ownership of the team, encourages athletes to be robotic in their actions and thinking and does not allow athletes to be active or contribute to their learning or development.³⁰¹

In competitive sport, especially at the elite level coaches have immense power over their athlete's lives, exceeding the mechanics of practicing and competing in a sport and extending virtually to all aspects of the athlete's life.³⁰² The coach's control over the material aspects of the athlete, cause the athlete to become vulnerable in the relationship and affects the psychological aspect in this relationship negatively.³⁰³ The main function of a coach is to give guidance and to be a mentor to his or her athlete, so that the athlete can make the right decisions independently on the playfield and to develop to the best of his or her ability. On the other hand some athletes prefer to be told what to do and are good followers and accept that a kind of dictatorial coaching style works the best for them.³⁰⁴

Contrary to the first mentioned style, a "power-to" style is where a coach shares power and responsibility and encouraging his or her athlete to strive to reach his or her fullest potential.³⁰⁵ This style also supports the athlete's social, psychological, and physical growth and development,³⁰⁶ which underlines the importance of the coach's ability to share power with the athlete.³⁰⁷ This style establishes trust and credibility in the coach-athlete relationship.

³⁰¹ *Ibid* 21.

³⁰² *Op cit* fn 207, Ch 2.4.1 (Brake 405). Generally the power that the coach exercise over his or her athlete's life, includes physical fitness, diet, weight, sleeping patterns, academic habits and social life (Brake 405).

³⁰³ *Ibid*.

³⁰⁴ Headley-Cooper 98.

³⁰⁵ *Ibid* 21.

³⁰⁶ *Ibid*. See also Williams on 3, indicating that coaches should not harm the physical, psychological, emotional and mental aspects of the athlete. Felton and Jowett stated on 13-14 in their article, about the importance of satisfaction and the psychological needs of the athlete.

³⁰⁷ Headley-Cooper 21.

2.5.5 Other Forms of Power in the Coach-Athlete Relationship

2.5.5.1 Manipulation of Trust and Power

This study deals comprehensively with the coach-athlete relationship and in particular chapter 2 that focuses on this special relationship extensively. Reference is made to the coach's role as a mentor,³⁰⁸ how the relationship between the coach and athlete evolves due to the amount of time spend together³⁰⁹ and the athlete seeking for advice and guidance from the coach.³¹⁰ Most relationships take time to develop and to gain trust and comfort, and to reach that level where the parties can communicate freely about any topic.

The same scenario occurs in a professional coach-athlete relationship where in the beginning the coach and athlete converse mostly about matters related to the particular sport they are engaged in. When trust and credibility is established, the coach is often viewed by the athlete as an expert in sport and life, regardless the topic.³¹¹ At this point of the relationship there is no more uneasiness or any discomfort between the coach and athlete, and the seniority and life experience of the coach makes it easy to persuade athletes into unfamiliar situations, because of the athlete's confidence and trust in the coach. This manipulation of power could be utilized to the positive development of the coach-athlete relationship.

2.5.5.2 Sexual Harassment and Abuse: An Act of Dominance

Sexual harassment is eminent in the realm of sport and considered a serious concern, where sport governing bodies should pay serious attention to combat this predicament.³¹² As mentioned before the coach possesses a considerable amount of power, which can have a positive or negative impact on the coach-athlete

³⁰⁸ Johnson *et al* (2011), *op cit* fn 102 Ch 2.3.2.

³⁰⁹ Jowett and Cockerill 327.

³¹⁰ Gibbons and Campbell 189.

³¹¹ Gibbons and Campbell 189-190.

³¹² See Ch 3.3 for a more detailed discussion about sexual assault. Gibbons and Campbell indicated that child sexual abuse is a major societal problem, which requires the attention of parents, community leaders and law makers. Organizations are not doing enough to protect their children (Gibbons and Campbell 186 and 187).

relationship. When sexual harassment is present in a coach-athlete relationship, it is a form of power display.³¹³ Wilson states that one characteristic that appears in all acts of sexual assault or interpersonal violence, is an act of dominance.³¹⁴ “The extent of control exerted by coaches over athletes in elite levels of sports is likely the reason why the risk of sexual abuse in sport has been found to increase as the level of athletic competition advances.”³¹⁵

This power display could appear in various forms, for example: when the coach touches his or her athlete’s hand, arm, or shoulder during conversation (contact situations); noncontact behaviour, including verbal abuse; the coach is paying more attention towards some athletes than others; the coach offers special training, or meeting sessions outside normal practice hours,³¹⁶ personal favours towards some athletes; buying presents for some athletes; buying dinner for some athletes; driving an athlete home, alone in the evening after training, or a meeting; etc. Educators who abuse their position of trust or authority to have sex with students, are committing a criminal offence in more than half of the states in the U.S.³¹⁷ In some cases these educators include, teachers, administrators, coaches, or other school employees.³¹⁸

This omnipresent power if utilised positively, could contribute to this special relationship, where both the coach and athlete can benefit from it in person. The benefit or advantage referred to in this situation focuses on the coach-athlete relationship. The coach should utilise his or her authoritative position positively in favour of the coach-athlete relationship creating a reassuring, pleasant and enjoyable atmosphere for both the coach and athlete. A coach-athlete relationship that is built on trust and respect will lead to success.

³¹³ Støckel and Lang indicated that an intimate coach-athlete relationship is strongly associated with coach power behaviour, (Støckel and Lang 32). See also more graphical information about the intimate coach-athlete relationship and other types of non-instruction behaviour of the coach, (Støckel and Lang 31-36).

³¹⁴ Wilson 2014 *NCAA* par D 8.

³¹⁵ Brake 406.

³¹⁶ Støckel and Lang 22-25.

³¹⁷ Hendrie (2003) *Education Week* (<http://edweek.org/ew/articles/2003/04/30/33abuse.h22.html?q=state+target+sexual+abuse+by+educators>) [accessed 25 March 2016]. Education Week is a U.S. national newspaper covering K-12 education. K-12 is primary and secondary education.

³¹⁸ *Ibid.*

2.5.5.3 Abuse of Power among Children

Another concern about the abuse of power is present among children. Most of the times the coach is seen as a well respected person in society, popular among everyone, who uses his power and trust vested in him by the parents, administrators and the club, to abuse the children he coaches.³¹⁹ Acknowledgement by the court of the power of the coach came in the case of *Morrel v Owen* in 1993 about the evidence to a coach's status, where Mitchell J said, "the coach's word is law, the same to God and what he says goes."³²⁰ In most societies one of the moral obligations taught to youngsters, is to have respect for older people, for example the teacher at school and the coach when participating in sport and to obey their instructions.³²¹ In these societies it is also the norm that a teacher is in a position of power, due to his or her employment and to have control over the students he or she is teaching. As mentioned earlier in this study, the coach-athlete relationship is *sui generis* and makes the coach's role in an athlete's life more unique than the role of the school teacher, which is more related to the role of a parent.³²² Young people and children are innocent and inexperienced about life and can easily be manipulated and abused by their teachers, or the coach. "This position of authority and influence allows a coach to get players to do things they would not otherwise agree to do."³²³ State legislators have recognized the potential for abuse of this special coach-athlete relationship and have passed laws that criminalize sexual relations between educators (including coaches as a person in a position of authority) and their students.³²⁴ There are numerous examples and cases of abuse,³²⁵ which indicate that this dilemma is problematic despite the research and efforts by lawmakers to rectify it.

³¹⁹ *Op cit* fn 3 Ch 2.2.1, Williams (2003) 59.

³²⁰ *Ibid.*

³²¹ Gibbons and Campbell 190.

³²² Brake 405.

³²³ Gibbons and Campbell 190.

³²⁴ *Ibid* 189.

³²⁵ See Ch 3 for more information about unlawfulness and irregularities, regarding the protection of women and children in sport, which includes a discussion about abuse. An extensive meaning is attached to 'abuse' in this context, which includes all forms of abuse, such as verbal or emotional abuse, injury, rape and sexual assault, unjust practices, etc.

The same abuse applies to the injured athlete. Injured athletes should not compete at all and should be allowed adequate time to recover to prevent further, or permanent injury. Earlier reference is made to the situation where athletes are sometimes cautious to report injuries (especially minor injuries), due to the fact that they lose their spot in the team.³²⁶ If you are injured and leave the team voluntarily, that would indicate to the coach that you did not really want to be there and coaches see it as a sign of weakness and that you do not want to play.³²⁷ Sometimes the pressure to play through an injury can be enormous.³²⁸ Nowinski explained about his experience as a freshman at Harvard when the football team toured to Japan to play a friendly game against Kyoto:³²⁹

He got injured during practice and the trainers recommended that he take a few days off. The coach was not happy with this arrangement. He wanted him to practice and didn't care what the trainers said. The coach asked how he feels and if he can practice on that specific afternoon. At the time Nowinski was only 18 years old, inexperienced and uncertain how to react. The coach shouted at him and eventually forced him to make his own decision about his injury and to practice. He said that the coach changed his attitude toward injury, but unfortunately didn't inform him that this new philosophy should never be applied to injuries above the shoulders.

"A coach who is not educated about the risks of concussions can be dangerous to his players."³³⁰ In one of the studies that looked at why players did not report concussions found that the *coach's knowledge and attitude toward head injuries* significantly influenced whether or not players reported them to medical personnel.³³¹

2.5.6 Conclusion

The above illustrates the negative impact of the abusive authority and dominance of a coach on sport and over young inexperienced people, where the coach uses his power and influence to make you feel guilty when you are not agreeing with his style

³²⁶ See Ch 2.4.2.

³²⁷ Nowinski 131.

³²⁸ *Ibid.*

³²⁹ *Ibid* 132.

³³⁰ *Ibid.*

³³¹ *Ibid.*

or methods. The coach persuades the athlete into a situation (such as an agreement) where the athlete normally would not have agreed to and many times the irreversible unpleasant occurrence will lead to the athlete's disadvantage. Sometimes even experienced young adult athletes found themselves in a difficult position where the coach's power and influence is so immense, it forces the athlete to make a choice which is not in the athlete's best interest.

When the coach commits himself to have rapport with his or her athletes, it enables him or her to utilize the power and influence over the athletes or the team positively, to contribute to the benefit of the team and the coach-athlete relationship.

2.6 Limitations, Violation of the Rules and Breach of Trust

2.6.1 Introduction

"Relationship of trust can be described as one in which one party is in a position of power or influence over the other by virtue of their work or the nature of their activity."³³² The main focus in this study is the sports coach and the importance of trust in the coach-athlete relationship and the power and influence of the coach on the team and athletes individually. Unfortunately this relationship is not flawless and consequently the shortcomings and violations pertaining to the coach-athlete relationship should be examined.

2.6.2 Is a Romantic Relationship between a Coach and Athlete Inappropriate?

Researchers, academics and society are of the opinion that a romantic relationship between a coach and athlete is inappropriate.³³³ Does this stress the position that a

³³² This definition is found on the website of CCPAS (Churches' Child Protection Advisory Service) <http://files.ccpas.co.uk/documents/AbuseOfTrustQRG.pdf> [accessed 04 April 2015]. CCPAS has originated in 1977 and is the only independent Christian charity in the UK providing professional advice, support, training and resources in all areas of safeguarding children, vulnerable adults and for those affected by abuse. These people are highly regarded for their experience and expertise and is recognised by government and other statutory and non-statutory bodies which they advise and to which they communicate their members' issues and interests.

³³³ See 'Sexual Assault' at Ch 3.3 for more information about the romantic relationship between a coach and an athlete.

romantic relationship between a coach and athlete is always invalid and forbidden? This point of discussion does not fall under the framework of this study, but is worth referring to regarding the coach-athlete relationship and the negative impact of sexual abuse in these relationships. Johnson pointed out that many think this kind of relationship is 'inappropriate' and 'unprofessional', but it's not necessarily that the relationship is in fact 'unprofessional'; it's the fear that the coach will start coaching in a manner that shows favoritism and lose his or her coaching ability and desire to win.³³⁴

Nowadays numerous policies can be found, prohibiting a coach to get into a romantic relationship with his or her athlete. Many universities do have general policies prohibiting or discouraging romantic relationships between students and the faculty and staff who supervise them, for example: *Amorous Relationships – Department of Athletics* from the University of Vermont. Another example would be the model policy of the NCAA and the Australian Sports Commission (ASC) that has a template for its National Member Protection Policy. This is to protect children from exploitation, or to avoid sexual assault on minors and adult athletes. Undoubtedly adults may consent, but many times they are vulnerable in the coach-athlete relationship, because of the dominance and power the coach possesses over his or her athlete. Another reason is that such a relationship could create an uncomfortable atmosphere among the other athletes, or favoritism towards a certain athlete. Most of the time this kind of relationship will be a violation of the rules and policy and depending on the facts of each case; it could also be a criminal offence.

Athletes need to be able to trust their coaches and have the reassurance that they can be on a personal level with their coach and teammates.³³⁵ In a team sport athletes spend a lot of time together and in many cases they become like one's second family, including the coach and therefore the reason for not dating each other, is similar than dating a family member.³³⁶ When they are fighting emotion gets in the way and create an unpleasant atmosphere, which has an influence on the team spirit, the goal of winning and when the trust and special bond is broken, the

³³⁴ *Op cit* fn 52, Ch 2.2.2.4, Johnson (2013).

³³⁵ Johnson (2013).

³³⁶ *Ibid.*

athletes lose respect for their coach and team mate and this ultimately leads to the deterioration of this relationship.³³⁷

2.6.3 *Does Male Dominance in Sport Lead to the Exploitation of Children and Female Athletes?*

It is a violation of most of the rules and policies related to sport and/or other sport organisations when a coach or any other person in a position of power and authority abuse his or her position for financial, political or personal gain.³³⁸ One example where abuse of the position of authority in the coach-athlete relationship occurs is among child sexual assault, which requires the attention of parents, community leaders, and lawmakers.³³⁹ Child molestation or child sexual abuse is a crime that involves indecent or sexual activities between an adult and a child, which is an international predicament³⁴⁰ and the prevalence of sexual assault and abuse of minor children is a major concern for sport organizations.³⁴¹ Cases of child sexual abuse propose that coaches abuse their position of authority in the coach-athlete relationship and this breach of trust is aggravated by the fact that the victims are familiar with the offender, who is the coach they have trusted.³⁴² Brake is of the opinion that the gender balance of power in sport leadership is also part of the gender dynamic of coach-athlete sexual exploitation and that the coaching profession is male-dominated, including women's sport.³⁴³ This power imbalance of the coach-athlete relationship, supported by power and authority limits the fundamental rights of females in sport. Such rights include, where women are not allowed to become a member of a men's private club, female athletes do not always receive the same price money as male athletes, most sport leader positions are held by men and in some countries religion discourage or forbid female participation in

³³⁷ Brake also confirmed this in her study about coach-athlete intimate relationships that have a negative impact on an athlete's well-being and the athlete's teammates; and interfering with the ability of the athlete and the athlete's teammates to compete successfully (Brake 407-408).

³³⁸ *SACE Code of Professional Ethics* article 3.12.

³³⁹ Gibbons and Campbell 187.

³⁴⁰ *Ibid* 189.

³⁴¹ *Ibid* 187. Rossouw stated that sport coaching at school level includes the occurrence of abuse and harassment of both sexual and non-sexual nature (*op cit* fn 172 Ch 2.3.3.4.4, Rossouw 2).

³⁴² *Ibid*. See Ch 3.3 for examples and case law of sexual assault; and a detailed discussion of sexual assault.

³⁴³ Brake 404.

sport. It may be argued that if there are more female coaches, or female persons in sport leadership positions, that there will be a decline in sexual assault towards female athletes. “The exploitation of female athletes that occurs in coach-athlete relationships should be recognized as an obstacle to women’s equality in sport.”³⁴⁴

For many athletes, including parents and other sports people, the dynamic role of the coach outlined with power and authority, is the measure of success and progress for the athlete.³⁴⁵ An athlete can become very vulnerable under these circumstances and young inexperienced athletes can easily be manipulated and exploited into difficult unwanted situations.³⁴⁶ “The athlete’s dependence on the coach makes it enormously difficult for the athlete to control the boundaries of the relationship or speak up to a coach who oversteps.”³⁴⁷ Any violation of the above is an infringement of a person’s³⁴⁸ fundamental rights and limits a person’s freedom as characterised in most constitutions.

2.6.4 Absence of Experienced and Educated Coaching

Jowett and Cockerill also reported about the absence of emotional closeness where two athletes in a study referred to their coaches’ teaching style as one where the coach was only interested in his own personal affairs and not caring about the athletes individually.³⁴⁹ Consequently the athlete does not receive the necessary professional help needed to perform, which leads to frustration and the retrogression of the trust and believe between the coach and athlete.³⁵⁰ As discussed above a coach should have adequate knowledge and experience and know how to convey that knowledge to his or her athletes successfully. A coach without a structured training plan, without purpose and experience, will not be able to elevate his or her athletes to a higher level, which will create distrust, doubtfulness, insecurity and

³⁴⁴ *Ibid* 417.

³⁴⁵ *Ibid* 406.

³⁴⁶ Brake 406. Brake continues by stating about the abuse of trust and exploitation of the athlete’s vulnerability when a coach enters into a sexual relationship with an athlete (Brake 418).

³⁴⁷ *Ibid*.

³⁴⁸ This includes all sports people and athletes (young and old; male and female), from amateur to professional level.

³⁴⁹ Jowett and Cockerill 321.

³⁵⁰ *Ibid*.

negativity among his or her athletes.³⁵¹ In the study of Jowett and Cockerill another participant complained that after a long relationship with his coach, the coach could not fulfil the needs of his athlete, which has led to frustration and distrust in their relationship.³⁵² These testimonies “indicate the ineffectiveness of interpersonal relationships when resources such as the coach’s knowledge, planning and support are perceived as inadequate to the athlete’s needs.”³⁵³ A coach-athlete relationship with these kinds of unacceptable and unpleasant attributes causes the relationship to become progressively worse and affects the athlete’s performance, psychological well-being and mood.³⁵⁴

Sometimes in athletic society, leaders and coaches do not value the positive input of their members, but rather criticize than focusing on what tasks were performed correctly and how to improve and amplify on this positive energy.³⁵⁵ Discouragement, criticism and negativity (especially by sporting authorities) creates an unpleasant atmosphere and causes people to become careless, unmotivated and gradually causes the relationship to descent.

Abusive sport coaching of a non-sexual nature includes *inter alia* overtraining, abusive coaching methods, non-accidental physical injuries, negligence and overuse injuries.³⁵⁶ These abusive methods limit an athlete’s potential and progress and are a breach of trust in the coach-athlete relationship. “These forms of abuse infringe the fundamental right of a child to have his or her best interest being looked after.”³⁵⁷ In South Africa the *Employment of Educators Act*³⁵⁸ defines *inter alia* serious misconduct by an educator as committing an act of sexual assault on a learner, student or other employee;³⁵⁹ having a sexual relationship with a learner of the

³⁵¹ Jowett and Cockerill 324-325. Støckel and Lang 8 also refers to the skillfulness of the coach.

³⁵² *Ibid* 325.

³⁵³ *Ibid*.

³⁵⁴ *Ibid*.

³⁵⁵ Allen 25.

³⁵⁶ Rossouw (2008) 2.

³⁵⁷ *Ibid*. These forms of abuse are applicable in the realm of sport and could include athletes of all ages, professional and amateur level.

³⁵⁸ Act 76 of 1998. Some of the provisions of this Act, such as ss 17(1) and 18(1) are applicable to the coach in a sporting context, especially with reference to the educator and learner.

³⁵⁹ S 17(b) Act 76 of 1998.

school where he or she is employed;³⁶⁰ and serious assault, with the intention to cause grievous bodily harm to a learner, student or other employee.³⁶¹ Section 18 continues and refers to general misconduct by the educator and emphasizes how these transgressions disintegrate the employment relationship, which could be compared and applied to the coach-athlete relationship.³⁶²

It is also of importance to mention the *South African Schools Act*,³⁶³ especially with reference to the liability of the State towards public schools. The *Schools Act* states:

“..., the State is liable for any delictual or contractual damage or loss caused as a result of any act or omission in connection with any school activity conducted by a public school and for which such public school would have been liable ...”³⁶⁴

A public school has an obligation to protect its learners, employees, or anyone who is attending any kind of school activity, including sport activities. It is the responsibility of a governing body to take all reasonable measures supplied by the State in order to improve the quality of education provided by the school to all learners at the school.³⁶⁵ The application of this occurrence is illustrated in *Louw en ‘n Ander v Lid van die Uitvoerende Raad, Vrystaat, Onderwys en Kultuur en ‘n Ander*,³⁶⁶ where an employee (non-educator) of the school acted negligent and caused brain damage to a pupil during a compulsory swimming activity, who almost drowned. The claimant’s case was *inter alia* based on section 60 of the *South African Schools Act*³⁶⁷, holding the State liable due to the educational activity offered by the school.³⁶⁸ The cause of the claimant’s case is based on the culpability of the defendants, the school employee and/or the school board. The main argument in this case was to determine the liability dispute in terms of the *South African Schools Act* and if the State could be held liable, or should the school be held accountable. In

³⁶⁰ *Ibid* s 17(c).

³⁶¹ *Ibid* s 17(d).

³⁶² Act 76 of 1998.

³⁶³ Act 84 of 1996.

³⁶⁴ S 60 Act 84 of 1996.

³⁶⁵ Ss 36(1) and 20(a) Act 84 of 1996.

³⁶⁶ [2004] ZAFSHC 80. South African case law in Afrikaans language.

³⁶⁷ Act 84 of 1996.

³⁶⁸ The *Louw* case par [6]. Section 60 of the *Schools Act* is also supported in the *Strauss* case par [25] and [28], *op cit* fn 31 and 32 Ch 2.2.2.3.

some exceptions, as contemplated in the *Schools Act*, the State's liability is excluded. The relevancy of section 60(1) of the *South African Schools Act* and the *Louw* case in a sporting context is to point out the State and/or school's liability in terms of the appointment of their employees and non-educators, such as sport coaches. It also indicates the importance of building relationships, not only between the coach and athlete, but also between the coach and the school. Collaboration in all areas of society, for example in sport between the government, sport organisations, sport clubs, etc., instil trust, respect and understanding. Inevitably, this will lead to the success of the people involved in these relationships.

All these iniquities, irregularities and violations committed against sports participants³⁶⁹ have a great impact *inter alia* on their lifestyle, personality, attitude and relationship towards the coach, team mates and family. Studies show that these effects last into adulthood and cause depression, substance abuse, bulimia nervosa, and other personality disorders.³⁷⁰ When rapport is absent between the coach and athlete, the relationship is almost irreversible and built on negative characteristics. These characteristics such as trust, respect, understanding, caring, support and communication is vital for a professional and harmonious sports relationship, pursuing to achieve success for both the athlete and the coach.

2.7 Conclusion

Around the world, young and old are interested in sport and eager to participate in sport, mostly on an amateur level, either for fun, or to stay healthy or to pursue a career in sport. Unfortunately a large number of athletes drop out because they lose interest and in most cases the reason is because of the poor coach-athlete relationship.³⁷¹

³⁶⁹ Sexual assault, abuse, discrimination, etc. affects society (young and old) on all areas and not only sports. The objective of this study is sports related and therefore the focus and examples will be about sports people, especially the coach-athlete relationship.

³⁷⁰ Gibbons and Campbell 189. See also Ch 3 for a detailed discussion about unlawfulness and irregularities in sport, such as sexual assault and child protection.

³⁷¹ Hanson (2013) 5.

The final purpose related to the coach-athlete relationship is to focus on the area that is not unlawful according to the general society, for example non-sexual contact and relationships inside the coach-athlete relationship (where maturity has already been attained), but if not recognized and dealt with accordingly, could lead to detrimental consequences and the result can be unlawful. Coaches should not only possess exceptional knowledge of their sport, but should also have excellent technical skills and to perceive any irregular behaviour among their athletes. You do not need to be a trained psychologist, but just be involved with your athletes, be communicative, motivational and passionate about what you are doing. This positive attitude will instil trust and respect in the coach-athlete relationship and will lead to understanding and success for both the coach and athlete.

As referred to earlier in this study³⁷² about the power and influence of the coach, sport and administrators will not interfere easily when the coach excels and achieve success, which equipped him or her with enormous institutional autonomy.³⁷³ It is unfortunate that “compared to teachers and other educators, coaches conduct their interactions with students with little oversight and assessment.”³⁷⁴

Some of the most essential key points for a successful coach-athlete relationship consist of caring, sharing, respect, trust, understanding, honesty, support and effective communication. The focus should be equally on the physical, psychological, emotional and mental aspects of this relationship. Coaching and training that endeavor these qualities are more probable to attain success in this special relationship between the coach and athlete. “It is recommended that coach education programmes provide information that will assist coaches to develop effective relationships with their athletes.”³⁷⁵ Sports Confederations around the world should assist the sports organisations of their respective countries and collaborate with each other, to pursue uniformity in sport around the world. In South Africa the *National Sport and Recreation Act* stipulates that the Sports Confederation may,

³⁷² See Ch 2.5.

³⁷³ Brake 407.

³⁷⁴ *Ibid.*

³⁷⁵ Jowett and Cockerill 313.

from time to time, develop guidelines for the promotion and development of high performance sport.³⁷⁶

It is time for sports organisations and federations, sports governing bodies, sports committees and key stakeholders to come together and find solutions to remedy this concern and protect athletes and the integrity of sport. One such solution is to create, adopt and/or change existing policies focusing on the above key points and providing practical guidelines to all sports people. Leaders in sport should take a more active role by enhancing the interaction between sports governing bodies, coaches and the athletes. Consequently, this will provide everyone with more opportunities to achieve success.

³⁷⁶ Act 110 of 1998, s 2(2).

CHAPTER 3

PROTECTION OF WOMEN AND CHILDREN IN SPORT

3.1 *Introduction*

In this chapter the primary focus will be on the position of minors, sexual offenders (including women and minors) and child protection in sport, within the context of the coach-athlete relationship. It is also of importance to focus on how to improve the safeguarding of women and minors in the sporting environment.

3.2 *The Position of Minors in Sport*

3.2.1 *Introduction*

Children are supposed to be the most important investment in our society today, as they are the future generation for the existence of humankind. They should be educated, taken care of and taught the moral values in our society, but also allowed to play¹ and have fun. Subsequently, they are only children and do not need to be adults when they are for example in their elementary years. Sometimes adults expect too much from children. Nevertheless, what is their position in the sporting context? What are their rights? How should they be treated and how can they be protected from any harm?

3.2.2 *International Legislation*

The *Convention on the Rights of the Child*² recognizes the human rights of children and is without doubt the most powerful children's rights instrument and acknowledges the role of non-governmental organizations (NGOs) in realizing

¹ Childhood is synonymous with innocence; it is a time of freedom and joy (Boezaart *Child Law in South Africa* 250).

² *Convention on the Rights of the Child* of 1989 (hereafter the "CRC").

children's rights.³ This superior source of children's rights is probably the most comprehensive human rights treaty for a specific group of people and certainly the most widely ratified.⁴ The age of a child does not alter his or her status as a rights-holder; rights are afforded absolutely.⁵ The preamble of the *European Convention on the Exercise of Children's Rights* of 1996,⁶ elaborates on this by stating that the rights and best interests of children should be promoted and children should have the opportunity to exercise their rights. The CRC contemplates four basic goals: children's participation in decision-making; protection from discrimination and all forms of harm, neglect and exploitation; preventing harm to children; and providing assistance to ensure that their basic needs are met.⁷

Rossouw stated:

The United Nations Convention on the Rights of the Child, widely accepted as the international norm in this regard, sets out the civil, political, economic, social and cultural rights of children. The Convention was signed in November 1989, and the United Kingdom ratified it in December 1991, while South Africa ratified the Convention in June 1995, shortly after the advent of democratic rule, under the Interim Constitution of 1994. The Convention acknowledges, amongst others, that children have the right to be protected from abuse and exploitation, and to have their privacy protected. Moreover, the Convention requires that their lives should not be subject to excessive interference.⁸

Lewis and Taylor is of the opinion that although there is no specific legislation that deals with child protection issues in sport, there is a body of legislation relating to the protection of children in general, which is largely directed at statutory bodies.⁹ The *CRC* is an international convention setting out the civil, political, economic, social

³ Brackenridge *et al UNICEF Innocenti Research Centre* 2010 p 4 http://www.unicef-irc.org/publications/pdf/violence_in_sport.pdf [accessed 12 December 2014].

⁴ Schäfer *Child Law in South Africa: Domestic and International Perspectives* 90.

⁵ Brackenridge *UNICEF Innocenti* 17. See the definition of a child in Ch 3.2.3 fn 25 and Ch 3.4.5 fn 354.

⁶ Hereafter "ECECR".

⁷ Schäfer 90.

⁸ *Op cit* fn 172, Ch 2.3.3.4.4, Rossouw 1.

⁹ Lewis and Taylor 782.

and cultural rights of children.¹⁰ The rights of children were not recognized comprehensively by international law, and States were not inclined to fully accept the specificities of children and adolescents in their legislation, policies and programmes.¹¹

The authoritative position in the United Kingdom (hereafter UK) relating to the protection of children is vested in the *Children Act*.¹² Lewis and Taylor further states that the *Children Act 1989* embodies a number of very important principles, including the following:

- (a) The welfare of the child is the paramount consideration.
- (b) The child's wishes and views must be considered.
- (c) There should be minimum statutory intervention.
- (d) Children should be safe and be protected by effective intervention if they are at risk of significant harm.
- (e) Agencies working with children should cooperate and work together in the best interests of the child.
- (f) Wherever possible, children should be brought up and cared for within their own families.¹³

In the UK it is the legal duty of every local authority to identify if any children are in need, within their respective jurisdiction.¹⁴ Upon this duty they have to ensure the safeguarding of these children by providing the appropriate services according to their needs.¹⁵ The said act was amended by the *Children Act 2004*¹⁶ with the primary goal to make the UK better and safer for children. There is no significant difference between the two acts. The *Children Act 2004* confirms the well-being of children and protection from harm and neglect¹⁷ and setting out the strategy of the persons or bodies represented on the Board for co-operating with each other with a view to

¹⁰ Lewis and Taylor 783.

¹¹ David 1999 *The International Journal of Children's Rights* 7: 54.

¹² *Act 1989* c. 41.

¹³ Lewis and Taylor 783-4.

¹⁴ *Children Act 1989* Schedule 2 Part 1 par 1(1).

¹⁵ *Children Act 1989* s 17(1).

¹⁶ *Act 2004* c. 31.

¹⁷ *Children Act 2004* Part 2 s 10(2).

improving the well-being of children and relevant young persons in the area of the authority that established the Board.¹⁸

3.2.3 South African Legislation

Chapter Two of the *Constitution of the Republic of South Africa*¹⁹ contains the *Bill of Rights*, which is the cornerstone of democracy in South Africa and it enshrines the rights of all people and affirms the democratic values of human dignity, equality and freedom.²⁰ It further states that a child's best interests are of paramount importance in every matter concerning the child.²¹ This statement is known as "the golden thread that runs through all matters concerning children."²² This implication shows that children enjoy equal protection as adult persons.²³ Children's rights are no longer confined to the common law, but also find expression in section 28 and a wide range of international conventions.²⁴ In the *SA Constitution*, a child means a person under the age of 18 years.²⁵ According to Singh²⁶ "section 28 of the 1996 *Constitution*²⁷ places various obligations on sport that must be fulfilled, for instance the duty to provide a special standard of care to minors."

Section 28(1) of *Act 1996* contains the rights of children. Goldstone J pointed out in *Minister of Welfare and Population Development v Fitzpatrick and Others* that section 28(1) is not exhaustive of children's rights.²⁸ The best interest of a child has to be determined by evaluating the circumstances of each individual case, taking into

¹⁸ *Children Act* 2004 Part 2 s 17(2).

¹⁹ *Act 1996* (hereafter "*SA Constitution*").

²⁰ Section 7(1) of the *SA Constitution*.

²¹ Section 28(2) of the *SA Constitution*. Section 28 of the *SA Constitution* focuses expressly on the rights and protection of children. This is also confirmed in Article 3(1) of the *Convention on the Rights of the Child* of 1989: "..., the best interests of the child shall be a primary consideration." Bertelsmann J stated in *S v Mbokhani* regarding s 28, that it is the right of a child to be a child and enjoy special care, 2009 (1) SACR 533 (T) 539 [17]. S 28 is based on the provisions of the CRC, Boezaart 324.

²² Boezaart 225.

²³ Skelton *The Bill of Rights Handbook* 599.

²⁴ Skelton and Carnelley (ed) *Family Law in South Africa* (Oxford University Press 2010) 238.

²⁵ Section 28(3). This is also confirmed in article 1(1) of the ECECR and states: "*This Convention shall apply to children who have not reached the age of 18 years.*" Also see s 1(1) of the *Protection of Harassment Act* 17 of 2011. Most countries around the world confirm this statement regarding the age of a child.

²⁶ Singh 2002 *S.A. Journal for Research in Sport, Physical Education and Recreation* 24(2): 69.

²⁷ The *SA Constitution*.

²⁸ Boezaart 280.

consideration the position of the child and what effect it has on the child.²⁹ In *Sonderup v Tondelli* the court held in general that section 28(2) provides an expansive guarantee that a child's best interests are paramount in every matter concerning the child.³⁰

The *Children's Act*³¹ in South Africa is the counterpart for the *Children's Act* in the UK. It promotes and protects similar rights of children as in the UK and that the best interest of the child is paramount.³² The *Children's Act* is the first legislation that codifies the law of parent and child.³³ The *CRC* was largely influential in the history and creation of the *Children's Act* and will continue to influence many other laws affecting children in South Africa.³⁴ The *CRC* has not been enacted as an Act of Parliament in South Africa, but some aspects and standards of this *Convention* has been adopted into South African jurisprudence through its influence in interpreting the provisions of the *Bill of Rights* and through national legislation like the *Children's Act*.³⁵

The above indicates that children are protected under the *SA Constitution*, the *Children's Act* of the UK and South Africa, and the *CRC* to name a few. Parental responsibilities and rights are vested in the South African Children's Act. This is the concept of best interests of a child and confirms the importance of the relationship between a parent and child. This same concept should be applied to similar relationships involving a child, such as teacher and learner, and a coach and athlete. These types of relationships must also enjoy similar protection. Putting the above into perspective, especially in the sporting sphere, I have to agree with Lewis and

²⁹ Davel and Skelton *Commentary on the Children's Act 2-7* [Revision Service 5, 2012].

³⁰ *Ibid* 2-13.

³¹ Act 38 of 2005.

³² *Children Act* 38 of 2005 Ch 2 ss 7 and 9.

³³ Skelton and Carnelley (ed) 238.

³⁴ Boezaart 324. One of the direct examples of the influence of the *CRC* in SA is the adoption of s 28 of the *SA Constitution* which is commonly acknowledged as being based on the provisions of the *CRC* (Boezaart 324). The importance of the *CRC*'s general principles in the application of s 28 was also recognised in *M v S* where the court found that these principles "guide all policies in SA in relation to children" (Boezaart 324).

³⁵ *Ibid* 325.

Taylor³⁶ that there are not any specific laws, or legislation that protects the child in the sporting context.

3.2.4 *The Protection of Children in Sport*

3.2.4.1 Introduction

The future of sport as an industry is heavily dependent not only on the participation of children from a young age, but also on keeping the largest possible number of talented young athletes involved in sport, both as participants and as spectators.³⁷ The children of today will be the stars and fans of tomorrow.³⁸ Without stars or fans, professional sport will collapse.³⁹

Most countries around the world support the fact that children are special and that their rights should be protected, such as food, education and care. The Universal Declaration on Human Rights, the Convention on the Rights of the Child and the Charter of Physical Education and Sport recognise the right of children to have the full opportunity for play, which promotes their general culture and well-being, and to have equal opportunities provided for cultural, artistic and recreational activities.⁴⁰ These rights of children, when applied to sport, recognise that participation increases the potential for the child to develop skills and abilities not only in sport, but also in the dimension of life-skills, such as teamwork, co-operation and strategy development that will assist them to function better in larger society.⁴¹

³⁶ *Op cit* fn 9 Ch 3.2.2.

³⁷ *Op cit* fn 295, Ch 2.5.3.4, (Cornelius and Singh 294). This is also mentioned by David 53.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid* 295. United Nations, *Universal Declaration on Human Rights* General Assembly Resolution 217A (III), U.N. Doc. A/810 at 71 (1948); United Nations, *Convention on the Rights of the Child* (New York, 20 November 1989) and United Nations Educational Scientific and Cultural Organisation, *International Charter of Physical Education and Sport* (Paris, 21 November 1978).

⁴¹ *Ibid.* See also David 53.

3.2.4.2 The Awareness of Children's Rights and Needs

South Africa is a country where the people are cultivated with the culture of sport. In the modern era sport participation has increased a lot under children, young people and adolescents where sport and physical activities are part of their daily lives.⁴² Sport activities contribute to children's health and fitness and teach children new skills.⁴³ A study conducted by the UNICEF⁴⁴ Innocenti Research Centre⁴⁵ (hereafter IRC) stated that children love to play: "through play they learn social and physical skills, tolerance, discipline and respect for others."⁴⁶ As stated earlier, global sport has grown into a multi-billion dollar industry.⁴⁷ This overwhelming success (modern champions competing around the world in various championships) has created an environment in which the most respectable aspects of sport, such as its educative scope, sportsmanship and physical and mental well-being, are seriously threatened.⁴⁸ Parents and coaches place more and more pressure on children to perform, with little regard to the best interests of the children.⁴⁹ Teachers, coaches and everyone involved with the training of children should ensure the safety of children in the different environments and sports they participated in.⁵⁰

It has been pointed out that the emphasis in sport has shifted on making money and more spectacular events for the fans and to meet these rising expectations of the spectators, children were some of the first victims, with sports trainers no longer asking how sports could benefit children but rather how children could benefit sports.⁵¹ When the child is not properly guided by adults in his/her sporting activity, sports can enter the realm of abuse and exploitation.⁵² The UNICEF IRC study stated further that:

⁴² *Op cit* fn 119, Ch 2.3.2, (Doubell 18).

⁴³ *Ibid.*

⁴⁴ United Nations Children's Emergency Fund.

⁴⁵ Located in Florence, Italy and established in 1988. Its prime objectives are to improve international understanding of issues relating to children's rights and to help facilitate the full implementation of the Convention on the Rights of the Child in all countries.

⁴⁶ *Op cit* fn 3, Ch 3.2.2 (Brackenridge 1).

⁴⁷ Ch 1.1.1 and 1.2.1.

⁴⁸ David 53.

⁴⁹ Cornelius and Singh 294.

⁵⁰ Doubell 18.

⁵¹ David 53-54.

⁵² *Ibid.*

A recurring theme in the literature on young people in sport has been the need to define young athletes in a way that is appropriate to their needs as children first and athletes second. Too often, however, children with exceptional athletic potential are treated as adults. This has serious consequences for the realization of their human rights and their legal access to legal processes and mechanisms of protection and defence – which might be more accessible to them in non-sporting contexts.⁵³

In addition, David pointed out that sports have succeeded to function in a legal loophole, because local, national, regional and international sports federations have their own rules, administrative bodies and courts.⁵⁴ There is nothing wrong with this, on the condition that those rules are defined and implemented in accordance with domestic and international law, but this is not always the case.⁵⁵

Gardiner states as follows:

The issue of treatment of children in sport mirrors increasing awareness of the rights of children generally in society. Although the focus is on participation in sport, there is evidence of considerable exploitation of children within the wider sports industry.⁵⁶

Children are entitled to the same fundamental human rights as any other human being and should be treated as people in their own right and not as the property of their parents.⁵⁷ This rule should be applicable in all situations where there is some kind of authority present over a child, such as a coach towards his or her athlete, when the athlete is still a child. Children are vulnerable, immature and dependant on adults and therefore need protection against exploitation.

⁵³ Brackenridge *et al* (2010) 3-4.

⁵⁴ David 55. An example in this regard, is the *Bosman* case (1995 Judgement of the European Court of Justice: C-415/93), where Bosman's right as an EU citizen to freedom of movement was breached, after his contract with one club was finished and not allowed to move to another club, without the payment of a transfer fee. 'This case is a clear illustration that sports carries a human rights dimension that may not be neglected by sports federations and States. In the case of children, this means that their rights, as recognized by the Convention, have to be fully taken into account by all partners involved in sports: parents, trainers, federations and especially public authorities (David 56).'

⁵⁵ *Ibid.*

⁵⁶ Gardiner 533.

⁵⁷ Boezaart 261.

3.2.4.3 The Vulnerability of Youth Sport

Sport has become extremely competitive in the new modern era, resulting in athletes starting to compete from a very young age, sometimes even before they go to elementary school and competing at the highest level during childhood. Brackenridge⁵⁸ said “what counts as ‘junior’ in one sport might be considered ‘senior’ in another.” She goes on and explains:

This means that legal and sporting age definitions are not necessarily the same, so the distinction between an adult and a child is often confused in sport. Child athletes, especially if very talented and performing at a high level, may be treated as adults and given adult responsibilities, or they may be expected to behave as if they were above the age of consent. In such circumstances, it is easy to assume that the child does not need adult protection. As a consequence, violence against children may be overlooked, go un-recognized or be excused.⁵⁹

According to Gardiner the main area of concern has been with the relationship between coaches and child athletes.⁶⁰ In general children are more vulnerable than adults and confide easily in older people, especially if they are in an authoritative position. In most societies children and younger people are taught moral values, such as to respect older people, for example their teacher and the coach in the sporting sphere. These people hold a position of trust, power and authority. They are admired in society and by the children they teach. Youth sport is particularly vulnerable in this regard because it often involves close relationships between adults and children and usually these adults are in a position of trust and authority.⁶¹ With coaches capable of exercising great power and authority over young people desperate to achieve success, the ingredients of the coaching situation lead to a potentially risky mix where children are susceptible to abuse of power by unscrupulous adults.⁶² This means children lack the moral values and rights of society and consequently due to their inexperience, their rights are brushed aside

⁵⁸ Brackenridge 4.

⁵⁹ *Ibid.*

⁶⁰ Gardiner 533. See also Ch 2 for an in depth analysis of the coach-athlete relationship.

⁶¹ Cornelius and Singh 294.

⁶² *Ibid* 295.

and easily become victims.⁶³ Cornelius and Singh⁶⁴ further indicated that “parents place their ultimate trust in sport organisations, their coaches and administrators. But what happens when that trust is breached?”

In Britain over the last few years, there have been a number of criminal trials of sports coaches.⁶⁵ In most of these cases coaches were entrusted with power and authority, responsible for the well-being of children/young people, ensure their safety and to protect them. Unfortunately this power is often breached by coaches and other adults, therefore infringing these rights of children.

Gardiner also states:

One real problem is that often allegations are greeted with disbelief from those associated with the individuals in question. Victims often believe that they are the only ones involved and only find out later that other fellow athletes were subject to similar treatment. The sports coach-child athlete relationship is one where the coach has immense power and influence over the child and it is difficult for the child to raise the alarm.⁶⁶

David⁶⁷ asked the question whether competitive sports always follow the best interests of children and stated that “in the case of children ... their rights, as recognised by the Convention, have to be fully taken into account by all partners involved in sports: parents, trainers, federations and especially public authorities. This is certainly not the case today. In fact, a wide range of children’s rights are threatened by the demand of competitive sports.”⁶⁸

⁶³ Boezaart on 249 states that, “A society in which rights do not exist will be morally impoverished and relationships would be based on power.”

⁶⁴ Cornelius and Singh 295.

⁶⁵ Gardiner 533. These irregularities have not only occurred in Britain, but also other countries such as, Canada and the USA.

⁶⁶ Gardiner 534. Lewis and Taylor mentioned the position regarding the relationship between a child athlete and his/her coach that can raise child protection concerns, due to the immense power and influence over a child, (Lewis and Taylor 787).

⁶⁷ David 54.

⁶⁸ *Ibid* 56.

Children are vulnerable, dependent and in need of care and protection.⁶⁹

3.2.4.4 Legislation and Policies for the Safeguarding of Children

It is clear that over the last decade a lot of policies, legislation, federations and non-governmental organisations (hereafter NGO) were enacted and established to promote safeguarding and well-being of children.

The rights of children are defined and recognised, but how does it protect children in the sporting context? The policies and legislation protect all children in general and does not focus on a particular group. Thus, one can argue that these policies and legislation should be sufficient and effective to include children participating in sport on all levels, from amateur to professional. However, this is exactly where the real problem emerges. Sport federations and sport governing bodies (local and international) have their own policies and constitutions regulating their own affairs.⁷⁰ FIFA⁷¹ for example exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players, worldwide.⁷² In the Court of Appeal, in the case of *R v Barnes*⁷³ the court stated, “In determining what the approach of the courts should be, the starting point is the fact that most organised sports have their own disciplinary procedures for enforcing their particular rules and standards of conduct.”

As a general principle, sports organisations owe a duty of care to children and young people in their jurisdiction to take appropriate steps to address the known risks of participating in the sport.⁷⁴ It is generally recognised that there is a higher duty of care owed to children and young people than adults.⁷⁵ Proper corporate governance

⁶⁹ Boezaart 250.

⁷⁰ See Ch 4.3 for more information about policies, constitutions and codes of practice. Cloete refers on 59 par 4.01 to “... with most sports becoming professional, ... conduct sports through incorporated entities such as companies (usually private companies).”

⁷¹ *Fédération Internationale de Football Association*. FIFA is the governing body of international football.

⁷² CAS 2008/A/1485 *FC Midtjylland A/S v/ Fédération Internationale de Football Association (FIFA)*, award of 6 March 2009 on 2.

⁷³ [2004] EWCA Crim 3246, at par 5.

⁷⁴ Lewis and Taylor 793.

⁷⁵ *Ibid.*

systems should be in place irrespective of the vehicle through which sport is run.⁷⁶ Not addressing the proper execution of the said policies and legislation, constitutes an infringement on the rights of children.

3.3 Sexual Assault

3.3.1 Introduction and Definition

In this subsection the focus will be sexual assault of women and children (boys and girls), in the sporting world deviating from the general practice as described in society. But it is irrefutable that it does not matter where and how it happens, the legal definition remains the same as it is a serious, unlawful act and a criminal offence which is punishable by law in most countries around the world.

The United States Department of Justice⁷⁷ defines sexual assault as:

Any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Falling under the definition of sexual assault are sexual activities as forced sexual intercourse, forcible sodomy, child molestation, incest, fondling and attempted rape.

In South Africa the *Criminal Law (Sexual Offences and Related Matters) Amendment Act*⁷⁸ describes sexual assault as:

A person ("A") who unlawfully and intentionally sexually violates a complainant ("B"), without the consent of B, or inspires the belief in a complainant ("B") that B will be sexually violated, is guilty of the offence of sexual assault.⁷⁹

⁷⁶ Cloete 59 par 4.02. See chapters 4.3 and 5.3-5.4 about policies, constitutions, educational programming and the sharing of knowledge regarding international collaboration between the stakeholders in sport to uniform the laws and policies of sport.

⁷⁷ <http://www.justice.gov/ovw/sexual-assault> [accessed 01 December 2014].

⁷⁸ Act 32 of 2007. Enacted by the Parliament of South Africa and signed by the President on December 13th, 2007.

⁷⁹ Ch 2, Part 1 s 5(1) and (2).

“Common law rape consists of intentional and unlawful sexual intercourse by a male person with a female person without her consent.”⁸⁰ “Indecent assault consists of the unlawful and intentional assault, touching or handling of another person in circumstances where either the act itself or the intention with which it is committed is indecent.”⁸¹

3.3.2 *The Awareness of Sexual and Physical Abuse against Women and Children*

Child abuse is a term that is used to describe the ways in which children are harmed, usually by adults and often by those they know and trust and it includes behaviour that individuals or sport organisations commit, or omit, that directly or indirectly harm children or ruins their prospects of a safe and healthy development.⁸² This may include physical abuse, emotional abuse, sexual abuse and neglect.⁸³ There are two distinct forms of sexual harassment, *quid pro quo* and hostile environment sexual harassment.⁸⁴

Awareness of the existence and extent of sexual and physical abuse of children has appeared fairly recently in sport as it has generally in society, with the realisation that more effective protection from exploitation of children in sport is required. The main area of concern has been with the relationship between coaches and child athletes.⁸⁵

Related to this effect, Cloete proposed as follows:

⁸⁰ Boezaart 525. *Act 32 of 2007* defines rape as, “Any person who unlawfully and intentionally commits an act of sexual penetration with a complainant, without the consent of the complainant, is guilty of the offence of rape (Ch 2, Part 1 s 3).” This new legislation is an act of the Parliament of SA that reformed and codified the law relating to sex offences.

⁸¹ *Ibid* 526. Indecent assault is an offence of aggravated assault in some common law-based jurisdictions and is the sexual contact with another person, exclusive of rape and without the consent of the other person. In SA indecent assault has been replaced by the statutory offence of sexual assault. *Act 32 of 2007* defines sexual assault as, “A person who unlawfully and intentionally sexually violates a complainant, without the consent of the complainant, is guilty of the offence of sexual assault [Ch 2, Part 1 s 5(1)].”

⁸² Cloete 165 par 9.113. This is also mentioned by Cornelius and Singh 296. Both research and case law suggest that the majority of abusers in sport are male, often, but not always, much older than the children they abuse and are sport coaches (*op cit* fn 3, Ch 2.2.1, Williams 58). Rossouw stated that research reveals that abuse is rarely from a stranger, and more commonly from someone the children know and trust (*op cit* fn 172, Ch 2.3.3.4.4, Rossouw [2008] 3).

⁸³ *Ibid* 165. Cornelius and Singh includes child labour and child trafficking, *ibid* 296. Sexual offences are complex and embrace social, psychological and legal considerations, Boezaart 524.

⁸⁴ Spies 2006 *Marquette Sports Law Review* Vol. 16:2 433. More about these two forms under the discussion of Title IX at Chapter 3.3.5.

⁸⁵ Gardiner 533.

The prevention of violence against women and children is a high political priority in many countries of the world. However, until recently, this issue has not received attention in the sphere of sport, probably because most people associate sport with fair play, ethical values and high moral standards.⁸⁶

One of the most prominent leaders in the field of abuse against women and children in sport, Celia Brackenridge,⁸⁷ states that “sexual abuse has been intensively researched within the *family*, but *extra-familial* abuse, including that in voluntary sport and recreation organizations, remains under-researched.”⁸⁸ She also stated that sexual harassment and abuse arise from the culture of sport and from the opportunities for exploitation of power and authority of which this affords coaches.⁸⁹ Sexual harassment may be defined simply as ‘*invasion without consent*’, where invasion on the basis of sex is psychological, physical or both.⁹⁰ She further states that “...with abuse the grooming process prepares the target victim in such a way as to secure apparent consent.”⁹¹ Rossouw⁹² said, “Harassment, which is closely related to abuse, is discriminatory behaviour by one person towards another that is offensive, abusive, belittling or threatening. It is unwelcome and the sort of behaviour a reasonable person would recognise as unwelcome. It is not always based on grounds such as sex, race or sexuality, but can simply consist of an abuse of power.” Harassment is the direct or indirect engaging in conduct, where the respondent knows or ought to know that the conduct causes harm or the reasonable belief that it may cause harm to the complainant.⁹³ Harassment is closely related to abuse and amounts to sexual harassment of the complainant or a related person.⁹⁴ The

⁸⁶ Cloete 164-165 par 9.111.

⁸⁷ Brunel Centre for Sport Health and Wellbeing, Brunel University, London.

⁸⁸ Brackenridge 1997 *International Review for the Sociology of Sport* 118. Cornelius and Singh confirmed this position that most research about sexual abuse has focused within the family and very little is known about the causes or characteristics of sexual harassment and abuse in sport, Cornelius and Singh 299.

⁸⁹ *Ibid* p 115. These power relations are facilitated by an organizational culture that ignores, denies, fails to prevent or even tacitly accepts such problems, which can be considered as symptoms of failed leadership, (*op cit* fn 141 Ch 2.3.3.3, Mountjoy, Brackenridge, Arrington *et al* 1020).

⁹⁰ *Ibid* p 117. Cloete states on p 165 par 9.115 that sexual abuse is considered to be any sexual activity with a child or an adult where informed consent is not, or cannot, be given.

⁹¹ Brackenridge 2000 *Clinics in Sports Medicine* 187. See also Williams *Entertainment Law*, Vol. 2, No.1, Spring 2003, 58, where she mentioned about two types of sexual abusers and the use of the grooming process.

⁹² Rossouw (2008) 3.

⁹³ *Protection from Harassment Act 17 of 2001* s 1(1)(a).

⁹⁴ *Ibid* s 1(b).

Protection from Harassment Act provides for the issuing of protection orders against harassment and furnishes victims of harassment an effective remedy against such behaviour. A complainant can approach the court to obtain a protection order against harassment.⁹⁵

3.3.3 *The Hickson Case*

Gibbons and Campbell stated that perpetrators are infiltrating places that were traditionally thought to be safe havens for our children and it is more disturbing given the power and trust that accompanies clerical status and the abhorrent way that trust is breached.⁹⁶ There was a time when parents felt safe handing their children over to clergy, police, and teachers and while most of these people conduct themselves honestly, many trusted servants have been doing harm to our children.⁹⁷ They continued by saying that this disturbing breach of authority and trust is one that has plagued competitive and recreational sport organizations around the country for years.⁹⁸ At community centres and sport leagues, child molesters are working as coaches and administrators and through these positions, perpetrators gain their communities' trust and have direct access to their victims.⁹⁹ They also stated that sexual abuse of athletes by coaches and other personnel, paid and volunteer, is a serious problem for sport organizations that provides services to children.¹⁰⁰

The controversial case of *R v Paul Anthony Hickson*¹⁰¹ is significant in this regard highlighting the dilemma in sport pertaining to children and sexual harassment. In short this case was about Hickson, a former British Olympic swimming coach, who was convicted for various sexual offences against teenagers he was coaching. He was abusing them over a period of 15 years and they range from 13 to 20 years old. He was also alleged to have sexually assaulted at least one elite mature woman

⁹⁵ *Ibid* s 2(1). The South African Police Service could also assist in this regard (s 6) and the Minister has the powers to make any regulations regarding matters related to this *Act* (s 19).

⁹⁶ *Op cit* fn 58 in Ch 2.2.3, Gibbons and Campbell 185.

⁹⁷ *Ibid*.

⁹⁸ *Ibid*.

⁹⁹ *Ibid* 185-186. Here *victims* are children (boys and girls), but could easily include adolescents and adult sports people (men and women).

¹⁰⁰ *Ibid*.

¹⁰¹ [1997] EWCA Crim 458.

swimmer.¹⁰² He was sentenced to jail for 17 years. He received the longest sentence that had been imposed for the rape and sexual assault of children.¹⁰³

Brackenridge also stated:

In sexual abuse, the coach exploits his power. This power is sustained because he has the skills and abilities to develop, enhance and maintain success and a strong reputation for the sport. To this extent, then, the coach has a powerful grip over the organization which employs him. This is demonstrated in several of the accounts collected from athletes who claimed that their organization knew of the coach's behaviour but refused to do anything about it since they needed him to produce winning results.¹⁰⁴

The above is emphasised by Williams about the Hickson case:¹⁰⁵

A particularly disturbing feature of this case, however, is the lack of attention paid by Hickson's governing body officials to his activities, as it was made clear at his trial and in later newspaper reports that, although complaints had been made about him to officials of the Amateur Swimming Association, they had been reluctant to intervene ... A similar reluctance to intervene is illustrated in a case identical to Hickson's in the Republic of Ireland in 1990, where again allegations of sexual abuse had been made about an Olympic swimming coach and the sports governing body had ignored them. The coach, George Gibney, was charged with serious sexual offences in April 1993, but was not prosecuted. Hickson's trial followed in 1995; and at the same time a second Irish Olympic swimming coach (Derry O'Rourke, the successor to Gibney) was sexually abusing children and young people he was coaching. Complaints against O'Rourke had been investigated by the governing body in 1992, and the finding had been that the incident complained of had 'resulted from a misunderstanding'. He was allowed to continue coaching and abusing.¹⁰⁶

¹⁰² *Op cit* fn 3, Ch 2.2.1, Williams 60. For more information about the Hickson case, see Williams in the same article, p 59-60, about his swimming career, achievements and the allegations.

¹⁰³ Williams 59.

¹⁰⁴ *Op cit* fn 88, Ch 3.3.2 Brackenridge (1997) 120.

¹⁰⁵ See also fn 165 Ch 3.3.4.5.

¹⁰⁶ Williams 60-61.

3.3.4 *The Prevalence of Sexual Assault*

3.3.4.1 United Kingdom

Steven Downes¹⁰⁷ wrote that youngsters in Britain face a growing danger of being sexually abused by their sport coaches, with more than 200 cases investigated in 2001.¹⁰⁸ Downes further stated that “the NSPCC¹⁰⁹ confirms that at least 20 British sporting governing bodies are dealing with cases of child abuse.”¹¹⁰

Gymnast Olga Korbut has claimed she was raped by her coach on the night before she competed in the 1972 Munich Olympics and he has never been prosecuted for any offence and maintains that Korbut concocted the entire story.¹¹¹ Ireland’s triple Olympic gold medal-winning swimmer Michelle Smith-De Bruin, was trained by three national coaches who would subsequently be involved in sex scandals.¹¹² She said of coach George Gibney, ‘whatever you think of him as a person, it doesn’t detract from the fact that he is a very good manager.’¹¹³

According to Brackenridge, it is difficult to gather statistics on the subject of sexual abuse since very few cases have been documented and members of athlete populations are reluctant to participate in research and the most serious limitation to quantitative work is the sensitive nature of the work.¹¹⁴

¹⁰⁷ A British author, sports journalist and television producer.

¹⁰⁸ Downes *Observer Sport Monthly* [OSM] <http://observer.theguardian.com/osm/story/0,,678189,00.html> [accessed 31 December 2014]. This was an OSM investigation about sexual abuse by coaches. The special report talk to victims and offenders, asking what is the best way to protect children from the threatening dangers they have to encounter.

¹⁰⁹ National Society for the Prevention of Cruelty to Children. The NSPCC, founded in 1884, is a charity campaigning and working in child protection in England, Wales, Northern Ireland and the Channel Islands.

¹¹⁰ *Ibid.* He further stated that when the NSPCC launched its child protection helpline specifically to deal with abuse within sport, it cited research from other countries which showed that as many as one in five of elite competitors have suffered some form of abuse from a coach or authority figure.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ Brackenridge (1997) 119.

3.3.4.2 Canada

In *R v Audet*¹¹⁵ the court affirmed the acquittal of the accused on a charge of sexual exploitation of a young person. The focal point in this case is the sexual offence by a person in a position of authority and trust. The accused, a 22-year-old teacher, was charged, under section 153(1) of the *Criminal Code*¹¹⁶, with touching a young person for a sexual purpose while in a position of trust or authority towards her.¹¹⁷ The accused, a 22-year-old physical education teacher went with a friend to a nightclub during the summer holidays. Surprisingly he encountered the complainant, a 14-year-old former student of his, who was accompanied by her two cousins, both in their twenties. They spent the evening together at the club. At about 2am in the morning his friend suggested that the group go to a cottage. The accused complained of a headache and went to lie down in a room containing two beds. Before long, the young person went to the same room where she accompanied him in the same bed and fell asleep. During the night when they woke up, they performed oral sex. At the time of the sexual activity the teacher (the accused) already knew that he would teach again at the school of the complainant (the young person) the following year.

According to La Forest, L'Heureux-Dubé, Gonthier, Cory and McLachlin JJ, the court has to establish at the time of the incident if the accused was in a position of trust and authority towards the young person, or if the young person was in a relationship of dependency with the accused.¹¹⁸ The words "authority" and "trust" used in section 153(1)¹¹⁹ must be interpreted in accordance with their ordinary meaning and the term

¹¹⁵ [1996] 2 SCR 171-206. This is a judgement of the Supreme Court of Canada, appeal from a judgement of the New Brunswick Court of Appeal.

¹¹⁶ The Criminal Code is a law that codifies most criminal offences and procedures in Canada. s 153(1) states as follows:

"Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who

(a) For a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or

(b) For a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person."

¹¹⁷ *R v Audet* 171.

¹¹⁸ *R v Audet* 172.

¹¹⁹ *Criminal Code* of Canada.

“position of authority” must not be restricted to cases in which the relationship of authority stems from a role of the accused but must extend to any relationship in which the accused actually exercises such a power.¹²⁰ They also stated that although teachers are not in a *de jure* position of trust or authority towards their students, they are in fact in such a position in the vast majority of cases given the importance of the role entrusted to them by society and to conclude that a teacher is not in such a position towards his or her students would be an error of law.¹²¹

Sopinka and Major JJ concluded that in enacting section 153(1) of the *Code*, Parliament did not intend that teachers be conclusively presumed to be in positions of trust or authority. Rather, it intended that each case be examined on its facts to determine whether an accused in fact occupied a position of trust or authority towards a young person.¹²² In light of the importance of their role in society, in most cases teachers will have established a nurturing relationship with their students, and the degree of dependency necessary to establish a position of trust will exist.¹²³ They also said in each case, however, that position of trust should be based on the nature of the relationship between the particular teacher and the particular student and not simply on the teacher’s status.¹²⁴

There are only a few studies and research on the prevalence and characteristics of sexual abuse in the world of sport.¹²⁵

The disclosure of sexual abuse in the world of sports is a process that has not been widely documented and current research demonstrates that the prevalence of sexual abuse in sports impacts between 2% and 8% of all athletes.¹²⁶ It is also not confined to a particular sport, but involves most of the everyday sports that we witness, or are involved in.¹²⁷

¹²⁰ *R v Audet* 172.

¹²¹ *Ibid* 173.

¹²² *Ibid* 173-174.

¹²³ *Ibid* 174.

¹²⁴ *Ibid* 174.

¹²⁵ Parent and Bannon 2012 *Children and Youth Services Review* 355.

¹²⁶ Parent 2011 *Journal of Child Sexual Abuse* 322.

¹²⁷ See also Brackenridge ‘Myths and evidence – learning from our journey’ Keynote *How Safe is Your Sport 2* <http://bura.brunel.ac.uk/bitstream/2438/4177/3/Myths%20about%20abuse%20in%20sport%2>

3.3.4.3 Australia

In Australia the *Crimes (Sexual Offences) Act*¹²⁸ states that sexual offences are significantly underreported and supports the seriousness of this issue, a significant number of sexual offences are committed against women, children and other vulnerable persons¹²⁹ and that sexual offenders are commonly known to their victims.¹³⁰

Simms¹³¹ stated that child abuse has long-term consequences for the child's family, friends and sometimes the community – including the sport community.¹³² She further stated evidence indicated that 1:4 girls and 1:8 boys under the age of 18 will be sexually abused; child abuse is significantly under reported; only 10% of abusers appear in court and every abuser will impact upon the lives of between 70 and 100 children during his/her life time.¹³³

3.3.4.4 South Africa

In South Africa, there has been no research conducted on the issue specifically in the sport context.¹³⁴ Cloete also stated that the South African Law Reports also do not index any sports related cases and from media reports, it would appear that the majority of cases even do not get to court, or those that do, get settled out of court.¹³⁵ It is generally acknowledged that with both child abuse and rape there is considerable under-reporting, both to the criminal justice and social welfare authorities and to researchers.¹³⁶

0 (1%203%2010).pdf [accessed 9 January 2015]; and Williams (2003) 61, that almost no type of sport is free from sexual harassment, with regard to a research conducted by Fasting *et al* that sexual harassment was carried out in almost all of the 58 sports in their study.

¹²⁸ S 37B(b) of *Act 2 of 2006*.

¹²⁹ S 37B(c) of *Act 2 of 2006*.

¹³⁰ S 37B(d) of *Act 2 of 2006*.

¹³¹ Debbie Simms established Simms Sports Consultancy in April 2011. Prior to this she had been 21 years with the Australian Sports Commission. She was instrumental in getting the sport industry to address issues surrounding gender equity, harassment, child protection and member protection.

¹³² Simms 2001 *Australian Sports Commission* <http://fulltext.ausport.gov.au/fulltext/2001/ascpub/childprotection.asp> [accessed 05 February 2015].

¹³³ *Ibid.*

¹³⁴ Cloete 167 par 9.121.

¹³⁵ *Ibid.*

¹³⁶ *Ibid* 166 par 9.121.

In the *Criminal Law (Sexual Offences and Related Matters) Amendment Act*, Chapter 2 deals with sexual offences and Chapter 3 with sexual offences against children. In *S v Coetzee*¹³⁷ the court supports the fact that persons who have committed sexual offences against children are prohibited for certain types of employment, as outlined in the *Criminal Law (Sexual Offences and Related Matters) Amendment Act*.¹³⁸ This is mainly to prevent further prevalence of abuse and the protection of the victims.

3.3.4.5 United States

Fried has noted that newspaper headlines throughout 1994 and 1995 focused on abuses meted out to female athletes and non-athletes.¹³⁹

There are numerous examples of sexual abuse by coaches during the mid-nineties in the US. Newer information on this unpleasant topic has been published in the Indianapolis Star, stating that USA Gymnastics is under investigation regarding numerous allegations of sexual abuse by coaches that go back to the nineties and was not reported to the authorities.¹⁴⁰ The governing national body has failed to investigate dozens of claims of sexual abuse by its coaches.¹⁴¹ Complaints from about 54 coaches from 1996 to 2006 were ignored due to the potential danger to a coach's reputation.¹⁴²

Staggering news recently reported the resignation of the CEO and president (Steve Penny) of USA Gymnastics, the national governing body for the Olympic sport, regarding sexual abuse allegations against coaches and a team doctor and how the

¹³⁷ 2016 (1) SACR p 134 par [E-H].

¹³⁸ Act 32 of 2007, section 41(1)(a)-(d).

¹³⁹ Fried 1996 *Journal of Legal Aspects of Sport* 155.

¹⁴⁰ Ilich 2016 *International Business Times* (<http://www.ibtimes.com/usa-womens-gymnastics-2016-sexual-abuse-coaches-failure-alert-law-enforcement-puts-2398332> [accessed 14 September 2016]).

¹⁴¹ Landsbaum 2016 *New York Magazine* (<http://nymag.com/thecut/2016/08/report-usa-gymnastics-ignored-sex-abuse-claims.html> [accessed 14 September 2016]). New York Magazine is concerned with the news, culture, entertainment, politics, etc. of New York City. NYmag.com, Vulture.com, The Cut, and Grub Street are websites that categorized under this magazine.

¹⁴² *Ibid.*

organisation deals with this dilemma.¹⁴³ USA Gymnastics' board stated that it "believes this change in leadership will help USA Gymnastics face its current challenges and implement solutions to move the organization forward in promoting a safe environment for its athletes at all levels."¹⁴⁴ Penny stated that his decision to resign is solely to support the best interests of USA Gymnastics at this time.¹⁴⁵ A judge has also recently released a great quantity of documents about cases of dozens of coaches who had been accused of sexually exploiting athletes and revealed a lack of training on sexual abuse at USA Gymnastics.¹⁴⁶

Another scandal following the expulsion of Penny, is the case of former USA Gymnastics doctor, Larry Nassar who was arrested in December 2016 on child pornography charges and allegedly molesting dozens of elite gymnasts through his position as a team physician situated at the Michigan State University.¹⁴⁷ More than 60 women have filed complaints against Nassar and the number is believed to increase.¹⁴⁸ Nassar has been refused bail and the police and FBI are now currently investigating dozens of other cases, some decades old and other within the last two years.¹⁴⁹ He was a man they trusted and felt comfortable with.¹⁵⁰ Elite gymnasts were intensively trained at the Karolyi ranch outside Houston, Texas where Dr. Nassar had provided medical treatment.¹⁵¹ There was a lot of pressure on the athletes, which was very overwhelming and stressful, causing the ranch to be an emotionally abusive environment.¹⁵² John Manly stated that the ranch was an environment of fear and this is here where Nassar planned his grooming process deceitfully, appearing to be the nice guy; gave them candy; gave them

¹⁴³ Connor 2017 *NBC News* (<http://www.nbcnews.com/news/us-news/usa-gymnastics-chief-quits-amid-fury-over-abuse-scandal-n731271> [accessed 20 March 2017]).

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

¹⁴⁸ LaPook 2017 *CBS News* (<http://www.cbsnews.com/news/former-team-usa-gymnasts-describe-doctors-alleged-sexual-abuse/> [accessed 20 March 2017]). This article came from a 60 minutes live episode, interviewing former Team USA Gymnastics Jamie Dantzscher, Jessica Howard and Jeanette Antolin from the unwanted treatment they have received from Nassar. Dr. Jon LaPook is the chief medical correspondent of CBS News. John Manly is the Californian attorney representing the three women in the interview, including dozens of other athlete-victims.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² *Ibid.* Dantzscher said yelling and screaming was normal; that you were not good enough and everything has to be perfect.

encouragement and acted that he cared about them, where nobody else gave that impression.¹⁵³ Manly is suing the Karolyis and USA Gymnastics on behalf of the women, for failing to protect their athletes.¹⁵⁴

A shocking investigation by the IndyStar has been revealed in December 2016 that children have been abused in gymnastics gyms, and the prevalence of this sexual assault was previously unclear until the report of this newly investigation.¹⁵⁵ Evidence of hundreds of gymnasts exploited by their coaches over the years is buried in court documents and police reports across the nation.¹⁵⁶ Victims seldom come forward to report the incidents, usually because they feel ashamed and betrayed and the actual number of victims is likely far higher, but in sports may be even lower because of the power coaches have over their athletes.¹⁵⁷

Another disturbing fact that has been revealed by this investigation is the instances where coaches (who were later convicted of sexual abuse) had been fired from multiple gyms for violating rules recommended by USA Gymnastics; retained their membership and are able to continue to work, by finding a job in another USA Gymnastics gym.¹⁵⁸ USA Gymnastics does not make any effort to track fired coaches moving from gym to gym, or to enforce many of the rules it recommends for its members.¹⁵⁹ Jeffrey Bettman who served a 25-year prison sentence for child pornography, and who was also fired at various gyms, is a clear warning sign where potential abuse can occur, or has occurred. Many times in these situations, gym owners just negligently step away without reporting this criminal behavior, because

¹⁵³ *Ibid.* See also more about 'grooming' in Ch 3.3.6.4 and the grooming process used by the respondent in the *Gordon Collins* case, *op cit* fn 376 Ch 3.4.6.

¹⁵⁴ *Ibid.*

¹⁵⁵ Evans Alesia and Kwiatkowski 2016 *Indystar* (<http://www.indystar.com/story/news/2016/12/15/20-year-toll-368-gymnasts-allege-sexual-exploitation/95198724/> [accessed 20 March 2017]). The IndyStar online newspaper is the homepage of The Indianapolis Star (located at Indianapolis in the US state of Indiana) with in depth local news, sports and entertainment. The exact number of children that have been sexually exploited in America's gyms over the past 20 years is unclear, but this report has reviewed hundreds of police files and court cases across the country, providing for the first time a measure of just how serious the problem is, Evans Alesia and Kwiatkowski 2016 *Indystar*.

¹⁵⁶ *Indystar Investigation*, Ch 1 of the document.

¹⁵⁷ *Ibid.* Victims who came forward said that they all had been mentally, physically or sexually abused, *Indystar Investigation*, Ch 2 of the document.

¹⁵⁸ *Indystar Investigation* Ch 5 of the document, including examples of coaches who continue to work, despite violations of USA Gymnastics. See also the example of soccer coach Brian Schofer who had moved for many years between different sport codes, *op cit* fn 241 Ch 3.3.6.4.

¹⁵⁹ *Indystar Investigation* Ch 5 of the document.

they do not want to get involved.¹⁶⁰ Nobody seems to care about the firings of a coach, or to keep a record of it and gym owners are unwilling to defame a coach (especially if the coach has a good reputation and therefore in a powerful position) when someone calls for a reference.¹⁶¹ This causes the problem that a coach can move from gym to gym for years, exploiting countless children.¹⁶² Nancy Hogshead-Makar stated that “sexual abuse thrives on the fact that people are embarrassed about the topic, ashamed to talk about it, keep quiet about it and that is exactly why molesting coaches keep getting hired at the next place; nobody talks about a coach that is inappropriate with athletes and as a result helping the coach to quietly moves away and gets hired someplace else.”¹⁶³

In the United States many strategies have been developed, including criminal and civil law remedies, organisational awareness and proactive development of plans, specific codes of conduct, screening potential coaches, etc. and has also become a priority in Britain.¹⁶⁴ Steps were taken by the Amateur Swimming Association in the light of the Hickson case, including consultation with the Home Office, Sports Council and other agencies with expertise in the area of child protection, where two problem areas were identified, physical and sexual abuse of children and emotional abuse.¹⁶⁵

The above shows that the prevalence of abuse in sport is an international problem and occurs worldwide.¹⁶⁶

¹⁶⁰ *Ibid* Ch 7 of the document.

¹⁶¹ *Ibid*. Gym owners have a conflict of interest when it comes to reporting abuse and fear harm to their businesses.

¹⁶² *Ibid*.

¹⁶³ *Indystar Investigation* document.

¹⁶⁴ Gardiner 536.

¹⁶⁵ Gardiner 537.

¹⁶⁶ According to Brake “there is no clear picture of how often coaches become sexually involved with athletes. Studies are conducted geographically over a large area, with some of the most comprehensive ones, outside the US. She has quoted Brackenridge where she said, there is a lack of research on the prevalence of sexual abuse in sport in the UK, but research in Canada, Norway and Australia show that sexual exploitation is a serious issue for sport.” *Op cit* fn 207, Ch 2.4.1, Brake (2012) 399.

3.3.5 *The Meaning of Title IX*

The enactment of *Title IX of the Educational Amendments of 1972*¹⁶⁷ is the key federal law in the U.S. prohibiting sex discrimination against students and employees in education programs and activities receiving federal financial assistance. *Title IX* states:

No person in the U.S. shall, on the basis of sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal aid.

The key point is to ban sex discrimination at participating schools,¹⁶⁸ whether it is in academics or athletics. Thus it covers education programs that receive support from any federal agencies.¹⁶⁹ Brake says that “Coach-athlete “romances” are the dirty little secrets of sport. No one wants to talk about them. Now and then, a high profile scandal rips through the headlines, like that of the soccer coach, Anson Dorrance¹⁷⁰ at the University of North Carolina at Chapel Hill (hereafter UNC).”¹⁷¹ In this case the complained-of behaviours were verbal and did not involve physical advances; the notoriety of the case stemmed from the coach’s fame and track record and its addition to a small handful of reported court decisions involving coach-athlete sexual harassment in intercollegiate sports.¹⁷² Coach-athlete relationships are rarely examined for their impact on womens sports and athlete well-being, because largely they do not come within the ambit of *Title IX*, which sets the agenda for conversations about gender equity in sport.¹⁷³ She further states that:

By limiting its reach to only unwelcome intimate relationships, *Title IX* effectively legitimizes all other sexual relationships between athletes and their coaches. Title IX

¹⁶⁷ Public Law No. 92-318, 86 Stat. 235 (June 23, 1972), confided at 20 U.S.C. sections 1681 through 1688.

¹⁶⁸ Title IX applies to, elementary and secondary schools, colleges and universities.

¹⁶⁹ The emphasis of Title IX in this sub section is based on sexual abuse.

¹⁷⁰ Former coach of the US women’s national soccer team. The National Collegiate Athletic Association (NCAA) has recognized Dorrance as the Women’s Soccer Coach of the Year seven times.

¹⁷¹ Brake (2012) 395.

¹⁷² *Ibid.* See a short discussion of the Dorrance case at par 3.3.6.3.

¹⁷³ *Ibid.*

not only under-protects women from sexual conduct in the coach-athlete relationship, it fundamentally misconceives the abuse of power inherent in such relationships. It has little impact on a sport culture that often works poorly for women (and many men).¹⁷⁴ She continues stating that the dominant win-at-all cost model of intercollegiate sport is rife with harms to athletes, male and female. The asymmetrical coach-athlete relationship empowers coaches to abuse athletes in sexual and non-sexual ways.¹⁷⁵

Brake further stated in her article, *Going Outside Article IX to Keep Coach-Athlete Relationships in Bounds*, to move beyond the framework of *Title IX* and create policies to regulate these relationships regarding coaching ethics and student welfare.¹⁷⁶ Her study focuses only on coach-athlete relationships in intercollegiate sports and not amateur sports.¹⁷⁷ Law critiques have criticised the problem of sexual relationships between coaches and athletes. Among them, Rhonda Reaves has discussed the poor fit between *Title IX's* unwelcomeness requirement and coach-athlete sexual harassment, and has critiqued the win-at-all cost model of coaching that prime athletes for abuse.¹⁷⁸ She recommends a more robust application of *Title IX* to address coach-athlete sexual harassment.¹⁷⁹ Nancy Hogshead-Makar and Sheldon Steinbach urge athletic departments to adopt their own sexual harassment policies, distinct from general university harassment policies, and to include within them a ban on coach-athlete sexual relationships.¹⁸⁰ According to Brake, the past decade has not seen significant progress in changing coach-athlete relationships and very few educational institutions go beyond prohibiting sexual harassment in regulating the coach-athlete relationship.¹⁸¹ Until very recently, the NCAA had not taken any action to address coach-athlete intimate relationships.¹⁸² Coach-athlete sexual relationships are a serious problem and that sport organizations and

¹⁷⁴ *Ibid* 396. See also Brake (2012) 403, stating that women's limited opportunities in sport making them especially vulnerable to sexual exploitation by a coach. Women have fewer chances to play competitive sports if they walk away from a relationship from a coach.

¹⁷⁵ *Ibid* 396 fn 4.

¹⁷⁶ *Ibid* 397.

¹⁷⁷ *Ibid* 397 and 398.

¹⁷⁸ *Ibid* 396.

¹⁷⁹ *Ibid*.

¹⁸⁰ *Ibid*.

¹⁸¹ *Ibid* 397.

¹⁸² *Ibid*.

institutions must prohibit such relationships if sport is to become a safe and empowering place for girls and women.¹⁸³

3.3.6 *The Impact of Abusive Power, Influence and Authority of the Coach on Victims*

3.3.6.1 Introduction

Not only does sexual abuse occur among minors (reflecting on the sporting context), but it is also problematic during adulthood. For many female athletes, the sexual climate of sports poses frequent risks and challenges and the psychologic consequences for the female athlete are severe when her personal safety is violated through harassment or abusive behaviour.¹⁸⁴ Brackenridge continued, stating that potentially dangerous relationships are characterized by an imbalance of power and include those between the athlete and her (usually male) coach or other authority figures, and those between the athlete and her senior peers.¹⁸⁵ Research by Brackenridge and Kirby, suggests that there is a higher risk of sexual abuse to an athlete at the 'stage of imminent achievement' – that is just prior to elite level in sport, especially where this coincides with puberty.¹⁸⁶

As mentioned above, sexual abuse also occurs between adult athletes, such as athletes and their coaches, athletes and their peers and other authoritative figures. It does not only happen on a professional/amateur level after school, but also occurs at university and college level and in schools between teachers (usually the PE¹⁸⁷ teacher) and pupils.

¹⁸³ *Ibid* 399. Sexual assault does not only affect female persons, but also appears among male persons.

¹⁸⁴ *Op cit* fn 91, Ch 3.3.2, Brackenridge (2000) 187. The Code of Professional Ethics of the *South African Council for Educators*, article 3 (3.5) refrains from any form of abuse, physical or psychological and any form of sexual harassment, physical or otherwise of learners [article 3 (3.8)], *op cit* fn 89, Ch 2.3.1.

¹⁸⁵ *Ibid* 189. See also Brake 402, where she stated it is primarily male coaches who become sexually involved with athletes.

¹⁸⁶ Williams 62.

¹⁸⁷ Physical Education.

Spies¹⁸⁸ refers to three incidents of sexual harassment involving university athletes and asked whether “all three of these sexually violent acts isolated incidents, or is there a nationwide epidemic of high profile male college athletes sexually assaulting female students.” Statistics show that male athletes are more likely than the average male college student to commit sexual assaults and according to one study, athletes commit one in three college sexual assaults.¹⁸⁹ Finally, a Federal Bureau of Investigation (FBI) report stated the rate of committing sexual assaults is thirty-eight percent higher among college basketball and football players than the average male college student.¹⁹⁰ These examples indicate that sexual harassment by athletes occurs also under non-athletes, but the emphasis of this study is the exploitation of athletes, the abuse of power and trust by coaches and other authoritative figures.

3.3.6.2 The Exploitation of Male Dominance at College Level in the USA

Most students at universities have a high aspiration for a safe and caring environment on campus and strive for healthy relationships with everybody. The NCAA¹⁹¹ Sport Science Institute has recently published a guide addressing problems that result from sexual assault and interpersonal violence and how they are affecting college students and student-athletes. The primary author and editor of the guide, Deborah Wilson, said the effects of sexual assault and interpersonal violence cause real and often lasting emotional, cognitive, physical and other types of damage to its victims.¹⁹² All acts of sexual assault or interpersonal violence share one characteristic ... acts of dominance.¹⁹³ Research has shown males are, overwhelmingly, the most frequent perpetrators of sexual assaults on both males and females.¹⁹⁴ The most recent major studies of campus crime reported *inter alia* that as many as 50 percent of college students experienced dating violence while in

¹⁸⁸ Spies 429-30.

¹⁸⁹ *Ibid* 430.

¹⁹⁰ *Ibid*.

¹⁹¹ The national office is situated in Indianapolis, a U.S. state of Indiana. The NCAA is an organisation dedicating to safeguarding the well-being of student-athletes.

¹⁹² *Op cit* fn 314 Ch 2.5.5.2, Wilson par C p 8. Interpersonal violence according to Wilson (par D p 8) includes a wide range of behaviors such as, taunting, dating abuse, stalking, harassment, hazing, bullying, assault, rape and murder.

¹⁹³ *Ibid* par D p 8. Also see Brake 403, referring to a coach's authority and exercising control over an athlete's life.

¹⁹⁴ *Ibid* par I p 10.

college and in a 2012 American College Health Association study, male-student athletes reported being victims of sexual assault at higher rates than their non-athlete peers.¹⁹⁵ In another 2005 study a majority of male and female college students had experienced harassment from their fellow students, faculty members and campus employees and approximately one-third of those incidents occurred in the student's first year of college.¹⁹⁶

The research indicates the majority of cases involving sexual assault and other forms of interpersonal violence go unreported.¹⁹⁷ In a 2011 College Dating Violence and Abuse Poll, over half of the respondents (all college female subjects) chose the same reasons for not reporting a sexual assault, because they were concerned they might make it worse for the victim or hurt their relationship with the victim and 60 percent of the people who knew of another student's sexual assault thought it was none of their business.¹⁹⁸ Students who are survivors of violence often experience a negative impact on their academic performances, relationships with peers and the ability to be involved in or benefit from campus life.¹⁹⁹ Psychological or emotional harassment and abuse has been the most recent form of interpersonal violence to receive research or policy attention.²⁰⁰ Sport research pertaining to interpersonal violence has started recently with relatively scarce data and formulations based on the parent-child literature.²⁰¹ There is strong evidence that sexual, physical and psychological abuse are highly correlated.²⁰²

¹⁹⁵ *Ibid* par E p 8.

¹⁹⁶ *Ibid* par E p 9.

¹⁹⁷ *Ibid* par F p 9. This is also confirmed by Brackenridge and it is generally acknowledged with both child abuse and rape that there is considerable under-reporting, both to the criminal justice and social care authorities and to researchers (Brackenridge *Spoilsports: Understanding and Preventing Sexual Exploitation in Sport* 54).

¹⁹⁸ *Ibid*.

¹⁹⁹ *Ibid* par H 9.

²⁰⁰ Mountjoy, Brackenridge, Arrington *et al* 1020.

²⁰¹ *Ibid*.

²⁰² *Ibid*.

3.3.6.3 Case Law

As indicated earlier,²⁰³ this detrimental phenomenon of sexual abuse and assault in the sporting society appears worldwide and is not confined to a particular sport. Former tennis champion (especially in doubles and mixed doubles) Bob Hewitt,²⁰⁴ was convicted on charges of rape and sexual assault of a minor in March 2015, of girls he coached decades ago.²⁰⁵ Two girls were under the age of 16, which occurred in 1981 and 1982 respectively and sexually assaulting a third girl under the age of 18 in 1994. All three incidents occurred in South Africa. Hewitt made indecent comments, peeked under their skirts, rub his erect penis against them, fondle their breasts, stick his tongue in their mouths, exposed his naked body to them and had sexual intercourse with one of them.²⁰⁶ He clearly abused his position of authority and responsibility towards them and also abused the trust that their parents had placed in him when they put their young children in his care.²⁰⁷

In the case of *Jennings v University of North Carolina*,²⁰⁸ the Fourth Circuit Court of Appeals, had to decide whether summary judgement against the Plaintiff was appropriate, or whether the case should proceed to trial. Melissa Jennings, a former student and soccer player at the UNC, alleged that the university's high-profile women's soccer coach, Anson Dorrance, made sexual comments toward her and other members of the team, discussed the private and sex lives of his players, therefore creating a sexually hostile environment. She also claims that she had informed UNC about the hostile environment, but UNC has failed to take any action. The action was brought under Title IX and section 1983.²⁰⁹ The court held that Jennings could continue to trial with her lawsuit, which was finally settled out of court.

²⁰³ *Op cit* fn 127 Ch 3.3.4.2 and also see Ch 3.5.

²⁰⁴ Robert Anthony John Hewitt is a former professional male tennis player from Australia and became a South African Citizen after marrying a South African.

²⁰⁵ *Hewitt v The State* 2016 ZASCA 100 par [1].

²⁰⁶ *Ibid* par [2].

²⁰⁷ *Ibid* par [11].

²⁰⁸ 482 F.3d 686 (4th Cir. 2007).

²⁰⁹ 42 U.S.C. Section 1983 is a US Code used to bring a civil action against individuals, for the deprivation of their constitutional rights.

It is clear that any form of sexual assault and sexual abuse have a long-term detrimental effect on its victims. This unlawful physical action has a great psychological impact on the victim, causing long lasting effects on the victim's lifestyle such as, depression and personality disorders.²¹⁰ The case of *AB v The Catholic Welfare Society*²¹¹ is about what happened to the claimant while he was a pupil at a reformatory school for boys if they had been convicted of a criminal offence and receiving a custodial sentence; or they were found to be in need of care and protection; or they were not attending school regularly.²¹² It was stated in the matter that "the claimant had a difficult childhood with a strict and sometimes violent father, consequently leading to minor trespassing of the law and truanting while he was still a minor and as a result he was placed in this reformatory school."²¹³ AB was allegedly assaulted physically and sexually by two teachers of the school on several occasions. He complained to several people about the sexual abuse; his football team manager, his Housemaster, the Head Teacher and his social worker."²¹⁴

With reference about the psychological impact on a victim in sexual abuse cases, two psychologists confirmed the psychological reasons why victims sometimes delay coming forward to report these kinds of incidents, stating that victims of child sexual abuse are often too ashamed and embarrassed to discuss or report the abuse.²¹⁵ The shame, embarrassment, the claimant's negative experience and trying to report the incident and problems with mistrust, have caused the claimant to suffer from alcohol addiction, absconding from the reformatory school and consequently committing more crimes.²¹⁶ This case is clear evidence of the psychological impact of sexual abuse on a victim and how it negatively affects the personality disorder of a victim.

²¹⁰ The victims do not always experience the same personality disorders (short-term and long-term consequences) and the list include *inter alia*, suicide, stress disorder, alcohol and drugs abuse, eating disorders, anxiety, involvement in criminal activities, etc. See also Ch 2.6.4 about the absence of leadership and control in the coach-athlete relationship, and other relationships for example between a student and teacher, and the effect it has on the victim's lifestyle and personality.

²¹¹ *AB v The Catholic Welfare Society (Diocese of Middlesbrough), The Trustees of the Middlesbrough Diocesan Rescue Society, Trustees of the De La Salle Provincialate* [2016] EWHC 3334 (QB).

²¹² *Ibid* par 1.

²¹³ *Ibid* par 7.

²¹⁴ *Ibid* par 12.

²¹⁵ *Ibid* par 35 and 39.

²¹⁶ *Ibid* par 12 and 15.

3.3.6.4 Methods Used by the Perpetrators

Referring to the above mentioned and numerous cases around the world, another startling fact are the methods used by these perpetrators to satisfy their desires and the physical and psychological impact it leaves on the innocent victims. These perpetrators exploit the innocence and youth of the victims.²¹⁷ In *S v HB*²¹⁸ the mother was found guilty being an accomplice of rape and indecent assault of her own two minor children. As a parent, she had violated the trust of her own children and on their tender age caused them physical harm due to the impact of the deeds on them and caused a psychological effect on their studies.²¹⁹ The offence of rape is traumatic for a victim of any age.²²⁰ The victim, aged 15, trusted the accused who was a friend of the family, before she was raped vaginally and anally and Gangen AJ considered this traumatic effect of the incident as an aggravating factor.²²¹ The victim is repeating a grade and has become withdrawn since the incident, does not participate in activities, not the friendly and playful child she used to be, has become rebellious and aggressive, and has difficulty making rational decisions.²²² The courts have always considered the rape of a young child as being especially serious in nature²²³ and as a general rule rape will be progressively more serious the younger the victim, because they are more vulnerable and the chance of serious injury is greater.²²⁴ The rape of the 7-year-old girl in this case would leave a lifelong psychological effect on the young child, negatively affecting her emotional growth, personality formation and psychosexual development.²²⁵

²¹⁷ See also *Hewitt* case par [11], *op cit* fn 205 Ch 3.3.6.3.

²¹⁸ 2015 (1) SACR 77 (GP).

²¹⁹ *Ibid* p 82 par [19].

²²⁰ *S v ET* 2012 (2) SACR 482-483 par [20] (WCC).

²²¹ *Ibid* p 482 par [14].

²²² *Ibid* p 483 par [20]. Also see Cloete 168 par 9.126, where a victim attempted suicide, lost considerable weight and had guilty feelings. She became aggressive, displayed violent outbursts and her self-confidence was destroyed. According to the CRC it is important for children to be able to make decisions on their own, Schäfer 90.

²²³ *S v SQ* 2013 (1) SACR 74 par F-G (ECG).

²²⁴ *Ibid* p 75 par [10].

²²⁵ *Ibid* p 73 par F. See also the *Hewitt* case regarding the immediate physical and psychological trauma suffered by the victims and the lasting and devastating effect which the offences have had on their lives and families, *Hewitt* case par [11]. In the *Coetzee* case *op cit* fn 137 Ch 3.3.4.4, the court mentioned the mental and emotional scars of the innocent young victims run deep and will endure, *Coetzee* p 132 par [G]. For more examples about the prevalence of violence against children in sport, see Brackenridge p 8, *op cit* fn 3 Ch 3.2.2, which include sumo wrestling, cricket, soccer, etc. and

Grooming plays an important role in cases of abuse, establishing an emotional connection and lures the victim to participate, creating the appearance of cooperation from the targeted individual, making the act of abuse appear to be consensual.²²⁶ It is virtually impossible to ascertain the exact commencement and end of grooming, as the process is a means to an end.²²⁷ Section 18 of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act*²²⁸ explains extensively about sexual grooming of children. Especially a person who supplies, exposes or displays to a third person (child) pornographic material (including jokes with a sexual content) with the intention to persuade, instruct or encourage to perform a sexual act, is guilty of the offence of promoting the sexual grooming of a child.²²⁹ The case of *Regina v Scott Allan Henderson*²³⁰ relates to this kind of grooming. The respondent pleaded guilty to “engaging in sexual activity in the presence of a child; causing or inciting a child to engage in sexual activity and the making of indecent photographs of a child.”²³¹ The respondent was employed at a football club, being the club mascot on match days and had an administrative role in coaching sessions for boys at the indoor training centre.²³² The respondent used his position to gain all the information about the victim, a 15-year-old boy.²³³ Spence J stated that “there was consequently a significant breach of trust in this case, which was a seriously aggravating feature.”²³⁴ In a similar kind of case the accused was charged with using lewd, indecent and libidinous practices towards two boys aged 12, offering them money to play a sexually intimate game.²³⁵ The essence of the crime is indecent conduct, intended to gratify the accused sexually, or intended to corrupt the child’s

Gibbons and Campbell 190, including basketball, baseball and soccer. See also Simms 111 for examples of reported incidents of child abuse.

²²⁶ Cloete 167.

²²⁷ Boezaart 556.

²²⁸ Act 32 of 2007. See also “Sexual grooming of Children” by Boezaart 555.

²²⁹ Act 32 of 2007 s 18(1)(c)(i)-(iii). This is the most common method used by the perpetrators. Section 19 deals with the exposure or display of child pornography, including images and the publication thereof.

²³⁰ [2012] EWCA Crim 2024.

²³¹ *Ibid* par 1.

²³² *Ibid* par 3.

²³³ *Ibid* par 3.

²³⁴ *Ibid* par 3.

²³⁵ *Sommerville (John) v HM Advocate* [2010] HCJAC 14; 2010 S.L.T. 616 (HCJ) 670.

innocence.²³⁶ The complainant felt pressured and scared, which is harmful to the child psychologically.²³⁷

Participants in sport are particularly vulnerable to abuse and harassment because it happens in an environment characterised by close physical and emotional relationships ... where close relationships often develop between athletes and between athletes and coaches.²³⁸ Sex offenders do not only groom the victim, but also adults around the child and even the environment in which these role-players find themselves, pursuing to win the confidence and trust of their victims and those in their supporting system.²³⁹ Unfortunately this very nature of sport creates the possibility of abuse and harassment by adults who are in positions of both trust and power.²⁴⁰ Rossouw states that in some instances the abuse is not intrinsically sport-related, and could have happened in any other sphere ... such as Brian Schofer in the period of 1994 to 2001, even migrate between sport codes to be close to unsuspecting victims.²⁴¹

Simms said that, "in addition to these reported incidents of sexual abuse, results from a doctoral study conducted by a Senior Psychologist at the AIS²⁴² indicate that 21% of male athletes and 31% of female athletes, in both club and the elite sport, reported experiencing sexual abuse in some point in their lives. These statistics are similar to other community prevalence data ... but what is relevant to sport is that of these sexually abuse athletes 46% of the elite group and 25% of the club group reported being sexually abused within sport."²⁴³

According to Cornelius and Singh sexual relationships in the case of children are exploitative.²⁴⁴ Even if both parties are legally adult, such relationships can be exploitative because there is usually a disparity between the parties in terms of

²³⁶ *Ibid* 672 par 3.

²³⁷ *Ibid* 674 par 7 and 678.

²³⁸ *Op cit* fn 172, Ch 2.3.3.4.4, Rossouw 2.

²³⁹ Boezaart 556.

²⁴⁰ Rossouw 2.

²⁴¹ *Ibid*.

²⁴² Australian Institute of Sport.

²⁴³ Simms 111.

²⁴⁴ Cornelius and Singh 301.

authority, maturity, status and dependence.²⁴⁵ Examples of this exploitation are where the coach is driving an athlete home alone; sharing a hotel room; any kind of socializing alone with an athlete/student or inviting an athlete to his or her home.²⁴⁶ Most of the time an athlete is honoured by the attention received from the coach and it is almost impossible to reject any offer, as it might indicate that the coach or the coach-athlete relationship is not important. The innocent athlete-victim honestly believes that this is his or her chance to be selected for the team, or that the coach believes that he or she is special and has the talent to achieve greatness. In many instances the coach is aware that the athlete will not reject any invitation and deviously use this opportunity to turn the relationship into a sexual one.

3.4 Child Protection

3.4.1 Introduction

The premise of child protection is to safeguard young people under the age of 18 from abuse, discrimination and harassment. It also includes protecting children from people who are unsuitable to work with children in a sporting context. Sport organisations have a moral, ethical and legal obligation to protect children who participate at any sporting programs and facilities.

Children are the future. The continuation of sport around the world depends on our descendants and they should be educated and protected in this regard. As discussed above,²⁴⁷ it is clear that the rights and protection of children are enacted in numerous policies and legislation focussing on the awareness, well-being and safeguarding of children. Most countries have a written constitution that comprises of a Bill of Rights.²⁴⁸ This is the democratic right of a person for equality, freedom and protection. These rights protect all people, including children. In this subchapter the focus will be on child protection in sport.

²⁴⁵ *Ibid* 301. The Code of Professional Ethics of the *South African Council for Educators*, article 3 (3.9) refrains from any form of sexual relationship with learners, *op cit* fn 89, Ch 2.3.1.

²⁴⁶ Brake 401.

²⁴⁷ See Ch 3.2.4.4. For more information about policies, constitutions and codes of practice, see Ch 4.3.

²⁴⁸ The *Bill of Rights* is a declaration of individual rights and freedom of all people.

3.4.2 The Position of Child Protection around the Globe

3.4.2.1 United States of America

What is child abuse? According to Federal Law in the USA, *The Child Abuse Prevention and Treatment Act (CAPTA)*,²⁴⁹ child abuse and neglect is described as, “at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm.”²⁵⁰ The basis for the US government’s intervention in child maltreatment is grounded in the concept of *parens patriae* – a legal term that asserts that the government has a role in protecting the interests of children and in intervening when parents fail to provide proper care; or if the parents are unable, or unwilling to meet the responsibility to protect the child’s safety and well-being.²⁵¹

3.4.2.2 South Africa

The *SA Constitution* states that every child has the right to be protected from maltreatment, neglect, abuse or degradation²⁵² and not to be tortured in any way.²⁵³ Section 28 further stipulates that “every child has the right to basic nutrition, shelter, basic health care services and social services.”²⁵⁴ This means the state has a duty to ensure that a child is provided with these basic requirements and to support the family to meet those requirements.²⁵⁵ This collaborates with the *Children’s Act*, stating that all organs of state in any sphere of government and all officials, employees and representatives of an organ of state must respect, protect and promote the rights of children.²⁵⁶

²⁴⁹ CAPTA of 2010.

²⁵⁰ S 3(2) of CAPTA. CAPTA is another example of endorsing the fundamental goals contained by the CRC, for example preventing any harm and exploitation to children, Schäfer 90.

²⁵¹ Introduction of CAPTA.

²⁵² S 28(1)(d). See also the *Children’s Act* 38 of 2005 s 7(1)(l). See also Skelton (2013) 614, where Sachs J referred to the state’s obligation towards children.

²⁵³ S 12(1)(d).

²⁵⁴ S 28(1)(c).

²⁵⁵ Skelton (2013) 600.

²⁵⁶ Act 38 of 2005 s 8(2).

Du Toit and Mbambo stated the importance that every child is provided with the basic necessities such as sufficient nutrition, nurturing and brain stimulation during early childhood, enabling the child to be better equipped to deal with life and preventing possible social problems later in life.²⁵⁷ The foundation of a child's development is during the child's early childhood and therefore early childhood development (ECD) programmes are indispensable for growth and development.²⁵⁸ Chapter 6 of the *Children's Act* aims to ensure that all children have equal access to ECD services, which have been identified as essential social services toward children's rights during early childhood.²⁵⁹ ECD services also ensure that children are socially, mentally, emotionally and physically ready to learn when they approach school-going age.²⁶⁰

As argued above, children are entitled the full benefits endorsed by the Constitution and thus enjoy their democratic right to be protected and to be taken care of.²⁶¹ The *SA Constitution* states that a child's best interests are of paramount importance in every matter concerning the child²⁶² and the *CRC* recognizes the human rights of children. It is without any doubt the most powerful children's rights instrument and acknowledges the role of non-governmental organizations in realizing children's rights.²⁶³ The four main principles of the *CRC* which have become the international standard, and guide all policy in South Africa in relation to children, are survival, development, protection and participation.²⁶⁴

²⁵⁷ Davel and Skelton 6-1 [Revision Service 2, 2010].

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid* 6-2. Ch 6 of the *Children's Act* demonstrates an undertaking by the state to fulfil children's right to social services, Davel and Skelton 6-2 [Revision Service 2, 2010]. S 91(1) of the *Children's Act* states as follows:

"Early childhood development, for the purpose of this Act, means the process of emotional, cognitive, sensory, spiritual, moral, physical, social and communication development of children from birth to school-going age" (Davel and Skelton 6-4 [Revision Service 2, 2010]).

²⁶⁰ Davel and Skelton 6-6 [Revision Service 2, 2010].

²⁶¹ Cloete 164 par 9.109 confirmed this proposition that children have a constitutional right of appropriate care and to be protected from abuse. See also Schäfer's comprehensive discussion on 116 about the constitutional rights of children.

²⁶² S 28(2). S 28(2) is a right, and not just a guiding principle, Boezaart 280.

²⁶³ *Convention on the Rights of the Child* of 1989 (*op cit* fn 2 Ch 3.2.2).

²⁶⁴ *S v M* 2007 (2) SACR 539 (CC) 553[17]. See also Schäfer's confirmation about the four basic goals of the *CRC*, Schäfer 90.

In terms of section 28 of the Constitution, South Africa has an international obligation as a State party to the UN Convention on the Rights of the Child (UNCRC).²⁶⁵ The State's obligation or duty, has originated as a result of the ratification of the UNCRC to 'take all appropriate measures to protect the child from violence, injury or abuse.'²⁶⁶ This confirms that children are bearers of rights which they can enforce not only against their parents, but also against the state.²⁶⁷ The UNCRC has become the international standard against which to measure legislation and policies.²⁶⁸ Human stated that many of the 'rights' contained in the UNCRC are merely claims based on ideals concerning the way children should be treated.²⁶⁹ The *ECECR* states that the rights and best interests of children should be promoted and children should have the opportunity to exercise their rights.²⁷⁰

According to the *Children's Act*,²⁷¹ certain factors must be taken into consideration, regarding the *best interests* of the child principle. It is a lengthy list of factors and this study will only refer to those that are significant for this study. Some of these factors relevant to the best interests of the child have been discussed and referred to in the previous chapter, which is about the coach-athlete relationship. The first important factor "is the child's physical and emotional security and his or her intellectual, emotional, social and cultural development."²⁷² Sport psychology has indicated that athletes reported greater well-being when they perceived their psychological needs within their designated sport to be satisfied, which has a positive influence on an athlete's growth and development.²⁷³ Another factor is, "the need to protect the child from any physical or psychological harm, or any other harmful behaviour, for example (i) maltreatment, abuse, neglect, exploitation or degradation; (ii) or exposing the child to these aforementioned harmful elements towards another person."²⁷⁴

²⁶⁵ *S v M* 2007 541[G].

²⁶⁶ Skelton (2013) 614. The state (including every legislative, administrative and judicial body or institution) has to consider how children's rights and interests are or will be affected by their decisions and actions, Boezaart 318.

²⁶⁷ Boezaart 3.

²⁶⁸ Skelton (2013) 601.

²⁶⁹ Boezaart 244.

²⁷⁰ *European Convention on the Exercise of Children's Rights* of 1996 (*op cit* fn 6 Ch 3.2.2).

²⁷¹ S 7(1) Act 38 of 2005.

²⁷² *Ibid* s 7(1)(h). These are the basic interests in respect of children, Boezaart 256. Article 31 of the Convention recognises the right of the child to rest, leisure and to engage in play, Boezaart 312.

²⁷³ *Op cit* fn 66 and 70, Ch 2.2.4, Felton and Jowett 59.

²⁷⁴ Act 38 of 2005 s 7(1)(i) and s 7(1)(ii) respectively.

Athletes place enormous trust in their coaches and therefore should acknowledge this duty and trust, and not do anything that would harm their athletes physically, psychologically, emotionally and mentally.²⁷⁵

Any person, parent, guardian, caregiver who has parental responsibilities and rights toward children, including people without parental responsibilities and rights and voluntarily care for children either indefinitely, temporarily or partially, is guilty of an offence if the person abuses or deliberately neglects the child,²⁷⁶ or abandons the child.²⁷⁷ The *Children's Act* acknowledges that different people are performing quasi-parental roles without formally holding parental responsibilities and rights (*in loco parentis* concept).²⁷⁸ The *Children's Act* grants any person responsibilities and rights in respect of a child, even if there is no biological or legal relationship between the child and the adult.²⁷⁹ Section 7(1)(c) of the Act states that a parent, care-giver or any other person has a duty to provide for the needs of the child, including emotional and intellectual needs.²⁸⁰ Where parents, care-givers, or any other person with parental responsibilities fail to protect the interests and well-being of children, the state may intervene.²⁸¹ A “caregiver” means any person who is not the parent or guardian, who factually cares for the child.²⁸² The Act includes a list of people who are not the parent or guardian.²⁸³ The list does not specifically mention a teacher or a coach, but the interpretation of the people mentioned in the list is extensive and would surely include *inter alia* a teacher and a coach.

²⁷⁵ *Op cit* fn 3, Ch 2.2.1, Williams 59.

²⁷⁶ *Children's Act* 38 of 2005 s 305(3)(a).

²⁷⁷ *Ibid* s 305(3)(b).

²⁷⁸ Schäfer 258.

²⁷⁹ Skelton and Carnelley (ed) 241. See also *Children's Act* 38 of 2005 s 7(1)(b)(ii) stating that this is an important factor concerning the best interest of the child and s 18(1) stating that a person may have either full or specific parental responsibilities and rights in respect of a child. “Maintenance of the child” [s 18(2)(d)] is one of the parental responsibilities and rights toward a child and exists quite independently of parental authority (Davel and Skelton 3-5 [Revision Service 4, 2012]).

²⁸⁰ *Children's Act* 38 of 2005 s 7(1)(c). See also Ch 2.2.2.3 about coaches that have to exercise a duty of care.

²⁸¹ Boezaart 256.

²⁸² Interpretation of *Children's Act* 38 of 2005 s 1.

²⁸³ *Ibid* s 1(a)-(g).

3.4.2.3 United Kingdom

Children are afforded protection in a number of Acts in the United Kingdom. The *Protection of Children Act*²⁸⁴ is legislation of the UK government and came into force in October 2000 and gives the Secretary of State the power to keep a list of people unsuitable to work with children and young people. This means that all regulated child care organisations and other organisations that work with children and young people can carry out checks on prospective employees and volunteers who apply for child care positions. The *Children Act* 1989²⁸⁵ recognised that the welfare of the child is paramount. This Act was amended by the *Children Act* 2004,²⁸⁶ but did not supersede the *Children Act* 1989. The primary goal of this Act is to make the UK a better and safer place for children. Children are further protected under the *Safeguarding Vulnerable Groups Act*.²⁸⁷ The Act provides that there will be two barred lists, one for those who are barred from engaging in regulated activity with children and one with vulnerable adults. The Act is enacted to prevent any harm to children and vulnerable adults and to conduct background checks on all individuals wanting to work or volunteer to work with children or vulnerable adults.

Part II of the *Criminal Justice and Courts Services Act*²⁸⁸ also deals with the protection of children. The relevance and application of the Act to the coach-athlete relationship, is found in section 36 which defines the meaning of 'regulated position' *inter alia* as a position whose normal duties include caring for, training, supervising or being in sole charge of children;²⁸⁹ a position whose normal duties involve unsupervised contact with children under arrangements made by a responsible person²⁹⁰ and a position whose normal duties include supervising or managing an individual in his work in a regulated position.²⁹¹ This is an extensive definition which

²⁸⁴ Act 1999 c.14.

²⁸⁵ *Children Act* 1989 (*op cit* fn 12-13 Ch 3.2.2).

²⁸⁶ *Children Act* 2004 (*op cit* fn 16 Ch 3.2.2).

²⁸⁷ Act 2006 c. 47 of the Parliament of the UK.

²⁸⁸ Act 2000 Ch 43. It is an act in England and Wales, *inter alia* providing a support service for children and families, and provision for the protection of children.

²⁸⁹ S 36(1)(c) of the *Criminal Justice and Courts Services Act* 2000.

²⁹⁰ S 36 (1)(d) of Act 2000.

²⁹¹ S 36 (1)(h) of Act 2000.

can cover numerous positions, but the focus is sport and in this instance should be applicable on the coach-athlete relationship.

However, Lewis and Taylor stated that the government is sadly unwilling to intervene in child protection issues in sport and coach-athlete relationships have not specifically been brought within the scope of the criminal law.²⁹²

3.4.2.4 India

The *Juvenile Justice (Care and Protection of Children) Act*,²⁹³ consolidates and amends the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through process provided, and institutions and bodies established, and for matters connected therewith or incidental thereto.²⁹⁴

3.4.3 *Sexual Abuse and Violence against Children*

3.4.3.1 Definitions

Although there are policies and numerous legislation protecting children, children are still being exploited. In the last decade research about children in sport has revealed shocking examples of sexual assault, abuse and violence. The definition of violence is described in the *CRC*²⁹⁵ as follows:

... all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, ...

²⁹² Lewis and Taylor 787. The Government they referred to is that of the UK. The UK is one of the leading countries in Sports Law and a lot of research, laws, policies, etc. Of the UK is used as a platform and as examples in other parts of the world.

²⁹³ Act 2 of 2016 (Act of Parliament, New Delhi, India).

²⁹⁴ Preamble of Act 2 of 2016.

²⁹⁵ Article 19.1.

Child sexual abuse is defined as:²⁹⁶

... involvement of dependent, developmentally immature children and adolescents in sexual activities that they do not fully comprehend, to which they are unable to give informed consent, or that violate the social taboos of family roles.

The authors chose the definition because it acknowledges the child's limited ability to give informed consent; it includes both contact and non-contact offences; and it encompasses sexual acts involving two children or adolescents who may be below the legal age of consent.²⁹⁷ The term sexual abuse is usually used when referred to sexual activities between adults and minors, but sexual abuse also occurs between adults in contexts where one adult holds power over another.²⁹⁸

The NSPCC defines "child abuse" as any action by another person – adult or child – that causes significant harm to a child.²⁹⁹

3.4.3.2 The Safeguarding of Children

The awareness of the existence and extent of sexual and physical abuse of children has appeared fairly recently in sport as it has generally in society, with the realisation that more effective protection from exploitation of children in sport is required.³⁰⁰ This is problematic in sport today and has emerged the awareness of the reality of this predicament. Child protection policies, guidelines and strategies were initiated because of sexually abuse scandals in the past and since then include a range of additional harms to children, such as physical and psychological abuse.³⁰¹ As with other social institutions, such as the church, health and education, sport has both initiated its own child protection interventions and also responded to wider social and

²⁹⁶ Boxall Tomison and Hulme 2014 *Australian Institute of Criminology* 2.

²⁹⁷ *Ibid.*

²⁹⁸ Brake and Nelson 2012 *NCAA* 6. See Ch 2.5 about the power and influence of the coach.

²⁹⁹ <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/> [accessed 13 June 2016]. According to the NSPCC there are various types of child abuse: domestic abuse, sexual abuse, neglect, online abuse, physical abuse, emotional abuse, child sexual exploitation, female genital mutilation, bullying and cyberbullying, child trafficking, grooming, and harmful sexual behaviour.

³⁰⁰ Gardiner 533.

³⁰¹ *Op cit* fn 25, Ch 1.1.3, Brackenridge and Rhind 326.

political influences.³⁰² As stated earlier, Gardiner said “the main area of concern has been with the relationship between coaches and child athletes.”³⁰³ Cloete also mentioned the severity and concern regarding violence against children around the world and that this dilemma has not received sufficient attention in the sphere of sport.³⁰⁴

Children have the right to participate in sport in a safe and enjoyable environment and their rights are enshrined in the United Nations Convention on the Rights of the Child.³⁰⁵ More recently in the modern era, more and more people who are victims of all forms of sport violence and sport offences have come forward to be heard and giving the opportunity to address this worldwide dilemma.³⁰⁶ Until the late 1990s/early 2000s very few sport organisations had put in place systems and structures to respond to complaints about the behaviour of adults or other young people.³⁰⁷ Victims of sport offences started to recognise that sports researchers, sports companies, etc. are doing something about it and propose proactive measures to make sport a better and safer environment for everyone. Victims also started to notice that the perpetrators are brought to court and held liable for their actions. In the beginning cases were underreported because victims believed that the coach or other powerful sports persons have immense authority and control in the domain of sport and that nothing will happen to them and victims could also be victimised. Some offences are sensitive in nature and victims were ashamed to report it. Nowadays there are various kinds of assistance and options available for the victims of sports offences.

³⁰² *Ibid* 327.

³⁰³ See fn 60 Ch 3.2.4.3.

³⁰⁴ See fn 86 Ch 3.3.2.

³⁰⁵ Rhind *et al* “International Safeguards for Children in Sport” 2. *International Safeguarding Children in Sport Working Group* was established by a group of organisations working in sport, sport for development, child protection, and international development, who came together to explore how to make sport safe for children around the world and has launched eight safeguards in Johannesburg in October 2014, that should be put in place by any organisation working with children in sport (<http://www.unicef.org.uk/UNICEFs-Work/Sport-for-development/safeguarding-in-sport/> [accessed 23 May 2016]). It is important that a safe working environment for child athletes are guaranteed, which is clearly an international problem (Gardiner 541).

³⁰⁶ Rhind *et al* 2.

³⁰⁷ *Ibid*. In the 1990s only a few organisations acknowledge or addressed child abuse and protection (notably, UK, Canada and Australia) – Brackenridge and Rhind 326.

The *International Safeguarding Children in Sport Working Group* was established by a partnership of organisations working together for the Beyond Sport Summit in London 2012 to develop a draft set of standards about ensuring the safety and protection of children in all sports internationally.³⁰⁸ A number of the organisations agreed to pilot these safeguards with a number of additional organisations committed to strengthening their approach to making sport safer for children.³⁰⁹ Research was conducted by Brunel University and the final version of the safeguards was then developed and launched at Beyond Sport 2014:³¹⁰ These safeguards aim to outline the things that should be put in place by any organisation providing sports activities to children and young people and reflect international declarations, the United Nations Convention on the Rights of the Child, relevant legislation, government guidance, existing child protection/safeguarding standards and good practice.³¹¹ These safeguards could also be helpful for other companies who support the safety and protection of all sports people, adopting this framework to pilot their own set of standards and policy.³¹² All athletes are entitled to safe participation in sport and an athletic environment that is respectful, equitable and free of all forms of non-accidental violence to athletes.³¹³ This also enshrines the democratic rights of all people in the context of sport.³¹⁴

3.4.3.3 Who Classifies as a Person “*Holding a Position of Trust?*”

3.4.3.3.1 United Kingdom Legislation

The *Sexual Offences Act 2003*³¹⁵ states that a person over the age of 18 and in a position of trust commits an offence if they engage intentionally in any kind of sexual activity with a child under his or her care.³¹⁶ The interpretation of position of trust only applies to adult persons in the public sector and does not include for example sport

³⁰⁸ *Ibid.*

³⁰⁹ *Ibid* 6.

³¹⁰ *Ibid.*

³¹¹ *Ibid* 4. For more information about these eight Safeguards, see Rhind *et al* 4-5 and 7-15.

³¹² *Ibid* 5.

³¹³ Mountjoy, Brackenridge, Arrington *et al* 1019 and 1020.

³¹⁴ *Ibid* 1020. See also s 7(1) of *The SA Constitution*.

³¹⁵ *Act 2003* c. 42 of the Parliament of the UK.

³¹⁶ *Sexual Offences Act 2003* ss 16-19.

coaches in the private sector.³¹⁷ The *Sexual Offences Act 2003* states that a person over the age of 18 commits an offence if he or she is involved in any kind of sexual activity with a child.³¹⁸ However, the *Act* interprets *position of trust* as a person who looks after persons younger than 18 if he is regularly involved in caring for, training, supervising or being in sole charge of such persons and criminal liable if found guilty.³¹⁹ It is clear that a coach holds a position of authority over young athletes (and adult athletes) involving training, either privately, or arranged by any governmental program agreed upon. This subsection also does not distinguish between a private and public person. Inevitably the *Sexual Offences Act 2003* does not need to define “person” and undisputedly “any person” will also apply to the private sector and not only the public sector and a person means a human being (adult or child). Therefore, a sports coach could be found guilty under the *Child sex offences* of the *Sexual Offences Act 2003*, irrespective if the person was in a position of trust. The *Sexual Offences Act 2003* is ambiguous in this regard and susceptible for different interpretations, but the legislator’s intention could not have meant that a sports coach is excluded from an offence under the *Sexual Offences Act 2003*, or that the aforementioned *Act* only applies to the public sector. In relation to the *Sexual Offences Act 2003*, Part II of the *Criminal Justice and Court Services Act*³²⁰ deals with the protection of children, including the meaning of an offence against a child for the purpose of Part II.³²¹ In this *Act* section 36 explains the meaning of a regulated position that applies to Part II, especially with reference to “a position whose normal duties include caring for, training, supervising or being in sole charge of children,”³²² which could encompass the function of the sports coach. Williams stated that a “regulated position” covers both paid and voluntary positions and in sport also includes an assistant coach, team managers, sports directors, coaching and other sports staff, chaperons, drivers for sports people and parents.³²³

³¹⁷ Lewis and Taylor 787-788 and s 22 of the *Sexual Offences Act 2003*.

³¹⁸ Sections 9-15.

³¹⁹ *Sexual Offences Act 2003* s 22(2).

³²⁰ *Act 2000* c. 43, *op cit* fn 288 Ch 3.4.2.3. Part II specially deals with the prevention of unsuitable people from working with children and applies to work with children in all sectors, paid or unpaid and includes casual work. All national or local organisations in England and Wales which offer services to children are subject to Part II of this act (Williams 69).

³²¹ S 26.

³²² S 36(1)(c).

³²³ Williams 70 and 73.

3.4.3.3.2 Australian Legislation

In the Australian Capital Territory in 2013, *The Crimes Legislation Amendment Act 2013* included that sexual contact or acts of indecency with a young person (16-17 years) under 'special care' constitutes a criminal offence and a young person's sports coach falls under this new legislation.³²⁴

3.4.3.3.4 South African Legislation

"Every child has the right to family care or parental care, or to appropriate alternative care when removed from the family environment."³²⁵ Schäfer asks the question: "Can non-parents provide the 'care' required by section 28(1)(b)?"³²⁶ This question can be extended to ask if this alternative care is only related to familial matters, or does it include the classroom at school and the sporting environment, for example the sporting grounds? Is *care* the same as *supervision*?

In *Heystek v Heystek*, Patel AJ held that this *care* is not confined to natural parents ... but extends to stepparents and foster parents.³²⁷ Most children go to school every day and during this time they are 'removed' from family care and are under the supervision of the teacher, or sporting coach after school hours, which is similar to alternative care as stated in section 28(1)(b) of the 1996 *Act*.

It is also important to note that *alternative care* at school usually involves the teacher and on the sporting grounds, the coach. These people have a duty to take reasonable care of those whom they are engaging with and where this involves children, the concept of '*in loco parentis*' will apply.³²⁸ The *in loco parentis* concept is where the person who is executing this role of alternative care as stipulated in section 28(1)(b), the same way as a parent toward his or her child. Teachers,

³²⁴ Boxall Tomison and Hulme 20.

³²⁵ *Act 1996 s 28(1)(b)*.

³²⁶ Schäfer 128.

³²⁷ *Ibid* 128.

³²⁸ See more about coaches that have to exercise a duty of care in Ch 2.2.2.3 and reasonable care in Ch 2.3.3.4.2. More about the *in loco parentis* concept in Ch 3.4.4.

coaches and people providing alternative care also hold a position of trust, especially by virtue of the position entrusted upon them.³²⁹

“A child’s best interests are of paramount importance in every matter concerning the child.”³³⁰ This statement encompasses all that is said about child protection under section 28. Everything about a child is important and has to be protected. Every single person taking care of a child (which will include supervision), in any kind of capacity has to protect the interests of a child, subject to other constitutional rights and legislation regarding the protection of children.

3.4.4 The “*In loco parentis*” concept

The preamble of the *Children’s Act*³³¹ states that the State must respect, protect, promote and fulfil those rights as set out in section 28 of the *SA Constitution*,³³² which expounded the rights of children. The objects of the *Children Act 2005* are set out in section 2 and *inter alia* state that:

1. *The best interest of a child are of paramount importance in every matter concerning the child;*³³³
2. *To give effect to the Republic’s obligations concerning the well-being of children in terms of international instruments binding on the Republic;*³³⁴

Chapter 3 of the *Children Act 2005* explains and set out the parental responsibilities and rights toward children. As indicated above, a coach is equal to a parent regarding the duty to take care and being responsible for the children (*in loco parentis*) under his or her control. The person has a duty to take care of the young person the same way as expected from a parent, for example teachers toward

³²⁹ See also Ch 3.4.3.3 for more information of ‘position of trust.’

³³⁰ *Act 1996* s 28(2). The reach of s 28(2) cannot be limited to the rights enumerated in s 28(1), and s 28(2) must be interpreted to extend beyond those provisions, Schäfer 153.

³³¹ *Act 38* of 2005 of the Republic of South Africa (op cit fn 31, Ch 3.2.3). For the purpose of this study, the *Children Act 2005* has been read together with the *Children’s Amendment Act 41* of 2007.

³³² *Act 1996* (op cit fn 19 Ch 3.2.3). This is confirmed by s 10 of the *Children Act 2004* (UK) about co-operation between the authority and other local bodies involved with welfare of children. See also Lewis and Taylor 790.

³³³ *Children Act 2005*, s 2(b)(iv) and s 9.

³³⁴ *Children Act 2005*, s 2(c).

students, or coaches toward their athletes. The *Children Act* 2005 addresses the care of a child by a person who does not hold any parental responsibility and rights towards a child and has to safeguard and protect the child.³³⁵ According to the interpretation contained in Chapter 1 of the *Children Act* 2005, care-giver includes “a person who cares for a child with the implied or express consent of a parent or guardian of the child.”³³⁶ Care-giver is an extensive definition and would definitely include a sports coach. Everyone has a right to basic education³³⁷ and parents entrust the teachers and/or coaches of schools to take good care of their children during school hours and when children participate in extracurricular activities and sport.³³⁸ As described before the *in loco parentis* concept is applicable to teachers and coaches, who spend a lot of time (sometimes more than the parents) with children and have a duty and responsibility to take care of a young person the same way as expected from a parent. The application of this concept is probably the most important toward teachers and coaches, due to the amount of time they spend with the children and the relationship between them. Hence, the children are entitled to an environment that is not harmful to their health or well-being³³⁹ and teachers and coaches have to protect children from harm and injuries during sport activities, which is their ethical and professional duty.³⁴⁰ Related to the *in loco parentis* concept, parents must realize that they are the primary educator of their children and that this role is not replaced by the teacher, coach, or any other person in a position of trust and authority over the learners.³⁴¹ In reality the education of the learners is not only vested with the parents, because they do not possess the necessary knowledge and specialized skills to teach children the same way as teachers, or other educators who are trained in their specialised fields.³⁴²

³³⁵ *Children Act* 2005 s 32(1).

³³⁶ *Children Act* 2005 s 1 “care-giver” (b).

³³⁷ The *SA Constitution* s 29(1)(a).

³³⁸ Doubell 19.

³³⁹ The *SA Constitution* s 24(a) and Doubell 19. Teachers have to ensure a safe environment where children participate and that sufficient security is at present, Doubell 29.

³⁴⁰ Doubell 19, 28 and 51.

³⁴¹ Doubell 52.

³⁴² *Ibid.* Teachers and schools fulfil a significant role toward the education of learners, Doubell 52.

3.4.5 The National Child Protection Register

The National Child Protection Register was introduced by the *Children's Act 2005* and is the first comprehensive child protection register based on voluntary and mandatory reporting in South African law.³⁴³ A National Child Protection Register must be kept and maintained by the Director-General.³⁴⁴ The *Criminal Law (Sexual Offences and Related Matters) Amendment Act* also deals comprehensively with the National Register for Sex Offenders.³⁴⁵ The primary purpose of the Register is to have a record of abused children and to monitor and protect them in this regard³⁴⁶ and to have a record of persons who are unsuitable to work with children.³⁴⁷ No such person can take employment or any other form of engagement, paid or unpaid, in institutions and bodies that deal with children.³⁴⁸ The primary function of Part B is to prevent, as widely as possible, certain individuals from making contact with children.³⁴⁹ "Institution" has an extended meaning, which refers to any kind of place that provides services to children.³⁵⁰ It therefore covers the whole spectrum from state-run institutions to privately-operated services.³⁵¹ This could include a wide range of privately operated facilities, associations and clubs, such as sports clubs, partial care facilities, wilderness programmes, diversion programmes for youth at risk, outdoor clubs for youth, and the like.³⁵² The *Criminal Law (Sexual Offences and Related Matters) Amendment Act* prohibits certain types of employment by certain persons who have committed sexual offences against children.³⁵³

The *Children's Act 2005* compares favourably with other international legislation, especially with those of the UK. A child is defined as a person under the age of 18

³⁴³ Schäfer 393. South Africa has not had any form of child abuse register until very recently and Part 2 of Ch 7 provides for its establishment, Davel and Skelton 7-34 [Revision Service 6, 2013].

³⁴⁴ *Children Act 2005* Ch 7 s 111(1).

³⁴⁵ *Act 32 of 2007* Ch 6. The Register is established under s 42(1). See also Schäfer 407-414.

³⁴⁶ *Children Act 2005* s 113. The objects of the Register is to protect children, *Act 32 of 2007* s 43.

³⁴⁷ *Children Act 2005* s 118, which is Part B of the National Child Protection Register. See also Williams regarding certificates of suitability for anyone who looks after, or provides care for children (Williams 75).

³⁴⁸ *Ibid* 403.

³⁴⁹ Schäfer 397. See also the discussion of Davel and Skelton on 7-43 [Revision Service 6, 2013].

³⁵⁰ *Children's Act 2005* s 123(1)(a).

³⁵¹ Schäfer 403. See also s 123(1)(b) of the *Children's Act*.

³⁵² Davel and Skelton 7-49 [Revision Service 6, 2013].

³⁵³ Section 41.

years old.³⁵⁴ Consensual sexual acts with certain children are prohibited and any violation as such, a person could be found guilty of an offence.³⁵⁵ The preamble of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act* states that:

Women and children, being particularly vulnerable, are more likely to become victims of sexual offences; the prevalence of the commission of sexual offences in our society is primarily a social phenomenon and that legal mechanisms to address this social phenomenon are limited. The South African common law and statutory law do not deal adequately, effectively and in a non-discriminatory manner with many aspects relating to or associated with the commission of sexual offences. The Government does not have a uniform and co-ordinated approach to the implementation and service delivery in terms of the laws relating to sexual offences and therefore fails to provide adequate and effective protection to the victims of sexual offences. The Bill of Rights of The SA *Constitution* contains the rights of all people in the Republic of South Africa, including the right of freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources and the rights of children and other vulnerable persons to have their best interests considered to be of paramount importance.

The information recorded in the Register is to protect women and children from further abuse; attempt to understand the pattern of the prevalence of this abuse and to minimise it; to monitor the abuse process; information-sharing between organisations and people involved in preventing this abuse; and support research of this dilemma and to inform planning, budgeting and other decision-making at national, provincial and municipal levels.³⁵⁶

³⁵⁴ Act 32 of 2007 s 1.

³⁵⁵ Ch 3 of Act 32 of 2007, Part 1-3, ss 15-22.

³⁵⁶ Schäfer 394. See also s 113 of the Children's Act 2005 describing the purpose of Part A of the Register.

3.4.6 The Crisis of Sexual Exploitation

The phenomenon and crisis regarding the vulnerability and exploitation of children and women in South Africa is stated in *S v SMM*,³⁵⁷ asserting that South Africa is experiencing an excessive prevalence of rape, especially of young children that causes shock and disbelief. The introduction of various programmes by the government to prevent this dilemma is unsuccessful and the sexual abuse of particularly women and children continues with undiminished force.³⁵⁸

It seems that everybody is suffocating from today's fast-paced modern world and unintentionally not paying enough attention about what is going on around them, including their family members. Gibbons and Campbell stated earlier about how parents have faith in their children's coaches and/or administrators of a club and trust that these places and people will not harm their children.³⁵⁹ The sports coach-child athlete relationship is one where the coach has immense power and influence over the child and it is difficult for the child to raise the alarm.³⁶⁰ The coach is the leader in the coach-athlete relationship and power and authority is vested in the coach by virtue of the position he or she holds.³⁶¹ The coach is a respected person among athletes, parents and sports administrators, but in some instances this power and authority is abused for the coach's personal gain, which includes violation against children. When children are attending sports practice, parents believe and trust that the place is a fun and safe environment.

Child sport attracts those with a propensity to paedophilia.³⁶² Sports places and facilities have always been seen as a safe environment where young and old can go

³⁵⁷ 2013 (2) SACR 292 (SCA) 297[14]. See also *S v Coetzee op cit* fn 137 Ch 3.3.4.4, 131 par [21] stating, "Our country is plainly facing a crisis of epidemic proportions in respect of rape, particularly of young children and the rape statistics induce a sense of shock and disbelief."

³⁵⁸ *Ibid.* It is also concerning regarding the increased prevalence of sexual abuse within the family context. See also the *Coetzee* p 131 par [21] where reference is made of the various programmes introduced by the government to prevent the tendency of rape, but the sexual abuse of particularly women and children continues unabated.

³⁵⁹ See fn 96-97 Ch 3.3.3. Parents place their ultimate trust in sports organisations, their coaches and administrators, Cloete 164 par 9.110.

³⁶⁰ Gardiner 534. See Ch 2.5 for a detailed discussion about the power and influence of the coach.

³⁶¹ See Ch 2.5 about the power and influence of the coach.

³⁶² Gardiner 534. See also the *Indystar Investigation* document in Ch 3.3.4.5 (*op cit* fn 155) revealing numerous examples and incidents pertaining to paedophilia.

to relax and have fun, either on a professional or amateur level. When children attend these places, people know they are surrounded by other people; adults who are mature, caring and entrusted to look after the children the same way they will look after their own. In general people don't believe that harmful incidents could take place at these facilities. A report by Child Helpline International underlined that "organised sports and recreational activities are also significant settings where abuse take place."³⁶³ Administrators of sports organizations, directors, coaches, parents, etc. should be aware that sports facilities and other places where sports are held provide opportunity for child molesters to become acquainted with and assault their victims.³⁶⁴ The perpetrators also use these places to meet families, teachers and other sports figures; gain their trust and slowly infiltrate the safe environment to attack their innocent child victims, male and female.³⁶⁵ Sport can provide a context in which abuse and non-accidental harm can occur, from amateur to professional level and various kinds of offenders such as, authority figures, coaches, and peer athletes.³⁶⁶

The Netherlands is the first country worldwide to create a helpline uniquely designed to support victims and (alleged) perpetrators involved in incidents of sexual harassment and abuse in sports.³⁶⁷ The prevalence of abuse in sport is an international problem and occurs worldwide that affects many athletes and that research is much needed to combat this predicament.³⁶⁸ Chroni further comments that sexual and gender harassment and abuse occurs everywhere and affects everybody and in most instances the perpetrators are those in positions of social,

³⁶³ Chroni *et al* 2012 *Deutsche Sportjugend* 9. The German Sports Youth (dsj) is the youth organisation of the German Olympic Sports Confederation. "The German Sports Youth represents the interests of over 10 million children and youth that are organised in 90 000 sports clubs. They support the personal development of young people and encourage social responsibility, integration and intercultural learning. The prevention of sexual violence is a very important topic. DSJ implemented this project to promote a culture of respect and integrity among sports clubs and to empower young people to stand up for their rights." (<http://sport-respects-your-rights.eu/deutsche-sportjugend/> [accessed 25 May 2016]). This document has been produced in the framework of the European project "Prevention of sexualized violence in sports – Impulses for an open, secure and sound sporting environment in Europe" on p 87.

³⁶⁴ Gibbons and Campbell 189.

³⁶⁵ *Ibid.*

³⁶⁶ Brackenridge and Rhind 327.

³⁶⁷ Chroni 68. See also fn 110 Ch 3.3.4.1 about the child protection helpline of the NSPCC.

³⁶⁸ Chroni 9. The sexual abuse of minor children is also a major concern for sport organizations (Gibbons and Campbell 187). See also Ch 3.3.4 that deals with the prevalence of sexual assault and the discussion of Title IX by Brake, Ch 3.3.5.

cultural, organisation or situational power, and the victims are usually those in a subordinate position toward the perpetrator.³⁶⁹ Brake and Nelson confirmed this statement that sexual abuse of minors are committed by the perpetrator who use his or her position of trust to take advantage of, and sexually violate an innocent child, because children are easily manipulated and not as powerful as adults to take part in inappropriate activities.³⁷⁰ These innocent and easily manipulated children (including young adults) are less powerful than their coach, athletics trainer, sport psychologist, sports director and administrator, or any other sports person or staff member endowed with supervisory control or authority.³⁷¹ Most of the sexual offenders are familiar with their victims and the percentage is higher with juvenile victims.³⁷² This abuse of authority and trust put children and adolescents in a vulnerable position and increase the potential for various forms of abuse; physical, non-physical, non-sexual, etc.³⁷³ The abuse usually involves close relationships between adults and children, where the adults are in a position of trust and able to exercise authority and power over the children.³⁷⁴ The coach-athlete relationship involves spending a lot of time together (especially on elite level) where an intense physical and emotional relationship develops and opens the door for the coach to abuse his authority to mistreat his or her athlete.³⁷⁵

The violation of a position of trust and authority has been illustrated in the Appeal Court case of *Her Majesty's Advocate v Gordon Collins*.³⁷⁶ The respondent was found guilty of a series of sexual offences, namely indecent behaviour towards girls aged between 12 and 16, and a charge of rape.³⁷⁷ The respondent was employed as a care worker at two secure residential units for children and young persons.³⁷⁸ The four complainants were in some way troubled or had experienced a difficult upbringing and over a period of eleven years the respondent groomed them, gaining

³⁶⁹ Chroni 10.

³⁷⁰ Brake and Nelson 6.

³⁷¹ *Ibid.*

³⁷² Gibbons and Campbell 188.

³⁷³ Rossouw 11.

³⁷⁴ *Ibid.* People in a position of care should be able to recognise the symptoms and indicators. For more information about the indicators of child abuse, see Rossouw 12.

³⁷⁵ Doubell 27.

³⁷⁶ [2016] HCJAC 102.

³⁷⁷ *Ibid* par 1.

³⁷⁸ *Ibid* par 3-4.

their trust and making them feel special, before sexually abusing them.³⁷⁹ The grooming process by the respondent includes *inter alia* of “the act of flirting; taking the residents for ice cream and give them sweets; gave one of them sweets and cigarettes, and took her in his car to watch a football match; giving hugs and cuddles.”³⁸⁰

The trial judge stated that the complainants were in his care, extremely vulnerable and that the respondent was in a position of trust and authority in relation to each of them.³⁸¹ He abused his position of trust by developing emotional and sexual relationships with the complainers.³⁸² The judge stated that this case was an example of a gross breach of trust.³⁸³

3.4.7 Abuse of a Non-Sexual Nature

3.4.7.1 Introduction

Child protection is not only about sexual abuse and includes other forms such as, physical abuse; emotional abuse; and neglect. There are various forms of neglect and in the context of sport includes *inter alia*, ensuring the safety of equipment for participants and to explain and demonstrate the use of equipment in an activity and what is expected from the athlete in a specific activity. The latter is related to the concept of communication, especially the lack of clear and effective communication as mentioned earlier in this study.³⁸⁴ The lack of poor communication and negligence, especially from someone in a superior position such as a coach, could result in the injury or death of an athlete.

³⁷⁹*Ibid* par 5. See also the *Indystar Investigation* Ch 1 of the document (Ch 3.3.4.5, *op cit* fn 155), about victims that refer to their coaches as parental figures and who will do anything to please their coaches, even if it means giving in to sexual demands.

³⁸⁰ *Ibid* par 6-13.

³⁸¹ *Ibid* par 16. One of the girls told the respondent about her troubled upbringing and confided in him that her stepfather had physically abused her, [par 9]. The respondent was in a position of trust when he committed the offences, planning the offences carefully while preying on the vulnerability of the victim, [par 22].

³⁸² *Ibid*. “He was seen by residents as the most approachable member of staff and he would frequently socialise with them,” [par 6].

³⁸³ *Ibid* par 48.

³⁸⁴ See the discussion about communication between a coach and athlete in Ch 2.4.

3.4.7.2 Case Law

The above-mentioned is illustrated in *Roux v Member of the Executive Council of the Department of Education, Gauteng and Another*³⁸⁵ where a schoolboy has sustained injuries during a rugby practice at school. An educator of the school, Postimus (rugby coach), tackled a student Tony (at the time of the incident 13 years old). He was a grown man, whose body was too heavy for the student and consequently broke his leg during a tackle (tibial fracture). The main issue before the court in the *Roux* case was:

“whether or not Postimus breached the duty of care he had towards Tony in the context of the rules of coaching the sport of rugby and was such duty circumscribed by the risk inherent in participating in such sport (contact sport) and if therefore the injury occurred reasonably within the ambit of the game.”³⁸⁶

Coaches are expected to exercise a heightened duty of care toward his or her students because of his or her capacity as a coach and to ensure the reasonable safety of his or her athletes, and will be negligent if this duty is violated.³⁸⁷ Due to the increased duty of care entrusted to coaches, they are responsible for providing reasonable supervision to their athletes and require that reasonable safety measures should be taken.³⁸⁸ Groenewald, an expert rugby coach and witness testified that “most of the time when a tackle is done on the demand of the coach, everybody knows that they are to be tackled and be ready for or expect the impact.”³⁸⁹ When a coach demonstrates a tackle on a small boy who is getting up, the coach should not

³⁸⁵ 2016 ZAGPPHC 603 [17 May 2016]. Similar facts are found in *Koffman v Garnett* where the coach of a football team in the US broke the arm of a 13-year old student, while demonstrating how to tackle. The court found the coach actions grossly negligent and reckless; disregarded the safety of the player involved (Rossouw 7).

³⁸⁶ *Roux* case par [16].

³⁸⁷ Cloete *op cit* fn 155, Ch 2.3.3.4.2. See Ch 2.3.3.4 for a general discussion of the *duty of care* and responsibility of a coach toward his or her athlete. In the *Roux* case the parties agreed that Postimus had a duty of care towards Tony, [par 14].

³⁸⁸ Robberts *op cit* fn 150, Ch 2.3.3.4.1. See also the *Anderson* case about breach of duty and the appropriate standard of care (Ch 2.3.3.4.4). It has been clear for some time that a *duty of care* exists within a number of sporting relationships covering participants, organisers, fellow players, match officials and governing bodies (Greenfield *et al* 2015 *Potchefstroom Electronic Law Journal* 2186).

³⁸⁹ *Roux* case par [33].

execute a full tackle because he is in a risk position and can be injured.³⁹⁰ Tony was tackled unexpectedly while in a crouch position, which is illegal according to the rules of rugby.

The legal principle, *volenti non fit iniuria* was raised by the defendants, which means that someone who participates in contact sport is aware of the risks and voluntarily consents to the risks and therefore cannot ask for compensation for any damage or injury resulting from it; and that the injuries must have been sustained in consequence of a risk falling within the ambit of the consent.³⁹¹ The same principle can be found in *Alex Roux v Ryand Karel Hattingh*³⁹² regarding a rugby player who consents to the danger and to the risks of certain injuries, but does not voluntarily consent to any injuries that fall outside the ambit of the normal rules of the game and lead to violation of the rules of the game. The key issue to establish liability is the unavoidable analysis of the standard of care owed by the wrongdoer.³⁹³

Khumalo J found Postimus' conduct grossly negligent and unreasonable.³⁹⁴ The court found that he owed Tony and the players a duty of care and breached such duty when he failed to ensure their safety by warning Tony and the other players properly and sufficiently of the imminent danger or risk posed by the tackle that was to be demonstrated by him on Tony and make sure that they are paying attention.³⁹⁵ Tony's injury is directly connected to Postimus' unreasonable conduct of deviating from or acting contrary to the basic principles and rules of coaching the game from his level 1 training.³⁹⁶

According to Rossouw³⁹⁷ education law is regulated by numerous statutes, for instance The SA Constitution,³⁹⁸ the *Employment of Educators Act*,³⁹⁹ the South

³⁹⁰ *Ibid* par [34] and [49].

³⁹¹ *Ibid* par [19].

³⁹² [2012] ZASCA 132 par [10]. See also Greenfield *et al* 2189.

³⁹³ Greenfield *et al* 2189.

³⁹⁴ *Roux* case par [52].

³⁹⁵ *Ibid*.

³⁹⁶ *Ibid*.

³⁹⁷ *Op cit* fn 172, Ch 2.3.3.4.4, Rossouw (2008) 4.

³⁹⁸ Ch 3.2.3 *op cit* fn 19.

³⁹⁹ Ch 2.6.4 *op cit* fn 358.

*African Council for Educators Act*⁴⁰⁰ and the *SACE*.⁴⁰¹ The *SA Constitution* states that “a child’s best interests are of paramount importance in every matter concerning the child”⁴⁰² and this clause should be the basic guideline and benchmark when sport coaching of students is considered.⁴⁰³ This proposition is confirmed in *S v M*⁴⁰⁴ where Sachs J stated that in all matters concerning children, the children’s interests shall be paramount. This provision serves as a general guideline and can become a benchmark for review of all proceedings regarding decisions about children.⁴⁰⁵ The court further stated that “section 28(2) read with 28(1) of *Act 1996* establishes a set of children’s rights that courts are obliged to enforce.”⁴⁰⁶

Rossouw refers to physical abuse and its regular prevalence in coach-participant relationships at school and the possible delictual liability of educator-coaches in cases of abuse of non-sexual nature.⁴⁰⁷ The participation of contact sports in schools impose high levels of risk and increase the duty of care that is held by various stakeholders involved.⁴⁰⁸ Sometimes school pupils are taught by inexperienced teachers and this raises the question if coach-teachers are informed that they could be held liable when injuries occurred during the participation of school sport by any of the school students.⁴⁰⁹ A teacher-coach is entrusted with certain responsibilities due to his or her capacity as a coach and is therefore in a position of trust and authority towards the students they teach.⁴¹⁰ This is applicable in this study regarding child protection and coach-athlete relationships. Similar principles that apply to school sports would also apply to the private sector. In certain instances, the

⁴⁰⁰ Ch 2.3.3.1 *op cit* fn 121.

⁴⁰¹ *The Code of Professional Ethics of the South African Council for Educators*, Ch 2.3.1 *op cit* fn 89.

⁴⁰² *Act 1996* s 28(2).

⁴⁰³ Rossouw (2008) 4. In education, a teacher should in each decision that he or she makes, always put the interest of the child first, Doubell 28. See also the discussion of Ch 3.2 about the position of minors in sport and Ch 3.4 about child protection.

⁴⁰⁴ 2007 (2) SACR 539 (CC) 547[1] and 551[12].

⁴⁰⁵ 551[13] and 552[15] respectively.

⁴⁰⁶ Skelton and Carnelley (ed) 241.

⁴⁰⁷ Rossouw (2008) 3. Educators should be aware of their common law duty of care and should not allow that their action bring any harm to those under their supervision, Rossouw 8. For more examples of abusive coaching methods, see Rossouw 7-8. This study will not discuss comprehensively the aspects of delictual and/or criminal liability regarding physical abuse of a non-sexual nature by coach-educators.

⁴⁰⁸ Rossouw and Engelbrecht 2011 *Potchefstroom Electronic Law Journal* 3 discusses in particular the physical abuse of a non-sexual nature in school sports by educator-coaches, as seen in the *Roux* case.

⁴⁰⁹ *Ibid.*

⁴¹⁰ *Ibid.*

State is liable for any damage or loss arising from any action or omission related to any school activity (educational activity) conducted by a public school and for which such public school would have been liable, if section 60 had not been in force.⁴¹¹

In this regard, referring to section 60 the case of *Duffield v Lilyfontein School and Others*⁴¹² is noteworthy, dealing with negligence, injury and safety measures. The plaintiff, Duffield, was participating in a school activity, fell from a zip-wire and sustained bodily injuries. The plaintiff instituted action against the defendants, blaming her falling due to the negligence of the personnel operating the platform to which the zip-wire was affixed and that the personnel failed to secure the safety harness around plaintiff's torso correctly, alternatively, failed to ensure that plaintiff herself had correctly secured the harness prior to her jumping off the platform.⁴¹³ Prior to this school activity, the plaintiff has signed an indemnity form where she agrees to indemnify the defendants against any claims and damages that may result from any injuries or accidents and sports equipment.⁴¹⁴ The court has to determine whether the defendants are indemnified from liability to the plaintiff, because of the signed indemnity, or regarding the safety measures that had been put in place.⁴¹⁵ Pickering J ruled in favour of the plaintiff and ordered "that the indemnity signed by the plaintiff is conditional upon it being established that the defendants did all things reasonably necessary to ensure that stringent measures were put in place ... so as to limit the risk of personal accident or injury to the participants thereof."⁴¹⁶

3.4.7.3 Physical Abuse and Delict

Physical abuse can be defined as non-accidental injury or harm to a child, where some form of intentional or negligent action can be identified.⁴¹⁷ Cornelius and Singh describe it as the deliberate physical injury to a child or the wilful or neglectful failure

⁴¹¹ *South African Schools Act* 84 of 1996. See also the discussion of section 60 in Ch 2.6.4.

⁴¹² 2011 JDR 0039 (ECG).

⁴¹³ *Ibid* 0039 p 2.

⁴¹⁴ *Ibid* 0039 p 3.

⁴¹⁵ *Ibid* 0039 p 4.

⁴¹⁶ *Ibid* 0039 p 10.

⁴¹⁷ Rossouw (2008) 6-7.

to prevent physical injury or suffering.⁴¹⁸ In short, it is when someone uses physical force and deliberately cause harm to another person. This harm could be inflicted upon any person; children and adult people. This form of abuse is categorised under the law of delict, where the wrongdoer is liable for the wrongful and blameworthy conduct, which causes harm to a person and therefore establishes delictual liability.

The general rule in the South African law of delict provides that damage, loss or injury lies where it falls, which means that the person who suffers the damage, loss or injury cannot hold someone accountable for it.⁴¹⁹ However, where the damage, loss or injury is caused in a wrongful and culpable way, the prejudiced party may institute a claim for damages or compensation from the wrongdoer.⁴²⁰ A delict is defined as the act of a person that in a wrongful and culpable way causes harm to another.⁴²¹ For a successful delictual claim by the person who has suffered damage, loss or injury, five requirements or elements need to be present before the wrongdoer will be held liable.⁴²² The five elements described in *Judd v Nelson Mandela Bay Municipality*⁴²³ are:

- (a) the commission or omission of an act (*actus reus*),
- (b) unlawful or wrongful (wrongfulness),
- (c) negligence or wit a particular intent (*culpa* or fault),
- (d) causation,
- (e) the suffering of injury, loss or damage (harm).

One more important point to mention regarding the liability, is about the test for *culpa*. The leading and classical case for the test of *culpa* is found in *Kruger v Coetzee*,⁴²⁴ where the court stated that for the purpose of liability *culpa* arises if:

⁴¹⁸ Cornelius and Singh 297.

⁴¹⁹ Rossouw and Engelbrecht 5. Also see Cloete 107 par 7.01.

⁴²⁰ Cloete 107 par 7.01.

⁴²¹ Neethling Potgieter Visser 2015 *Law of Delict* 4.

⁴²² *Ibid.* Also see Cloete 107 par 7.02. For more detailed information about the liability for injuries and elements of delict, see Cloete Ch 7 p 105-118.

⁴²³ 2011 JDR 0118 (GNP) par [8]. See also Cloete 107 par 7.02.

⁴²⁴ 1966 (2) All SA 490 (A) 491. The test for *culpa* in the *Kruger* case was also used in the *Judd* case on par [51]. This test has been used in the courts of S.A. for about 50 years, *Judd* case par [52]. This test also applies to *Roux v Hattingh* where the court found that the respondent intentionally injured the appellant, causing him serious harm and that his conduct in doing so was wrongful, par [29].

- “(a)(i) the wrongdoer would foresee the reasonable possibility for his conduct injuring another in his person or property and causing him financial loss; and
(a)(ii) would take reasonable steps to guard against such occurrence;
(b) the wrongdoer failed to take such steps.”

3.4.7.4 Overtraining and Overuse Injuries

Another area of physical abuse which is in some way unclear and unfamiliar is overtraining and overuse injuries. Overuse injuries occur due to repetitive submaximal loading of the musculoskeletal system when rest is not adequate to allow for structural adaptation to take place.⁴²⁵ This means tissue (muscles, ligaments, bone, etc.) damage resulting from repetitive exercise over a period of time. It is important to recognize that children’s sports are big business where coaches, personal trainers, club team organizations, sporting goods manufacturers, tournament directors, and others have a financial stake in youth sports participation.⁴²⁶ From an early age children, especially those who are serious competitors, are involved in various phases of training; frequent competition; from a young age start to specialise in a specific sport; the increasing highly competitive nature of youth sports; and due to these circumstances it is no surprise that overuse injuries and burnout occur.⁴²⁷ Another motive for this fatigue is the emphasis on competitive success and winning, resulting in increased pressure to begin high-intensity training at young ages.⁴²⁸ This driven force of winning at all costs may be impelled by the child-athlete’s parents who want their children to pursue success such as getting a scholarship, professional contract or being selected for a high-level team.⁴²⁹ Coaches and peers could also induce an athlete to be over competitive.

A variety of factors contributes to overuse injuries in sport and is often categorised under intrinsic or extrinsic factors.⁴³⁰ The medical explanation and history of sports

⁴²⁵ DiFiori et al 2014 *Clinical Journal of Sport Medicine* 7. See also Rossouw (2008) 8-11 about overtraining and overuse injuries.

⁴²⁶ DiFiori 6.

⁴²⁷ *Ibid* 5 and 6. The frequency and type of overuse injuries in elite young athletes varies by sport and by age (*ibid* 7).

⁴²⁸ *Ibid* 6.

⁴²⁹ *Ibid*.

⁴³⁰ *Ibid* 7.

injuries does not fall under the category of this study, but a brief explanation of some aspects would be significant. Intrinsic factors consist *inter alia* of the growth and development of an athlete; flexibility; muscle-tendon imbalance; and a history of prior injury.⁴³¹ Extrinsic factors include workload, sport technique, training environment, and equipment.⁴³² It is clear from the above that a coach and other role figures in sport have a duty to exercise reasonable care and to prevent foreseeable risk and harm to athletes and other participants.

The examples of the above-mentioned cases clearly indicate that sport coaches, educators, or any other adult in a sport related context who are in a position of trust and authority, should exercise their authority with great responsibility and caution.⁴³³ The special relationship between the teacher and student constitutes the foundation of the existence of a legal obligation.⁴³⁴ Consequent to this special relationship is the concept of duty of care towards the student.⁴³⁵ The *in loco parentis* concept is applicable to the teacher-coach *vis-à-vis* the students who participate in school sport and has to be aware of any injuries that may occur due to students' impulsive and irrational actions, or due to students' lack of skills and maturity.⁴³⁶ A qualified and skilled teacher-coach has to be more aware of the liability or exposure of risks of specific sport situations, than a less qualified and inexperienced teacher-coach, inevitably expecting from them a greater degree of care.⁴³⁷

Cornelius and Singh argues that "further research into the roles of all stakeholders should seek to provide sound information to those with responsibility for promoting safety in sport."⁴³⁸ Various laws and statutory provisions have been created to

⁴³¹ *Ibid.* For more information see also p 8-9 of the same article.

⁴³² *Ibid.* For more information see also p 9-10 of the same article

⁴³³ Rossouw (2008) 8. See also the references about the legal concept *in loco parentis* where a person is equal to a parent regarding the duty to take care and being responsible for the children under his or her control. See also Ch 2.2.2.3 and 2.3.3.4.4 about *in loco parentis* and a discussion about this concept in Ch 3.4.4.

⁴³⁴ Rossouw and Engelbrecht 8.

⁴³⁵ *Ibid.*

⁴³⁶ *Ibid.*

⁴³⁷ *Ibid* 11. The *boni mores* test will apply here.

⁴³⁸ Cornelius and Singh 299.

protect and safeguard children, but it is not adequate for the purpose.⁴³⁹ There is no single solution to the problem of child abuse or its prevention.

3.5 Conclusion

From the above it is clear that the prevalence of sexual assault and abuse in sport occurs worldwide and does not involve only a particular sport. It also appears from club through professional level and also includes schools and universities. The target victims are both males and females; ranging from children to young adults. The perpetrators are male dominant and are mostly committed by coaches and some other authoritative figures and senior peers. As indicated most of these coaches and authority figures are educated people and hold high level positions in the sporting sphere. They are highly respected by everybody, including non-sporting people. They hold a position of power and trust, endowed by governing bodies, sport organisations, clubs and athletes. They are known for their abundant experience (most coaches have competed on the highest level) and skills. They transform athletes into champions, lead teams competing at the highest level and inevitably their track record reflects success for the coach, the athletes, the teams and the institution that the coach belongs to. This is one of the areas that is problematic, where sport organizations neglect to acknowledge the misconducts of their coaches.⁴⁴⁰ These coaches will be protected in full measure, regardless the consequences.

One of the biggest obstacles is the under-reporting of sexual assault, especially among women and children (boys and girls) and because of the sensitive nature of these cases, victims do not come forward, because they feel ashamed, fear of being victimised, or that nobody will believe them because the coaches are *inter alia* so powerful. There is no doubt that this is a serious concern in the sporting sphere, where this predicament has not yet been resolved.

Amateur and professional levels remain problematic regarding sexual coach-athlete relationships, where sport organisations/federations fail to recognise these

⁴³⁹ Rossouw (2008) 12.

⁴⁴⁰ The misconduct in this context refers mainly to the coach, but does not exclude other authoritative figures, personnel, peers, athletes, etc. that falls under a specific sports organisation.

relationships as serious. The exploitation by coaches is also underreported and difficult to detect. It would be beneficial to sport if sport organisations in general could be forced to develop their own policies to enhance the awareness among coach-athlete relationships. Educational programs could be established to educate both the athlete and coach to protect the sport industry on all levels.

A criminal history background check provides one method for identifying individuals who are more likely to engage in illegal sexual activity.⁴⁴¹ An organization's ability to screen applicants is often hindered by a multitude of problems including timelines of the information, geography (if a former convict moves either during or after parole), privacy rights and screening costs.⁴⁴²

Brackenridge argues that in order to minimise risk in *sport organisations*, research needs to move beyond analysis of the experiential aspects of sexual abuse towards predictive models of sexually abusive coach-athlete relations.⁴⁴³

There is clearly no single solution to the problem of child abuse or to its prevention.⁴⁴⁴ Sport administrators need to work closely with specialists in ethics, human rights, public health and child welfare if safety for young athletes is ever to be achieved and maintained.⁴⁴⁵ Sports organizations need to collaborate with the government and other sports bodies involved in sports and the welfare of children, to promote the safeguarding of child protection, by deliberating strategies on how to tackle this unresolved dilemma and implement a feasible plan of action. Sports governing bodies have to prioritise child protection and implement strategies to combat this worldwide dilemma and realize that child abuse is a problem in society.⁴⁴⁶ The Olympic committee and national governing bodies have to set a standard, say what the rules are and have a mechanism in place to enforce those

⁴⁴¹ Fried 158.

⁴⁴² *Ibid.*

⁴⁴³ *Op cit* fn 88 Ch 3.3.2, Brackenridge (1997) 125.

⁴⁴⁴ Brackenridge and Rhind 334.

⁴⁴⁵ *Ibid.*

⁴⁴⁶ Gardiner 536. Steps were taken by the sport (swimming) in the light of the Hickson case (see Ch 3.3.3 for more information) for the development of an effective child protection policy by producing guidelines in support and the recognition of child abuse (Gardiner 536-537).

rules.⁴⁴⁷ Hamilton, founder of CHILD USA, said that just a few minimal requirements would be helpful for better child protection and recommended an annual mandatory “high quality” training for every coach, athlete and parent.⁴⁴⁸

The past decade has shown a lot of research in child protection and abuse, which has led to the enactment of numerous laws and policies around the globe. Sport is performed globally by various cultures and people who share the same pleasures, competitiveness and rules. It is time that countries and sport federations worldwide start working together, share knowledge and aim to create standardised policies and laws for each specific sport that is applicable to everyone. The next phase is for these federations to collaborate with their respective governments and spread it nationally to the provinces and clubs, so that everyone can be on the same level and subject to the same rules and laws.

⁴⁴⁷ *Indystar Investigation* Ch 5 of the document. This statement was by Nancy Hogshead-Makar pertaining to USA Gymnastics, for the protection of athletes-gymnasts.

⁴⁴⁸ *Indystar Investigation* Ch 6 of the document. See also the discussion in Ch 5.3 about training programs and the monitoring thereof.

CHAPTER 4

PRACTICAL SOLUTIONS AND POLICIES

4.1 Introduction

The constitution of most countries in democratic societies is regarded as the supreme law of a country. *The SA Constitution* states, “This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled¹ and all citizens are (a) equally entitled to the rights, privileges and benefits of citizenship; and (b) equally subject to the duties and responsibilities of citizenship.”² Applied to sport, section 2 implies that any conduct, whether in the form of on-field play-behaviour, enforcement of rules and regulations or commercial activity has to occur within the broad guidelines of the constitution, otherwise it would be invalid.³ It also place various obligations on sport that must be fulfilled, for instance the duty to provide a special standard of care to minors, imposed by section 28 of the *SA Constitution*.⁴ The interpretation of section 3(2) in relation to sport implies that all parties involved should be accorded equal opportunities as citizens, along with corresponding responsibilities and duties toward sport and toward the state.⁵ Sport has to conduct its affairs with due regard for human dignity, the equality of all persons in the eyes of the law and basic freedoms of choice, expression and association granted to individuals.⁶

The previous chapters have referred to various policies describing the importance of these guided principles aiming to achieve a specific objective. The approach in this chapter is to look at the practical applications of some policies and constitutions and to view the purpose and function of sports policies in general, risk strategies, shortcomings and problems in sport and the impact of it in the realm of sport. The study’s principal focus is the coach-athlete relationship and how to elevate this

¹ Section 2 of Act 1996.

² Section 3(2)(a) and (b) of Act 1996.

³ *Op cit* fn 26 in Ch 3.2.3, Singh p 69.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Singh 70, referring to the *Constitution of South Africa, Act 1996, s 7.*

unique relationship to achieve better communication and understanding, which could lead to fewer irregularities. The applied policies have a direct impact on the coach-athlete relationship.

4.2 Risk Strategies

4.2.1 Introduction and Definition

Risk can be described as a chance where the result is uncertain and may lead to harm, whereas *strategy* is a plan or method to obtain a positive outcome. *Risk management* in short is to identify, address and find a solution to prevent or control the risk. Sport is practised by millions of people around the world, from amateur to professional level. Taking risks is an ordinary lifestyle for coaches and athletes and it is expected from them to identify, assess, treat and monitor risks every day.⁷ Because of the physicality and endurance of the body, injuries occur from time to time. Sometimes injuries occur due to natural causes or the deterioration of body tissue.

Other cases of injuries occur due to the negligence of another party and may incur civil and/or criminal liability. It is essential to develop the awareness of legal liability among sports lawyers, sports researchers, coaches, sports organisations and other sports providers to take the lead by creating risk management policies in reducing or eliminating risks within sports organisations.⁸ Risk management is a method that provides the safest possible environment for their participants and maximizing the profitability of an organisation.⁹

4.2.2 Risk Assessment in Sport

Risk assessments of participants and equipment have been explained in the *Anderson* case with reference to breach of duty and the appropriate standard of

⁷ *Op cit* fn 35, Ch 1.2.2, Bell-Laroche and Corbett 2.

⁸ Cloete 121 par 8.01.

⁹ *Ibid* 122.

care.¹⁰ The case has also pointed out that a coach must competently instruct his or her athletes on the activity, the safety rules and the proper methods of participating. Unacceptable risk occurs when an athlete is injured and the coach does not allow the athlete to leave the field, which could lead to harm that is more serious.¹¹ A coach always has a duty to prevent a foreseeable danger that can cause harm and to take reasonable steps to minimize or control it.¹² Communication from both the athlete and the coach in the coach-athlete relationship plays a major role in risk management; for example, when an athlete is injured and informs the coach about it and does not continue because he or she is too scared to tell the coach. Other categories of risk include sexual abuse, physical abuse, psychological abuse, child abuse, discrimination and overtraining.¹³

4.2.3 *The Impact and Significance of Risk Management in Sport*

The above are only a few examples of risks occurring in sport. Sports people and organisations should start to acknowledge the situation with respect to the circumstances around risk management and accept that risk is a common occurrence in sport. Discussion about risk management can lead to practical, sensible solutions and an empowering frame of mind.¹⁴ Communication is the key factor and the sports environment expects sports managers, lawmakers and sports organisations to develop risk management and loss control programmes to ensure a safe environment for all who participate in sport.¹⁵ Collaboration between the government, sports organisations, clubs, managers and coaches would be a step in the right direction to identify risk problems and finding solutions to control and monitor the present risks for each sport category. Creating standardised risk assessment policies will pursue uniformity and better understanding for everyone.

¹⁰ See Ch 2.3.3.4.4. "To be negligent, someone must first have been in a situation that created a duty of care to ensure the reasonable safety of another person. The particular circumstance that gives rise to this duty is the existence of a relationship between one person and another." (Cloete 123 par 8.18).

¹¹ *Op cit* fn 157, Ch 2.3.3.4.3.

¹² *Op cit* fn 181, Ch 2.3.3.5 (Watson case). See also the *Anderson* case about breach of duty and the appropriate standard of care.

¹³ More information about these risk factors can be found in Ch 4.2 of this study. See also Cloete about the major areas of risk, Cloete par 8.10 p 122. The three main types of risk for a sports organisation are: physical injury, wrongful actions and property loss or damage, Cloete par 8.31 p 125-126.

¹⁴ Bell-Laroche and Corbett 3.

¹⁵ Cloete par 8.16 p 123. See also Bell-Laroche and Corbett 38.

Intelligible policies would also contribute to the coach-athlete relationship, where each party (especially the coach) knows what to expect and what is expected from him or her.

Risks form part of our daily lives and routines. Many risks can be avoided or minimized if there is a proactive plan in place, to practice common sense and to fulfil a reasonable standard of care (is required by Canadian law for the Canadian organizations)¹⁶ and in order to be effective, risk management must be done every day, by everyone involved in the organization.¹⁷ According to Bell-Laroche and Corbett “risk management integrates a systematic and rigorous approach to what people do on a daily basis. It is about creating opportunities, understanding the risks and managing them to achieve desired outcomes.”¹⁸

This study has shown the magnitude of a coach, especially in the coach-athlete relationship and the power and authority they possess. Humans as a source of risk, such as a board of directors, and who is involved in the planning and implementation of risk management, form part of a sports organisation where the coach is one of the most important figures and subject to different kinds of risks. Inevitably it would be beneficial to any sports organisation to implement a written member code of conduct that establishes norms for behaviour, especially for the coaches.¹⁹

The *in loco parentis* (in the place of a parent) concept involves the care and supervision of children and inevitably causes a high risk for sports organisations due to the responsibilities and parental status, to take care of children the same way as a reasonable parent would do.²⁰ Most sports organisations consist of youth sports, which place a very high onus upon such organisations to ensure they provide a supervised and safe environment.²¹ Athletics has a compliance duty towards its athletes or any other participants, the crowd and its staff to take responsibility in

¹⁶ Bell-Laroche and Corbett 10.

¹⁷ *Ibid* 14.

¹⁸ *Ibid*.

¹⁹ Bell-Laroche and Corbett 20. An organisation should accept the fact regarding the important role of coaches and the power and authority that the coaching role entails, and should establish specific written agreements with its coaches (*ibid*).

²⁰ See the discussion about the *in loco parentis* concept at Ch 3.4.4.

²¹ Bell-Laroche and Corbett 23.

maintaining safety regarding facilities, recruiting and dealing with pending cases involving student-athletes.²² The responsibility to maintain a safe environment for sport includes *inter alia*, locker rooms, team rooms, athletic training rooms, academic support facilities, practice areas and competition venues.²³ The safety also includes the safety of the athletes or participants regarding proper supervision at these locations.²⁴

Modern sport involves various challenges and sport organisations will unequivocally face some of the above-mentioned risks. Most of the time risks are viewed as negative and potentially bad things that could happen, but to identify and plan ahead regarding risk strategies, help to achieve goals, create opportunities and overturn something negative into something positive. Sport organisations and lawmakers are called upon to practice risk management more explicitly, which will enhance governance, dispute resolution and business practices.²⁵ Bell-Laroche and Corbett recapitulate the benefit of risk management as follows:

“A sport organization committed to risk management is an organization that cares about living its values, scans the environment for risks and opportunities, and learns to adapt. It helps the organization to provide a safe environment for members and participants, and enhances the delivery of quality sport experiences.”²⁶

4.3 Policies, Constitutions and Codes of Practice

4.3.1 Introduction

Since the beginning of time, mankind was submissive to authority and rules. In today's modern fast-paced world, authority and rules bring stability and order in a society. The modern era has changed dramatically in this regard. Irregularities, mistreatment, unfair practices and other offences have caused society to engage in

²² *Op cit* fn 314, Ch 2.5.5.2, Wilson par D 14. Athletics has a responsibility to ensure that all areas and facilities under its oversight are safe, nonhostile environments (Wilson 15).

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Bell-Laroche and Corbett 42.

²⁶ *Ibid* 42-43.

the drafting of various laws, policies and rules to protect the innocent and their interests. Sport has followed a similar path as many other organisations regarding the enactment of policies and rules to protect the sports people, because of calamities such as sexual assault, abuse and child protection.²⁷ This has led to the establishment of various organisations such as CPSU, German Sport's Youth, Respect in Sport, NSPCC, UNICEF, ASC and the NCAA.²⁸ Most of these organisations objectives' are the safeguarding of sport (especially among women and children), to promote sport among the youth, regulating sport and to be the liaison with government organisations, sport federations and other organisations involved in the welfare and safeguarding of sport.

The definition of a written *constitution* is, "fundamental and entrenched rules governing the conduct of an organization, and establishing its concept, character, and structure."²⁹ This is about the basic structure and methods of an organisation and describing its purpose. In general, there are no restrictions regarding the contents of a constitution. The provisions should relate to the administration of the club and not to the conduct of the activities of the club. The fundamentals of the organisation are expressed in the constitution and should be examined regularly for effective operation. Effective management of a club or organisation is associated with the bylaws and policies that establish the legal and administrative practices, providing a framework to guide the everyday operation of the club or organisation.

There are various policies for the different kinds of sport, targeting different aspects of sport and sports people from amateur to professional level. For example, "an effective child protection policy requires comprehensive implementation, monitoring and evaluation strategies."³⁰ This approach is essential not only for child protection, but in all other sport spheres. Fried³¹ pointed out that significant steps can be taken

²⁷ See Ch 3 for more information about the protection of women and children in sport; particularly Ch 3.3 that deals with sexual assault and Ch 3.4 that deals with child protection.

²⁸ These organisations can be found in Ch 3 and 4.

²⁹ *BusinessDictionary*, <http://www.businessdictionary.com/definition/constitution.html> [accessed 14 July 2016].

³⁰ Lewis and Taylor 780.

³¹ Formerly an Assistant Professor at the University of Houston teaching sports law, sport management and sports marketing. Currently he is a Professor at the University of New Haven, School of Business, in the Management of Sports Industries Program.

to reduce the chances of sexual abuse in youth sports through the implementation of a comprehensive sexual abuse prevention program, the implementation of relevant risk management strategies and legislative assistance from a variety of governmental agencies.³² One organization that has undertaken several measures to protect athletes in its charge is USA Gymnastics, urging gym owners to conduct criminal background checks before hiring, distribute educational material, and encourage the reporting of sexual deviant conduct.³³ Fried concludes with the implementation of sexual abuse programs and the adoption of new statutory protections allowing greater access to criminal history records, youth sports organizations can reduce the potential for any further preventable sexual abuse.³⁴

4.3.2 *Is a Coach-Athlete Relationship Permissible?*

Another dilemma is the proper boundaries of the coach-athlete relationship. A coach's power over athletes can extend to virtually all aspects of an athlete's life. Athletes do not always recognise harassing or abusive behaviour when they experience it, resulting in coaches exploiting their abusive powers with regard to an athlete. Clear boundaries in this regard are hard to define, which leave us with questions such as: "Where can we draw the line for these boundaries? When is a relationship with an athlete permissible and when is the relationship abusive and harassing?" Contributory to this issue, is the proposition by Lewis and Taylor,³⁵ "to which extent can the sport protect vulnerable participants from action that are lawful but nevertheless harmful to individuals and the sport."

UK Athletics' rules impose restrictions on, without completely banning, sexual relationships between coaches and the adult athletes under their training.³⁶ According to Brake amateur sport is beginning to recognize that the coach-athlete

³² *Op cit* fn 139 Ch 3.3.4.5, Fried 155.

³³ Fried 157.

³⁴ Fried 164.

³⁵ Lewis and Taylor 529.

³⁶ Codes of Conduct and Ethics of the British Institute of Sports Coaches emphasizes the importance of coaches to take responsibility and the initiative for setting and monitoring the boundaries (working relationship and friendship) in a coach-athlete relationship, *op cit* fn 3, Ch 2.2.1, Williams (2003) 59.

relationship is unsuitable in a sexual relationship.³⁷ A statement by the IOC in 2007 expressed its concern about the power differences between athletes and authority figures in sport, stating the risk of exploitative sexual relationships by these authority figures and to respect these boundaries.³⁸ It urges sport organizations to develop policies to protect athletes from sexual abuse and harassment.³⁹ In this kind of example, or situation when drafting a policy prohibiting sexual relationships between coaches and athletes, will not abate or solve this dilemma. Sexual or romantic relationships between coaches and athletes will continue to exist. Policies are mere guidelines expressing its concern regarding this unpleasant topic, with the intention to protect the athletes, establish boundaries applicable to sexual or romantic relationships in this regard and to instil norms and values. This kind of policy is preventative and protective in nature, but does not guarantee that it will discontinue. Brake confirms that these kinds of policies do not always prevent such relationships, but set a clear ethical standard against coach-athlete relationships that cross the line.⁴⁰ It is noteworthy how she addresses relationships that cross the line, arguing that these relationships are not entirely forbidden, but in her earlier article that sexual or romantic coach-athlete relationships should not be allowed.

It is necessary to analyse the risk factors comprehensively, evaluate the findings, identify the positives and negatives, finding a solution and monitor it regularly. Finding a solution to accommodate both parties would be helpful, otherwise the problem will continue.

4.3.3 Legislation

4.3.3.1 The South African Constitution and Bill of Rights

As stated earlier the *Bill of Rights* is the cornerstone of democracy in South Africa and it enshrines the rights of all people and affirms the democratic values of human

³⁷ *Op cit* fn 207, Ch 2.4.1, Brake (2012) 419-420.

³⁸ *Ibid* 420.

³⁹ *Ibid*. Most universities have policies put in place to prevent such relationships, *op cit* fn 52, Ch 2.2.2.4, Johnson (2013).

⁴⁰ Brake 421. See also Brake about the prioritization of the well-being of the student-athlete and a policy-based approach to coach-athlete relationships, Brake 424.

dignity, equality and freedom.⁴¹ The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.⁴² *Organ of state* means:⁴³

(a) any department of state or administration in the national, provincial or local sphere of government; or

(b) any other functionary or institution-

(i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public duty in terms of any legislation, but does not include a court or a judicial officer.

According to Engelbrecht *organs of state* is used to refer to a range of institutions, including national and provincial government departments, municipalities and their business agencies.⁴⁴ *The SA Constitution* is the foundation for South African citizens, entrenching democratic values and fundamental human rights. The constitution enjoys supremacy in SA where everyone is submissive to the constitution and must act according to its provisions and principles and all laws made by Parliament must pass the test of constitutionality. *The SA Constitution* cooperates with other independent bodies and other institutions to support and safeguard democracy.⁴⁵ Every human being has a fundamental right to physical education, physical activity and sport without being unfairly discriminated against.⁴⁶ This

⁴¹ *Op cit* fn 20, Ch 3.2.3. Singh also stated that *The SA Constitution* is the preeminent law in SA, *op cit* fn 26, Ch 3.2.3, Singh 69.

⁴² *The SA Constitution* s 8(1).

⁴³ *Statistics Act* 6 of 1999, 1(x)(a) and (b)(i)-(ii). See also *The SA Constitution* s 239 under definitions.

⁴⁴ Engelbrecht 2011 defenceWeb (http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=13148:what-is-a-state-organ&catid=49:National%20Security&Itemid=115 [accessed 16 July 2016]).

⁴⁵ See *The SA Constitution* Ch 9 s 181 for State Institutions supporting constitutional democracy. For more information about organisations, conventions, codes and policies (especially for the protecting and safeguarding of women and children), see Cornelius and Singh, *op cit* fn 293, Ch 2.5.3.4, p 304-306.

⁴⁶ *International Charter of Physical Education, Physical Activity and Sport* 2015, art 1.1. This *Charter* is a rights-based reference that orients and supports policy- and decision-making in sport, setting ethical and quality standards for everyone involved with the design, implementation and evaluation of sport programs and policies. The *Charter* is applicable to everyone around the globe (amateur and professional) and promotes inclusive access to sport irrespective of gender, ethnicity, age, language,

fundamental right must be supported by all governmental, sport and educational institutions.⁴⁷

All stakeholders, especially national and local authorities must participate in creating a strategic vision, identifying policy options and priorities;⁴⁸ and take action to develop and implement legislation and regulations with clear objectives, and adopting other measures to endeavor physical education, activity and sport.⁴⁹ All stakeholders must ensure that their activities are economically, socially and environmentally sustainable.⁵⁰

The *SA Constitution* does not explicitly mention sport and the participation thereof, but as stated treasures the rights of all people in SA and some of the provisions can be related to sports law. One example is section 7(1) and (2) of *The SA Constitution* regarding the rights of all people and that the state is obliged to respect, protect and fulfil these rights. This means that sport has to conduct its affairs with due regard for human dignity, the equality for all persons in the eyes of the law and the basic freedom of choice, expression and association granted to individuals.⁵¹ A further example is section 9, with reference to equality for everyone in South Africa. The relation to sport is that everyone is equal before the law, has the right to equal protection, and that all grounds of unfair discrimination are prohibited. People participating in sport are protected by the law and equal before the law regarding unfair discrimination.⁵²

4.3.3.2 *The National Sport and Recreation Act*

On the other hand there are various regulations and laws protecting the interests of sport, which have to comply with the constitution and these organisations and federations collaborate with the government pursuing democracy as enshrined in the

religion, etc. The *Charter* was designed and published by UNESCO (United Nations Educational, Scientific and Cultural Organization).

⁴⁷ *Ibid*, art 1.2.

⁴⁸ *Ibid*, art 3.2.

⁴⁹ *Ibid*, art 3.3.

⁵⁰ *Ibid*, art 5.

⁵¹ Singh 70.

⁵² Singh 71. See also *The SA Constitution* s 9(1)-(3).

constitution. One of them is the *National Sport and Recreation Act* stating that the Sports Confederation may develop guidelines for the promotion and development of high performance sport⁵³ and must co-ordinate all activities relating to high performance sport, after consulting with all the relevant sport bodies in that regard.⁵⁴

4.3.3.3 *The Human Rights Act of the UK versus the SA Constitution*

The *Human Rights Act (HRA)*⁵⁵ of the UK is also applicable to the realm of sport and correlates with the *SA Constitution* in this regard. An example is Article 8 of the *HRA* and section 14 of the *SA Constitution* about the respect for privacy. In the sporting context, this imposes the protection of an athlete's privacy.⁵⁶ A further example is Article 10 of the *HRA* and section 16 of the *SA Constitution*, which protects freedom of expression and is one of the essential foundations of a democratic society.⁵⁷

This has an extensive meaning in the sporting context. To bring it into perspective with this study regarding the impact on the coach-athlete relationship, the key factor from an athlete's viewpoint is the freedom to express one's state of mind. In this regard communication between the coach and athlete is essential and the athlete should not be afraid to communicate freely. Communication, understanding and bonding in the coach-athlete relationship is extremely important.⁵⁸

⁵³ Act 110 of 1998, s 2(2). The Minister must issue guidelines or policies to promote equity, representivity and redress in sport and recreation, Act 110 of 1998 s 13A.

⁵⁴ *Ibid*, s 2(4).

⁵⁵ Act 1998, c. 42, which is an Act of Parliament of the United Kingdom and its aim is to give further effect in UK law to the rights contained in the European Convention on Human Rights (ECHR) and came into force on 2 October 2000.

⁵⁶ Lewis and Taylor 528.

⁵⁷ *Ibid* 531. In the sporting world, arguments about freedom of expression may arise in various contexts, for example, (i) the imposition of a dress code may interfere with participants' ability to express themselves, (ii) efforts to prevent players, managers and officials from talking to the press, (iii) coverage by the press of off-field activities and (iv) non-accreditation for an important event (Lewis and Taylor 531).

⁵⁸ See Ch 2 about the coach-athlete relationship.

4.3.4 One Child Protection Policy for all Sport Organisations

Until 2008 no international sports federation has implemented a comprehensive child protection policy.⁵⁹ In 2007 the International Olympic Committee (IOC) has taken steps in this direction by adopting a Consensus Statement on Sexual Harassment and Abuse in Sport.⁶⁰ The IOC's recommendations were that all sports organisations should comply with the requirements as set out in the statement.⁶¹ From 2009 until the present numerous sport organisations and federations have committed to the welfare and safeguarding of children, which has led to the enactment of various child protection policies around the globe.

In Australia "it has been announced that sports organisations will be expected to establish and comply with child protection policies or face exclusion from the 2018 Winter Olympics in Pyeongchang in South Korea.⁶² This ensures that the sport at each sport organisation is safe, fair and inclusive for everyone involved and recognises their legal obligations to prevent and address discrimination and harassment and to protect children from abuse."⁶³ If all sports in Australia have to comply with the World Anti-Doping Code, then there is no reason not to elevate child abuse and protection to the same level of importance.⁶⁴

In the UK all karate instructors are subject to be screened for any criminal records, must be in a possession of a first aid certificate, must be insured and must comply with the guidelines of the Federation's Child Protection Policy, if they wish to work with children. The NSPCC Child Protection in Sport Unit was established to work with sport organisations to provide support and advice on developing child protection policies and procedures in order to help them safeguard children and young people.

⁵⁹ Lewis and Taylor 811.

⁶⁰ *Ibid.*

⁶¹ *Ibid.* For a list of the recommendations, see Lewis and Taylor 811-812.

⁶² Tran 2016 *SchoolGovernance*. SchoolGovernance.net.au is the Australian school sector's leading news and information source on issues related to governance, risk management, compliance and policy management.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

4.3.5 *International Action against Sexual Abuse and Harassment in Sport*

4.3.5.1 Europe and Beyond

Significant research of the prevalence of sexual and gender harassment and abuse in sports has been initiated and conducted in Europe.⁶⁵ Initiatives in Europe and beyond consist of nine European countries, Canada, Australia and the UK. The main purpose is to explore and prevent sexual and gender harassment, abuse in sports and how to extirpate this unresolved dilemma in the realm of sport.⁶⁶ Canada is one of the leading countries in the world that focuses on child protection in sport and has implemented an initiative intended for coaches, community activity leaders, officials and volunteers. The description of the initiative is as follows:

*Respect in Sport*⁶⁷ is Canada's only interactive online programme that targets coaches, managers, trainers, administrators, volunteers and parents, and is one of very few of its kind in the world. The overall goal of this programme is to raise awareness, acquire knowledge and to present tools to prevent bullying, abuse (physical, sexual, emotional), emotional maltreatment, harassment, neglect, and legal and moral responsibilities. It also helps to address the lack of awareness and education about this emotive and sensitive issue. Coaches and youth organisation leaders have power over the children in their care and they have to understand that they have this undeniable power that can be either abused or used constructively.⁶⁸

4.3.5.2 Monitor Adults Working with Children

Fasting stated that "research and criminal court cases over the last years have shown that it is necessary to monitor adults who work in sports clubs and have relationships of trust and responsibility with children and persons with mental disabilities."⁶⁹ It should be compulsory that all sports clubs have to obtain a police

⁶⁵ Chroni 11.

⁶⁶ Chroni 18.

⁶⁷ *Respect in Sport* was founded in 2004 by Sheldon Kennedy and Wayne McNeil. Their mission and vision is to empower people to recognize and prevent bullying, abuse, harassment and discrimination by inspiring a global culture of respect (<http://respectinsport.com/about-us/> [accessed 25 May 2016]).

⁶⁸ Chroni 38.

⁶⁹ *Ibid* 48.

certificate of good conduct for anyone on behalf of a club who wish to work with children and a relationship of trust and responsibility in relation to minors or persons with mental disability.⁷⁰ This is to ensure the same rights to protection for everyone. Sport organizations should screen volunteers and employees to determine their fitness to work with children, which is their legal and moral duty to act reasonably to protect the children they serve.⁷¹ More effective vetting and screening of applicants to coaching positions needs to be implemented.⁷² Background checks is a method that contributes to the protection of children.⁷³ Støckel also argues that sports clubs should start using criminal record checks when hiring sports coaches and endeavour to appoint qualified coaches.⁷⁴

4.3.5.3 Australian Sports Commission

The Australian Sports Commission (ASC) has developed a Member Protection Policy template to assist National Sporting Organisations in writing their own sport-specific member protection policy to address issues of sexual harassment and abuse, discrimination and child protection.⁷⁵ All national, regional and local sports organisations are required to have an updated Member Protection Policy if they want to receive Government funding.⁷⁶ The ASC also provides member support and online training to assist the role of administrators and coaches.⁷⁷

The ASC policy approach establishes a very high level of political and organisational responsibility and commitment.⁷⁸ The ASC has initiated an astute way to endeavor the safety and protection of children, which is surely applicable to all kinds of athletes

⁷⁰ *Ibid.*

⁷¹ Gibbons and Campbell 186.

⁷² Gardiner 540.

⁷³ Williams 72.

⁷⁴ Chroni 51. A child has the right to be coached by a qualified person and to assure the safety and protection of children.

⁷⁵ Chroni 57.

⁷⁶ *Ibid.* In the UK a national certificate of coaching is to be adopted by all Sports Council recognised National Governing Bodies in order to continue to be eligible for public funding (Williams 56). Hogshead-Makar said that the USA Gymnastics should require gyms to adopt specific safety measures as a condition of membership, *Indystar Investigation* Ch 5 of the document (in Ch 3.3.4.5).

⁷⁷ *Ibid.* The ASC provides two separate member protection policy templates, one for sports organisations and one for sports clubs.

⁷⁸ *Ibid.*

(amateur, professional, young and old) by *forcing* clubs and other sports organisations to adopt this policy if they want government funding. It is not mandatory to adopt this policy, but almost unavoidable because of its beneficial aspects, such as receiving funds to assist sports clubs, provide training and assisting in other administrative procedures.

4.3.5.4 Safeguarding Children in Germany

Bettina Rulofs of Germany contributed on the topic of safeguarding children and youth in sports clubs commenting on the German Sports Youth body as the umbrella organisation for young people in sport.⁷⁹ Previously the German sports organisations did not have a joint and corporate strategy for preventing sexual violence in sport.⁸⁰ One of the main tasks of this group was the development of a joint guideline for safeguarding children in sports clubs and for the first time a mutual standard for preventing sexualised violence has been adopted in German sport.⁸¹

4.3.5.5 Child Protection in the UK

Guidelines were produced by the Amateur Swimming Association which offered guidance in child abuse and how to respond if abuse is suspected or alleged.⁸² The NSPCC⁸³ in particular provided great assistance in the formulation of this document, which was published in June 1996.⁸⁴ Other sports have been praised for developing coherent child protecting policies and bodies such as the Child Protection in Sport Unit and Sports Coach UK have produced considerable literature⁸⁵ in this area.⁸⁶ “The English Football Association (FA) has been one of the leading sports

⁷⁹ Chroni 60.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Gardiner 537. These guidelines are of the British Amateur Swimming Association in response to the *Hickson* case (see fn 101 Ch 3.3.3 for more information on this case) to confront child abuse in sport.

⁸³ National Society for the Prevention of Cruelty to Children; a charity campaigning and working in child protection in England, Wales, Northern Ireland and the Channel Islands.

⁸⁴ Gardiner 537.

⁸⁵ See <https://thecpsu.org.uk/> (safeguarding of children and young people) and <http://www.sportscoachuk.org/> (recruiting, retaining and developing coaches). These two websites contain considerable amount of information and literature about child protection. For more information on CPSU see Lewis and Taylor 780-781.

⁸⁶ Gardiner 540.

organisations in the UK in terms of acknowledging the promotion of safety, health and protection of athletes of all ages, following the establishment of the Child Protection in Sport Unit (CPSU) in 2001, which aims at supporting sports organisations in ensuring children's safety and welfare."⁸⁷

In 2012 the FA has implemented a program titled *Respect*, which aims to promote positive behaviours by adults in order to ensure safeguarding of children and in 2011 launched *The FA Licensed Coaches Club*, aiming to enhance commitment to professional development, good practice and updated learning (The FA, 2012).⁸⁸ *Respect* is the FA's program to address unacceptable behaviour in football (on and off the field). The program provides guidelines for leagues, clubs, coaches, referees, players and parents from amateur to professional level to ensure a safe and positive environment for all to enjoy. The following is an excerpt regarding an FA licensed coach:

"They are required to hold valid English/UEFA⁸⁹ coaching qualifications, have an enhanced FA Criminal Records Bureau (CRB) check, complete the minimum Continuous Professional Development every year (CPD), receive Safeguarding Children and Emergency Aid Certificates and join the FA Coaches Club for Licensed Football Coaches."⁹⁰

Coaches are required to undergo workshops in safeguarding children if they want to coach children and it includes information of all types of child abuse, and sexual abuse.⁹¹ Codes of conduct have been developed for coaches in an effort to prevent poor practice in football.⁹² A positive element of this workshop is that it is compulsory for all coaches, referees (over 16 years old) and welfare officers who will be working with children.⁹³

⁸⁷ Chroni 73.

⁸⁸ *Ibid.*

⁸⁹ The Union of European Football Association (UEFA) is the administrative body for association football in Europe.

⁹⁰ Chroni 73.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid* 74.

Child sexual abuse has emerged in UK sport in the mid-1990s and led to the development and implementation of child protection and safeguarding policies and procedure.⁹⁴ The focus regarding child welfare in the beginning has changed significantly to the imposition of mandatory safeguarding standards for all national sport governing bodies, the inclusion of children's rights and broader conceptions of athlete welfare.⁹⁵ Hartill states that "if the global problem of childhood sexual abuse is to be more effectively addressed, the international sports community must evaluate its early progress, identify key challenges and share knowledge."⁹⁶ The Rugby Football League (RFL) was one of the first governing bodies in sport in the UK to develop and implement its own child protection policy and agreed to support research aimed at investigating the efficacy of the implementation process.⁹⁷

4.3.5.6 UNICEF

UNICEF⁹⁸ has been formed in 1946 and has always been an advocate of children's rights, promoting the rights and wellbeing of every child. They have developed a strategy for enhancing child protective measures in sport that includes:⁹⁹

"Strengthening child protection systems around and within sport organisations; increasing awareness and strengthening the protective role of parents, teachers, coaches and other caregivers, as well as the media; developing and implementing standards for the protection and well-being of child athletes; implementing sport for development and international programmes and initiatives; and improving data collection and research to develop an evidence base.

Future developments in this field are likely to explore how the different research and policy interests in sport and international development might coalesce."

⁹⁴ Chroni 78. The sensational case of *Hickson* in 1997 is an example of this dilemma in the UK (see Ch 3.3.3 for more information on this case). Many cases of sexual, physical and emotional abuse in sport were reported by the 1980s, but few were publicised and almost no research or studies have been conducted, but at the start of the 1990s studies and research have emerged initiating the development of child protection policies and more intensive research regarding the safeguarding of children and abuse in sport (Brackenridge and Rhind 328).

⁹⁵ Brackenridge and Rhind 330.

⁹⁶ Chroni 78.

⁹⁷ *Ibid.*

⁹⁸ See more about UNICEF in Ch 3.2.

⁹⁹ Brackenridge and Rhind 330-331.

4.3.5.7 Administrative Procedures

Workshops in safeguarding children surely do not only involve abuse and sexual abuse. The *SA Constitution* ensures the safety and protection of all citizens which is enshrined in the *Bill of Rights*. To fulfil this obligation the government also needs to comply with various administrative measures. There are various factors involved in child safety and because sport activities in school have more risks than classroom activities, necessary precautions have to be considered.¹⁰⁰ Workshops also need to focus on important administrative procedures regarding the protection and safety of children and therefore the teacher-coach and all other sporting people involved in teaching and/or coaching children should also be knowledgeable about the legal aspects regarding children.¹⁰¹

4.3.5.8 The Importance of Sporting Authorities

The purpose of policies, legislation, sports governing bodies, etc. are to protect and prevent unsuitable people from working with children.¹⁰² Williams stated that the biggest barrier to protecting children is the attitudes and policies of the sporting authorities.¹⁰³ Not all governing bodies have adequate protection plans incorporated in their policies and they are also not obliged to do it. Most of the times when a club is achieving success it will protect the coach, as they cannot afford bad publicity that could contribute to the demise of a club.

Sport Councils have a responsibility for approving and regulating the governing bodies. Better legal protection for children in specific targeted areas, for example regulated or implemented by the government or a sporting organisation, could improve the well-being and opportunities for many children. On the contrary, in areas that are not targeted, exploitation and abusive methods will continue, because there are no authority and control present. The lacking of government or organisational

¹⁰⁰ Doubell 18.

¹⁰¹ *Ibid.* See also Doubell 24, stating that it is the duty of each teacher-coach in his professional capacity to keep themselves abreast of the legal aspects regarding the children and to show respect and dignity toward them.

¹⁰² Williams 1999 *Childright* 8.

¹⁰³ *Ibid.*

control is an infringement on the rights of children, other athletes and sporting people, especially in the underprivileged areas. In the absence of adequate legal protection, what is needed is a nationally co-ordinated strategy to protect the interests of children and young people in sport. The Sport Councils are ideally placed to device and implement such a strategy.¹⁰⁴

Recently the scandal about child and sexual abuse of child-athletes were disclosed amid the resignation of USA Gymnastics Steve Penny.¹⁰⁵ Due to the failure of USA Gymnastics to protect their athletes and the long history of abuse of this national governing body, a former federal prosecutor has been hired by USA Gymnastics to review the organization's policies.¹⁰⁶ Congress has also taken notice of the scandal where more than a dozen senators introduced a bipartisan bill that would require adults working at Olympic governing bodies to immediately report abuse complaints to law enforcement, and failing to report allegations 'as soon as possible' would be a crime punishable by fines and up to three years in prison.¹⁰⁷ Amateur athletic governing bodies, coaches, and personnel have a special obligation to do all they can to protect young athletes in their care.¹⁰⁸

This attitude by the government to intervene and take appropriate action is what is necessary to test existing policies and/or causing the implementation of new policies and legislation. Inevitably, collaboration between the government, governing bodies and sport organisations is of the utmost importance to ensure the effective establishment of a uniform and feasible policy, or the enactment of legislation.

4.4 Conclusion

A policy should not punish or offend someone. It should be a useful tool aiming to help and give guidance and pursuit to safeguard and protect the interests of the innocent and to prevent or minimize irregularities that might occur. The psychological

¹⁰⁴ *Ibid.*

¹⁰⁵ See the discussion about this sex scandal in Ch 3.3.4.5.

¹⁰⁶ Miller 2017 *The Huffington Post* (http://www.huffingtonpost.co.za/entry/usa-gymnastics-steve-penny-resigns_us_58cad793e4b00705db4d4fc3 [accessed 20 March 2017]).

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

nurture in sport is of utmost importance. Implementing programs and workshops to point out the importance of this field, would be helpful in this regard and make athletes aware that their problems can be attend to and dealt with professionally.

All the major sports are affiliated with a different governing body that act in a controlling and regulatory capacity. International sports federations regulate and control a specific sport; creating laws and organising the specific sport internationally. National federations have the same objectives as an international federation, but are bound to one country or a specific district of that country and responsible for local clubs and teams. Each Olympic Sport is represented by its respective international federation, which conversely is in collaboration with its national federation. Most of these federations, sports governing bodies, etc. pursue the same goals and have similar perspectives. They have the power and authority to inflict laws and policies to promote, expand and protect the interests of the sport they are affiliated with. Hence, sport organisations have a moral duty to protect children from abuse and to combat future abuse by preventing it due to their authoritative power.¹⁰⁹

In the modern era of sport, athletes compete and participate globally. Many times athletes and coaches leave their home countries to relocate to other countries. Sometimes these sport people have to adopt new policies and rules. These changes and inconsistency lead to misunderstanding, confusion and may cause the violation of rules and laws in sport. If international sports federations and sports bodies could work together on future plans by implementing similar policies and safety measures to consolidate the same goals, would be a step in the right direction.¹¹⁰ This will promote uniformity and a better understanding of sport around the world as a whole, especially pertaining to the rules and conduct of sport, acceptance of each other's culture and a better understanding of each sports person's role and what is expected of him or her.

¹⁰⁹ Lewis and Taylor 781. By providing a safer environment for children in sport to learn socialisation, team work, skills, etc. without being exposed to abuse and other forms of harm can help to reduce the number of future abusers, Lewis and Taylor 781.

¹¹⁰ See also the Conclusion in Ch 5.5 for more information regarding international collaboration in sport.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1 The Problems and Shortcomings in Sport

5.5.1 Introduction

The various problems and shortcomings in sport hamper the progress and development of athletes and sport in general. Earlier the study has mentioned the modernisation of sports law, the challenges faced by sport organisations and federations, sport governing bodies and other stakeholders involved with sport.¹ Various irregularities have emerged during this time, leading to the enactment of laws and policies and research to improve and pursuit for uniformity in sport globally. It is almost impossible to mention all the wrongdoings, misconduct and imperfections found in sport.

This chapter will briefly refer to the imperfections referred to in this study and will discuss succinctly about some of the problems that have emerged from the coach-athlete relationship.

5.5.2 Abusive Power of Authoritative Figures

Coaches and other authoritative figures should apply a duty of care and safety toward athletes. Unfortunately coaches abuse their power and influence, and position of trust for personal gain. This power and influence is also evident in the positions they held. Gender imbalance is problematic in the realm of sport. Female sport leaders at the Olympic level continue to struggle in terms of numbers and positions of power. In general men's sport enjoy more media coverage than female sport. Most of the coaches are male and many times female athletes prefer male coaches. Support by governments and sport organisations to assist female coaches and training programs, could help to overcome this area of imbalance.

¹ See Ch 1.1 and 1.2.

A major problem area in sport is sexual abuse and harassment because of the exploitation of power and authority by coaches and other authoritative figures. The under-reporting and sensitivity of these instances contribute to this predicament. It seems that many of these cases are settled outside of court, or is handled internally in the sports organisation. The uneven punishment of these crimes does not assist to prevent, or minimise it and sometimes the punishment is not severe enough. Sport organisations sometimes neglect to acknowledge the misconducts of their coaches and other authoritative people. This is usually to protect the sport's image. Sport is a multi-billion dollar industry, meaning that money is sometimes more important than the well-being and best interests of the athletes.

5.5.3 Screening of People Working with Children

One of the main problems is the relationships between coaches and child athletes and violence against children in sport. Child molesting and assault is problematic and the main figures in sport have to pursue the well-being and safeguarding of children. Sport organisations should attempt to hire qualified people and thereafter monitor these people regularly, especially adults working with children. One of the methods is to screen the applicants and to do a police check before the hiring. There are some obstacles with this method such as, it sometimes takes a long time to obtain this kind of information, to get this information can be expensive, privacy rights, etc.

More emphasis should be placed on these different kinds of relationships by regulatory bodies for coaches and laws controlling these relationships and creating policies to support it. A problem in this area is that not all sport organisations, or clubs have adequate protection plans, or possess of any other important policies of interest. Especially poor and small clubs do not apply risk management or risk assessments. The problem is they do not have sufficient funds to make investments and do not receive government assistance. The opportunity for exploitation and assault is higher because there is no control, support or supervision from the government or sport organisations.

5.5.4 Poor Governance in Sport and Insufficient Collaboration between the Government and Sporting Organisations

There is not enough emotional and psychological support for athletes; their needs are not satisfied and the key role figures in their lives have to show more involvement, so that they are able to notice any abnormality. Children have to absorb a lot of pressure from coaches and parents to be champions. They need to be better monitored. There is not sufficient communication between the different sport figures, for example between the coach and athlete; sport organisations and the coach; government and sport federations; etc. There need to be physical and mental bonding and the athletes should be thoroughly monitored.

Media exposure can also have a negative effect by adding unintentional pressure. The most practical and widespread strategy recommended by various researchers to make youth sport positive and safe is “the education of parents and child-athletes”.² I would also suggest the inclusion of the coach, especially because the coach is the main figure in the coach-athlete relationship and cannot be separated from the relationship with the parents. Parents trust the coaches sometimes too easily, which can lead to situations where their children could be easily exploited. It is also important that coaches are well trained and educated in his or her specialised field, with sufficient experience. Inexperienced coaches could act negligently, which can cause harm to his or her athletes and other participants. Athletes lose interest due to poor coach-athlete relationships.

To return to the problem of not enough emotional and psychological support for athletes and that their needs are not satisfied and the key role figures in their lives have to show more involvement, leads to the question how to approach and solve this dilemma. There is not sufficient counselling for athletes, especially adolescent and adult athletes. Nowadays there is a lot of emphasis on children in sport and protection plans, but older athletes do not have similar support. Personal problems are sometimes private in nature and if shared with the coach, could be harmful for the coach-athlete relationship. The general assumption is that adults are mature and

² Rossouw 13.

are able to take care of themselves. The appointment of specialised people in a sport organisation, specifically for this purpose would help to assist and support these kinds of athletes. An immediate obstacle that arises with this premise will be the cost aspect to fund this kind of appointment.

There are also various other policies applicable in sport; policies for: equipment, abuse and harassment, member protection, discipline and complaints, code of conduct and ethics, safety and security, crowd control, alcohol, medical issues, weather conditions, etc. It seems that the major field of research has developed around the welfare of children and to create child protection policies. It is true that if the dilemma can be addressed at adolescent level, it could minimise the risks in the future and during adulthood. This could lead to the question, what about the current adult and young adult athletes; are they not as important as adolescent athletes? According to the constitution, everyone is equal before the law and enjoy the same interests and protection. It also does not mean if an organisation has a child protection policy, or other policies that there would not be any problems. Large and small organisations both possess all kinds of policies, but not necessarily similar. It depends on various factors, such as: what kind of organisation; what are the risk factors; some policies are required by law; etc. An organisation can have the best written policies, but if they are not regularly reviewed and updated, or actively used and referred to as guidance, it will be meaningless. All members of an organisation should be aware of the policies and its meaning to ensure its effectiveness and feasibility.

Implementing child protection standards for everyone globally is problematic due to cultural differences and to determine about acceptable and unacceptable conduct.³ Sport organisations and federations around the world have to take child protection seriously for the implementation of an effective child protection policy and to report, investigate and take the necessary action to remedy those incidents.⁴

³ Lewis and Taylor 812.

⁴ *Ibid.*

Numerous legislation, policies and laws exist, but children are still exploited. Does this imply that the laws and policies are not effective and need to be revised? Do we need more policies and laws to protect children? The answer to both questions is *no*; it is the lack of proper governance and the lack of funding for poor countries. Sport organisations and the government should be more involved to assist and support sport in all spheres. Assistance from governmental agencies and cooperation between the government, national sporting organisations, provincial sporting agencies and club level, would contribute to establish the foundation to address this predicament. Perpetrators should receive more adequate punishment for the crimes they commit and it must be well reported to act as a deterrent for others. Whenever laws fail to address the problem specifically in the context of sport, it remains for sport organisations themselves to address the problem of abuse.⁵ This approach should also be followed with other risks and problems in sport. One of the biggest problems, as pointed out by Williams is the attitude by sporting authorities.⁶ Policies are not always mandatory and enforceable and the lack of interest by those with power and authority could lead to irregularities.

5.5.5 Intimate Relationships in Sport

One also has to mention about the importance of relationships between sports people and the development process to form a special bond that is necessary for success.⁷ The key focus should be the coach-athlete relationship. Relationships are complex and more research is needed in this area, especially between a coach and his or her athlete; the athlete and parents; coach and parents.⁸ This would help to understand the functioning of these relationships, how to integrate these relationship, identify the problem areas and elevate these relationships to become successful in the realm of sport.

⁵ *Op cit* fn 295, Ch 2.5.3.4, Cornelius and Singh 306.

⁶ *Op cit* fn 102 Ch 4.3.5.8, Williams 8.

⁷ Ch 2 discuss in detail about the coach-athlete relationship; what it is, the implementation and development process, the legal aspects thereof, etc.

⁸ *Op cit* fn 64, Ch 2.2.4, Felton and Jowett 64.

Successful implementation of a practicable solution would decrease many irregularities in sport. A step toward the right direction would be for sport organisations, sport federations, sport clubs, governments and other stakeholders to collaborate with each other; sharing knowledge; creating policies and constitutions that are universal, understandable and feasible. Lewis and Taylor states that the UN Convention could provide an appropriate basis for developing common standards and the success of such an international policy, would depend on the full commitment and co-operation of all international and national sports federations.⁹

5.2 Appointment of Personnel

Resourcing and training requirements are important to ensure that individuals with the requisite skills and experience are available to perform the role of independent assessor.¹⁰ An efficient and effective response to incidents of sexual violence, or other irregularities in sport is critical to providing appropriate support and resources for the victims and helps to minimize or prevent future violations.¹¹ It is important that people who work with athletes (young and old; professional and amateur level) are educated how to solve different kinds of irregularities (and educated in recognizing these behaviours) and the appropriate person or institution to approach and providing the victims effective support and counseling.¹² Professional people who are committed and skilled in sport irregularities should be approached, or appointed to assist in these predicaments. Sporting organisations, governments and coaches would benefit by involving the assistance of these professional people and see to that these professional people possess the necessary skills and training to assist sport people.

Trained professional people, who are involved in establishing programs to standardise the laws and policies regarding the safeguarding and progress of sport, should be involved in collaboration with the stakeholders of sport to combat the irregularities and to find a common solution in the interest and benefit of everyone.

⁹ Lewis and Taylor 812.

¹⁰ Lewis and Taylor 807.

¹¹ *Op cit* fn 314, Ch 2.5.5.2, Wilson par C2 p 22.

¹² *Ibid.*

Any irregularity in sport has a negative impact on athletes, teammates, the parents and coaches; and therefore leadership is essential to understand and to find a solution to combat these unpleasant problems that occur in sport worldwide.¹³

Authoritative organisations, people, governments, etc. in sport have the power to create, present and change laws and policies that are directed to serve a certain purpose. In South Africa the *National Sport and Recreation Act*¹⁴ “provides for the promotion and development of sport and recreation and the co-ordination of the relationships between Sport and Recreation South Africa and the Sports Confederation, national federations and other agencies; to provide for measures aimed at correcting imbalances in sport and recreation.”¹⁵ According to this statement, the minister of sport has the power to appoint competent people to perform specific duties that contribute to the promotion and development of sport in SA. Skilled and qualified professionals pertaining to the safeguarding of sport have to be identified and appointed to perform these duties nationwide.¹⁶

The minister must acknowledge a Sports Confederation which will be the national coordinating macro body for the promotion and development for high performance Sport in the Republic.¹⁷ The South African Sports Confederation and Olympic Committee (SASCOC) has been appointed to perform these duties and is the responsible body for South Africa at the Commonwealth Games, responsible for high performance sport in South Africa and coordinates the relationship with various international sport federations. Many other countries have similar appointments.

5.3 Training Programs and the Monitoring Thereof

Training programs in sport usually refers to the physical training of athletes to prepare them for competition, but in this study the focus is primarily to educate coaches, staff, athletes and parents; everyone involved in sport that needs to

¹³ *Ibid* par C3 p 23.

¹⁴ Act 110 of 1998, *op cit* fn 376, Ch 2.7.

¹⁵ The preamble of Act 110 of 1998.

¹⁶ *Op cit* fn 119 Ch 2.3.2, Doubell 122.

¹⁷ Act 110 of 1998, s 2(1).

understand the pedagogy of sport. Workshops and training camps could be helpful to acquire and update knowledge necessary for everyone to instill the awareness of any irregularities, how to attend to a specific problem and finding the appropriate solution. Child-athletes should also be educated about their rights and what to do when faced with a problem. More discussion and guidance is needed to educate and support student-athletes when they are faced with difficult situations and what to do in these circumstances.¹⁸ This approach should be more interactive, respecting of bystanders and skill development orientated.¹⁹

Athletes, especially children, also need to know about the rules of the sport they participate in and therefore it is recommended that children need to attend training courses in this regard.²⁰ Children and student-athletes have to realise that they also have a responsibility toward the sport and their coaches.²¹ If they learn to abide the rules and have respect for the sport, including toward the coach, teammates, officials, and other sporting figures, it could minimise irregularities in the future.

A starting point for enhancing the coach-athlete relationship should be to implement mandatory workshops (lectures, seminars) for both coaches and athletes in educating them about the pedagogy relating to this relationship. People with excessive skills and experience should be appointed to regulate and monitor this training sessions. Communication has to be persevering not only within, but also outside the practical coaching situation of athletes, to include parents, other coaches, officials and administrators. By involving some role players, will point out that there is nothing to hide and at the same time elevate trust, power and respect. These camps should be strictly monitored on a regular basis to ensure commitment and striving to achieve success.

Fried stated that supervisors and/or coaches should be properly trained in recognizing signs of sexual abuse and signs that someone within their charge might

¹⁸ Wilson par C p 18. The education and guidance should be available for all athletes and not only child-athletes and should include all kinds of sport, including amateur and professional sport.

¹⁹ *Ibid.*

²⁰ Doubell 119.

²¹ *Ibid.*

be undergoing significant family changes which could possibly lead to sexual abuse.²² Children have to be actively involved in developing the sexual abuse prevention program and prevention strategies so that the children understand that sexual abuse against their peers is unacceptable conduct.²³ Organizations have to evaluate their own goals and objectives before implementing any risk management program.²⁴ It would be essential for organisations, governments, local authorities, etc. to develop and be involved in training programmes in sport and the development of leadership qualities.²⁵

Educators such as sport teachers, sport managers and coaches do not only need to recognise signs of abuse or other irregularities, but also need to be educated about the legal aspects of various aspects of sport, training, sport offences, etc. The legal aspects of sports coaching is an unknown field for coaches and if they can be informed about their rights and those around them (athletes, parents and spectators), it could make a contribution to their own safety and security and their athletes.²⁶ Educators are passionate about sport coaching and to be part of student development and therefore a greater emphasis should be placed on the development of legal knowledge,²⁷ and to give educators the opportunity to attend courses, workshops and seminars.²⁸ A lot of training courses focus on the development of the student, identifying skills and the ability to execute with success, but forget to pay attention to the protection and development of coaches on the basis of legal liability.²⁹ Authoritative figures in sport possess of a lot of power and have the necessary resources to take leading action toward the development of coaches.³⁰

SASCOC possess the authority in addressing the education and training in high performance sport, by providing support in organising and presenting training workshops, courses and seminars for high performance sport leaders, managers,

²² *Op cit* fn 139 Ch 3.3.4.5, Fried 161.

²³ *Ibid.*

²⁴ Fried 162.

²⁵ Act 110 of 1998, s 2(3)(a).

²⁶ Doubell iv.

²⁷ *Ibid.*

²⁸ Doubell 116. Young teachers and coaches should get more opportunity to receive training, Doubell 118.

²⁹ Doubell 116.

³⁰ *Ibid.*

administrators, sport coaches and technical officials in cooperation with the relevant national federations and other macro-bodies.³¹ Without sufficient and effective training it will be impossible to produce quality people who can contribute to the success and the prosperity of sport; dedicating their knowledge, skills and techniques to student-athletes.

5.4 Educational Programs

Education in its ordinary meaning is the process of acquiring knowledge, developing skills to learn, analyse and understand. This process is usually presented by skilled professional people and through textbooks. Education pertaining to sport and related to this study, is to educate the various kinds of sporting people in the realm of sport about irregularities as described in Chapter 3, the importance of the coach-athlete relationship as described in Chapter 2, risk strategies and policies as described in Chapter 4, etc. To identify, analyse and treat various risks in sport is to promote the awareness of these irregularities with the sporting people and together pursuing fairness, safeguarding and uniformity.³² The sporting people referred to are from the top level down to the bottom. Everyone, the CEO's, government officials, lawmakers, coaches and athletes should know and understand how to contribute to make sport better for all.³³ Student-athletes, coaches and athletics administrators must be the primary audiences receiving athletics specific educational programming.³⁴ Secondary people such as, parents and guardians also need to be educated, so they can understand how to be helpful and supportive to their student-athletes; and not to frighten them about the negative elements that occur in sport.³⁵

³¹ Act 110 of 1998, s 7(1)(a).

³² Wilson confirms this statement and describes what educational programming is and through educational programming, athletics deliver the content inherent in prevention, response and recovery, Wilson par A p 27.

³³ This is also confirmed by Wilson about the awareness among student-athletes, coaches and administrative staff, and through its educational programming athletics demonstrate its commitment for safeguarding to everyone, Wilson par B p 27.

³⁴ Wilson par D p 28.

³⁵ *Ibid* 29. This is also confirmed by Doubell about the position of the parents in sport and their role regarding sport coaching, Doubell 119.

Educational programming consists of various methods such as: presentations, training programs, workshops, seminars, books, the internet, and other educational activities that inform, challenge and motivate students and staff to act responsibly.³⁶ In the UK the relation between sports coaches and child athletes are expressly provided for in a Home Office booklet³⁷ and states that the Government believes all organizations involved with caring for young people or vulnerable adults should have codes of conduct to protect against sexual activity within relationships of trust.³⁸ Compliance with the different laws of a country and institutional policies is a requirement and the foundation of responsible practice³⁹ and to ensure collaboration between the various stakeholders and sport. Different sets of laws and policies for a specific sport and each organisation, government and stakeholders involved with that sport, lead to complexity and confusion. An example of collaboration is found in SA where the minister of sport consults with SASCOG concerning high performance sport and from time to time determines the general policy to be pursued with regard to sport and recreation.⁴⁰

Wilson has added that the best approach to the prevention of sexual violence in athletics is through strategically developed, comprehensive educational programming that targets student-athletes, coaches and other athletics staff.⁴¹ Designing and implementing an effective educational plan is critical to creating an environment where sexual assaults or other violent behaviors are not tolerated and is helpful to focus on important elements.⁴² This approach could be employed to other areas of sport where irregularities occur. Involving athletes, coaches, athletic staff and parents all together in decision making and finding solutions, contribute to cohesion, understanding and pursuing uniformity, fairness and equality in sport.

³⁶ *Ibid* par A p 27. Effective educational programming requires a long-term action plan, Wilson par C p 28.

³⁷ *Caring for the Young People and the Vulnerable? Guidance for Preventing Abuse of Trust* – published in 1999.

³⁸ Lewis and Taylor 528.

³⁹ Wilson par A p 13.

⁴⁰ Act 110 of 1998, s 4(1). The policy may refer to many aspects of sport and recreation, see Act 110 of 1998, s 4(2).

⁴¹ Wilson par C1 p 22.

⁴² *Ibid*.

5.5 Conclusion

A lot of rules, regulations, policies and laws have been implemented in the realm of sport around the world, but the question everybody is asking, does this prevent the incongruence in our sport. For the implementation of new polices, laws, etc., means a lot of research has to be done and that is time consuming, preventing rapid solutions where needed and more time for perpetrators to bring our sport in imbalance. Other factors that are contributing to the intricacy of this problem are cost implications, appointment of qualified and competent people who are willing to make a difference in sport, some sport clubs and companies refuse to adopt new policies, or to make changes thereto and sometimes people are just unwilling to offer any help, or participate in any kind of research. Some people just refuse to accept the fact that there are serious problems prevailing at the sport they are involved with, or they are aware of problems, but do not want to get involved.

If international sports federations and sports bodies could work together on future plans by implementing similar policies and safety measures to consolidate the same goals, would be a step in the right direction. Different people, nations and cultures participate in various sports around the world, where the same rules and playfield of the particular sport apply for everyone. They share almost similar goals, even compete in the same teams and become friends through the enjoyment of sport. International sports federations already serve as a non-governmental governing body for a given sport and administer each sport at a world level. This leads to the question, why not the same policy and safeguarding measures for each given sport and implementing it in each country where the specific sport will be administered by the international sport federation in collaboration with the local government and sport's governing body of each country? The future is for everyone to start working together, sharing knowledge, education, etc. pursuing safety for all athletes and other sports people, improving the different kinds of relationships between sports people, understanding sport and the enjoyment of sport. The *National Sport and Recreation Act* in SA supports the idea of collaboration, seeking assistance of

international organisations in sport and recreation to enhance the programmes and to exchange experiences and ideas.⁴³

A proposal of working together is found in the UK regarding the prevention of sexual abuse, where Gardiner stated that there needs to be greater information sharing between governing bodies, assisting each other with free information to combat this dilemma.⁴⁴ He further mentioned the need for coordination strategies within sport and society as a whole.⁴⁵ Gardiner is referring to the Amateur Swimming Association in the UK and their pursuit of confronting sexual abuse and especially child abuse in sport.

Collaboration between different sport organisations, governments, stakeholders, etc. unite everyone that have a vested interest in sport and working together to pursuit the same goals and to maximize the use of resources.⁴⁶ Through the exchange of ideas, strategies, and plans everyone learns from one another's successes and failures,⁴⁷ thus pursuing uniformity, fairness and equality. Perhaps there are too many laws and policies in sport, or too many governing bodies, stakeholders and authoritative figures. More research, collaboration and understanding are needed to find universal laws and policies that are accepted by everyone.

⁴³ *Act 110 of 1998*, s 9(2)(f).

⁴⁴ *Op cit* fn 14, Ch 1.1.3, Gardiner 539.

⁴⁵ *Ibid.*

⁴⁶ Wilson par B p 21. *Act 110 of 1998*, s 2(4) states that the Sports Confederation must co-ordinate all activities relating to high performance sport including team preparations must consult with all the relevant sport bodies in that regard. This is also confirmed in *Act 110 of 1998*, s 9(2)(b).

⁴⁷ *Ibid.*

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LIST OF ABBREVIATIONS

AIS	Australian Institute of Sport
ASC	Australian Sports Commission
BAILII	British and Irish Legal Information Institute
CAPTA	Child Abuse Prevention and Treatment Act
CAS	Court of Arbitration of Sport
CCPAS	Churches' Child Protection Advisory Service
Ch	Chapter
CPSU	Child Protection in Sport Unit
CRC	Convention on the Rights of the Child
dsj	Deutsche Sportjugend (German Sports Youth)
ECD	Early Childhood Development
ECECR	European Convention on the Exercise of Children's Rights
ECHR	European Convention on Human Rights
FA	Football Association (English) [England]
FBI	Federal Bureau of Investigation
FIFA	Fédération Internationale de Football Association
FISU	Fédération internationale du sport universitaire (International University Sports Federation)
HRA	Human Rights Act
HRM	Human Resource Management
IAAF	International Association of Athletics Federations
IOC	International Olympic Committee
IRC	Innocenti Research Centre (UNICEF)
ISF	International Sports Federations
NCAA	National Collegiate Athletic Association
NGB	National Governing Body
NGO	non-governmental organization
NIF	Norwegian Olympic and Paralympic Committee and the Confederation of Sports

NSPCC	National Society for the Prevention of Cruelty to Children (United Kingdom)
OSM	Observer Sport Monthly
PE	Physical Education
RFL	Rugby Football League
S.A./SA	South Africa
SACE	South African Council for Educators
SASCOC	South African Sports Confederation and Olympic Committee
UEFA	Union of European Football Association
UK	United Kingdom
UN	United Nations
UNC	University of North Carolina at Chapel Hill
UNCRC	United Nations Convention on the Rights of the Child
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Emergency Fund
USA/U.S.	United States of America
WWE	World Wrestling Entertainment