
BY

OWEN GWANZURA
(200705895)

A MINI-DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF PUBLIC ADMINISTRATION

IN THE FACULTY OF MANAGEMENT AND COMMERCE
AT THE UNIVERSITY OF FORT HARE

SUPERVISOR: PROF. E.O.C. IJEOMA

DECEMBER 2012
DECLARATION

I, Owen Gwanzura hereby declare that this mini-dissertation entitled “AN EXPLORATION OF ETHICAL CONDUCT IN THE SOUTH AFRICAN PUBLIC SECTOR: A CASE OF THE EASTERN CAPE DEPARTMENT OF EDUCATION (2009-2010)” submitted at the University of Fort Hare for the degree of Master of Public Administration is the author's original work and has never been submitted by the author or anyone else at any university for a degree. All the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

Signed........................................................................ Date

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DEDICATION

This piece of work is dedicated to my late father Mr. Douglas Gwanzura, my mother Mrs. Marry Chipomho Gwanzura and the rest of my family for their unwavering support and concern for my studies.
ACKNOWLEDGEMENTS

I would like to express my sincere gratitude to, above all, God the Father, God the Son and God the Holy Spirit, for sufficient grace, spiritual guidance and wisdom throughout my life. I also feel thankful to the following people for their advice, guidance, support and inspiration throughout this research project.

My supervisor Professor. E.O.C. Ijeoma for his guidance and inspiration. Had it not been for his contribution and encouragement I could not have finished this research project.

My family members who always stand by me through the thick-and-thin episodes of life, for motivating me to complete this research project in time although it was appearing to be a ‘hard nut to crack’ in the beginning.

Last but not least, I feel indebted to my fellow students and colleagues for their periodic contributions towards this research project. You are such a motivational force in my life- keep the fire burning.
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<td>Auditor- General</td>
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<td>BAS</td>
<td>Basic Accounting System</td>
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<tr>
<td>BBBEE</td>
<td>Broad-Based Black Economic Empowerment</td>
</tr>
<tr>
<td>CFO</td>
<td>Chief Financial Officer</td>
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<tr>
<td>DPSA</td>
<td>Department of Public Service and Administration</td>
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<td>ECDoe</td>
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<tr>
<td>GAAP</td>
<td>Generally Accepted Accounting Principles</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>HRIS</td>
<td>Human Resources Information System</td>
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<td>IT</td>
<td>Information Technology</td>
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<td>LOGIS</td>
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<td>SGB</td>
<td>School Governing Body</td>
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<tr>
<td>SHERQ</td>
<td>Safety, Health, Environment, Risk and Quality Management</td>
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<tr>
<td>SMART</td>
<td>Specific, Measurable, Achievable, Realistic, Time Bound</td>
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ABSTRACT

The Eastern Cape Department of Education has become like a problem child in the Republic of South Africa. It is a cause for concern to both the provincial and national government. This is a department where service delivery is problematic. Schools are not built or renovated and children are taught in dilapidated structures or sometimes under trees. Hardly a week passes without the department making the headlines in the media for the wrong reasons. It is widely accepted that the department is dysfunctional and education is in a crisis. The department has emerged as the number one culprit of engaging in corrupt activities in the province. Public officials in the department have been identified as being at the helm of these corrupt activities.

In the 2009/10 financial year, the Auditor General issued a disclaimer to the department and highlighted a lack of direction, accountability and a total breakdown of internal control systems and supply chain management within the department. Numerous fraud risk indicators were identified during the audit and underlined by findings that are indicative of fraud and corruption within the department. This unfortunate state of affairs is contrary to the requirements of section 195(1) of the Constitution of the Republic of South Africa which provides for the democratic values and principles governing public administration including inter alia, that:

- A high standard of professional ethics must be promoted and maintained.
- Efficient, economic and effective use of resources must be promoted.
- Public administration must be accountable.
This raises several questions about the ethical fitness of public officials in the department as the custodians of the public resources and trust. Though several reasons abound for this unfavourable state of affairs in the department, the researcher has singled out unethical conduct by public officials in the department and its impact on service delivery. The approach followed in this research was to analyse the 2009/10 Department of Education Annual Report and the 2009/10 Auditor General’s Report to the Eastern Cape Department of Education. The analysis confirmed the existence and occurrence of multiple cases of unethical conduct in the department. At the end scientific recommendations are proposed to alleviate this ill.
KEY WORDS

Accountability

Auditor-General

Code of Conduct

Corruption

Eastern Cape Department of Education

Ethical Conduct

Ethics

Fraud

Leadership

Unethical Conduct
CHAPTER 1
INTRODUCTION AND SETTING OF THE STUDY

1.1 INTRODUCTION

The Republic of South Africa is constituted as a unitary state with three spheres of government, namely national, provincial and local. The state is divided into nine provinces, each with its own diverse socio-economic culture, legislature, premier and executive councils. There are some 49.9 million people in South Africa, with 18.6 million being children under the age of 18 years. Among young people aged 18 to 24 years, 41 percent are not working and not in school (South Africa’s Children, 2011).

The Eastern Cape is one of the most poorest and rural province of South Africa with a population of approximately 7 million residents. The province integrates three administrations that is the Cape Provincial administration, which includes some parts of the Western Cape, the Ciskei and Transkei Bantustans. These factors have a bearing on education administration and resource allocation to the Department of Education (Basopu, 2010; Ndongeni, 2010; Safa, 2011).

The Eastern Cape Province is divided into 23 districts with approximately 6000 schools. The Eastern Cape Department of Education (hereafter referred to as the Department of Education) is demarcated into districts and cluster boundaries such as:

- Cluster A- is comprised of Libode, Lusikisiki, Maluti, Mbizana, Mt. Frere, Mt. Fletcher and Qumbu;
• Cluster B- is comprised of Butterworth, Cofimvaba, Idutywa, Lady Frere, Mthatha, Ngcobo, Queenstown, Sterkspruit; and

• Cluster C- is comprised of Cradock, East London, Fort Beaufort, Graaf-Reinet, Grahamstown, King Williams Town, Uitenhage and Port Elizabeth. (Department of Education, cited in Ndogeni, 2010).

There are four universities in the province viz., Fort Hare, Rhodes, Nelson Mandela and Walter Sisulu. The Department of Education has eight programmes namely, Administration, Public Ordinary School Education, Independent School Subsidies, Public Special School Education, Further Education and Training, Adult Basic Education and Training, Early Childhood Development and, Auxiliary and Associated Services (Eastern Cape Department of Education, 2009/10).

Safa (2011) asserts that the Eastern Cape Department of Education is but one of the departments where service delivery is problematic. Schools are not built or renovated and children are taught in dilapidated structures or sometimes under trees. In the same vein Ntathu (cited in Ndongeni, 2010) writes that the Department of Education has been the subject of negative publicity over its spending patterns, which have resulted in unspent millions of rands being returned to the National Treasury. Many schools complain of teacher shortage, especially for such critical subjects as Mathematics, Science and Technology. Some have been experiencing shortage of textbooks and learner-teacher support material. Others complain of lack of proper infrastructure, which is necessary for learning and absence of electricity in their schools.
This situation is worsened by the fact that the Department of Education has emerged as the number one culprit of engaging in corrupt activities in the province. Public officials in the department have been identified as being at the helm of these corrupt activities (Basopu, 2010). This raises several questions about the ethical fitness of public officials in the department as the custodians of public resources and trust. Though several reasons abound for this unfavourable state of affairs in the Department of Education, the researcher has singled out unethical conduct by public officials in the department and how this impact on service delivery initiatives of the department. It is imperative that the causes for the lack of service delivery are scrutinized and solutions be found.

1.2 CONTEXTUALISING ETHICS IN THE PUBLIC SECTOR

Edwards (2007) writes that ethics and accountability have become important issues for modern government, as in most of the countries there is a severe ethical decay. Kakumba and Fourie (2008) echo the same sentiments by stating that the notions of ethics and accountability have become more critical in public administration because of the continued public sector institutional failings that are attributed to public servants’ lack of moral values, which in turn, are associated with weak values and weak administrative systems. This unfortunate state of affairs is contrary to public expectations. According to Edwards (2007) citizens expect from public officials and public servants ethical responsible conduct.

Similarly, the OECD Public Management Policy Brief No. 7 (2000) asserts that Public Service is a public trust. Citizens expect public servants to serve the public interest with fairness and to manage public resources properly on a daily basis. Fair and
reliable public services inspire public trust and create a favourable environment for businesses, thus contributing to well-functioning markets and economic growth. Public service ethics are a prerequisite to, and underpin, public trust, and are a keystone of good governance (OECD Public Management Policy Brief No. 7, 2000). According to Pauw, Woods, Van der Linde, Fourie and Visser (2002) public sector ethics concerns the moral requirements of public servants in the services that they are paid for and expected to offer the citizens. It therefore concerns:

- The personal morality of officials
- Codes of conduct
- The theory of what is permissible and not permissible in public life.

1.3 PROBLEM STATEMENT

Hardly a week passes without the Eastern Cape Department of Education making the headlines in the media for the wrong reasons. It is accepted that the department is dysfunctional and education is in a crisis (Jonas, 2011). The embattled Department of Education last received a clean audit in 1995/96 financial year. It has of late been obtaining disclaimers and adverse opinion reports from the Auditor-General (AG) despite numerous attempts and interventions by the AG’s office and the Provincial Treasury to rectify the impasse (Basopu, 2010). In 2009/10 financial year, the AG issued a disclaimer, which means that he could not form an opinion on the financial statements submitted by the department. The AG noted a lack of direction, accountability and a total breakdown of internal control systems and supply chain management within the department. Furthermore, numerous fraud risk indicators were identified during the audit and underlined by findings that are indicative of fraud and corruption within the department. The department’s former
superintendent-general Modidima Mannya, said that, “An analysis by the AG in the 2009/10 financial year showed that 299 education officials traded with the department directly and were paid R63 million for services rendered. Recently we turned back seven staff members who wanted accreditation as booksellers. They wanted to trade with the department directly. That’s how serious this problem is”, said Mannya (cited in George, 2011). The above highlighted deficiencies in internal control mechanisms open gaps for unethical conduct by public officials in the department. These include but are not limited to fraud, corruption, irregular, fruitless and wasteful expenditure which have become rhetoric in the AG’s reports for the provincial department in recent years. A thorough analysis of the problems bedevilling the department as indicated in various reports by the AG reveals that most of these problems have their roots in unethical conduct by public officials in the department. Given that the review of literature on ethics in the South African public sector has focused on other government departments and that no known studies, if any have been conducted in the Department of Education, the present study therefore, seeks to examine the ethical fitness of public officials in the department.

1.4 RESEARCH QUESTIONS

The present study is guided by the following research questions:

- What are the challenges confronted by the Department of Education in ensuring the ethical fitness of its personnel?

- What are the causes of unethical conduct by public officials in the department?
• To what extent is the Department of Education making use of its ethics infrastructure to alleviate unethical conduct by officials in the department?

1.5 RESEARCH OBJECTIVES

The primary objectives of this study are:

• To explore and examine the challenges faced by the Department of Education in ensuring the ethical fitness of its personnel.

• To examine the causes of unethical conduct by public officials in the department.

• To examine the functionality of the ethics infrastructure employed by the department.

• To come up with strategies and recommendations which can help in improving on ethical conduct of public officials and therefore enhance service delivery in the Department of Education.

1.6 SIGNIFICANCE OF THE STUDY

The Eastern Cape Department of Education last received a clean audit in 1995/96 financial year and common themes which have been emerging in recent AG’s reports have been fraud, corruption, circumvention of funds, irregular, fruitless and wasteful expenditure. The present study seeks to provide a panacea to these ills by emphasising on ethical conduct of public official in the department. Ethical conduct is a prerequisite for good governance and unethical behaviour by public officials results in the loss of public trust and confidence in the management of public institutions. It is also envisaged that in the final analysis, unethical conduct will translate into poor
This study is important in its attempt to investigate the causes of unethical conduct in the Department of Education. It is hoped that the findings of the research will assist the National Department of Education, the nine Provincial Education Departments, the District Education Departments, schools and parents in the development of policies and strategies to ensure the ethical fitness of public officials in the Department of Education at all levels. Such a policy could be used as a strategic framework designed to serve as a guide in all departments, thereby leading to the improvement of service delivery. The practical recommendations that will be made at the end this study will assist managers and supervisors in the Department of Education to effectively deal with the challenges they face in ensuring the ethical fitness of their personnel. It is also envisaged that the study will provide insight to other researchers interested in ethics in the public sector for effective service delivery to explore further the findings emanating from this study.

1.7 CLARIFICATION OF KEY CONCEPTS AND TERMS

1.7.1 Public Administration

According to UNDP (2003) public administration has two closely related meanings:
(a) The aggregate machinery (policies, rules, procedures, systems, organizational structures, personnel and so forth) funded by the State budget and in charge of the management and direction of the affairs of the executive government, and its interaction with other stakeholders in the State, society and external environment;
(b) The management and implementation of the whole set of government activities dealing with the implementation of laws, regulations and decisions of the Government and the management related to the provision of public services.

1.7.2 Ethics

The word ‘ethics’ is derived from the Greek word ‘ethos’ which means “custom”. It shares an equivalent meaning with yet another word “mores”, which means “customs” or “habits”. Sometimes the two words are used interchangeably to mean “customs, habits and acceptable ways of behaviour of an individual or a community” (Uduigwomen 2006). Uduigwomen (2006) identified the major concern of ethics to be “the regulation of the behaviour and conduct of man as it affects the overall wellbeing of the state or society in which he lives”. Similarly, Andrews (1988) views ethics as standards that guide the behaviour and actions of public officials in public institutions and which may be referred to as moral laws.

Hanekom (1984) echoes the same sentiments with the above authors by stating that ethics deals with the character and conduct and morals of human beings. It deals with good or bad, right or wrong behaviour; it evaluates conduct against some absolute criteria and puts negative or positive values on it. Fox and Meyer (1995) define ethics as the process by which we clarify right and wrong and act on what we take to be right, that is a set or system of moral principles that is generally applied. Chapman (1993) argues that ethics is concerned not only with distinguishing right from wrong and good from bad, but also with the commitment to do what is right or acceptable.
1.7.3 Public Administration Ethics

Public administration ethics refers to the determination of what is right and just in the decisions and actions that affect members of the public. Thus the concern with ethics in the public service focuses on what is considered the right and just behaviour of public officials (Disoloane, 2012).

1.7.4 Unethical Behaviour

This refers to any deliberate or negligent conduct constituting a deviation from or breach of the guidelines designed to inform an expected pattern of behaviour in a given situation. Unethical behaviour is an indication of a decline in morality and negative work ethic. It includes theft and misuse of public property and accepting outside employment during one’s tenure in government without approval (Disoloane, 2012).

1.7.5 Service Delivery

This is the provision of public activities, benefits or satisfactions. Services relate both to the provision of tangible public goods and to intangible service themselves (Fox & Meyer, 1995).

1.7.6 Fruitless and Wasteful Expenditure

Means expenditure which was made in vain and would have been avoided had reasonable care been exercised (PFMA, 1999).
1.7.7 Irregular Expenditure
Refers to expenditure, other than unauthorised expenditure, incurred in contravention of or not in accordance with a legislative requirement including PFMA, the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of that Act (PFMA, 1999).

1.7.8 Unauthorised Expenditure
Means overspending of a vote or a main division within a vote; expenditure not in accordance with the purpose of a vote or, in the case of a main division, not in accordance with the purpose of the main division (PFMA, 1999).

1.7.9 Fraud
Hansen, Phute, Dembe and Chikanza (2005) define fraud as the use of one’s occupation for personal enrichment through deliberate misuse or misapplication of the employing organizations’ resources or assets. According to Andrew (2011) fraud is a purposeful deception, misrepresentation, or concealment of facts intended to cause injury or loss to another party, typically for the sake of one’s own direct or indirect gain.

1.7.10 Corruption
Basopu (2010) defines corruption as any intentional and unlawful conduct or behaviour by any person entrusted with responsibilities in public office, which violates the duties of such a public official, and which is aimed at obtaining undue gratification of any kind for self or for others. It manifests itself in various forms including bribery, embezzlement, fraud, extortion, abuse of power, nepotism, conflict
of interest, cronyism, influence peddling, appropriation of public funds, assets and property for private use and the abuse of privileged information and favouritism. In the South African context, corruption occurs when one party gives another party anything of value with the purpose of influencing them to abuse their power (Prevention and Combating of Corrupt Activities Act No. 12 of 2004).

1.7.11 Leadership

Hayward (2005) defines leadership as an interpersonal process through which a leader directs the activities of individuals or groups towards the purposeful pursuance of given objectives within a particular situation by means of communication.

1.8 DELIMITATION OF THE STUDY

1.8.1 Type of the Organisation

The Eastern Cape Department of Education is classified as a Provincial Government Department.

1.8.2 Geographical Location

The organisation is located in King Williams town in the Eastern Cape Province of South Africa.

1.8.3 Concept of Evaluation

The central concept of evaluation in this study will be unethical conduct by public officials in the Department of Education with a primary focus on the causes and consequences of unethical conduct on service delivery by the department.
1.9 LIMITATIONS OF THE STUDY

Like all studies of a similar nature, this study will have some obvious limitations which signal caution to the generalisation of the findings. The use of official documents as the only source of data for the study raises some questions over the research findings. Questionnaires and interviews could have been used as other data collection techniques but because of the sensitive and confidential nature of the information sought by the study, the researcher opted for a documentary study.

1.10 PRELIMINARY FRAMEWORK FOR THE RESEARCH

Chapter One introduces and outlines the setting of the study. The chapter also provides the problem statement, research questions, research objectives and significance of the study. The chapter further clarifies the key concepts and terms that will be used in the study, delimitation and limitations of the study.

Chapter Two reveals the relevant and related literature underpinning the study.

Chapter Three gives an account of the research design and methodology used in the study. The chapter also highlights the ethical considerations applicable to the study and conclude by discussing the data analysis techniques that were used in the empirical study.

Chapter Four dealt with the analysis of data collected, presentation and discussion of the results.

Chapter Five drew conclusions and made scientific recommendations based on the research findings.
1.11 CONCLUDING REMARKS

This chapter has briefly outlined the introduction, background of the study, statement of the problem, research questions and the research objectives. It has also presented the significance for undertaking the study and clarified the key concepts and terms used. Finally, the chapter highlighted the delimitation and limitations of the study and concluded by outlining the preliminary framework for the research. The next chapter will review the literature on ethics in the public sector.
CHAPTER 2
REVIEW OF RELEVANT LITERATURE

2.1 INTRODUCTION
Aitchson (1998) defines literature review as a systematic search of published work to find out what is already known about the intended research topic and its purpose is to establish the need for research. It also serves the purpose of familiarizing the researcher with the latest developments in the area of study and thereby attempts to close the existing gaps. Therefore, the purpose of this chapter is to review the existing literature on ethics in the public sector. To achieve this various sources were explored including books, journal articles, official reports and Acts.

2.2 THEORETICAL FRAMEWORK
Theoretical approaches to ethics holds that ethics is not primarily concerned with getting people to do what they believe to be right but rather with helping them decide what is right (Jones, cited in Zikhali, 2005). There is a large family of ethical theories. However, this research is guided by the theory of consequentialism and the rule-oriented approach to ethics.

2.2.1 Theory of Consequentialism
Consequentialism is the view that whether an act is morally right or wrong is determined, directly or indirectly by the act’s consequences and not by its intrinsic features, or the doing of the act. Actions and precedents are judged morally right or wrong in proportion to their propensity to produce the most happiness or pleasure, for the greatest number (Iqbal ud-Din, 2012). In the same vein Hull (1979) asserts
that an action is morally right either if doing it brings about the best attainable
consequences in the situation, or if the action is of a kind which would have the best
attainable consequences if everyone did it in that sort of situation. It is the goodness
or badness of the consequences of actions alone that makes them right or wrong,
rather than anything intrinsically good or bad about the actions themselves (Hull,
1979).

Hull (1979) further posits that because these theories usually involve the notion of
utility in producing good consequences, they are often called utilitarian theories.
According to the utilitarians, the greatest good means the greatest happiness.
Applied to the field of public administration, the moral duty of public officials in the
Department of Education is to maximise human happiness and to minimise
unhappiness in the execution of their duties. In addition, the ultimate goal of any
government should be to ensure that the common good or general will for its citizens
prevail. Utilitarians back up this claim by pointing out that everybody wants to be
happy, it is the one universal thing that everybody desires and agrees as good (Iqbal
ud-Din, 2012).

According to Hull (1979) utilitarian theories have three parts: a theory of value, a
principle of utility, and a decision procedure. There are several theories of value held
by individuals who have been called Utilitarians.

a) Hedonism: equates good with pleasure, bad or evil with pain;

b) Eudemonism: equates good with happiness, bad or evil with unhappiness;
c) Agathism: views good as an indefinable, intrinsic feature of various situations and states, evil as either an indefinable, intrinsic feature of other situations and states, or simply as the absence of good;

d) Agapeism: equates good with live, bad with hate; and

e) Values pluralism: holds that there are many good, including pleasure and happiness, but also knowledge, friendship, love, and so forth. These may or may not be viewed as differing in importance or priority (Hull, 1979).

Hull (1979) writes that according to principle of (universal) utility: an act is right if it brings about the greatest increase in the world of consequential good of all the alternative actions available, or the least increase in evil consequences of all the alternatives. This utility value is, in theory, a function of all the consequences of the act, direct and indirect, not merely those that one can foresee. But in practice one is enjoined to choose that act that has the best foreseeable balance of good over evil as one’s *prima facie* obligation (Hull, 1979). If one’s calculations show accurately that there are two possible courses of action either one of which will have greater utility than any third alternative, but which are equal in such value to each other, they are both permissible and the choice between them is not a moral matter. In these calculations, Hull (1979) asserts that one weighs the good and bad of all persons equally, giving no preference to any individual or group.

The third part of utilitarian theories (decision procedure) has to do with how the judgment is made that a particular act is of relative maximum utility or relative minimum disutility (Hull, 1979). The principle of utility can be applied to either particular actions which is called act-utilitarianism, and to general rules, which is
called rule-utilitarianism (Iqbal ud-Din, 2012). In the act-util the utility is applied to each alternate act in a situation of choice. The right act is then defined as the one which brings about the best results (or the least amount of bad results) (Iqbal ud-Din, 2012). In the case of rule-util the principle of utility is used to determine the validity of rules of conduct. A rule like promise keeping is established by looking at the consequences of a world in which people broke promises at will, and a world in which promises were binding. Right and wrong are then defined as following or breaking those rules (Iqbal ud-Din, 2012).

2.2.2 The Rule-Oriented Approach (Deontological Ethics)

Deontological theories hold that an action is morally right if it is required by duty, or permitted by duty and not in conflict with any other action required by another duty (Hull, 1979). According to this approach doing good means obeying the rules or doing our prescribed duty, irrespective of consequences or motives. The task of theoretical ethics would then be the discovery or formulation of the principles we should obey (Pauw et al., 2002). Deontological philosophy holds that rules are the basis of morality. Kant rejected the consequentialist view of morality, because to him it relies too heavily on subjective considerations. He presented the deontological moral system based on the demands of the categorical imperatives as an alternative to consequentialism, based on hypothetical imperatives (Iqbal ud-Din, 2012).

2.2.2.1 Immanuel Kant’s Moral Philosophy (1724-1804)

Kant believed that there is a single moral obligation which he called the “categorical imperative”, and is derived from the concept of duty. (*Categorical Imperative*: One that is binding on us absolutely, simply in virtue of the fact that we are rational
creatures). It is from the categorical imperative that all other moral obligations are generated and by which all moral obligations can be tested (Iqbal ud-Din, 2012). He believed that the moral law is a principle of reason itself and is not based on contingent facts about the world, such as what would make us happy, but to act upon the moral law which has no other motive than “worthiness of being happy”. He believed that moral obligation applies to all and only rational agents. A categorical imperative is an unconditional obligation; that is it has the force of an obligation regardless of our will or desire (Iqbal ud-Din, 2012).

Kant argued that the source of the good lies not in anything outside the human subject, either in nature or given by God, but rather only the good will itself. A good will is one that acts from duty in accordance with the universal moral law that the autonomous human being freely gives itself (Iqbal ud-Din, 2012). This law obliges one to treat humanity- understood as rational agency and represented through oneself as well as others- as an end in itself rather than as means. Morality is rooted in human freedom and acting autonomously is to act according to rational moral principles (Iqbal ud-Din, 2012). Kant gave three conditions essential to his concept of morality. These are also known as the formulation of morality. They are:

**The first formulation:** The first formulation declares “the maxim be chosen as though they should hold as universal laws of nature”. This implies that one must perform his actions in such a way as that could be applied universally. This formulation has its supreme law “always act according to that maxim whose universality as a law you can act the same time will” and is the only condition under
which a will can never come into conflict with itself”. It is also called universality test (Iqbal ud-Din, 2012).

**The second formulation:** Every human being is an end in itself. The rational being as by its nature as an end and thus as an end in itself must serve in every maxim as the condition restricting all merely relative and arbitrary ends (Iqbal ud-Din, 2012).

**The third formulation:** It is a synthesis of the first two and the basis for the complete determination of all maxims. It says that rational being is a realm (kingdom), the legislative force, and also the subject in himself. Thus all maxims which stem from autonomous legislation ought to harmonize with a possible realm of ends as with a realm of nature. “So act as if your maxims should serve at the same time as the universal law (of all rational beings), implies that we should so act that we may think of ourselves as “a member in the universal realm of ends” (Iqbal ud-Din, 2012).

The major points of Kant’s theory according to Hull (1979) are:

i. Nothing is intrinsically good but a good will.

ii. A good will is one that habitually wills rightly.

iii. The rightness or wrongness of a volition depends wholly on its nature or motive, and not on its actual consequences or its intended consequences (except as the expectation of these is part of the motive).

iv. There are two kinds of voluntary actions- those based on impulse and those on principle. The former are done because of situation dependent emotions or feelings. Kant held that an action cannot be morally right unless it is done on
some general rule or principle which the agent accepts as binding on everyone in a similar situation.

v. But the foregoing isn't a sufficient condition of rightness. There are two classes of rules of conduct: hypothetical imperatives and categorical imperatives. The former are prudential principles of conduct accepted simply as rules for gaining desired ends. A categorical imperative would be one accepted on its own merits and not as a means for gaining some desired end. Kant held that an action is right if and only if it is done on a principle which is a categorical imperative, not contingent on one holding something as an end.

vi. There are three formulations of what Kant calls “the Moral Law or the Supreme Principle of Morality” (but what he should have called “the Supreme Criterion for Categorical Imperatives” - for it is a second-order principle that states necessary and sufficient conditions that any first-order principle of conduct must have if it is to be a categorical imperative and if action determined by it is to be morally right):

a. It is necessary and sufficient that the maxim shall be such that anyone who accepts it as his or her principle of conduct can consistently will that everyone else should also make it their principle of conduct and act on it.

b. Treat every rational being, including yourself, always as an end and never as a means only.

c. A principle of conduct is morally binding on me if and only if I can regard it as a law which I impose on myself (Kant meant to eliminate cases where the principle is accepted merely on tradition or merely out
of fear of catching Hell if one doesn’t act in accordance with it) (Hull, 1979).

Applied to the study and public administration in general, public officials in the Eastern Cape Department of Education should abide by the acceptable rules of conduct established by the government. These include *inter alia*, the Constitution of the Republic of South Africa, 1996, Public Financial Management Act No. 56 of 2003, Code of Conduct for the South African Public Service and the *Batho Pele* principles. The officials should know that doing good and acting ethically (morally) means obeying the set rules or doing their prescribed duty. Anything outside of this is deemed unethical. The public officials should also act according to rational moral principles with good will and motives. When executing their duties, public officials in the Department of Education should treat the citizens they serve as an end and not as a means to an end. They should strive to ensure human happiness by providing better services and acting ethically all the times.

**2.3 LEGISLATIVE FRAMEWORK FOR ETHICS**

**2.3.1 The Constitutional Foundation for Ethics in South Africa**

Disoloane (2012) put forward that ethics in public service is crucial to the success of democratic institutions such as those in South Africa. The Constitution of the Republic of South Africa, 1996, makes various calls for ethical behaviour by public officials. Section 195 of the Constitution states that public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
a) A high standard of professional ethics must be promoted;
b) Efficient, economic and effective use of resources must be promoted;
c) Public administration must be development-oriented;
d) Services must be provided impartially, fairly, equitably and without bias;
e) People’s needs must be responded to, and the public must be encouraged to participate in policymaking;
f) Public administration must be accountable;
g) Transparency must be fostered by providing the public with timely, accessible and accurate information;
h) Sound human resource management and career development practices designed to maximise human potential must be cultivated; and
i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past in order to achieve broad representation.

Emanating from the Constitution are other various pieces of legislation and regulations aimed at promoting ethical conduct by public officials in the execution of their duties. In South Africa, the ethical framework includes the following laws and regulations (Lues & Bester, 2007; Dorasamy, 2010):

- Public Service Act (No. 103 of 1994);
- Prevention and Combating of Corrupt Activities Act, 2004 (No. 12 of 2004);
- Promotion of Access to Information Act, 2000 (No. 2 of 2000);
- Protected Disclosures Act, 2000 (No. 26 of 2000);
• Public Financial Management Act, 2003 (No. 56 of 2003);
• Promotion of Administrative Justice Act, 2000 (No. 3 of 2000);
• Public Protector Act, 1994 (No. 23 of 1994);
• Labour Relations Act, 1995 (No. 66 of 1995);
• Basic Conditions of Employment Act, 1997 (No. 75 of 1997);
• Employment Equity Act, 1998 (No. 55 of 1998);
• Executive Members’ Ethics Act, 1998 (No. 82 of 1998);
• Witness Protection Act, 1998 (No. 112 of 1998);
• Prevention of Organised Crime Act, 1998 (No. 121 of 1998);
• The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (No. 4 of 2000);
• Provincial Tax Regulations Act, 2001 (No. 53 of 2001);
• Public Audit Act, 2004 (No. 25 of 2004); and
• Intergovernmental Relations Framework Act, 2005 (No. 13 of 2005).

Other initiatives by government include (Lues & Bester, 2007; Dorasamy, 2010):

• The National Anti-Corruption Forum 2006;
• Directorate of Special Operations: Public Prosecutions;
• Moral Regeneration Movement;
• Anti Corruption Capacity Requirements;
• Public Service Code of Conduct;
• White Paper on the Transformation of the Public Service, 1995;
• Annual Report of the Public Service Commission, 1997;
• White Paper on Transforming Public Service Delivery, 1997;
• White Paper on Affirmative Action in the Public Service;
• Treasury Regulations;
• SA ethics in practice 2001 survey;
• Public Service Regulations;
• Country corruption assessment report: South Africa, 2003;
• Public Sector Anti-Corruption Strategy (PSACS);
• Senior Management Service: Public Service Handbook (SMS);
• National Anti-Corruption Hotline (NACH) for the public service;
• Directors-General signed a Public Service Pledge as a sign of commitment to a high standard of professional ethics; and
• Normative guidelines (principles) which can be divided into the following categories: guidelines from the body politic, guidelines emanating from social value systems, legal rules as guidelines and the Batho Pele principles (Du Toit, Knipe, Van Niekerk, Van der Waldt & Doyle, 2002).

The state institutions supporting constitutional democracy established by section 181(1) of the Constitution are also responsible for addressing manifestations of unethical conduct by public officials. These include inter alia, the Public Protector, South African Human Rights Commission, Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, Commission for Gender Equality, Auditor-General, Electoral Commission, Public Service Commission, Independent Complaints Directorate and National Prosecuting Authority. The following sections will discuss the normative guidelines, the Batho Pele principles and the Code of Conduct for public officials with a specific reference to the South African context.
2.4 NORMATIVE GUIDELINES

Du Toit et al. (2002) write that ethics in government institutions mean that public administration and management must comply with certain generally accepted principles. They further state that these principles have their origin in social value systems, and are not necessarily contained in official manuals. Cloete (cited in Du Toit & Van Der Waldt, 1999) explains the rules of conduct as principles of public administration which originate from three broad categories, namely, guidelines from the body politic, guidelines from community values, prescribed guidelines and the Batho Pele principles. The normative guidelines provide public servants with guidelines according to which they must conduct their work (Du Toit et al., 2002). From the above assertion, it is therefore clear that citizens can use the normative guidelines as yardsticks to evaluate the conduct of public officials in execution of their duties. The normative guidelines (principles) are discussed in detail below.

2.4.1 Guidelines from the Body Politic

Du Toit and Van Der Waldt (1999) mention the following as guidelines from the body politic:

- Political supremacy- Ministers are the political heads of public institutions and therefore have authority over the actions of officials.

- Public accountability- Includes the public responsibility of the legislative, judicial and executive authorities with regard to service delivery and conduct which is in the public interest. The Public Protector and the Auditor-General are two state institutions respectively instituted in terms of sections 182 and 188 of the Constitution to ensure accountability (Du Toit et al., 2002).
• Tenets of democracy- Which implies that those who govern must not abuse the power vested in them in their personal interest or in the interest of one population group only, and that deliberations and consultations with the community must take place (Du Toit & Van Der Waldt, 1999).

2.4.2 Guidelines from Community Values

Du Toit et al. (2002) argue that just as a society expects from its members to adhere to the value systems they accepted as good, it also expects government institutions to adhere to their value systems. They also propose that any action undertaken by a government institution must comply with what the society or community accepts as good and desirable. According to Du Toit and Van der Waldt (1999) the public expects public institutions to adhere to the following principles: reasonable and fair treatment, balanced decision-making, truth, justice, thoroughness, efficiency and respect for people’s religion. These principles are discussed below.

2.4.2.1 Reasonableness and Fairness

According to Du Toit and Van der Waldt (1999) reasonable and fair treatment means that public servants’ actions must be in accordance with the principles of reasonableness and fairness. For example, the consequences of an action must not have a negative effect on those at the receiving end of such an action (Du Toit et al., 2002). Cloete (cited in Du Toit et al., 2002) asserts that citizens expect reasonable and fair treatment regardless of sex, origins, language and religion.
2.4.2.2 Balanced Decisions

Given the huge costs of delivering government services, government institutions should make balanced decisions as ill-considered decisions can waste taxpayers’ money. Thus balanced decisions should be made only after all the relative factors have been considered. The public expect public officials to make balanced decisions before entering into a venture that may be costly and a waste of taxpayers’ money (Du Toit et al., 2002).

2.4.2.3 Truth

Heyns (cited in Du Toit et al., 2002), relates truth to loyalty and reliability, honesty and integrity, tolerance, level-headedness and objectivity. As governments work with public money, it is not strange that the public expects loyalty, trustworthiness and honesty from government institutions and public officials, especially toward the public. As far as the public is concerned, truthfulness implies transparent governance (Du Toit et al., 2002).

2.4.2.4 Justice

According to Du Toit and Van der Waldt (1999) the principle of justice requires that government institutions and officials should not obstruct service delivery to the public. The principle of justice is contravened when the public is prevented from obtaining those services they are rightfully entitled to (Du Toit et al., 2002).
2.4.2.5 Thoroughness

Cloete (cited in Du Toit et al., 2002) states that government institutions should perform their activities thoroughly. This implies that an activity must be carried out timeously and economically, and the result must be one of quality.

2.4.2.6 Efficiency

According to Du Toit et al. (2002) efficiency becomes important if we take into consideration that the resources available to deliver services are far less than what the public demands in terms of service delivery. Because of the continuous shortage of resources, the efficiency and economy of government institutions and public officials is crucial (Du Toit & Van der Waldt, 1999). Apart from this, the public also expects efficiency, effectiveness and economy from government institutions and public servants.

2.4.2.7 Religion

Du Toit et al. (2002) assert that in a country where freedom of religion is guaranteed in the Constitution, we can expect government institutions and public officials to respect the religion of the different religious groups. Cloete (cited in Du Toit et al., 2002) points out that religion is a basic principle as it is the basis of community value systems. In a country like South Africa with its diverse religious groupings, a lot is required from public servants, particularly when they deal with clients whose religions differ from their own (Du Toit et al., 2002).
2.4.3 Prescribed Guidelines

Cloete (cited in Du Toit et al., 2002) asserts that the importance of legal rules lies in the fact that they provide a code of conduct in terms of which public officials have to execute their functions. Legal rules give direction and can be used as a code of conduct for government officials in fulfilling their responsibilities (Du Toit & Van der Waldt, 1999). The following are some of the legal rules (prescribed guidelines) which public officials must heed when they have to make decisions and take actions.

- The *audi alteram partem* principle, which means that there is more than one side to a story. The other side of the story must also be heard (Du Toit et al., 2002).
- The *nemo debet esse judex in propria causa* principle, which means that no one should be made a judge in his own case, or the rule against bias (www.lawnotes.in).
- A *bona fide* act (to act in good faith) as against a *mala fide* act (to act in bad faith). In practical terms, this means every administrative action carried out by public officials must be performed in good faith (Du Toit et al., 2002).
- The powers of executive institutions and those exercised by public officials must be performed with due consideration of the *ultra vires* doctrine. The implication is that no public official must exceed his or her powers. ‘Anything officials do in carrying out their tasks must be done within the restrictions of the powers granted- in other words, they must be *intra vires* and not *ultra vires*’. Every public official must regard the legal rules as binding (Du Toit & Van der Waldt, 1999).
• Fundamental rights- Chapter 2 of the Constitution of the Republic of South Africa (1996) contains a list of fundamental rights, called the Bill of Rights, which are binding on all legislative and executive organs of state at all levels of government. Fundamental rights provide, among other things, equality, the right to life and respect for and protection of dignity (Du Toit & Van der Waldt, 1999).

• Code of ethics or conduct- Every specialist unit within the public sector has a set of guidelines governing conduct. Thus all public relations or communications officials, health services officials, state prosecutors and other officials have a code of conduct. These codes usually do not have any legal authority, but are simply guidelines that have been formulated over time. They reflect the genuine desire of public officials to serve their various communities with dignity and integrity (Du Toit & Van der Waldt, 1999). Chapter M of the Public Service Act promulgated on 10 June 1997 provides a Code of Conduct for the Public Service. Included in this Code are guidelines pertaining to the relationship between public officials and the legislature and executive; their relationship with the public and relationships among colleagues (Du Toit & Van der Waldt, 1999).

• Right to information held by the state- The right of access to information held by the state which is provided in terms of section 32 of the Constitution is also important with regard to external ethical conduct. Section 32 has significant implications for the activities of government institutions. This because in terms of this section every person has the right of access to all information held by the state or any of its organs at any level of government in so far as such
information is required for the exercising or protection of any of his/her rights (Du Toit & Van der Waldt, 1999).

- Just administrative action- Following on the normative principles of public administration, section 33 of the Constitution provides that every person has the right to:
  - administrative action that is lawful, reasonable and procedurally fair
  - be given written reasons if his/her rights have been adversely affected by administrative action, in other words complying with a set of ethical principles (Du Toit & Van der Waldt, 1999; Du Toit et al., 2002).

### 2.5 THE BATHO PELE PRINCIPLES

Du Toit et al. (2002) write that public officials are also obliged to execute their functions with due consideration of the Batho Pele principles. The White Paper on Transforming Public Service Delivery (1997) introduced the eight Batho Pele principles as a fresh approach to service delivery. This is an approach which puts pressure on systems, procedures, attitudes and behaviour within the Public Service and reorients them in the customer’s favour. It involves creating a framework for the delivery of public services which treats citizens more like customers and enables the citizens to hold public servants to account for the services they receive.

The approach is encapsulated in the name which has been adopted by this initiative- **Batho Pele** (a Sesotho adage meaning ‘People First’) (White Paper on Transforming Public Service Delivery, 1997). The service delivery principles of Batho Pele
according to the White Paper on Transforming Public Service Delivery (1997) are as follows:

2.5.1 Consultation
Citizens should be consulted about the level and quality of the public services they receive and, wherever possible, should be given a choice about the services that are offered.

2.5.2 Service Standards
Citizens should be told what level and quality of public services they will receive so that they are aware of what to expect. This implies that public servants must deliver the level and quality of services they have undertaken to provide. Failing to do so means that citizens have a right to complain and demand quality services (Du Toit et al., 2002).

2.5.3 Access
All citizens should have equal access to the services to which they are entitled and public officials must not withhold that right from them.

2.5.4 Courtesy
Citizens should be treated with courtesy and consideration. This implies that public officials must treat citizens with respect as customers of public services irrespective of their social status.
2.5.5 Information
Citizens should be given full, accurate information about the public services they are entitled to receive. An important implication of this principle is that, should the standard of service drop for whatever reason, citizens must be informed why this happened, and when the situation will be remedied (Du Toit et al., 2002).

2.5.6 Openness and Transparency
Citizens should be told how national and provincial departments are run, how much they cost, and who is in charge.

2.5.7 Redress
If the promised standard of service is not delivered, citizens should be offered an apology, a full explanation and a speedy and effective remedy; and when complaints are made, citizens should receive a sympathetic, positive response.

2.5.8 Value for Money
Public services should be provided economically and efficiently in order to give citizens the best possible value for money. This principle gives citizens the right to demand that the services they receive are real value for the money paid for them. This makes public servants responsible for providing efficient, effective and economic services- real value for money (Du Toit et al., 2002).
2.6 CODES OF CONDUCT AND CODES OF ETHICS IN PUBLIC ADMINISTRATION

Amundsen and Pinto de Andrade (2009) define a code of conduct as “principles, values, standards, or rules of behaviour that guide the decisions, procedures and systems of an organization in a way that (a) contributes to the welfare of its key stakeholders, and (b) respects the rights of all constituents affected by its operations”. Codes of conduct are the products of rules and regulations governing officials in an organisation which is why they tend to be statutorily defined through inclusion in Acts of Parliament or in regulations. A code of conduct normally consists of a set of provisions, setting out the right and wrong forms of conduct for public managers, and establishing, in some cases, specific punishments for those who misbehave (Cendon, cited in Kanyane, 2004).

On the other hand Hanekom (cited in Zikhali, 2005) describes a code of ethics as a set of rules set out by a higher authority for a specific group of employees to ensure that these people behave in an acceptable and justifiable manner. A code of ethics can be defined as being an instrument which not only identifies unacceptable conduct but also identifies and encourages conduct (Zikhali, 2005). The objective of a code of ethics is to show officials and the public in unambiguous terms what is regarded as acceptable (Barrie, cited in Zikhali, 2005). The need for a code of ethics can be regarded as two fold, viz. firstly, to combat corruption and secondly, to prevent corruption and can be used to combat the following activities which are generally regarded as unethical in public administration (De Barros, cited in Zikhali, 2005):
• bribery, favouring, nepotism, influencing, graft;
• conflict of interests;
• protection or covering up of incompetence;
• regulation of trade practices or the lowering of standards with an eye to personal gain; and
• the use or misuse of official and confidential information for private purposes.

Williams (cited in Zikhali, 2005) put forward that a code of ethics has to define what constitutes decent behaviour or integrity and the public service code of ethics must be "acceptable as sensible guide to good behaviour by the vast majority of officials. Williams further asserts that the code of ethics gives public officials the conscience that sometimes seems lacking and is a mechanism by which morality can be internalized and thereby enforced by the individual. Williams also cautions that it is vital that a code of ethics is imposed and that it should not just be seen as something produced on paper. It should be viewed by officials as a condition for employment in order to work effectively and to ensure that everyone follows the stipulated guidelines.

According to Hanekom (cited in Zikhali, 2005), four major objectives can be achieved through a code of ethics namely:

• the promotion and maintenance of responsible conduct by public officials;
• the promotion of public confidence in the integrity of public officials;
• the provision of guidelines for public officials regarding their relationship with fellow public officials, elected public office-bearers and members of the public; and
• providing public officials with guidelines on how to exercise their discretionary powers.

De Barros (cited in Zikhali, 2005) posits that a code of ethics can be closely associated with the role of morals and values and could lead to a better standard of ethical principles and values. Clapper (cited in Zikhali, 2005) is of the view that codes of ethics supplemented by personal morality and expertise are needed to ensure, maintain and promote a public service characterized by a high standard of professional ethics. Zikhali (2005) asserts that a code of ethics has to do with behaviour and more specifically behaviour, which relates to duty, self-control, equal treatment and the absence of favouritism. A code of ethics also has a role to play in enduring uniform conduct in accordance with community values as well as being a means of upholding existing community values and norms (Zikhali, 2005).

According to the National Democratic Institute (NDI) the major difference between codes of conduct and codes of ethics is that the content of codes of conduct is fairly general, while the content of codes of ethics is fairly specific (Disoloane, 2012). Given their aspirational and general nature, codes of conduct must be accompanied by detailed and specific "codes of ethics", codes that provide the details necessary to realise the goals set out by codes of conduct (Disoloane, 2012). The NDI underlines that, unlike codes of ethics that dictate expected behaviour in great detail, codes of conduct are basic documents written in easily understood language that set forth
broad goals and objectives that legislators seek to achieve. The content of codes of conduct is general and their nature aspirational, while the content of codes of ethics is specific and their nature prescriptive (Disoloane, 2012).

There are generally accepted characteristics of a successful code of ethics:

- It provides behavioural guidance;
- It is applicable to a variety of occupations within the same profession; and
- It has an effective mechanism to ensure compliance (Disoloane, 2012).

On the other hand, a code of conduct does not attempt to deal with possible circumstances in which various principles appear. Codes of conduct are more concrete and practical than ethics codes for they represent executive orders or legislatively defined and enforceable behavioural standards with sanction for violation (Disoloane, 2012). They contain a list of the kinds of behaviour required in a given set of circumstances and provide direction to those whose conduct they govern. Often called “ethics laws”, they contain minimalistic prohibitions to unquestionably subversive or criminal acts. They are designed to protect the government employee, the client and/or the public (Disoloane, 2012).

2.7 CODE OF CONDUCT FOR THE SOUTH AFRICAN PUBLIC SERVICE

In South Africa, codes of conduct are set out in Chapter 2 of the New Public Service Regulations, 5 January 2001. According to the Public Service Regulations of 2001, all public officials must subscribe and comply with the principles of the Code of Conduct for the public service. The Code should act as a guideline to public officials
as to what is expected of them from an ethical point of view, both in their individual conduct and in their relationship with others. It further provides guidelines to employees with regard to their relationship with the legislature, political and executive office-bearers, other employees and the public and to indicate the spirit in which employees should perform their duties, what should be done to avoid conflicts of interests and what is expected of them in terms of their personal conduct in public and private life (Public Service Regulations, 2001).

Heads of department, by virtue of their responsibility in terms of section 7(3)(b) of the Act for the efficient management and administration of their departments and the maintenance of discipline, are, *inter alia*, under a duty to ensure that the conduct of their employees conform to the basic values and principles governing public administration and the norms and standards prescribed by the Act. Heads of department should also ensure that their staff is acquainted with these measures, and that they accept and abide by them (Public Service Regulations, 2001).

The primary purpose of the Code is a positive one, viz. to promote exemplary conduct. Notwithstanding this, an employee shall be guilty of misconduct, and may be dealt with in accordance with the relevant collective agreement if she or he contravenes any provision of the Code of Conduct or fails to comply with any provision thereof (Public Service Regulations, 2001). A summary of the Code of Conduct is given below.

### 2.7.1 Relationship with the Legislature and the Executive

An employee-
• is faithful to the Republic and honours the Constitution and abides thereby in the execution of her or his daily tasks;

• puts the public interest first in the execution of her or his duties;

• loyally executes the policies of the Government of the day in the performance of her or his official duties as contained in all statutory and other prescripts;

• strives to be familiar with and abides by all statutory and other instructions applicable to her or his conduct and duties; and

• co-operates with public institutions established under legislation and the Constitution in promoting the public interest.

2.7.2 Relationship with the Public

An employee-

• promotes the unity and well-being of the South African nation in performing her or his official duties;

• will serve the public in an unbiased and impartial manner in order to create confidence in the public service;

• is polite, helpful and reasonably accessible in her or his dealings with the public, at all times treating members of the public as customers who are entitled to receive high standards of service;

• has regard for the circumstances and concerns of the public in performing her or his official duties and in the making of decisions affecting them;

• is committed through timely service to the development and upliftment of all South Africans;
• does not unfairly discriminate against any member of the public on account of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language;
• does not abuse her or his position in the public service to promote or prejudice the interest of any political party or interest group;
• respects and protects every person’s dignity and her or his rights as contained in the Constitution; and
• recognises the public’s right of access to information, excluding information that is specifically protected by law.

2.7.3 Relationships among Employees

An employee-

• co-operates fully with other employees to advance the public interest;
• executes all reasonable instructions by persons officially assigned to give them, provided these are not contrary to the provisions of the Constitution and/or any other law;
• refrains from favouring relatives and friends in work-related activities and never abuses her or his authority or influences another employee, nor is influenced to abuse her or his authority;
• uses the appropriate channels to air her or his grievances or to direct representations;
• is committed to the optimal development, motivation and utilisation of her or his staff and the promotion of sound labour and interpersonal relations;
• deals fairly, professionally and equitably with other employees, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language; and
• refrains from party political activities in the workplace.

2.7.4 Performance of Duties

An employee-

• strives to achieve the objectives of her or his institution cost-effectively and in the public's interest;
• is creative in thought and in the execution of her or his duties, seeks innovative ways to solve problems and enhances effectiveness and efficiency within the context of the law;
• is punctual in the execution of her or his duties;
• executes her or his duties in a professional and competent manner;
• does not engage in any transaction or action that is in conflict with or infringes on the execution of her or his official duties;
• will recuse herself or himself from any official action or decision-making process which may result in improper personal gain, and this should be properly declared by the employee;
• accepts the responsibility to avail herself or himself of ongoing training and self development throughout her or his career;
• is honest and accountable in dealing with public funds and uses the public service's property and other resources effectively, efficiently, and only for authorised official purposes;
• promotes sound, efficient, effective, transparent and accountable administration;

• in the course of her or his official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest;

• gives honest and impartial advice, based on all available relevant information, to higher authority when asked for assistance of this kind; and

• honours the confidentiality of matters, documents and discussions, classified or implied as being confidential or secret.

2.7.5 Personal Conduct and Private Interests

An employee-

• during official duties, dresses and behaves in a manner that enhances the reputation of the public service;

• acts responsibly as far as the use of alcoholic beverages or any other substance with an intoxicating effect is concerned;

• does not use her or his official position to obtain private gifts or benefits for herself or himself during the performance of her or his official duties nor does she or he accept any gifts or benefits when offered as these may be construed as bribes.

• does not use or disclose any official information for personal gain or the gain of others; and

• does not, without approval, undertake remunerative work outside her or his official duties or use office equipment for such work.
This study therefore suggests that when performing their duties, public officials in the Eastern Cape Department of Education should take cognisance of the legislative framework governing their conduct. It is envisaged that by abiding to the legislative framework, normative guidelines, Batho Pele principles and the public service code of conduct cases of unethical conduct will significantly drop in the department. The following section will discuss the concept of ethical behaviour.

2.8 THE CONCEPT OF ETHICAL BEHAVIOUR

According to Hummel (cited in Zikhali, 2005) to be ethical could mean any of the following:

- Being true to your job, i.e. doing your duty;
- Being true to your work, i.e. fulfilling your duty in accordance with the available relevant material; or
- Being true to others, i.e. that those people who are working with you have a right to expect you to fulfil your work obligations.

Hondeghem (1998) writes that ethical behaviour is essential for an effective and stable political-administrative authority as well as social and economic structures. Corruption can disturb economic competition; endanger free trade and stability on which the free market economy is based. Zikhali (2005) asserts that the public expects ethical behaviour from its public officials in the fulfilment of their duties and also expects the actions of public officials in the performance of their duties to be ethically justifiable. This viewpoint is underlined by the assumption that public
institutions exist to serve the interest of the public at large and as such the general behaviour and actions of public officials are determined by specific codes of ethics.

As soon as the personnel of public institutions engage in unethical behaviour, this could lead to ineffective administration and unsatisfactory service (Zikhali, 2005). This action in turn results in a violation of the specific right of members of the community, because public officials do not fulfill their obligations to the community in an ethically justifiable manner (Andrews, cited Zikhali, 2005). Kazman and Bonczek (1999) support the above view by stating that when ethical wrongdoings and scandals occur in government, they pose a threat to the democratic principles of the rule of law, equity, and individual rights. Fraud, bribery, and other abuses in government take the power from people and give it to a few in position of control, which distorts the concept of the equality of all participants of public life (Kazman & Bonczek, 1999).

Therefore, it is of the utmost importance that the public official fulfils his/her duties in an ethical manner. According to Max Weber (cited in Zikhali, 2005) the behaviour of the (public official) is vested in his ability to execute conscientiously the order of superior authorities, exactly as if the order agreed with his own conviction. Any public official should at all times show the utmost respect for, and trust in the truth; the law; the constitution and its conventions; the customers and clients of the services provided; the management hierarchy; and each individual public official (Williams, cited in Zikhali, 2005).
The following aspects comprise acceptable behaviour on the part of the public officials (Andrews, cited in Zikhal, 2005):

- all dealings must be transparent and open;
- all dealings must be in the public interest;
- there must be no violation of the rights and privileges of individuals;
- there must be strict adherence to all legal prescriptions and regulations;
- discretionary powers must not be abused;
- no financial resources should be wasted, and effective work performance must be maintained at all times;
- the actions of a public official may not benefit or wrong any individual; and
- the actions of public officials should be such that the effectiveness of public institutions is absolutely above suspicion.

2.9 MODELS OF ETHICS

Zemanovičová, Sičáková and Beblavý (2007) defined two models of ethics namely:

- professional model and
- political model

2.9.1 Professional Model

Zemanovičová et al. (2007) assert that the professional model of ethics is based on the phenomenon of strong professionalism and can be used in the countries with a long tradition of public service. Its development is supported by almost bureaucratic attention paid to simultaneous cultivation of suitable norms of professional behaviour. Thus the employees and the representatives of the public administration
know exactly which norms and expressions of professional behaviour they are expected to perform (Zemanovičová et al., 2007).

Zemanovičová et al. (2007) further state that this model is characterized by high expectations laid upon the public sector by ethics. The professional employees are automatically expected to act in highly ethical manner during the decision making process although this behaviour is not directly regulated or described in the rules. In addition, the basic condition for such ethics is ability of sound and responsible decision and binding trust in employee’s ability to distinguish the fragile limits between ethical and unethical. The values and principles applied and accustomed this way form the protection from irresponsible behaviour (Zemanovičová et al., 2007).

2.9.2 Political Model

According to Zemanovičová et al. (2007) the political model of ethics views unethical form of behaviour as a certain form of corruption and serious breach of political standards. This model considers breaching of ethical principles as offences. Requirements of ethical behaviour create major part of legislative rules and laws and failure to comply with them or their breaching is considered as crime or breaching the penal law, punishable by means of sanctions specified thereby (Zemanovičová et al., 2007).
2.10 CATEGORIES OF PUBLIC SERVICE ETHICS

Given the complexity and pervasiveness of the ethical dimension of public administration, it is useful to distinguish among three major categories of public service ethics (Kernaghan, 1996).

2.10.1 Policy Ethics

The first category that of policy ethics, refers to the ethical implications of policy decisions and recommendations. Public servants face difficult ethical choices in making or recommending policy especially, for example, with respect to policy issues like AIDS or the regulation of hazardous products- issues where human life is at stake (Kernaghan, 1996). Kernaghan (1996) also writes that the government has the unenviable task of making ethical choices among competing rights. The government has to decide between the rights of children to be well educated and the rights of seniors to more complex forms of health care or between the human rights of prisoners and society’s right to be well protected. Kernaghan (1996) further mentions other policy issues with important ethical implications, such as employment equity and freedom of information impinge to a large extent on the public service itself.

2.10.2 Individual Ethics

Kernaghan (1996) names the second category of ethics as individual ethics (or personal ethics), referring to those personal ethical standards that public servants bring to their decisions and recommendations. Kernaghan (1996) asserts that there is a significant ethical component to the actions of public servants because of their power in the policy process, their privileged access to information and their responsibility for allocating public funds. Kernaghan (1996) also argues that despite...
the proliferation of written rules, it is often necessary to rely on the ethical standards of the individual official and ultimately, on his or her conscience.

From the above assertion it can be deduced that personal ethics have a significant bearing on the policies and discretionary decisions passed by public officials. A first principle of professional morality is that being accountable to others does not make you any less accountable to yourself. The vitality of government is partly dependent on how well we understand and respect this principle of personal ethics (Kernaghan, 1996).

2.10.3 Organisational Ethics

Kernaghan (1996) refers to the third category of ethics as organizational ethics, meaning the ethical duties and obligations imposed by the organization to which one belongs. Public servants occasionally experience conflicting organizational demands within the government itself. They must on occasion deal on the one hand with conflicts between their personal ethical standards or the policy choices they would prefer to make, and on the other hand with the demands of the organizations they serve (Kernaghan, 1996). For example, a public servant with knowledge of wrongdoing within government may have to choose between loyalty to the government of the day and personal conviction that the public has the right to know about the wrongdoing (Kernaghan, 1996). The following sections will discuss the causes of unethical conduct and its manifestations.
2.11 CAUSES OF UNETHICAL CONDUCT

Van der Waldt and Helmbold (cited in Du Toit & Van der Waldt, 1999) asserts that there is a difference in opinion as far as the causes of and reasons for unethical conduct among public officials are concerned. There are a number of generic factors which may be regarded as causes of unethical conduct. These will be discussed in the following paragraphs (Jain, 1997; Du Toit & Van der Waldt, 1999; Pauw et al., 2002).

2.11.1 Deficient Control and Accountability

If control is applied ineffectively, dishonest officials can exploit the situation for their own gain. Therefore, channels of communication need to be created to make accountability possible (Jain, 1997; Du Toit & Van der Waldt, 1999). Accountability ultimately ends with the political head or minister of a department who must account to Parliament and therefore indirectly to the public, for the conduct of the appointed public officials in his or her department (Jain, 1997).

2.11.2 Complex Legislation

The application of complex legislation may sometimes leave room for unethical and ineffective conduct. Because regulations and technical points may be difficult to understand, their application sometimes runs counter to their ultimate purpose. Incorrect interpretation also leads to inconsistencies which result in the goals of the institution not being realised. Public managers should be aware of this and control measures should be implemented (Jain, 1997; Du Toit & Van der Waldt, 1999).
2.11.3 Inadequate Procedures and Manuals

The procedures officials have to follow can at times conflict with what officials experience in practice. Unless manuals are practical and written in a way that is relevant to specific circumstances, officials may be left feeling uncertain about how to conduct themselves appropriately. Officials are also expected to make value judgements which cannot be found in a manual. These judgements may be in conflict with the objectives of the institution and the needs of the community (Jain, 1997; Du Toit & Van der Waldt, 1999).

2.11.4 Deficient Management and Organisation

Jain (1997) posits that if a department is managed poorly from an organisational point of view this may mean that goods or services are not rendered effectively and efficiently. Furthermore, if an official's productivity is not evaluated, he or she can exploit this. Therefore, the services which a department renders must also comply with specific criteria so that effectiveness is not neglected and a breeding-ground for unethical behaviour is not created (Jain, 1997).

2.11.5 Psychological Factors

Van der Waldt and Helmbold (cited in Du Toit & Van der Waldt, 1999) assert that people are fallible by nature and are inclined to crave power and money to varying degrees. When the right conditions are created, it is to be expected that people will be vulnerable to temptation. In such a situation personal interests could come before the interests of the public. Management must identify situations such as these and do everything possible to eliminate or reduce them (Van der Waldt & Helmbold, 1995). Inadequate education, training and personal development could also
contribute to the occurrence of unethical conduct (Jain, 1997; Du Toit & Van der Waldt, 1999).

2.11.6 New Public Officials

Jain (1997) writes that the move from a closed to an open personnel system resulted in new officials being appointed from outside the South African Public Service onto different hierarchical levels in that service. Jain (1997) recognises that this brings about the ethical question of service rendering as different categories of officials can, and most probably will, subscribe to different ideals, objectives and ideologies (and therefore also ethical norms for service rendering). Consequently, government policy may not be interpreted and implemented in a uniform manner.

2.11.7 Lack of an Ethical Awareness

Boling and Dempsey (cited in Louw, 1998) are of the view that ethical dilemmas arise as the result of a lack of ethical awareness among public officials. That is to say, public officials are not always sufficiently sensitive to the important normative dimension of their work. This could also be related to ineffective communication between the government and the public. Andrews (cited in Louw, 1998) states that the personal ethical standards of public officials may be a factor which results in ethical dilemmas. Since it is not always easy to determine whether a decision is ethical or not public officials develop personal ethical standards. To counter this, Louw (1998) asserts that ethical standards must be laid down in legislation in order to prevent each public manager from pursuing his or her own standards.
2.11.8 Weak Values

According to Pauw et al. (2002) weak values imply that an individual does not regard behaviour generally regarded as ethical as important or worth the trouble. They also put forward that an official might espouse the correct values in theory, but lack the willpower or the ability to put these values in to practice. Pauw et al. (2002) further note that it is one thing to be opposed to bribes, but quite another thing to refuse a bribe at the moment it is offered by a friend when your family is in dire need of money. They also recognise that weak values and weakness of will might have the same effect in practice.

2.11.9 Weak Systems

Pauw et al. (2002) write that weak systems are systems which provide opportunities for corruption and fraud. They also assert that the ways in which the systems operate do not prevent opportunities for fraud and corruption from arising.

2.11.10 Weak Consequences

Pauw et al. (2002) posit that weak consequences cause would be perpetrators of corruption to believe that they are not likely to be found out. Weak consequences might also lead to perpetrators of corruption to believe that even if their misdeeds were to be discovered, the repercussions would not be strong. They think they can commit their unethical deeds with impunity (Pauw et al., 2002).

2.12 MANIFESTATION OF UNETHICAL CONDUCT

Zikhali (2005) argues that if government fails to establish high ethical standards in its institutions, it may lead to an unfortunate situation where unethical conduct of public
employees and political office-bearers become the order of the day. Some of the manifestations of unethical conduct are discussed below.

2.12.1 Election Fraud

This manifests itself when political parties and their supporters use unethical tactics to secure an election victory. These may include tactics such as spreading false rumours, miscounting votes, declaring ballot papers invalid after defacing them and adding pre-marked ballot papers for their candidates (Van Niekerk, cited in Zikhali, 2005). This is a common phenomenon in most African countries.

2.12.2 Official Violence

According to Van Niekerk (cited in Zikhali, 2005) official violence usually manifests itself during protest action, labour dispute and demonstrations. This could also occur when citizens are deprived of their political and other rights and freedoms by way of legislation and other similar suppressing measures. Official violence can also be very subtle. For example, if pensioners have to wait in long queues in the sun to receive their allowances, it can also be regarded as official violence (Van Niekerk, cited in Zikhali, 2005).

From this assertion, it is clear that official violence in prevalent in South Africa. It exists in the form of *inter alia*, labour disputes resulting in perpetual strikes and protest action by employees including those in the Department of Education. It also manifests itself in subtle ways as pensioners, the old aged and those qualifying for the child support grant have to wait in very long queues every month to receive their pension benefits and grants.
2.12.3 Institutional Misconduct

Misconduct and unethical behaviour by public employees and political office bearers can take on a variety of forms. Some of these are listed below (Van Niekerk, cited in Zikhali, 2005; Du Toit et al., 2002):

- Misuse of authority and the violation of public responsibility usually for private gain.
- Protecting incompetent colleagues, managers and political heads.
- Nepotism (if relatives or friends are favoured in awarding contracts or promotion).
- Bribery (if public employees accept improper gifts and entertainment in return for special favours such as privileged information).
- Misuse of inside knowledge and influence peddling (this is used to gain access to important ears).
- File tampering (involves being paid a bribe to have compromising documents removed from official files).
- Misuse of stationery (the use of official letterheads to conduct private business is a common example).
- Selling of recommendations (in this case, money changes hands in exchange for a recommendation regarding appointments and the issuing of licenses among other things).
- Selling of jobs (an elected office bearer with appointing authority can easily sell a job- even a non-existent job, especially when work is scarce).
- Fraudulent use of travel documents (Some people relish official trips and will go to great lengths to obtain permission for them. The trips are then used for...
everything but the authorised reason, and documents are tampered with to cover up the misdeed.

- **Abuse of service benefits** (A major manifestation of this type of unethical conduct is the misappropriation of housing benefits. Misuse of official transport is another example, such as an ambulance being used for private purposes).

- **Cover-up of wrong doing** (In order to preserve good social relations, a great deal of wrongdoing is either purposely overlooked or covered up, especially if a friend or relative is involved).

### 2.13 PROFESSIONAL ETHICS

Fulton (cited in Kanyane, 2004) writes that the public service is not a place for the amateur but one for men and women who are truly professional. Kanyane (2004) contends that professionalism in the public sector is critical to the realisation of aims and standards of the profession to the advantage of citizens. When someone is recognised as a ‘real professional’ it is acknowledged that he or she has something to profess and has the skill with which to do so. Such a person is admired not only for knowing what to do, but also for knowing the reason why it must be done (Bowman, cited in Kanyane, 2004). According to Goss (1996) professions are distinguished from occupations not just by their level of technical knowledge, competence and specialized training, but also by a commitment to a set of ethics and an obligation to serve faithfully.

Professional ethics can be viewed as a system of *norms*, meaning how things “should” or “ought to” be (Bayles, cited in Goss, 1996). Josephson (cited in Goss,
1996) describes professional ethics as normative ethics, concerned with the discovery and application of moral norms or standards that help us distinguish right from wrong. It is based upon a bedrock premise that people ought to do what is right and avoid what is wrong. Van der Waldt and Du Toit (cited in Kanyane, 2004) defines professionalism as the way in which public managers and their subordinates behave, their conduct being bench-marked according to standards appropriate to their activities. One of these standards is the quest for customer satisfaction, as contained in the White Paper on Transforming Public Service Delivery, 1997 (Kanyane, 2004).

Le Bris (cited in Kanyane, 2004) mentions that professionalism requires a public manager to fulfil his or her role as efficiently as possible and to do so with competence and precision. In support of this assertion, Kanyane (2004) expects public managers and their subordinates (particularly those in the Eastern Cape Department of Education) to display the following characteristics measured against their standards and performance:

- Competency and excellence;
- Worthiness of the public service;
- A continuous quest for the highest level of customer satisfaction;
- Ethical conduct and work ethic;
- Accountability and honesty;
- Leading by example; and
- Timeliness and accuracy.
Goss (1996) put forward that it is arguable whether the public administration is yet a profession, but notes that the public service has undergone increasing professionalization and is becoming more like a profession. In the South African context, public administration is regarded as a profession as envisaged in the Constitution of the Republic of South Africa, 1996. Section 195 (1) (a) of the Constitution states that a high standard of professional ethics must be promoted and maintained in the public sector. In fact the whole of Section 195 (1) of the Constitution is dedicated to the basic values and principles governing public administration in South Africa. Such values and principles therefore qualify the South African public administration as a profession as alluded to above.

Bowman (cited in Kanyane, 2004) is of the view that the complete professional requires more than mere technical skill. A public manager or any official is not simply a professional because of expertise, but also through adherence to high moral standards and must lead by example. Bris (cited in Kanyane, 2004) adds that the manager is responsible for setting an example, not only in terms of his methods or departmental resources, but also through soundness of judgement and respect for the citizen. Kanyane (2004) also contends that the public manager’s behaviour should ultimately become a role model for those working down the line.

In the same vein Mafunisa (cited in Kanyane, 2004) asserts that it is essential for public managers to personify the values of the public service, thereby providing tangible role models for subordinates to follow. Furthermore, ethical behaviour should be communicated throughout the organisation. It is the responsibility of public managers to create an atmosphere of trust and openness within their departments,
so that officials down the line can feel free to consult them about their challenges and problems (Le Bris, cited in Kanyane, 2004).

### 2.14 PUBLIC ADMINISTRATION ETHICS

Dmochowski, Jurczuk and Szczepankowski (not dated) write that public service ethics are a prerequisite to and underpinning of public trust and are a keystone of good governance. Public service is a public trust and therefore, citizens expect public servants to serve the public interest with fairness and to manage public resources properly on a daily basis. Fair and reliable public services inspire public trust and create a favourable environment for businesses, thus contributing to well-functioning markets and economic growth.

Amundsen and Pinto de Andrade (2009) concur with Dmochowski *et al.* (not dated) and assert that both politicians and civil servants have discretionary powers, they make decisions that affect a lot of people. Therefore, these decisions ought to be based on some form of ethics. They further state that the citizens expect the country’s politicians and public servants to serve in the public interest and to serve in a rational and efficient way. They will not want them to pursue narrow private, personal, or group interests (Amundsen & Pinto de Andrade, 2009).

Brewer (2009) emphasizes that maintaining high ethical standards in government is very important because the government has the authority to demand obedience from individuals and compel them to act in desired ways. Government finances its operations by levying taxes on the public, thus, taxpayers expect honesty and integrity in government (Brewer, 2009). Public administrators are instruments of the
state and their actions are extensions of government institutions, laws and policies. Moreover, public administrators exercise discretion when sizing up problems, formulating courses of action and meting out justice (Davis, cited in Brewer, 2009). It is for some of these mentioned reasons that public administrators ought to act ethically when executing their duties.

According to Brewer (2009) public servants are expected to have high ethical standards for several other reasons. First of all, it is the law. The most basic forms of ethical conduct are prescribed in statutes, regulations and ordinances. Second, ethical behaviour is essential for maintaining public trust in government. Citizens must know that public officials have integrity and will deliver critical public services on time. High levels of trust translate into greater legitimacy, which is government’s license to operate. Third, moral reasoning is required to balance the competing values and demands of government (Brewer, 2009).

Public administrators often make hard decisions based on imperfect information and the administrator’s ethical values inform these decisions (Selden, Brewer & Brudney, cited in Brewer, 2009). Ethics is also a central element in the long running debate over administrative responsibility, responsiveness and accountability (Brewer, 2009). Zemanovičová et al. (2007) put forward that public administration ethics:

- Deals with the issue of desirable behaviour of a public administration employee.
- Deals with the principles of improving the standard of public services and society in relation to behaviour of employees.
• Sets what kind of personal characteristics the public administration employees should keep trying to gain.

• Defines generally applied basic abstract norms and values such as usefulness and kind-heartedness, avoiding doing bad deeds, honesty, tolerance and respect for others, freedom, justice, trustworthiness, responsibility, providence, politeness and many others which the public sector employees should perform as part of their work.

2.15 PUBLIC ADMINISTRATION NORMS AND VALUES

Raga and Taylor (2005) write that in order to have a clear understanding of the concept of ethics, the concepts “norms” and “values” need to be explained. According to Barton and Chappel (1985) norms are standards of behaviour within the organisation which serve as a guide to all its members. One of the earliest norms in public administration was that of neutrality, meaning that public officials should be apolitical policy implementation functionaries rather than policy-makers (Raga & Taylor, 2005). Within the context of public administration, the emphasis on norms is associated with the recommendation of certain values that are viewed as desirable by their promoters (Ferreira, cited in Raga & Taylor, 2005).

In line with the above assertion Van Dyke (cited in Raga and Taylor, 2005), posits that normative statements express conceptions of the desirable. They indicate value preferences. They concern not what is, but what ought to be, endorsing ends, purposes or norms. Hanekom and Thornhill (cited in Visser and Erasmus, 2002) outlines that the ethical conduct of public officials and the extent to which it is acceptable can be measured against the following general norms:
• Ethics entrenched in religious beliefs of officials, which will in most cases require them to be honest, to do good to others, and to respect human life. The public official’s conduct in practising administration should therefore always take into account the basic requirements of honesty, integrity, fairness, and justice.

• The public official should always endeavour to promote the general welfare of the public, implying the greatest good must be intended for the greatest number, also called utilitarianism.

• The endeavour to demonstrate administrative and managerial competence, including professional conduct of officials to behave morally in practicing administration and management.

• The principles of democracy and procedural fairness must be adhered to, meaning officials should not act arbitrarily.

• The exercise of administrative and managerial discretion in the public interest, and not to strive for personal gain.

• Honesty and openness in the execution of duties, either in dealing with the public or when presenting information to superiors.

• Observance of the prescriptions of different legislation, regulations, and procedures, such as the Public Service Act, the Public Service Regulations, the PFMA, the National and Provincial Treasury Regulations, and the relevant financial procedures. This implies the conduct of officials should be in accordance with statutory provisions, prescriptions and requirements.

Heyns (cited in Raga and Taylor, 2005) writes that values are basic perceptions of the relative importance of our elements of existence. These perceptions always have
to do with priorities, whereas norms are the function which direct and evaluate human attitudes and actions. A value is something ‘fundamentally good or desirable that an individual holds onto as a guide through life’ (Fox & Meyer, 1995). According to McShane and Von Glinow (2008) values are stable, evaluative beliefs that guide our preferences for outcomes or courses of action in a variety of situations. They are perceptions about what is good or bad, right or wrong. Values tell us what we “ought” to do. They serve as a moral campus that directs our motivation and potentially, our decisions and actions.

Just as a society expects from its members to adhere to the value systems they accepted as good, it also expects government institutions to adhere to their value systems. This means that any action undertaken by a government institution must comply with what the society or community accepts as good and desirable (Du Toit et al., 2002). McMurry (cited in Raga and Taylor, 2005) asserts that the influence of values on the individual is powerful because:

i. They principally determine what he/she regards as right, good, worthy, beautiful and ethical.

ii. They provide the standards and norms by which he/she guides his/her day-today behaviour.

iii. They chiefly determine his/her attitudes toward the causes and issues such as political, economic, social and industrial with which he/she comes into contact daily.

iv. They determine which ideas, principles and concepts he can accept, assimilate, remember and transmit without distortion (McMurry, 1977).
According to Zemanovičová et al. (2007) values form bases of the public service and serve as a guide for performance of everyday operation in public administration. They further assert that OECD countries for example, have a defined set of basic values for the public service. They confess these values and their primary sources to illustrate their priorities and intentions. It is also important to note that OECD countries respect other values not stated in their official documents. The following are the most frequently stated values: Impartiality, Legality, Integrity, Transparency, Efficiency, Equality, Responsibility and Justice (OECD, cited in Zemanovičová et al., 2007).

The basic common sign in the OECD countries is that all of them take the same sources of their values for a starting point. These are society, democracy and profession (Zemanovičová et al., 2007). The following are other important public sector values commonly cited in the literature (Bouder, Bertok & Beschel, 2000):

2.15.1 Honesty

Bouder et al. (2000) write that this value is fundamental and is expected in all sectors of society. It takes on a particular meaning in the public service, as it implies the ability to hold a public trust and to put the common good ahead of any private or individual self-interest. Bouder et al. (2000) assert that countries typically integrate the standard of honesty in the recruitment process of civil servants, by verifying that the person does not have a prior criminal conviction (e.g., in France and Poland).
2.15.2 Impartiality

In addition to non-discrimination on ethnic, religious, gender or economic grounds, the main aspect of this value is political neutrality, i.e. non-partisanship. Civil servants, while loyal to their political leadership, are expected to behave in a manner that does not favour or damage any political party or faction (Bouder et al., 2000).

2.15.3 Loyalty

Bouder et al. (2000) write that in a democratic context loyalty to the political leadership is a duty of civil servants, but reaches its limit when it would imply unethical behaviour. This is obvious when the order given is illegal. But loyalty also ends when obedience could seriously jeopardize a public interest or require unethical behaviour (even if not formally illegal). They also contend that in a complex management environment, the loyalty principle is also challenged when public servants are asked to be ultimately accountable to the citizen (Bouder et al., 2000).

2.15.4 Continuity

Bouder et al. (2000) assert that civil servants are expected to ensure stable and continuous services to citizens. Aspects of continuity are that they cannot desert their office and can only have other professional activities in addition to their public duties in limited cases, which do not conflict with performance of their tasks. They also put forward that when leaving their position, public officials should not hide or remove any information concerning their past activity in order to ensure a smooth transition (Bouder et al., 2000).
2.15.5 Balancing Transparency and Discretion

Bouder et al. (2000) write that traditionally government has been reluctant to release information. Sometimes, there are good reasons. But secrecy also works as a way to hide misconduct. It is the duty of the state to define clearly what information is public and to guarantee access to it. They also note that the consequence of openness is extensive control exercised by the citizens and even more by the mass media. Thus, they suggest that the obligation of openness must be balanced by the value of discretion. This means that public officials should have clear guidelines about what information they are entitled to provide and to whom (Bouder et al., 2000).

2.15.6 Responsibility and Accountability

According to Bouder et al. (2000) public officials must feel personally responsible and accountable for their decisions and actions. Developing a good sense of the public interest is essential. In the Republic of Korea, it has been suggested that a weak sense of responsibility among public officials caused by frequent change in posts was a major corruption incentive (Bouder et al., 2000). This could be true for the Eastern Cape Department of Education where at the top management level there is the revolving door syndrome. Therefore, the ever increasing cases of unethical conduct in the department can to some extent be attributed to frequent changes in posts.

Another good example of public sector values is found in the “Seven Principles of Public Life” by the Nolan Committee in the United Kingdom. Raga and Taylor (2005) assert that the principles (see Table 1) are set out for the benefit of all who serve the
public. In the Republic of South Africa, the Constitutional Values and Principles that underpin and govern public administration are:

i. Professional ethics

ii. Efficiency, effectiveness and Economy

iii. Development orientation

iv. Impartial, fair and equitable service delivery

v. Public participation

vi. Accountability

vii. Transparency

viii. Human resource management and development

ix. Representivity

Any act by a political office bearer or administrator is judged for its rightfulness or wrongness by the citizens using these values and principles governing public administration (Raga and Taylor, 2005). Furthermore, such values and principles make whistle-blowing by citizens possible.
Table 1: The Nolan Committee’s Seven Principles of Public Life

<table>
<thead>
<tr>
<th>Principle</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Selflessness</strong></td>
<td>Public officials should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.</td>
</tr>
<tr>
<td><strong>Integrity</strong></td>
<td>Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.</td>
</tr>
<tr>
<td><strong>Objectivity</strong></td>
<td>In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holders of public office should make their choices on merit.</td>
</tr>
<tr>
<td><strong>Accountability</strong></td>
<td>Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.</td>
</tr>
<tr>
<td><strong>Openness</strong></td>
<td>Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest demands it.</td>
</tr>
<tr>
<td><strong>Honesty</strong></td>
<td>Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.</td>
</tr>
<tr>
<td><strong>Leadership</strong></td>
<td>Holders of public office should promote and support these principles by leadership and example.</td>
</tr>
</tbody>
</table>

*Source: Raga & Taylor (2005)*
2.16 ETHICS AND ETHICAL DILEMMAS

Ehrich, Cranston and Kimber (2004) posit that ethical dilemmas are likely to confront public sector managers as they endeavour to choose options amongst competing sets of principles, values and beliefs. Baai (cited in Disoloane, 2012) supports this assertion by stating that ethical dilemmas arise where there is conflict between competing obligations or between a sense of duty and self-interest. Badaracco (cited in Ehrich et al., 2004) refers to these competing sets of principles as ‘spheres of responsibility’ that have the potential to ‘pull managers in different directions’ and thus create ethical dilemmas for them.

An ethical dilemma then can be described as a decision that requires a choice among competing sets of principles, often in complex and value laden contexts (Ehrich et al., 2004). Kidder (cited in Ehrich et al., 2004) maintains that many of the ethical dilemmas facing professionals and leaders ‘don’t just centre upon right versus wrong but can involve right versus right’. Ethical dilemmas can arise from equally attractive options that could be justified as being ‘right’ in particular situations (Duignan & Collins, cited in Ehrich et al., 2004).

According to Disoloane (2012) ethical dilemmas are issues such as economic growth versus environmental protection, or discipline versus compassion towards employees. These are conflicts between two or more right values and lie at the heart of ethical decision-making. Ehrich et al. (2004) contend that within complex contexts and circumstances it may not be so easy to discern what the ‘right’ option might be and what the ‘wrong’ option might be or whether the action is legal or illegal.
Warwick (cited in McDougle, 2007), in identifying some of the common ethical dilemmas faced by public officials in the exercise of discretion, offers five ethical principles of guidance: (1) the exercise of discretion should serve the public interest, (2) public officials should push back bounds on rationality so that deliberation may take place, (3) public officials should provide truthfulness in the discharge of official responsibilities, (4) public officials should demonstrate procedural respect, and (5) public officials should exercise restraints on the means chosen to accomplish organizational ends.

McDougle (2007) assert that leaders in the public sector are expected to maintain a level of morality and integrity which serves the interests of society while at the same time demonstrates personal responsibility, diplomacy and truthfulness. Given these views, Warwick (cited in McDougle, 2007) sums up the ethical role of the public administrator as follows: serve the public interest while being fair, honest, lawful, trustworthy and doing the least amount harm. It is therefore suggested that public managers in the ECDoe should abide by these guidelines when executing their duties and making decisions. It is also anticipated that these guidelines will help solve the ethical dilemmas experienced by public sector managers.

2.17 TYPES OF ETHICS FAILURE

Ethics failure encompasses problems at both the individual and the organizational level (Caiden & Caiden, cited in Zajac & Comfort, 1997). Individual-level failure results from wrongdoing on the part of isolated persons within the organization. Organisational-level failure results when wrongdoing becomes widespread throughout the organization, rooted in dysfunctions within the organisation itself.
Individual and organizational level ethics failure parallels one another (Zajac & Comfort, 1997). Zajac and Comfort (1997) identified the following types of ethics failure discussed below.

**2.17.1 Marginal Failure**

According to Zajac and Comfort (1997) marginal failure is the simplest type of ethics failure where simple organizational mistakes harm innocent persons or where ignorance or confusion cloud appropriate standards of behaviour. Organisational variables that contribute to marginal failure include rules, procedures, and operational routines (Zajac & Comfort, 1997). This failure is seen most clearly where public agencies, such as the Social Security Administration or state motor vehicle departments, make record keeping mistakes that cause individuals to be declared dead or to suffer the loss of a license. Ethics failure results when agencies resist correcting such mistakes or are slow to do so (Zajac & Comfort, 1997).

**2.17.2 Malicious Failure**

Zajac and Comfort (1997) posit that malicious failure refers to the traditional concept of corruption, which is the result of public servants wilfully misusing public resources or authority for personal gain or private agendas. Organizational variables that contribute to malicious failure include internal monitoring and control mechanisms, rules and procedures, and inadequate ethics training (Zajac & Comfort, 1997).

**2.17.3 Symptomatic Failure**

Zajac and Comfort (1997) contend that the most complex type of ethics failure is symptomatic failure. Although such failure includes complex cases of marginal or
malicious failure, symptomatic failure often goes beyond the domain of the other types. Symptomatic failure describes the failure of an organization’s core policies, goals, values, beliefs, assumptions, or culture(s) and contributes to systematic behaviour that violates legal, civil or human rights or results in unjust treatment of individuals (Zajac & Comfort, 1997). Such failure indicates a problem, not with a few bad employees but with the organization per se (Caiden & Caiden, cited in Zajac & Comfort, 1997). Such failure is symptomatic of deeper dysfunctions within the organization. Symptomatic failure is illustrated vividly within police departments that experience patterns of persistent, widespread brutality and corruption (Zajac & Comfort, 1997).

2.18 UNETHICAL BEHAVIOUR AND THE SOUTH AFRICAN PUBLIC SECTOR

Louw (1998) writes that in South Africa the implementation of national policy is delegated from legislatures to the executive authority in order to render services to the community. In the rendering of these services, the conduct of public officials must always be directed towards the promotion of society's interests. Similarly, Dorasamy (2010) asserts that public leaders are expected to serve public needs and not to promote personal interests. Despite this being widely accepted, the South African public service is characterized by allegations of unethical behaviour. According to Mafunisa (cited in Dorasamy, 2010) unethical behaviour in the South African public service includes the following:

- Lack of responsiveness to the needs of clients.
- Tardiness in the discharge of duties.
- Manifestations of inefficiency and ineffectiveness.
Corruption.

Mafunisa further argues that unethical behaviour often starts at the top of public service leadership, where public service values are not personified and promoted. He attributes this largely to the lack of accountability for promoting quality public services. Dorasamy (2010) also notes that although all departments are obliged to establish an ethics infrastructure as per government requirements, ethical practice is still a major challenge facing the South African government. This is particularly true for the Eastern Cape Department of Education and this is supported by the negative audit reports the department has been receiving in recent years. An ethics survey conducted by the Public Service Commission during 2001 revealed the following:

- Ineffective and very basic ethics infrastructures.
- Inadequate ethics responsibilities for ethics programmes.
- Ineffective ethics training.
- Neglect of ethics criteria in performance management.
- Inadequate integration of ethics management practices with all processes.
- Financial risks supersede reputational risks when determining ethical priorities.
- Reluctance to enforce ethic codes.

The majority of the surveyed respondents indicated that their institutions do not provide training on the application of the Code of Conduct and ethics. The report also highlighted that only 3% of the surveyed public institutions provide any form of ethics training. It was also found that in most instances where training was provided, departments limited the training to labour relations officers or junior officials (Ethics
The Ethics Survey Report (2001) also highlighted that the majority of the surveyed institutions do not have a formal policy to protect employees who report ethical or legal violations. According to Edwards (2007) this is an indication that employees are not informed about the Protected Disclosures Act, 2000 and its implications.

Furthermore, the State of the Public Service Report highlighted the following findings associated with leadership (Public Service Commission, 2008):

- The level of compliance with the Financial Disclosure Framework was below 100%, of this figure five national departments had a compliance rate of 0%. This suggests a lack of will to encourage a culture of ethical leadership.
- The absence of clear regulations on the conflict of interests system has impacted on the neutrality of public servants who hold dual employment and have business interests with government. This affects the sustainability of high standards of public ethics.
- The lack of a national integrity system with which leaders from different sectors can identify.

Dorasamy (2010) suggests that the above findings reveal an inadequate commitment to ethical practice which impacts on the effectiveness of regulations and frameworks guiding ethical practice. Edwards (2007) asserts that ethics training in the public sector should not only offer specific skills to employees but should also communicates to subordinates that ethical behaviour is valued and that the Code of
Conduct, core values and ethical principles should be considered in everyday activities in the public sector.

Van Rooyen (cited in Dorasamy, 2010) argues that although government introduced the Public Service Integrated Anticorruption Strategy, the prevalence of unethical behaviour still persists. The inference is that unless a high level priority status is accorded to ethics within the institution’s strategic thrust, very little will change. Dorasamy (2010) proposes that merely paying lip service to the ethical framework guiding the public sector is unacceptable and that corresponding action from the civil servants that will ensure adherence to the ethical framework is needed. This study also suggests that leaders play an important role in the enforcement ethical behaviour in the public sector. They should thus, lead by example and become good role models for public sector employees to conduct themselves in an ethical manner.

2.19 THE INFRASTRUCTURE OF PUBLIC ADMINISTRATION ETHICS
Stevulak and Brown (2011) write that about fifteen years ago, international governmental and non-governmental organizations took up in earnest the challenge of ensuring ethics and good governance in democracies. The Organisation for Economic Co-operation and Development (OECD) led the way, proposing the development of an ethics infrastructure consisting of “tools, systems and conditions that provide incentives for professionalism and high standards of conduct” (OECD, cited in Stevulak & Brown, 2011).

Zemanovičová et al. (2007) defines the term “ethical infrastructure” as a complex of tools and procedures aimed at elimination of undesirable behaviour and oriented at
creating motivation for correct and highly ethical behaviour. The result of effectively functioning ethical infrastructure is formation of such environment which provides a framework of knowledge of corresponding processes, rules and institutions. In accordance with them the public administration employees consider and ponder correctness or incorrectness of their behaviour (Zemanovičová et al., 2007). The ethical infrastructure can be characterized as a complex of eight elements (OECD, 1996; Zemanovičová et al., 2007):

1) Political support and commitment
2) Effectively functioning legislative framework
3) System of accountability mechanisms – mechanisms aimed at “giving accounts”
4) Workable codes of conduct
5) Professional mechanisms of socialization (including training)
6) Supportive public service conditions
7) The existence of an ethics coordinating body
8) An active civil society (including probing media).

Amundsen and Pinto de Andrade (2009) posit that each part is a source of public sector ethics, in other words public sector ethics emanates from several different sources. These sources range from the private ethical character of the individual public servant, via the agency-internal regulations and culture of the agency and national legislation, to international conventions with written standards and codes of conduct. They further state that the most efficient ethics regime is when these three sources work in the same direction, in parallel. Zemanovičová et al. (2007) assert that an ethical environment must be built in all components of public power- in the
executive, legislative and judicial. At the same time it is necessary to pay more attention to the ethics in the state enterprises or in companies with an ownership interest of the state.

2.20 APPROACHES TO ETHICS MANAGEMENT

Pevkur (2007) writes that public management practice and theory offer two often-opposing routes to encouraging ethical practice and ethical practitioners in public agencies. These are the high road and the low road. According to Rohr (cited in Pevkur, 2007) the “high road” stresses social equity. Relying on moral character, this route counts on ethical managers individually to reflect, decide and act. Individual responsibility is both a starting and an end point on the integrity route in public service. Integrity-based systems focus in internal mechanisms, which are those who individuals control- moral judgement capacity and character. The first is formed through value learning and training ethical decision-making; the latter depends on the intrinsic desire to act according to the moral judgement (Maesschalck, cited in Firmino, 2010).

If the integrity’s high road rejects administrative realities that stem from accountability, then the “low road” addresses ethical issues almost exclusively in terms of adherence to agency rules. In this approach ethical behaviour is reduced to staying out of trouble (Pevkur, 2007). Pevkur (2007) asserts that the “low road” of compliance is designed to spur obedience to minimum standards and legal prohibitions. Here adherence to formal rules, legally enforceable standards and legalistic problem solving are in focus. Firmino (2010) concurs with Pevkur (2007) and states that compliance-based systems rely on external mechanisms of control
based on formal and detailed rules and procedures. Some of these include legislation and codes of conduct.

In managerial terms, compliance translates into oversight and control. The low road of compliance does not care that most people want to make good decisions but only that most people meet minimum standards of conduct (Pevkur, 2007). The compliance approach emphasizes the importance of external controls in shaping the behaviour of public servants and the integrity approach focuses on self-control exercised by each individual public servant (Pevkur, 2007). While old public administrations rely essentially on law to promote an ethical behaviour, countries where the New Public Management (NPM) paradigm prevails are compliance-based, acting according to rules (codes of conduct). New Public Service (NPS) systems are integrity-based, cherishing values to elevate ethical behaviour (Pevkur, 2007).

2.21 CONCLUDING REMARKS
This chapter has reviewed the literature on ethics in the public sector with a specific reference to the South African public sector. It alluded to the theoretical framework guiding ethics in this study and the legislative framework governing ethics in the South African public sector. The chapter also highlighted and elaborated on various important aspects of ethics in the public sector including codes of conduct, codes of ethics, causes and manifestation of unethical conduct as well as the ethics infrastructure and approaches to ethics management. The next chapter outlines the methodology adopted by researcher in this study.
CHAPTER 3

RESEARCH METHODOLOGY

3.1 INTRODUCTION

This section describes the research design and methods that will be used in the study. The research design presents the methodology and methods that will be used in this study. The methodology and method, outlines the research approach and instruments that will be used to collect data respectively. The research design enables the researcher to use data collection techniques that suit the research problem. The section will conclude by outlining how the collected data was analysed.

3.2 RESEARCH DESIGN

The study used the qualitative research approach. According to Van Maanen (cited in Welman, Kruger and Mitchell, 2005) qualitative research is an umbrella phrase covering an array of interpretive techniques which seeks to describe, decode, translate and otherwise come to terms with the meaning of naturally occurring phenomena in the social world. From this assertion, Welman et al. (2005) came to the conclusion that the qualitative approach is fundamentally a descriptive form of research. Lewis, Taylor and Gibbs (2005) posit that qualitative data is information gathered in a nonnumeric form. It is a way of collecting information on the knowledge, values, feelings, attitudes, beliefs and behaviours of the target population. Mouton and Marais (1990) writes that qualitative research is characterized by the fact that the researcher is trying to get to multiple meanings and interpretations rather than impose one dominant interpretation.
3.3 DATA COLLECTION TECHNIQUES

According to David and Sutton (2004), data are what the researcher actually receives from the respondents, be it social or physical. Layder (1993:54) identifies a number of instruments that can be used to gather data, among these are interviews, intakes forms, questionnaires and surveys, attendance records and documents. This study used document surveys as its data collection technique and analysed the information contained thereto. The researcher opted for document surveys because of the sensitivity of the research topic. Bailey (cited in Des Vos, Strydom, Fouche and Delport, 2005) asserts that official documents or non-personal documents imply documents that are compiled and maintained on a continuous basis by large organisations such as government institutions. Such documents are more formal and structured than personal documents. They include minutes and agendas of meetings, inter-office memos, financial records, statistical reports, annual reports and process records (De Vos et al., 2005).

For the purpose of this study, information was sought from the following official documentary sources:

- The 2009/10 Department of Education Annual Report; and
- The 2009/10 Auditor General’s Report to the Eastern Cape Department of Education.

De Vos et al. (2005) posit that when documents are studied, it is of cardinal importance that the researcher evaluates the authenticity, or validity and reliability of documents. The reason for this is that the authors of documents sometimes harbour
ulterior motives such as money or prestige. The AG’s report and the Annual Departmental report were regarded as reliable and valid for the research mainly because the two are official government documents. These documents were useful because they contained the relevant information needed for the research project.

The choice of document study as the instrument for data collection was informed by the following advantages: *Relatively low cost* - document study is relatively more affordable than, for instance, a comprehensive survey; *Non-reactivity* - unlike surveys or experiments where respondents are aware of the fact that they are being studied, producer of documents do not necessarily anticipate the analysis of their documents at a later stage. The contents of the documents are thus not affected by the activities of the researcher; and *Inaccessible subject* - the researcher does not need to make personal contact with the respondent(s) (De Vos et al., 2005).

However, the researcher was aware of the following disadvantages of document study: *Incompleteness* - reports, statistical records and historical documents are often incomplete, which means that there are gaps in the data base that cannot be filled in any other; *Bias* - since documents were not intended for research purposes, there are factors that can influence the objectivity of documents. For example, annual reports of organisations may be formulated to influence consumers positively; and *Lack of standard format* - Documents differ quite widely as regards their format. Comparison is then made difficult or impossible, since valuable information contained in a document at a particular point in time may be entirely lacking in an earlier or later document (De Vos et al., 2005).
3.4 ETHICAL CONSIDERATIONS

Bak (2004) explains that any research that involves people must show an awareness of the ethical considerations and an agreement to conduct the research in accordance with ethical procedures. There are various ethical considerations when conducting a research, but this study considered honesty in reporting of results. The falsification of research results or the misleading reporting of results was avoided (Welman et al., 2005). The information gathered from official documents was used for academic purposes only.

3.5 DATA ANALYSIS

Patton (2002) writes that qualitative analysis transforms data into findings. This involves reducing the volume of raw information, sifting significance from trivia, identifying significant patterns and constructing a framework for communicating the essence of what the data reveal. Mouton (1996) describes data analysis as involving ‘breaking up’ the data into manageable themes, patterns, trends and relationships. According to De Vos et al. (2005) data analysis is the process of bringing order, structure and meaning to the mass of collected data. The purpose of analysis is to reduce data to an intelligible and interpretable form so that the relations of research problems can be studied, tested and conclusions drawn. In this study, data was analysed using the filtering technique and content analysis. The filtering method is whereby the researcher filtered out any irrelevant information contained in the voluminous reports.

Welman et al. (2005) describes content analysis as a quantitative analysis of qualitative data. They further state that the basic technique involves counting the
frequencies and sequencing of particular words, phrases or concepts in order to identify keywords or themes. Jose and Lee (2007) define content analysis as a technique for making inferences by objectively and systematically identifying specified characteristics of messages. Denzin and Lincoln (2000) explain that content analysis allows for thick description in the analysis of data. This can be facilitated through thematic organization. The themes will then ground the arguments presented in the discussion. The focus considers the frequency with which certain words or particular phrases occur in the text as a means of identifying its characteristics (May, 2011).

According to Hofstee (2006) content analysis studies closely examine the content of preserved records. The records are nearly always written documents, although films or videos can also be used. The end goal of content analysis research is to discover the non-obvious meaning contained in the record. Adams, Khan, Raeside and White (2007) assert that this method may be useful in allowing the researcher to present a picture of what the concepts are but it does not help in understanding why ideas or interpretations arose in the first place. Hofstee (2006) is of the view that these types of studies are invaluable when an in-depth understanding of a text or collection of texts is required.

3.6 CONCLUDING REMARKS

This chapter has given an exposition of the research methodology applied in this study. The researcher opted for the qualitative approach and given the sensitive nature of the research topic, data was collected from official documentary sources the researcher deemed as having the required information. Ethical issues observed
in the study were highlighted and justified. The chapter concluded by detailing how the mass of collected data were analysed using the filtering technique and content analysis. The next chapter will focus on the presentation, analysis and interpretation of the data collected using the methodology described in this chapter.
CHAPTER 4

DATA PRESENTATION, ANALYSIS AND INTERPRETATION

4.1 INTRODUCTION

In this chapter the researcher presents the data, analyses and interprets it. The data collected from official documents were analysed using the filtering technique and content analysis.

4.2 EASTERN CAPE DEPARTMENT OF EDUCATION 2009/10 ANNUAL REPORT

The following are some of the challenges that were encountered by the Eastern Cape Department of Education in the 2009-10 financial year in some of their programs and sub-programmes which relates to unethical conduct by officials in the department.

4.2.1 Administration

The following challenges were identified that relate to poor financial management in the department.

4.2.1.1 Poor standards of reporting and long lines of communication

The standard of reporting in the department was poor and information contained in some reports was far from being accurate. Such a situation leaves room for poor performance and other unethical forms of behaviour by officials in the department who may in some instances wilfully perform such acts knowing that they will not account to anyone. Furthermore, the department experienced delays in getting information for either internal or external use and this is particularly true where
information had to come from Districts, who may have to receive the information from Circuit offices. In line with these findings, Jain (1997); Du Toit and Van der Waldt (1999) assert that if control is applied ineffectively, dishonest officials can exploit the situation for their own gain. Thus channels of communication need to be created to make accountability possible. Therefore, this unfortunate state of affairs limits the ability of the Department to achieve an unqualified audit opinion and meet tight deadlines set by the Auditor General.

4.2.1.2 Weak control systems and increased complexity of fraud and corruption

The department had weak control systems, particularly in procurement of services at the School level (The Learner Transport System, The School Nutrition Program, The Early Childhood Development (ECD) program etc) and these have been exploited by perpetrators of fraud and corruption. In addition, the profile of fraud and corruption perpetrators in the department was diverse as they come from all walks of life, economic circumstances and social classes. Consequently, an increased level of complexity of fraud and corruption has been observed in the department. This situation was been exacerbated by the fact that the Risk Management unit of the Department was constrained and limited both in number of staff as well as their level of expertise.

The department should capacitate its Risk Management unit with skilled and experienced personnel and need to implement functional internal control systems in order to curb the occurrence of cases of institutional misconduct highlighted above (Van Niekerk, cited in Zikhali, 2005; Du Toit et al., 2002). Pauw et al. (2002) support
these findings by asserting that weak systems provide opportunities for corruption and fraud. They further mention that the ways in which such systems operate do not prevent opportunities for fraud and corruption from arising.

**4.2.1.3 Payroll**

Many pay-point managers were not complying with PFMA and the Treasury Regulations. Human Resource and Finance personnel at District level were not submitting discrepancy reports to allow Head Office to effectively monitor compliance. This made it difficult for the Department to account for all its compensation of employee expenditure. The Department was using a manual excel payroll spreadsheet for tracking purposes. This system was open to manipulation and was not easy to update and monitor.

Due to financial constraints the procurement of an electronic database was stalled. This situation has led to the proliferation of reported ghost workers in the Department and the leadership of the Department must ensure compliance with the PFMA and Treasury Regulations for everyone involved in pay administration. The Department must also avail funds for the purchase of an electronic database to do away with weaknesses inherent in the manual excel payroll spreadsheet which is costing the department millions of rands in salaries for ghost workers and leave entitlements.

**4.2.2 Human Resource Management and Development**

The following challenges were identified which relates to issues of poor human resource management and development.
4.2.2.1 Non-compliance with Procedure for Incapacity Leave Ill-health Retirement (PILIR)

The cost containment measures implemented by the department limited District visits of the Leave Project Manager who could not complete her program. Consequently less than 50% of the total number of district offices were visited where leave entitlements remained incorrect and where training on the required skills and knowledge on the audit process of leave remained a dire need. There was failure to comply with the policy on incapacity leave and ill health retirement which increased litigation against the already financially constrained Department.

4.2.2.2 Slow pace of implementation of the Massified Induction Programme

The implementation of the Massified Induction Programme was very slow, resulting in non-confirmation of permanency of some officials at the end of their probation period. This was due to budget constraints and the limited number of trainers. During the year under review, the Department was sitting with 1024 backlog cases. Therefore, the Department should speed up the implementation of the Massified Induction Programme, avail sufficient funds and trainers for the programme.

4.2.2.3 Employee Health and Wellness Programme

The financial allocation for the Employee Health and Wellness Programme was insufficient to the extent that employees were sometimes abandoned midstream in the process of their recovery. This is both highly unprofessional and unethical and has contributed to the programme being unable to meet its targets. The Employee Health and Wellness Programme did not have confidentiality enhancing accommodation both at Head Office and District levels. The open plan
accommodation does not work for Employee Wellness as employees who have confidential issues to address are unable to do so.

In worst case scenarios, officers consulted clients in their own vehicles, an ironically non-confidential situation which in turn discourages a lot more employees from accessing the service. To counter this, the Department should avail sufficient funds for the Employee Health and Wellness Programme to ensure that employees are not abandoned midway through the process. It should also provide private accommodation for officers to ensure confidentiality during consultation.

4.2.2.4 Hazards not addressed
The hard and sterling work performed by the Safety, Health, Environment, Risk and Quality Management (SHERQ) of identifying Occupational Health Hazards is most often downplayed because of lack of resources to implement the recommendations of the assessment. The case in point here was Idyoki Public School in the Mt Fletcher District where the assessment revealed that the school was dilapidated and therefore posing a risk to its occupants (both learners and teachers). It subsequently collapsed before any intervention was implemented.

4.2.3 Supply Chain Management
The following challenges related to supply chain management for the Department of Education.
4.2.3.1 Inadequate organisational structure

The Supply Chain of the ECDoE did not comply with the PFMA and Treasury Regulations. Contract management, asset management and supply performance review components were not included in the organisational structure. This non-compliance with SCM policies creates a fertile ground for institutional misconduct including but not limited to fraud and corruption by employees in the department. Hence there are numerous reports of employees in the department trading directly with the department without declaring their interests. In addition the department was not complying with the regulations in terms of custody, archiving and disposition as a result of lack of a proper document management system. This contributed to poor audit findings as documents could not be found or retrieved in time for the audit process.

The Department did not fully implement the LOGIS system in all districts. This led to different systems, procedures and practices being adopted across the affected Districts hampering efforts to monitor risks and expenditure trends at Head Office level. Furthermore, the Department did not have an accredited supplier database in place. This had a negative effect with regards to the implementation of government policy on SMME and BBBEE reporting as rotating suppliers and service providers is not possible. Therefore, the department should install the LOGIS system across all Districts to ensure uniformity, effective monitoring of risks and expenditure at the Head Office. It also must have an updated accredited supplier database in place to ensure compliance with government policy on SMME and BBBEE.
4.2.4 Internal Audit

The following challenges related to the Internal Audit function of the department.

4.2.4.1 Non-implementation of corrective actions

There was poor attendance at Audit Committee Meetings by management which compromised the level of accountability of management performance. The Department of Education Management has for years been failing to implement corrective measures to reduce or to mitigate audit findings and recommendations. In its general reviews conducted during the year under review, the internal audit committee highlighted that there were weak controls and lack of monitoring and support of district offices by the head office through cluster chief directors leading to opportunities for gross mismanagement of funds not detected as early as possible.

The committee also noted some instances where the control measures set by the Department suffered from misinterpretation of and non compliance to policies and procedures or lack thereof. This view is also supported by Jain (1997); Du Toit and Van der Waldt (1999) who assert that the application of complex legislation may sometimes leave room for unethical and ineffective conduct. Because regulations and technical points may be difficult to understand, their application sometimes runs counter to their ultimate purpose. Incorrect interpretation also leads to inconsistencies which result in the goals of the institution not being realised.

4.2.4.2 Poor resourcing

The lack of capacity of the Internal Audit staff and budgetary constraints made it extremely difficult to engage the Internal Audit Activity in either the internal or the
external quality assurance reviews. Moreover, the Audit Committee was unable to review and evaluate the accuracy, reliability and credibility of statutory financial reporting in the Annual Financial Statements of the Department. The financial statements were not always readily available to the committee for review and hence the financial statements continued to misrepresent the true financial state of the department.

Therefore, the Department should capacitate the Internal Audit Committee with skilled personnel and sufficient financial resources so that the unit is able to perform its duties efficiently and effectively. The department should also ensure that financial statements are readily available to the Audit Committee for review purposes.

4.2.5 Public Ordinary School Education

The following challenges relating to unethical conduct by public officials in department were encountered in the management of Public Primary Schools and Public Secondary Schools.

4.2.5.1 Poor financial management by some schools

The Department observed that poor management, inefficient utilisation and accountability for financial resources by some school authorities contributed to poor performance. This led to poor quality of teaching and learning and adverse reports. There are indications that some former Model C schools have parallel structures to RCLs and SGBs and that undermines the transformation and democratisation of education institutions. Some NO FEE schools were charging school fees depriving some poor learners’ access to education. This is a direct contravention of section 29
(1) of the Constitution of the Republic of South Africa which states that everyone has the right (a) to a basic education, including adult basic education; and (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

The above findings highlight a spirit of deliberate non-compliance with the legislation governing schools by officials in the Department of Education. This is an indication of weak values in the Department of Education which according to Pauw et al. (2002) imply that an individual does not regard behaviour generally regarded as ethical as important or worth the trouble. This state of affairs might also be attributed to weak consequences imposed by the department on those officials found on the wrong side of the law. According to Pauw et al. (2002) weak consequences may lead to perpetrators of fraud and corruption to believe that even if their misdeeds were to be discovered, the repercussions would not be strong.

4.2.5.2 Shortage of school safety personnel and access control

During the year under review, there were no designated school safety personnel to ensure that safety standards and policies and access control measures were implemented at school level. Access control to schools was a problem. The movement of people into and out of school was a problem because most of the schools did not have proper fencing. This made it easy for criminals to enter the school to attack, vandalise or sell drugs to learners. This situation which is highly unethical in nature was worsened by the fact that the department implemented cost curtailment measures which resulted in the cancellation of many school safety programmes. It is suggested that the department should deploy enough school
safety personnel to address this unfortunate state of affairs which could be contributing to perpetual low pass rates in the province.

4.2.5.3 Physical conditions of hostels

Most of the hostels were in a poor state due to lack of infrastructural maintenance and vandalism. This unfortunate reality exposes learners to dangers and health risks and indirectly affects the quality of learning. Furthermore, certain hostels especially former model C were not complying with Treasury Regulation of March 2005 which compels them to deposit all hostel monies they collect as revenue. This prevents them from getting the subsidy from government and, thereby, disadvantaging some deserving learners who come from poor backgrounds. The leadership of department should ensure that funds are available on a regular basis to carry out the necessary repairs to hostels. They should take a tough stance on those model C hostels not complying with Treasury Regulation.

4.2.5.4 Delays in tender processes

The non-awarding of the tender for fully resourced Mobile Kitchens for secondary schools resulted in the Department forfeiting a rollover of R20.117m and an inability to provide mobile kitchens to all deserving schools as promised. The non-provision of mobile kitchens to schools resulted in schools not complying with a cooked menu. Learners were fed on a bread-based menu which is not in compliance with the approved business plan. In addition, the non-awarding of tenders by the Department resulted in the continuous extension of previous tenders leaving the Directorate with a challenge and inability to include deserving schools and learners who were erroneously omitted but had submitted on time. These learners would have to wait
for a long time before they could be included. Also non-monitoring resulted in suppliers not complying with the prescribed menus as well as non-feeding in some areas.

4.3 REPORT OF THE AUDIT COMMITTEE FOR THE YEAR ENDED 31 MARCH 2010

The Department of Education’s Audit Committee highlighted the following challenges that faced the department during the financial year ending 31 March 2010.

4.3.1 Risk Management

As part of governance improvement the department established and was in the process of fully implementing a risk management strategy. During the 2009-10 financial year the audit committee reviewed and recommended to the accounting officer for approval of the Risk Management Strategy, Framework and Policy. Due to the significance of identified potential fraud, conflict of interest and corruption cases within the department, limited resources of the risk management unit were applied in following up these matters and only limited effort was placed on preventative measures. It is therefore suggested that the department should place more emphasis on preventative measures and sustainable risk management practices to reduce the potential of the above mentioned malpractices. Campaigns to raise awareness of the provisions of the code of conduct for the public service among officials in the department will go a long way in realising this aim.
4.3.2 Internal Audit

The internal audit was under-resourced in terms of skills and number of personnel and therefore was not in a position to fully discharge its responsibility. This impacted on the overall effectiveness of the internal audit during the financial year under review. The audit committee determined that assurance was needed in various areas, such as financial administration and reporting, supply chain, performance audit and legal compliance and based on this further advised the department on the areas to be considered when appointing a service provider. However, the department could not implement any of the above recommendations. It is imperative for the leadership of the department to take heed of the recommendations of the internal audit committee in order to address the perennial problems confronting the department.

4.3.3 Effectiveness of Internal Control

The internal audit committee concluded based on the work that was undertaken as part of the annual internal audit plan and Auditor General’s interim and final audits, that the system of internal control for the department was ineffective. The material areas that were affected were human resource administration, supply chain management, financial administration, planning and reporting, and asset management. The audit committee described the key root causes for these weaknesses as lack of appropriate capacity and expertise at correct levels, lack of will at senior levels to enforce best practices, non-compliance with management policies, lack of appropriate policy framework for managing outsourcing arrangements and also lack of a proper document management system.
The committee also noted that the failure of the department to fill critical posts in finance and supply chain with appropriately skilled individuals, and upgrading skills at district levels is slowing progress in addressing these matters. This study therefore, suggests that the department should overhaul its internal control systems and implement workable systems. The department should also prioritise the filling of all critical posts highlighted above.

4.3.4 Governance Processes and Accountability

The findings and related recommendations of internal audit, Auditor General and audit committee had been acknowledged by management but no significant corrective action had been taken in the past and no evidence that managers responsible had been held accountable for their respective areas. The findings included processing transactions without appropriate approval and sufficient documentation, non-performance of routine accounting functions such as reconciliations and clearing of suspense accounts on a regular basis, inaccurate processing and recording of transactions. These findings indicate that gross misconduct is rampant in the department. It is an ill that is also found at the management level hence the reluctance to act seriously on the recommendations of the internal audit, Auditor General and audit committee.

The leadership of the department should embark on an ethical awareness campaign in the department by teaching basic values and principles governing public administration as contained in Chapter 10 of the Constitution. They should also emphasize the importance of the code of conduct for the public service, PFMA, Treasury Regulations and any other laws, rules and regulations that regulate the
conduct of officials in the department. The leadership should also award stiff punishments to those employees charged of misconduct and hold defaulting managers accountable and take decisive steps. The department was also negatively affected by the constant turnover of senior and general management, vacant positions and other human resource disturbances throughout the reporting year. Hence the audit committee was of the view that good governance in the department can be achieved by the creation of a skilled and stable management team.

4.3.5 Evaluation of Financial Statements

The audit committee noted that a lack of appropriate policies, procedures, control mechanism and capacity within districts, supply chain management and finance division of the department, makes it difficult for the Department of Education to generate a reliable, accurate and complete set of financial statements. For the third year in a row the financial statements were not made available in time for the members to perform the relevant quality reviews on them. At the time of the audit committee meeting arranged to review the annual financial statements, these financial statements were partially complete and the audit committee was not in a position to review and recommend them for approval by the Head of Department.

The audit committee has reached a conclusion that the department does not have capacity to produce a set of financial statements within the time frames appropriate to comply with PFMA and in the manner prescribed by the applicable accounting framework. This perpetual failure by the department to meet the deadlines for submission of financial statements is unethical and unacceptable. The leadership of the department must capacitate the finance department with skilled personnel so that
they can be able to produce quality financial statements within the prescribed time frames.

4.4 REPORT OF THE ACCOUNTING OFFICER FOR THE YEAR ENDED 31 MARCH 2010

The accounting officer noted the following challenges that were encountered by the department during the financial year.

4.4.1 Significant events that took place during the year

A new acting Head of Department was appointed by the Department during the year under review. After the 2009 elections the same Member of the Executive Council was appointed thus ensuring continuity. This is the typical revolving door syndrome at the top management level that has been affecting the organisation in recent years.

4.4.2 Capacity constraints

The post of Chief Financial Officer was filled during the year under review thus leaving the post of Chief Director Finance vacant. The post of the Chief Director SCM could not be filled as anticipated during the year under review but was in the process. A senior manager was seconded from the National Department of Education to assist at that meantime. The Department operated without a fully capacitated Internal Audit division for part of the financial year. Other forms of capacity constraints include lack of experience and skills since some of the districts are not able to attract experienced and skilled people. These are districts that are mostly in the remote areas of the province and in such a situation, the department should incentivize posts in those areas to attract experienced and skilled personnel.
The organogram review process was expected to be finalised in the next financial year. Some of the capacity constraints were to be resolved through an organogram review process.

The availability of systems such as LOGIS, BAS and PERSAL varies from district to district with some districts having no systems whilst others have weak and/or unreliable systems. This is an unethical practice which may result in unfair treatment of personnel in terms of remuneration and other benefits. In line with this Du Toit et al. (2002) assert that the consequences of an action must not have a negative effect on those at the receiving end of such an action. Cloete (cited in Du Toit et al., 2002) echoes the same sentiments by stating that citizens expect reasonable and fair treatment regardless of sex, origins, language, and religion. Thus those employees who may have perceptions of unfair treatment might end up being demotivated and even sabotaging the attainment of organisational goals.

4.4.3 Corporate governance arrangements

Internal audit functioned for part of the financial year without the necessary capacity. The directorate Risk Management also functioned without the necessary capacity during the year under review. Therefore, it is clear that these two critical units of the department could not execute their mandates effectively due to capacity constraints. This could have paved the way for the reported fraud, corruption and other forms of unethical behaviour in the department during the year under review. The leadership of the department should capacitate these two important units with experienced and skilled personnel. The department appointed the services of the Special Investigation Unit during the year under review in order to follow up on all outstanding reports on
corruption within the department. This highlights the magnitude of the problem of corruption in the department. Those that are found embarking on these malpractices should receive stiff punishments including fines and expulsion from the department.

4.5 REPORT OF THE AUDITOR-GENERAL FOR THE YEAR ENDED 31 MARCH 2010

This section presents the Report of the Auditor-General to the Eastern Cape Provincial Legislature on the Financial Statements of Vote No. 6: Eastern Cape Department of Education for the Year Ended 31 March 2010. Emphasis was placed only on those areas relating to unethical conduct by public officials in the department.

4.5.1 Auditor-General’s responsibility

The AG is required by section 188 of the Constitution and section 4 of the Public Audit Act and section 40(2) of the PFMA, to express an opinion on the financial statements of the department based on his audit in accordance with the International Standards on Auditing and General Notice 1570 of 2009 issued in Government Gazette 32758 of 27 November 2009. During the year under review, the AG was not able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion.

4.5.2 Disclaimer of opinion

The Department of Education received a disclaimer of opinion from the AG. The AG further stated that this audit outcome was of concern as there was a lack of direction and accountability within the department. In addition, there was a total breakdown of
internal control and supply chain management. Furthermore, numerous fraud risk indicators were identified during the audit and underlined by findings that are indicative of fraud and corruption within the department. Therefore, the leadership of the department should urgently address these critical matters identified by the AG.

Heath and Rich (1999) stress the importance of addressing these social ills by stating that fraud and corruption is a disease, which affects the poorest of the poor and the richest of the rich. It affects the socio-economic climate of a country and influences potential international investment, and can cause the economical downfall of a country if it is not curbed and measures are not in place to combat it.

4.5.2.1 Basis for disclaimer of opinion
(a) Compensation of employees

The department could not provide complete employee files and other appropriate documentation in support of basic salaries, compensative/circumstantial payments, performance awards, service based payments, periodic payments and other non-pensionable allowances. In addition not all employees selected for testing presented themselves for physical verification. This was as a result of poor record keeping and document management. Furthermore, this was also attributed to the inadequate pay point management which is contrary to paragraph 8.3.5 of the Treasury Regulations.

The AG highlighted that this could be an indicator of fraud and requires further investigation. The department’s employee records were incomplete and inaccurate and did not permit the application of alternative procedures to compensation of employees. As a result the AG was unable to obtain sufficient appropriate evidence
relating to the occurrence and accuracy of employee costs of R1,57 billion during the year under review. To address this ill, this study suggests that the leadership of the department should channel funds towards the procurement of a functional Human Resource Information System and document management system.

(b) Goods and services
During the year under review, the department could not provide appropriate supporting documentation to support payments amounting to R325,9 million included in the goods and services of R1.9 billion in the statement of financial performance. This amount included R180,4 million in respect of payments made for the school nutrition program. This was a result of the department not maintaining an adequate document management system. The department’s records did not permit the application of alternative procedures relating to goods and services. Consequently the AG did not obtain all the information and explanations he considered necessary to satisfy him as to the occurrence and accuracy of payments made for goods and services.

(c) Transfers and subsidies
The department could not provide sufficient appropriate audit evidence to support the occurrence and accuracy of journal entries in respect of payments made for households of R36,1 million disclosed in the annual financial statements for transfers and subsidies. There were no alternative audit procedures that the AG could perform to obtain reasonable assurance that all transfers and subsidies were properly recorded.
(d) Contingent liabilities

The department could not provide bank confirmations for housing loan guarantees to the value of R103 million included in the housing guarantees of R130.6 million disclosed in the annual financial statements. Even after performing alternative procedures, the AG could not obtain sufficient appropriate evidence relating to the existence, completeness, accuracy and valuation of housing guarantees.

(e) Capped leave and leave entitlement

The department could not provide sufficient appropriate evidence supporting the increase in capped leave credits to the value of R173.4 million included in the annual financial statements. This was a result of poor record keeping of adjustments made to capped leave resulting from queries received from employees pertaining to their balances. In terms of PSR 1/V/F(b), the head of department shall record all leave taken by an employee accurately and in full. The leave balance as reflected on PERSAL did not agree with employee leave forms in the employee files as leave was not captured timeously and accurately. As a result, the leave entitlement of R153 million disclosed in the annual financial statements was overstated by R76.4 million because the leave days on PERSAL were overstated. In addition, employees at the Department of Education had negative capped leave credits which were not deducted from their annual leave and were not recovered via unpaid leave.

(f) Sick and incapacity leave

In terms of PSR 1/V/F(c), the head of the department should ensure that sick leave is not abused. The Department of Education did not comply with the DPSA’s Determination on leave of absence in the public service (leave determination), which
requires that medical certificates be submitted, and did not implement processes and procedures to monitor sick leave in order to prevent abuse thereof. Furthermore, the Department of Education granted more temporary or permanent incapacity leave than the employee was entitled to and did not meet the requirements of the determination and the policy. The department’s records and systems did not permit the application of alternative audit procedures regarding capped leave. Consequently, the AG did not obtain all the information and explanations he considered necessary to satisfy him as to the valuation and existence of capped leave.

(g) Accruals
The department could not provide invoices and goods received vouchers in respect of accruals amounting to R18, 6 million included in the annual financial statements. This was as a result of poor record keeping and record management of documentation. The department’s records and systems did not permit the application of alternative audit procedures regarding accruals. Consequently, the AG did not obtain all the information and explanation he considered necessary to satisfy him as to the completeness, occurrence and valuation of accruals.

(h) Commitments
Contracts and project management files supporting commitments were not submitted for audit purposes and there were no satisfactory alternative audit procedures that the AG could perform to obtain reasonable assurance that all commitments were properly recorded. Consequently, he was unable to obtain sufficient appropriate audit evidence to satisfy him as to the completeness and valuation of commitments.
of R1.67 billion included in the annual financial statements. Commitments of R37,5 million included in the financial statements were overstated by R37,5 million due to the miscalculation of the value of the commitments at year-end, where expenditure against the commitments was either added or subtracted from the value of the commitment. This was a result of the department not having monitoring controls in place to ensure the accuracy of the amount disclosed in the annual financial statements.

(i) Unauthorised, irregular and fruitless and wasteful
The Department of Education had qualifications with regard to expenditure. The challenges mainly stemmed from deficiencies in the control environment and daily and monthly control activities that are not monitored and reviewed by the leadership and management. In addition, the retention of documentation was a challenge that needed further attention. The AG noted that the management was failing to address and rectify known and recurring errors. In addition to the above, the nature of the findings and the fraud risk indicators identified during the audit indicated that the possibility of fraud could not be excluded.

• Unauthorised expenditure
The department incurred unauthorised expenditure of R709 million as a result of exceeding two main divisions within its vote. The root cause of this unauthorised expenditure was a lack of effective monitoring and supervision over monthly management accounts. It is also indicative of a lack of discipline as far as adhering to laws and regulations are concerned. Kanyane (cited in Mafunisa and Maserumule, 2004) asserts that over-expenditure is a hereditary issue that has pushed the country
into serious budgetary deficits, thus affecting the strength of the South African currency.

Therefore, the leadership of the department must ensure effective monitoring and supervision of monthly management accounts. They must also ensure strict adherence to the laws and regulations governing public finance in the department including the PFMA and Treasury Regulations.

- **Irregular expenditure**

The Department of Education incurred an amount of R658 million in irregular expenditure due to irregularities in the supply chain management process. Education also overspent on compensation of employees by R7.5 million. In addition, the Department of Education incurred a further R132,7 million irregular expenditure through the irregular promotions of staff members. Documentation relating to delegations was not provided and as a result the AG was unable to obtain sufficient appropriate audit evidence relating to goods and services of R108,2 million included in the annual financial statements. This was a result of poor record keeping and record management of documentation. The AG was not able to determine whether these transactions were contrary to PFMA requirements which could have resulted in irregular expenditure. Consequently, he did not obtain all the information and explanations he considered necessary to satisfy him as to the completeness and accuracy of irregular expenditure disclosure.
- **Fruitless and wasteful expenditure**

Fruitless and wasteful expenditure of R26,7 million disclosed in notes to the annual financial statements was understated by R31,3 million. This related to expenditure being incurred which could have been avoided in respect of compensation of employees, goods and services and capital expenditure as due care was not taken by officials when authorising payments and applying the policies and procedures of the department. This was in contrary to section 40(3)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA) which requires disclosure of all fruitless and wasteful expenditure incurred during the year.

According to Pauw *et al.* (2002) unauthorized expenditure is either expenditure for a purpose that was not budgeted for, or expenditure exceeding a budgeted amount for a purpose. It is a misdirected spending or overspending or both. They further contend that unauthorized expenditure, in combination with fruitless and wasteful expenditure and irregular expenditure form the ‘gruesome threesome’ or 3Gs. Pauw *et al.* (2002) also put forward that the 3Gs are pitfalls which any accounting officer should avoid at any cost. They are negative forces which work against the 3Es of economy, efficiency and effectiveness. Section 81(1) of the PFMA states that an accounting officer for a department commits an act of financial misconduct if he/she wilfully or negligently makes or permits an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure.

Because of the significance of the matters described in the Basis for disclaimer of opinion paragraphs above, the AG was not able to obtain sufficient appropriate audit
evidence to provide a basis for an audit opinion. As a result, the AG did not express an opinion on the financial statements of the Eastern Cape Department of Education.

4.5.2.2 Additional matters
The AG also drew attention to the matters below.

(a) Reporting against predetermined objectives
The record keeping at the department of education did not support credible reporting of actual performance against predetermined objectives. The Department of Education did not implement performance management systems that contained objectives that were SMART (specific, measurable, achievable, realistic, time bound) and supported by appropriate document management systems. This contributed to the findings on predetermined objectives in its reports. The leadership of the department should establish appropriate systems and processes for collecting retaining and retrieving information that supports their reported performance.

(b) Reported performance measures not valid, accurate and complete as inadequate supporting source information was provided
For more than 60% of performance measures which were material by nature relating to school nutrition, registration and pass rates, the validity, accuracy and completeness of the reported target could not be established as the relevant databases and examination mark sheets could not be provided for audit purposes. There were also no alternative audit procedures that the AG could perform to obtain the required assurance.
(c) Reported information not consistent with planned objectives, indicators and targets

Twenty seven percent of the performance measures relating to primary school outcomes were included in the annual performance plan without targeted amounts. However, the department reported actual achievements for these measures in the annual report. This was an unethical act by the department and no explanations were provided to confirm the basis used to calculate the actual achievements.

(d) Reasons for major variances between planned and actual reported targets were not explained

The reasons for material variances between the planned targets and the actual reported achievements for 33% of the performance measures relating to school nutrition, registration and pass rates were not provided.

(e) Lack of effective, efficient and transparent systems and internal controls regarding performance management

The accounting officer did not ensure that the department has and maintains an effective, efficient and transparent system and internal controls regarding performance management, which describe and represent how the institution’s processes of performances planning, monitoring, measurement, review and reporting will be conducted, organised and managed, as required in terms of section 38(1)(a)(i) and (b) of the PFMA. Under such an environment characterised by weak internal control systems, fraud, corruption and other forms of unethical behaviour are inevitable.
(f) Inadequate quarterly reporting on performance information

The quarterly reports of the department did not track progress against outputs, indicators and targets as per the approved annual performance plan and therefore did not facilitate effective performance monitoring and evaluation, as required by Treasury Regulation 5.3.1. In addition, inspection of the department’s quarterly reports revealed the following shortcomings:

- The format/content of the quarterly reports was not consistent with the performance objectives, measures and targets contained in the annual performance plan;
- The quarterly reports were not reviewed, monitored and evaluated by senior management and the internal audit function.

From the above findings, it is clear that there is deliberate disregard by both the management and employees of the laws and regulations that govern the way they should execute their departmental mandates. This could be attributed to the fact that the management itself is failing to lead by example and the absence of cautioning as well as stiff punishments to those employees who are not performing their duties or are charged with misconduct.

4.5.2.3 Compliance with laws and regulations

The following are the findings related to material non-compliance with the acts as indicated.
(a) Public Finance Management Act No. 1 of 1999 and Treasury Regulations of 2005

Contrary to section 66 of the PFMA the department obtained and used overdraft facilities to finance its operations. The researcher views such an act as gross misconduct which warrant disciplinary action on officials that were involved. Contrary to the requirements of TR 17.12b, amounts included in the clearing suspense accounts were not cleared and correctly allocated to the relevant accounts on a monthly basis. The department did not settle all monies due to creditors within 30 days of receiving the invoice, as required by section 38(1)(f) of the PFMA and by paragraph 8.2.3 of the Treasury Regulations. Creditors which exceeded the 30 days repayment terms amounted to R437,5 million as disclosed in the financial statements.

There were no controls in place to ensure that the payroll report was signed on a monthly basis by every employee before the payment was made in terms of paragraph 8.3.4 of the Treasury Regulations. Contrary to the requirement of TR 3.2.11 the internal audit function did not assist the accounting officer in maintaining efficient and effective controls by evaluating those controls to determine their effectiveness and efficiency and by developing recommendations for enhancement or improvement.

Furthermore, contrary to TR 3.2.1 the department did not implement its risk assessment strategy and fraud prevention plan during the 2009-10 year as it was only approved at the end of March 2010 by the audit committee. In addition to this the department did not have a risk assessment committee. Therefore, during the
year under review the department operated in an environment that was very much susceptible to risks including fraud and corruption. This view is also supported by the findings of the AG who highlighted the presence of weak internal control systems in the department.

(b) DPSA Circular of 15 April 2009
Performance contracts were not signed by the 31st of July 2009 for 11 officials who were level 12 and above employees as required by the DPSA Circular 15 April 2009.

(c) Public Service Act of 1994
Contrary to the requirements of section 30 (1) of the Public Service Act, departmental employees engaged themselves to transact with the department, without the written permission of the executive authority of the department and without declaring their interest. The total amount paid to entities related/directly to these employees or their spouses’ is R40,4 million. The researcher views this as wilful misconduct by the employees involved because they know that on one will take action against them as some members of the management are also implicated in the scandals.

4.5.2.4 Internal control
The AG noted the following challenges in the Department of Education relating to internal control systems.
(a) Leadership

The AG pointed out that the departmental environment is not conducive to good accountability and service delivery through positive attitude, integrity, competence and ethical behaviour. There were a number of suspensions and investigations of senior management which indicated that management was not leading by example and that the correct tone at the top was not set. During the year under review there were two acting accounting officers and the CFO’s position was filled after two years. At that time of writing of the AG’s report the acting accounting officer’s contract had also been extended over a number of times. The lack of sustainability of senior management has contributed to the findings under the Basis for disclaimer of opinion paragraphs, predetermined objectives and compliance with laws, rules and regulations.

The AG also alluded to the fact that monthly management information of the department was not reliable and useful as a result of management not fulfilling their responsibilities. This was caused by a culture of non-performance by management in terms of performing their daily duties and a lack of accountability. Certain senior officials also did not have performance contracts in place. The researcher suggests that all non-performing managers should be punished or dismissed if they continue to do so because their non-performance will result in poor service delivery by the department.

(b) Financial and performance management

The department was unable to provide the auditor with adequate supporting documentation for various components of the audit which contributed to the
disclaimer of opinion. This was as a result of the department not having an adequate record management system in place to ensure easily retrieval of documentation. In addition, the departments’ manual and automated controls are not designed and controls are not implemented to ensure that the transactions which have occurred, are authorised, and are completely and accurately processed. The AG also reported that management did not adequately monitor transactions upon recording which resulted in the findings under the Basis for disclaimer of opinion paragraphs, predetermined objectives and compliance with laws, rules and regulations.

This failure by management to adequately monitor transactions is unethical as it results in overspending, irregular, fruitless and wasteful expenditure. It constitutes a breach of the code of conduct for the South African public service which states that when performing his/her duties, an employee must promote sound, efficient, effective, transparent and accountable administration. Cloete (cited in Du Toit et al., 2002) concurs with this view by asserting that government institutions should perform their activities thoroughly. This implies that an activity must be carried out timeously and economically, and the result must be one of quality.

Furthermore, the department’s control systems did not respond adequately to the risks of fraud in payroll, procurement and the payment of goods and services. The AG also pointed out that the department did not have adequate controls in place to identify and record irregular and fruitless and wasteful expenditure. From the above assertion, the researcher has come to the conclusion that the internal control systems of the department are ineffective and need an overhaul. Some employees and members of the management are taking advantage of this situation and hence
the AG reported fraud, corruption, irregular, fruitless and wasteful expenditure in the department during the year under review.

(c) Governance

The AG noted that although the fraud prevention plan has been reviewed by the audit committee in March 2010, the department did not implement the risk assessment strategy and fraud prevention plan, nor did it have a risk committee in place for the financial year under review. This may have contributed to an increase in the number of fraudulent activities that took place in the department some of which were under investigation.

The department's internal audit division was ineffective in performing its duties and responsibilities as most of the findings from the previous years’ audit report have not been addressed. The internal audit division was also understaffed and technically unqualified. This was as a result of the department not providing them with an adequate budget for the performance of their responsibilities. The department had also tendered to have their internal audit function outsourced during the year under review. However, the department failed to award this tender as the tender period had lapsed resulting in the department being without the co-sourced internal audit function that was requested by the audit committee for the entire year under review. This subsequently led to the audit committee and internal audit division not being able to perform their duties and responsibilities effectively.
4.6 CONCLUDING REMARKS

From the above analyses it is clear that the Eastern Cape Department of Education is experiencing a massive ethics failure at both the individual and the organisational level. This unfortunate state of affairs is attributed to many factors as highlighted in the Department’s Annual Report as well as the Auditor General’s Report. These include *inter alia*, the failure of the leadership of the Department of Education to set the right tone at the top, the total breakdown of internal control systems, poor document management system and the deliberate disregard of the laws, rules and regulations governing the way in which officials in the department should execute their mandates. In such an environment abuse of public power and resources is inevitable. Hence the AG’ findings for the department were reflective of fraud, corruption and other irregularities including overspending, irregular, fruitless and wasteful expenditure. Unless the National Department of Education and the leadership of the country act seriously without reservations on this impasse, the Eastern Cape Department of Education is likely to continue receiving disclaimers of opinion from the AG. The next last chapter will give an account of the conclusions and recommendations emanating from the findings of this study.
CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1 INTRODUCTION

This chapter presents the conclusions and makes recommendations based on the research findings. The primary objectives of this study were:

- To explore and examine the challenges faced by the Department of Education in ensuring the ethical fitness of its personnel.

- To examine the causes of unethical conduct by public officials in the department.

- To examine the functionality of the ethics infrastructure employed by the department.

- To come up with strategies and recommendations which can help in improving on ethical conduct of public officials and therefore enhance service delivery in the Department of Education.

5.2 CONCLUSIONS

The following conclusions and recommendations can be drawn based on the study’s major findings emanating from the analyses of the 2009/10 Department of Education Annual Report and 2009/10 Auditor General’s Report to the Eastern Cape Department of Education.

- The Department of Education received a disclaimer of opinion from the AG due to the lack of direction and accountability within the department.
• There were poor standards of reporting in the department and information contained in some reports was far from being accurate. Long lines of communication were also evident which resulted in unnecessary delays in getting information for either internal or external use by the department.

• There was a total breakdown of internal control systems and the Risk Management unit of the Department was constrained and limited in personnel and their expertise. The material areas that were affected were human resource administration, supply chain management, financial administration, planning and reporting, and asset management. The root causes for these weaknesses were lack of appropriate capacity and expertise at correct levels, lack of will at senior levels to enforce best practices, non-compliance with management policies, lack of appropriate policy framework for managing outsourcing arrangements and also lack of a proper document management system. The researcher concluded that the ethics infrastructure of the department was not functional.

• Pay-point managers were not complying with PFMA and the Treasury Regulations. Human Resource and Finance personnel at District level were not submitting discrepancy reports to allow Head Office to effectively monitor compliance.

• There was failure to comply with the policy on incapacity leave and ill health retirement which increased litigation against the already financially constrained Department.

• The Supply Chain of the department did not comply with the PFMA and Treasury Regulations. Contract management, asset management and supply
performance review components were not included in the organisational structure.

- There was poor attendance at Audit Committee Meetings by management which compromised the level of accountability of management performance. The control measures set by the Department suffered from misinterpretation of and non compliance to policies and procedures or lack thereof. The Department of Education Management has for years been failing to implement corrective measures to reduce or to mitigate audit findings and recommendations. Capacity and budgetary constraints made it difficult to engage the Internal Audit Function for internal or external quality assurance reviews. The Audit Committee was unable to review and evaluate the accuracy, reliability and credibility of statutory financial reporting in the Annual Financial Statements of the Department.

- There were no designated school safety personnel to ensure that safety standards and policies and access control measures were implemented at school level.

- The department did not have capacity to produce a set of financial statements within the time frames appropriate to comply with Public Finance Management Act and in the manner prescribed by the applicable accounting framework.

- The availability of systems such as LOGIS, BAS and PERSAL varies from district to district with some districts having no systems whilst others have weak and/or unreliable systems.

- The Department of Education had qualifications with regard to expenditure. An environment that was conducive to good accountability and service
delivery through positive attitude, integrity, competence and ethical behaviour was not established resulting in unauthorised, irregular, fruitless and wasteful expenditure.

- The Department of Education had poor record keeping and record management of documentation.
- There were no Ethics Officers and ethical performance measures in the department.

5.3 RECOMMENDATIONS

Based on the above research findings, the following administrative reforms are proposed to improve professional ethics and help breed a new calibre of ethically fit public officials in the Eastern Cape Department of Education. These reforms are also applicable to all government departments and parastatals in the Republic of South Africa.

- The Department of Education should take seriously the recommendations of the Auditor General and the Audit Committee and implement them without reservations.
- The department should urgently develop of a functional ethics infrastructure consisting of tools, systems and conditions that provide incentives for professionalism and high standards of ethical conduct. The leadership of the department should develop effective and transparent systems, strengthen anti-bribery actions, promote integrity and support active public involvement in the affairs of the department (Edwards, 2007).
• The department should urgently avail funds for the procurement of the state of the art internal control systems and must ensure the computerisation of critical functions such as human resource administration, supply chain management, financial administration, planning and reporting, and asset management. The department should also ensure uniformity of these systems including LOGIS, BAS and PERSAL in all districts to ensure reliability. The department should also capacitate the Risk Management unit with skilled and experienced personnel. This is a critical unit which can help in identifying and reducing risks bedevilling the department including fraud and corruption in the supply chain management process. Checks and balances should be in place to verify all payments made for goods and services.

• The National Department of Education should urgently create some posts in all the Provincial Head Offices and District Offices of Ethics Officers (Ethics Counsellors) to perform advisory and administrative functions. These include providing advice on ethics rules and ethics issues within the department. They should also be responsible for the development of comprehensive ethics programs including ethical awareness campaigns, ethics education and training for public officials in the department including the application of the code of conduct for public servants and the PFMA. The Ethics Officers should also be responsible for teaching and inculcating in officials public administration values contained in Chapter 10 of the Constitution such as accountability, economy, efficiency, effectiveness, fairness and transparency. Other values that are also important in this regard include inter alia, honesty, integrity, loyalty, objectivity and selflessness. The department can also
establish Ethics Committees to assist Ethics Officers in the execution of their duties.

- Through the help of ethics committees and ethics officers the Department of Education should regularly carry out ethics audits to evaluate the organization’s policies and procedures for preserving and nurturing ethical behaviour (Kernaghan, 1996).

- The department should develop effective ethical performance measures and integrate these measurements and reporting with existing performance management systems and performance standards (Edwards, 2007). These ethical performance measures should also form the basis for appointing and promoting all members of the department.

- The leadership of the department must be ethically fit and should set the right tone at the top for employees to follow. They should never be implicated in scandals of fraud, corruption and other forms of unethical behaviour. Furthermore, the leadership should promote ethical awareness by raising ethical considerations in a deliberate and regular way at meetings and through such other means of communication as newsletters (Kernaghan, 1996).

- The leadership of the department should capacitate all the relevant units of the department with skilled and experienced personnel to ensure timely, accurate and quality production of reports and financial statement within the time frames appropriate to comply with Public Finance Management Act and in the manner prescribed by the applicable accounting framework.
• The computerisation of all the departmental functions will ensure proper record keeping and record management of documentation. It will also facilitate easy retrieval of documentation for internal or external use.

• The leadership of the department should encourage whistle blowing by developing a formal policy that protects employees who report ethical or legal violations. These include the provision of a confidential hotline that officials in the department can use to discuss concerns about their personal ethical behaviour or that of others. Informing employees about the Protected Disclosures Act, 2000 and its implications will go a long way in realising this aim.

• The recruitment and selection process of the department should also examine the ethical fitness of applicants. This can be facilitated through extensive background checks including criminal record checks on every potential candidate. As part of the selection tests, candidates can be presented with case studies involving ethical issues and ethical dilemmas and should be asked to solve the problem or give some advice. In line with this, the department should also conduct exit interviews with employees leaving the organisation to ask questions about the employee’s view of the ethical culture of the organisation. The department should act seriously on the findings emanating from these interviews.

• Stiff punishments should be given to those employees charged of misconduct including fine, suspension and expulsion from the organisation to deter other employees from engaging in such unethical behaviours. Close follow-up and monitoring of cases of misconduct are important to ensure that the provisions of the code of conduct for the public service are adhered to by officials.
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