

LEGAL ASPECTS OF TEACHER TERMINATIONS
FOR INCOMPETENCE IN BRITISH COLUMBIA

by

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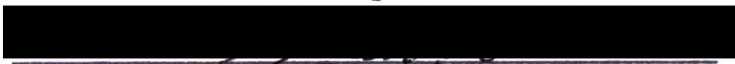
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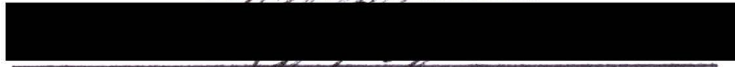
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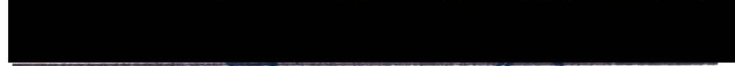
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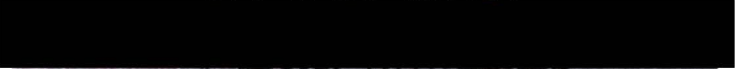
Educational Administration

We accept this thesis as conforming
to the required standard


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December 1986

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SCHOOL OF GRADUATE STUDIES



March 12, 1987

DEAN

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ABSTRACT

The primary purpose of this study was to promote a better understanding of the termination of continuing teacher contracts for incompetence in British Columbia according to the provisions set down in the present British Columbia School Act and School Act Regulation. A secondary purpose was to examine and analyze the outcomes of the 17 teacher appeals from termination placed before the review commission from the inception of this tribunal until 1985.

Five questions were addressed in the course of the study concerning:

a) the historical origin of the present British Columbia legislation for employment and dismissal of teachers and for the review commission;

b) the legal requirements for the termination of a continuing teacher contract for incompetence in the present statute;

c) the results of the 17 teacher requests for review commissions between 1974 and 1985;

d) the standard of competence for teachers in British Columbia determined through decisions of the review commissions; and,

e) the comments of various British Columbia chief administrators on the termination of teacher contracts for incompetence.

The methodology involved the following: firstly, a detailed study of the present British Columbia legislation considered in the context of the relevant common law and of the historical origins of the statute; secondly, an examination of the confidential reports and records of the 17 review commissions appointed since 1972; and, thirdly, interviews conducted with chief administrators representing 10 British Columbia school districts.

The study identified the three stage process for termination of incompetent teachers as follows: receipt by a school board of three less than satisfactory reports written by administrators; a hearing before the school board; and, an appeal to a provincial review commission. Important elements in considering the issue of competence were identified from the reports of the review commission. Finally, chief administrators generally were found to be unfamiliar with the specifics of the process, critical of what they regarded as the time consuming, cumbersome

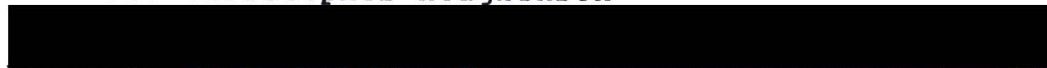
and legalistic aspects of this process, and inclined to seek alternate methods of removing incompetent teachers from the classroom.

These findings were discussed and recommendations were made as follows: first, the need for administration to become more aware of all aspects of the statutory process for teacher contract termination for incompetence; second, the need, from a legal point of view, for clarification of the existing process in the School Act and School Act Regulation; third, the desirability, from a policy point of view, of considering alternates to the present process of contract termination; and, fourth the desirability of further research into the aspects of teacher contract termination for incompetence.

Examiners:


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CHAPTER I

INTRODUCTION AND BACKGROUND INFORMATION

We hear sometimes of an action for damages against the unqualified medical practitioner, who has deformed a broken limb in pretending to heal it. But what of minds that have been deformed for ever by the incapable pettifoggers who have pretended to form them! (Dickens, 1839)

Teacher competence has been a source of concern to society for over a century. While the vast majority of teachers in present educational systems are competent, the few teachers who are incompetent must not be ignored. Administrators, school board trustees, parents, students and teachers themselves agree that incompetent teachers should be dismissed. British Columbians in 1985 were asked by the provincial government how they viewed their schools in the "Let's Talk About Schools" discussion paper that was circulated to the voting public as well as to educators (Ministry of Education, 1985). The general consensus of all groups polled was that "incompetent teachers should be released" (Ministry of Education, 1985, 25). More specifically, Kilian, an educator and author, in his address to the Lower Island Teachers' Association in Victoria on February 21, 1986, commented as follows:

...I believe that we could convey our own seriousness about education by making our profession much less secure than it is now...All of us know of colleagues who are lazy, unprofessional, or downright

incompetent. Our tolerance of such people is an embarrassing reflection on ourselves. Sooner than shake up the hierarchy, we become accomplices: if we cover their asses, they'll cover ours.

In 1986, the Association of British Columbia School Superintendents sent a position paper, "Future Directions", to education minister Tony Brummet. This paper included the recommendation "to shorten the time required to dismiss, after due process, teachers who have been found to be incompetent". Moreover, Elsie McMurphy, president of the BCTF, gave support to the position of the superintendents' association in the following comment reported in the Times-Colonist on November 5, 1986 at page C11:

We have a mutual desire with the school superintendents to ensure the best teachers are in the classrooms with the kids.

In Canada, with the exception of British Columbia, all provincial public school legislation has combined teacher misconduct and incompetence under one section concerned with cause for teacher dismissal. British Columbia public school legislation is unique in the provision for a separate statutory procedure for dismissal for the cause of misconduct and for the termination of a continuing teacher contract for the cause of incompetence. Pursuant to section 123 of the School Act, R.S.B.C., Chap. 375, 1979 and regulation

(reg.) 65 of the School Act Regulation, B.C. Reg. 436/81, a continuing teacher contract may be terminated by the school board for teacher incompetence after the receipt of three "less than satisfactory" written reports filed by designated administrators. The aggrieved teacher then, according to section 130 of the School Act, has a right of appeal to a provincially appointed review commission consisting of three representatives from the education community who after providing a hearing must either confirm or reverse the decision of the board to terminate a teacher contract for incompetence. The resolution of the review commission is final and binding on the teacher and the board. Involvement of the courts is limited by statute to judicial review considerations of jurisdiction or of procedure employed in the hearing for the aggrieved teacher before the board or the review commission.

Neither the School Act nor the School Act Regulation defines incompetence or what constitutes a "less than satisfactory" performance by a teacher. Moreover, there is little evidence of effort by school administrators to co-ordinate or to standardize teacher evaluation criteria throughout the various school districts in British Columbia (B.C.P.V.P.A., 1983). Notwithstanding the significant social and emotional tensions facing administrators who file a "less than

satisfactory" report on a teacher, administrators are charged with the statutory obligation to ensure that teachers provide a competent level of instruction in British Columbia schools.

Statement of Problem

More than 1500 continuing teacher contracts have been terminated in British Columbia since 1975. This number of contract terminations may be attributed to the factors of decreasing student enrolment and economic restraint. During this period of extensive staff reduction, few teachers have had their contracts terminated for "less than satisfactory" or incompetent teaching (reg. 94). However, a population of over 25,000 British Columbia public school teachers "ensures a certain number of incompetents" (Mackay, 1984, 160). In fact, the review commission, the final appeal body for the few teachers whose contracts have been terminated for incompetence according to British Columbia legislation, has confirmed only 6 of 17 appeals placed before it from the appearance of the first case in 1974 until 1985. While it is probable that a number of cases involving incompetent teachers were settled at one of the many junctures along the lengthy termination procedure, nonetheless, the fact

that only 17 appeals have been placed before the review commission in over a decade warrants investigation. Apparently, either administrators are not using the statutory provisions for the termination of incompetent teachers or alternatively, the legislation has proved to be so unwieldy as to be ineffective in ridding the teaching profession of incompetent teachers.

Statement of the Purpose

The purpose of this study is to promote a better understanding of the termination of continuing teacher contracts for incompetence in British Columbia according to the provisions set down in the School Act and School Act Regulation.

A second purpose is to examine and analyze the outcomes of the 17 teacher appeals from termination before review commissions from the first case in 1974 until 1985.

Questions to be Answered

In order to analyze and understand the termination of teacher contracts for incompetence in British Columbia, the following questions will be addressed:

1. What is the historical origin of the present British Columbia public school legislation for employment and dismissal of teachers and for the review commission?
2. What are the legal requirements in the unique procedure of termination of a continuing teacher contract for incompetence in the present British Columbia School Act and School Act Regulation?
3. What are the results of the 17 applications for review of teacher contract terminations placed before the review commission from the first case in 1974 until 1985?
4. What standard of competence for teachers in British Columbia has been determined through the decisions of the review commissions?
5. What are the responses of various British Columbia district superintendents or assistant superintendents regarding the termination of teacher contracts for incompetence in their districts?

The answers to these questions were sought to promote a better understanding of the termination of teacher contracts for incompetence and to provide essential criteria for administrators' evaluation of

teachers that are set down in the reports of the review commission.

Delimitations

This study is limited to analysis of the termination of continuing teacher contracts for incompetence in the British Columbia public school system and to analysis of the decisions of the British Columbia review commission from 1974 to 1985.

The identification of termination of a contract for incompetence is specifically to be distinguished from teacher suspension or dismissal for misconduct.

Importance of the Problem

First, it is hoped that the findings of this study identify precisely what British Columbia legislation requires for the termination of continuing teacher contracts for incompetence. Second, the reasons of the review commission in reversing or confirming the decisions of the boards to terminate teacher contracts for incompetence should have operational implications for administrators. In particular, teacher evaluation criteria identified by review commissions should be widely known and should be written into district teacher evaluation policies and regulations. Moreover,

the findings of this study should be instructive to teachers who are accountable for their classroom learning situations. In addition, it is hoped that this study provides some insight for interested members of the tax-paying public of British Columbia who endeavor to understand what is required to remove an incompetent teacher from the classroom.

Review of the Literature

The study of the termination of continuing teacher contracts for incompetence in British Columbia focused on primary documentary sources, with an emphasis on an examination of the present School Act and School Act Regulation and on Canadian court decisions that were considered to be relevant to the interpretation of the legislation. Legal texts and periodicals have been consulted in order to provide an understanding of pertinent legal terms and principles. For comparative purposes, the study included an historical review of the British Columbia School Act provisions relating to teacher dismissals and a brief reference to the present legislation in force in the Western Canadian provinces and Ontario. Finally, access has been gained for the first time for study purposes to the confidential

reports of the decisions of the British Columbia review commissions.

Canadian Secondary Sources

Secondary British Columbia sources relating to the topic of termination of teacher contracts for incompetence do not exist. There is however, a developing body of Canadian literature on the legal process for teacher contract termination for incompetence which incidentally distinguishes between incompetence and misconduct. Reference to the issue of teacher competence has been made by Czuboka (1986), by editors in The Executive Educator (1986), by editors in the bulletin of the Canadian Association of University Teachers (1986), by Hickcox (1985), by Mackay (1984) and by Harrison (1982) in the following way.

The work of Czuboka (1986) on the status of tenured teachers in Manitoba was instructive to the present study. Part of Czuboka's study referred to teacher incompetence as a cause for the dismissal of teachers according to Manitoba legislation. Examination of the public school legislation presented in this text concerning termination of teacher contracts in the various Canadian provinces revealed significant similarities and differences between jurisdictions. For example, while all statutes

identified the need for "cause" in the termination of a continuing teacher contract by a board, Newfoundland legislation refers to cause as "adequate reason for termination" (Czuboka, 1986, p. 247), Ontario legislation cites cause as "a matter [that] arises that in the opinion of the Minister adversely affects the welfare of the school (Czuboka, 1986, 221) and Manitoba legislation speaks of "reasons for the termination". Saskatchewan legislation makes a specific reference to "professional incompetency" as cause for teacher dismissal (Czuboka, 1986, p. 209). Constitutionally, each province provides for its own appeal body for teachers who have been subject to dismissal by a board. Provision for the following appeal bodies has been established according to each provincial statute to hear and to adjudicate teacher dismissal cases in Canada: Nova Scotia and New Brunswick provide for a Board of Appeal; Manitoba, Quebec and Newfoundland refer to a Board of Arbitration; and, Alberta, Saskatchewan, Ontario, Prince Edward Island and British Columbia establish a Board of Reference (Czuboka, 1986, p. 197). British Columbia is unique in the provision for a second tribunal, the review commission, that has been established specifically to deal with allegations of teacher incompetence as opposed to dismissals for misconduct.

In addition to an overview of the Canadian statutory provisions for termination of continuing teacher contracts, Czuboka (1986) examined administrative difficulties in the termination of the contracts of tenured teachers. Czuboka (1986, p. 38) dismissed the prevailing "myth of the unfireable teacher" as follows:

Nothing could be further from the truth than this myth of the unfireable teacher. Any board which believes teachers to be incompetent but does not fire them brings into question its own competence. To adapt an old saying, behind every incompetent teacher is an incompetent school board.

The burden of proof for teacher incompetence allegations rests with the school board and its administrators. Administrative personnel who have appeared before teacher dismissal boards to defend allegations of teacher incompetence report that "they seem to be on trial rather than the teacher" (Czuboka, 1986, p. 169). Czuboka (1986, p. 37) cautioned that:

...an award of a board of arbitration tends to be a sort of certificate of incompetency for the losing party which, in turn, tends to keep tenure cases to a minimum.

Also, Czuboka (1986, p. 207) identified the following phenomenon that is present in most teacher contract termination cases. Seemingly, there is a:

... "rallying behind the little guy being attacked by the establishment"... Even some of those who previously disliked [the teacher] probably found their sympathies aroused.

The provincial adjudicative tribunals "were originally devised to provide an inexpensive and uncomplicated system for the settlement of contract disputes", but over the years these tribunals have proven to be costly both in time and money (Czuboka, 1986, p. 264). Czuboka (1986, p. 265) has attributed the costliness of the teacher dismissal appeal committees to the "high court manner" and the court-like procedures instituted by the presence of legal counsel at the hearings. While these legal procedures probably have resulted "in fairer hearings and justice being done", the interpretations of lawyers who lack familiarity with the school system have been "legalistic and rigid" according to Czuboka (1986, p. 265). Czuboka (1986, p. 276) has maintained that because "all teachers and administrators are "competent" or "incompetent" in varying degrees, and they cannot be put into two clearly-defined categories", educators are needed to make educational decisions respecting teacher competence.

In spite of the risk and the effort required of administrators and school boards to terminate teacher contracts for incompetence, an allegation that is

difficult to prove unless it is "blatant and overwhelming", Czuboka (1986, p. 65) encouraged such teacher dismissals for the following reason:

For better or for worse, Canadian society has reached a stage where the rights of people take precedence over the rights of organizations. It is hoped that the rights of children in Canadian schools will not be forgotten during this important period of transition.

Moreover, Czuboka (1986, p. 244) emphasized the fact that "school boards must pay close attention to their public school acts and related regulations".

An editorial comment in The Executive Editor (Downey, 1986, p. 11) offered suggestions to administrators involved with teacher dismissals. The following checklist that was gleaned from the writings of Czuboka (1986) was compiled to prepare administrators in Manitoba for the possibility of a court challenge:

- Gather accurate, well-documented written evidence to back up accusations of incompetence.
- If a dismissal comes before an arbitration board, use an attorney who has experience with teacher dismissals and school law, and hire a court reporter to produce official transcripts of the hearings. Save these for possible court appeals.
- Once a dismissal proceeding is under way, limit your communication with the fired teacher. Persistent contact could lead to a claim of

harassment.

- Remember that the superintendent-- as the administrator carrying responsibility for the dismissal attempt--will be, in effect, on trial alongside the teacher. Act accordingly, and prepare your case carefully.

- Don't confuse the issue by including accusations you can't back up with evidence. You need only one reason to dismiss a teacher, but you must be able to prove your charge.

- If you find yourself unable to substantiate your accusations, resist the temptation to go "dredging"-- interviewing administrators and teachers to uncover rumors, hearsay evidence, or past incidents you can use against the teacher.

- Insist on receiving complaints about teachers in writing. Unless you have written documentation, potential witnesses could change their minds and refuse to testify.

Two articles from the Canadian Association of University Teachers (CAUT) bulletin were particularly instructive. Although this literature applies to university teachers rather than to elementary or secondary school teachers, the following points seemed relevant to the present study. The first CAUT editorial comment (1986, p. 24) emphasized the importance of procedural fairness in a "significant and historic legal decision" that favoured the Canadian university academic community. The CAUT bulletin referred to the case of Professor Cohnstaedt, Head of the Department of Sociology at the University of Regina who had been dismissed for incompetence because:

...the University had not followed the rules of procedural fairness, and...as public officers under the laws, tenured professors are protected by the rules of natural justice.

The CAUT editor (1986, p. 24) identified the Cohnstaedt case as:

...only one of a number of recent cases, some of which reached the Supreme Court of Canada, which have established the right of faculty members to procedural fairness and natural justice when decisions affecting their careers are made by universities.

A previous issue of the CAUT bulletin (Shore, et al., 1986, p. 11) identified the improvement of instruction as the most important purpose of teacher evaluation and emphasized that "without assistance to permit teachers to improve instructional techniques, gathering data is counter-productive". Moreover, Shore, et al. (1986, p. 11) presented a positive recommendation to university professors to compile a:

...well-constructed and maintained teaching dossier [that] may be useful if faculty members find it necessary to appeal against negative decisions on appointment renewal, promotion, tenure or dismissal. The procedures which are now commonly used by arbitrators or members of appeal panels require the formal submission of persuasive evidence. Such persons are charged with evaluating such evidence. The maintenance of records of teaching effectiveness will enhance the

persuasiveness of a faculty member's appeal when this is in question.

While not all the items suggested to be included in a university professor's dossier would be applicable to elementary or secondary school teachers, many of the following examples that were listed by Shore, et al. (1986, p. 11) might prove to be valuable:

- samples of student work;
- samples of course materials prepared for students;
- evidence of exchanging course material with another colleague;
- evidence of help given to colleagues;
- student scores on standardized tests at the beginning and at the end of instruction;
- description of how non-print materials (e.g. computers, film) were used in instruction;
- steps taken to emphasize the interrelatedness and relevance of different kinds of learning;
- journal articles on improving teaching and attempting to implement acquired ideas;
- maintaining a record of changes resulting from self-evaluation;
- reports on identification of student difficulties and encouragement of student participation in special courses or programs;
- comments from teachers who teach subsequent classes;
- comments from administrators; and,
- requests for advice.

Hickcox (1985, p. 19) suggested that "a minute fraction - perhaps less than one percent of permanent contract teachers" warrant a negative evaluation.

Also, Hickcox (1985, p. 24) argued the difficulty of

the dual administrative purposes of teacher evaluation and supervision, because while the "prime manifest purpose of teacher evaluation" was:

...the improvement of instruction...the concept looks appropriate on the surface but improvement does not happen in practice. I do not reject the need for identifying and dealing with incompetence, defined in terms of failure to meet some minimum set of expectations, but I urge a new definition of supervision that would permit supervisors to engage in problem-solving activities with teachers and to promote development of activities for teachers as a means of infusing new life into the teaching act.

Although Mackay (1984), in his book on law and education failed to deal extensively with the issue of termination of teacher contracts for incompetence, he acknowledged the fact that incompetent teachers exist in Canada. His only mention of this problem was that there is a "Canadian tendency to resolve education issues at the administrative level rather than at the judicial level" (Mackay, 1984, 293).

Harrison (1982, p. 252) reviewed the topic of the dismissal of teachers in Canada, but the extent of his discussion on the topic, apart from general rationale behind the process of dismissal, was as follows:

Incompetence

The inherent difficulty in asserting incompetence lies in establishing some objective standard of performance. Appeal boards consider all mitigating factors that may explain alleged

incompetence such as proper placement in accordance with training and experience. If a teacher's job is in jeopardy, it is necessary to provide adequate warning and opportunity to correct existing deficiencies.

Insofar as it was necessary to supplement this study with legal background, legal text have been used.

American Secondary Sources

Review of the literature of the United States revealed a substantial body of writing that referred to the issue of teacher competence and to the issue of fair procedure for the termination of a continuing teacher contract for incompetence. While Rosenberger and Plimpton (1975), Noble (1985), and Citron (1985) investigated grounds for teacher competence decisions and teacher competence testing, Munnelly (1979), Webb (1983), and Van Horn (1984) commented on the nature of the procedural fairness required to successfully terminate teacher contracts for incompetence.

In the United States, the issue of teacher competence has been subject to extensive consideration by the courts. The American court experience has included not only the review of school board decisions to terminate teacher contracts for incompetence, but also claims by disgruntled students and their parents to recover damages from teachers and school boards as a

result of insufficient education or educational malpractice. Rosenberger and Plimpton (1975) have attempted to identify grounds for teacher incompetence cited by courts throughout the United States. Perhaps the most instructive finding was that:

Since there exists a presumption of competence on the part of a properly certified teacher who has served for a period of time without being rated incompetent, the burden of proof is upon those that assert that a teacher has fallen short of his obligations (Rosenberger & Plimpton, 1975, 479).

Generally, the American courts have defined what is or what is not teacher competence based on specific fact situations in each individual case. Furthermore, in no case has a single reason been sufficient to terminate a teacher contract for incompetence. Among the reasons to terminate teacher contracts that were put forward successfully in American courts were as follows: failure to adapt to current instructional procedure; low student achievement; poor personal attitude; and significant or "critical incidents" in a classroom (Rosenberger & Plimpton, 1975, p. 473). The most important reason cited by the courts was poor teaching methods that included factors of preparation, organization, materials, teacher enthusiasm and classroom control. Unsatisfactory classroom control included the elements of lack of discipline and order,

of unco-operative students and of bitterness or fear in the classroom. Lack of teacher knowledge was not identified as a major factor in the determination of an incompetent teacher.

Second, unlike Canadian provinces, residual power for education largely is granted to the federal government in American states and decision making on teacher competence is not left to the administrators. Noble (1985) and Citron (1985) commented on the American trend towards teacher competence testing. According to Noble (1985), legislation for competence testing was an effort to modify the certification program for teachers, particularly beginning teachers. However, the purpose of the competence test was not to measure pedagogical effectiveness, but to determine whether a teacher possessed minimal qualifications in reading, writing and arithmetic. This purpose does not coincide with the court findings cited above. Citron (1985) stated that competence testing has been mandated in two-thirds of the American states. Because granting tenure is much simpler than removing it, Citron (1985) explained that the purpose behind competence testing was to extend the statutory process that provided an almost automatic, rapid conversion of a probationary teacher contract into a continuing contract. Therefore, The American tenure reform issue dealt with

teacher competence at a state-wide level of certification or de-certification, whereas in British Columbia teacher competence decision making has been left by statute to the administrators, the school board and the review commission.

Third, unlike the previous authors who examined teacher competence issues, Munnelly (1979) reviewed essential components of procedure in the administrative evaluation of teachers. Specifically he focused on the importance of procedural fairness throughout evaluation proceedings. In particular, Munnelly (1979) emphasized that well documented incompetence allegations against teachers will be overturned by review bodies if fair procedure has not been provided to the aggrieved teacher.

Munnelly (1979, p. 223) identified four "fairness rights" for teachers during evaluation proceedings as follows:

1. the right to know what standards of performance were expected,
2. the right to notice and feedback,
3. the right to a chance to improve and to get help for improvement,
4. the right to have sufficient time to carry out prescribed improvement.

The first right, in order to prevent a teacher from making claims of harassment, requires that a teacher be informed of precisely what teaching

standards will be expected of all teachers in the district. The second right addresses the importance of feedback to a teacher throughout the process of evaluation in order to allow an adjustment of a teacher's performance to suit the standards. The final two rights deal with improvement opportunities for a teacher and emphasize the need to employ all possible strategies in an effort to bring a teacher up to standard. If the standard of teaching remained less than satisfactory following this process, it was these due process practices that would "provide the grist for the discharge proceedings" (Munnelly, 1979, 224).

Munnelly's argument was supported by Van Horn (1984, 7) who identified the court's reluctance to "intrude upon the internal affairs of school boards in matters pertaining to teacher incompetency". Instead of policy considerations, Van Horn (1984) suggested that courts tended to review the decision of the school board on matters of jurisdiction, evidence and reasoned analysis, as follows in the case of *Celestine v. Lafayette Parish School Board* (1973), 284 So. 2d 650 (La. Ct. App.) at page 653:

When there is a rational basis for an administrative board's discretionary determinations which are supported by substantial evidence insofar as factually required, the court has no right to substitute its judgment for

the administrative board's or to interfere with the latter's bona fide exercise of its discretion (Van Horn, 1984, 7).

Van Horn (1984, 7) identified dismissals of incompetent teachers to be "heavy but necessary responsibilities of competent administrators".

Webb (1983) commented on problems concerning the purpose of the teacher's report. In particular, he referred to the conflicting purposes of teacher evaluation by administrators whereby evaluation potentially may result either in improvement of instruction or teacher dismissal. He suggested that while teachers must be protected from arbitrary dismissal, students also must be protected from teachers who fail to provide them with an adequate education. In the United States:

...there has been an abundance of litigation in the area of teacher dismissal...[but] school boards and administrators should not misinterpret the involvement of the judiciary as an obstacle to the dismissal process (Van Horn, 1984, 6).

The following conclusion, expressed by Van Horn (1984, 7), described the American experience with reference to the role of the courts and to the administrative procedural requirements for the removal of incompetent teachers from the classroom:

The remediation of ineffective teachers and the dismissal of those judged incompetent...[and] the expectations of the courts are within reason and compatible with the practices of effective school management.

There have been a number of cases in the last decade in the United States where students have tried to recover damages from teachers and school boards as a result of insufficient education or educational malpractice. In the first educational malpractice case, *Peter W. v. San Francisco Unified School District* (1976), 131 Cal. Rptr. 854 (S.F.C.A.L), the court commented at page 860 on potential difficulties in the establishment of a standard of care for teachers so charged by a student:

Unlike the activity on the highway or the marketplace, classroom methodology affords no readily acceptable standards of care, or cause, or injury. The science of pedagogy itself is fraught with different and conflicting theories of how or what a child should be taught, and any layman might--and commonly does--have his own emphatic views on the subject.

None of the educational malpractice cases have succeeded in court in the sense that the student recovered a judgment for damages against a teacher, a school administrator or school board. While this is a related issue, educational malpractice case law is not really relevant to the proposed study since the

considerations in the recovery of damages in a liability lawsuit are totally different from concern with procedures to dismiss teachers. Accordingly, these cases were of limited assistance in the procedural analysis.

For purposes of this study, the American literature was instructive in providing increased understanding of the issue of competence, but it cannot form the basis of the present study which deals specifically with the procedure for termination of teacher contracts for incompetence established by legislation in British Columbia. However, the American requirement of fair procedure or "due process" is similar both in the United States and Canada. Reference to American literature then, largely was for comparative purposes in considering conclusions on teacher competence that may be drawn from the analysis of the review commission cases and of the comments of chief administrators from 10 British Columbia school districts.

Methodology

In order to understand the termination of teacher contracts for incompetence according to statute in British Columbia and to analyze the reasons for the

decisions in the review commission reports, the following methods and procedures were followed.

Chapter II explains specific terminology and principles of law from legal texts that are considered essential to provide an understanding of the legal termination of teacher contracts for incompetence.

Chapter III examines the statutory framework in British Columbia for the provision of public education, particularly as it relates to the employment and dismissal of teachers.

Chapter IV presents an historical analysis of British Columbia public school legislation. The method of analysis will be to investigate, in chronological order, the sections of the British Columbia statutes that refer to termination of teacher continuing contracts for cause, from 1872 to the present. In addition for comparative purposes, the present legislation in force in Alberta, Saskatchewan, Manitoba and Ontario relating to this topic are considered briefly.

Chapter V presents a detailed analysis of the scheme of legislation in British Columbia for the termination of teacher contracts for incompetence. Specifically, this legislative process is traced along a time line from the first less than satisfactory report, through contract termination by the board, to

the hearing before the review commission, and finally to the opportunity for judicial review in court. All pertinent legislation is summarized in a chronological time line of an overlapping schedule of events from the filing of the first less than satisfactory report to judicial review in court.

Chapter VI examines in chronological order the outcomes of the 17 teacher appeals from termination placed before the British Columbia review commission since its inception until 1985. Due to the confidential nature of these ministry of education documents, the names of the teacher and the school district are not disclosed and each of the hearings is identified by a case code number ranging from #1 to #17. Each review commission report is subject to a classical method of case analysis described by Dernbach and Singleton (1981, 8) as "helpful as a starting point and framework for analysis". Analysis includes the following basic components identified by Dernbach and Singleton (1981): facts, the details that are relevant to the decision; issue, the legal question that must be resolved before a case can be decided; decision, the legal answer to the issue; and, reasons, the steps in the logical process a court uses in arriving at its decision. A fifth component, argument, is included in the analysis between the issue and the decision of the

hearings in order to present a summary of the arguments of the teacher and the school board. In addition, this chapter suggests a standard of competence for teachers in British Columbia that has been determined through the decisions of the review commission to confirm the termination of a teacher contract.

Chapter VII presents a discussion of how British Columbia district superintendents, deputy superintendents and assistant superintendents functionally manage teacher incompetence in their respective districts. In an effort to provide a representative sample, 10 chief administrators were selected from various urban and rural districts in British Columbia. Anonymity of the administrators was guaranteed in order to invite candid comments to the interview questions. The tool to be used for this section of the study is the interview.

Finally, Chapter VIII comments critically on what this documentary study of the British Columbia educational legislation and of the reports of the review commission hearings have revealed about the termination of continuing teacher contracts for incompetence in British Columbia. The findings of the 10 interviews with British Columbia district superintendents or assistants regarding the practical administrative solution in the field to the problem of

teacher incompetence has been compared to the administrative tribunal resolutions identified in this study. It is hoped that the informed conclusions that may be drawn from this analysis add to the existing body of knowledge on the termination of teacher contracts for incompetence for use by administrators, teachers, school boards and the general public.

CHAPTER II
LEGAL BACKGROUND

The purpose of this study is to promote a better understanding of the termination of continuing teacher contracts for incompetence in British Columbia according to the provisions of the School Act and School Act Regulation. A second purpose is to examine and to analyze the outcomes of the 17 teacher appeals from termination placed before review commissions from the inception of this tribunal until 1985. Since the termination of teacher contracts for incompetence is a legal process, a general knowledge of legal terms and principles is necessary under the following headings: basic categories of law - substantive and procedural; sources of law - court judgments, statutes and subordinate legislation; administrative procedural fairness and natural justice - notice, hearing and freedom from bias; Canadian Charter of Rights and Freedoms and fundamental justice; employment law - master, servant and good cause.

Basic Categories of Law

Law may be divided into two broad areas: substantive law and procedural law. On the one hand, substantive law refers to the legal rule itself that

defines the "rights and duties which each person has in society" (Smyth, 1983, 43). Procedural law, on the other hand, assumes a secondary or adjectival role "concerned with the protection and enforcement of these rights and duties" (Smyth, 1983, 43). Procedural law, then, focuses on the issue of whether or not all the right steps were taken to ensure the protection and enforcement of the rights and duties prescribed in the substantive rule of law.

Sources of Law

In addition to the division of law into the two basic categories of substantive law and procedural law, law also may be defined according to its source. Specifically, law originates in court judgments, statutes or subordinate legislation. First, the decisions of judges in reported court cases form the basis of common law. Common law provides for consistency and predictability before the law through the theory of precedent or "stare decisis", a Latin term that means "to stand by previous decisions" of the courts (Smyth, 1983, 45). Common law, the basis of the Canadian system of law, dates back to feudal England at the time of the Norman conquest.

Second, legislative law or statute law "consists of statutes passed by Parliament and by provincial Legislation" that "override all the common law dealing with the same point" (Smyth, 1983, 49). In a dispute that involves a section (s.) of a statute, the courts are called upon to interpret the statute. In turn, the court's interpretation of the statute becomes common law.

A third major source of law is what is referred to as subordinate legislation, that is the laws or regulations made according to statute, but not made by the legislature. Subordinate legislation:

...derives from authority granted by statute to various administrative agencies of government to make rules and regulations in order to carry out the purposes for which the legislation was passed (Smyth, 1983, 47).

Such subordinate legislation, then, often determines the powers and procedures of administrative bodies constituted by statute. Administrative bodies may be empowered to make decisions affecting the rights of individuals from which decisions for purposes of cost saving and efficiency no right of appeal to the courts is granted by statute. In so doing, the prime concern is to balance the principle of efficiency and fairness between the public interest represented by government

and the private interests of individual citizens (Gall, 1977).

The common law, however, has developed a field of law called administrative law that deals with the situations in which a court will set aside the decision of an administrative body (Gall, 1977). Generally, unless a statute has provided for an appeal, the court will not deal with the merits of a decision but will intervene only if the particular administrative body somehow has exceeded its jurisdiction or has not proceeded in accordance with certain basic principles of fairness developed over the centuries by the courts (Gall, 1977).

Administrative Procedural Fairness

The elements of administrative procedural fairness were defined at page 675 in the Supreme Court of Canada case of *Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police* (1978), 88 D.L.R. (3d) 671 (S.C.C.) as follows:

...notice and hearing, with an opportunity to make representations and with reviewability of the decision.

These principles often have been referred to collectively as natural justice. In the case of

Furnell v. Whangerei High Schools Board, [1973] A. C. at page 660, the court defined natural justice as follows:

Natural justice is but fairness writ large and judicially. It has been described as 'fair play' in action...

The legal test to determine the level of procedure appropriate to a given case is the measure of how far one can depart from the judicial model and yet be fair. In the Furnell v. Whangerei High Schools Board, at page 679, the court explained that:

...the requirements of natural justice must depend on the circumstances of each particular case and the subject matter under consideration.

Moreover, at page 682 of the Nicholson v. Haldimand-Norfolk case, the circumstances when principles of natural justice must be applied were explained as follows:

...if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some way adversely affected by the investigation and report, then he should be told the case made against him and be afforded a fair opportunity of answering it.

Therefore, depending on the circumstances, the appropriate procedure for an administrative hearing may

range from an informal meeting to a formal judicial appeal. An earlier British Columbia Court of Appeal decision identified critical elements of an administrative hearing in the case of *Lloyd v. Superintendent of Motor Vehicles* (1973), 3 W.W.R. 619 (B.C.C.A.) at page 23:

...A hearing can be formal, or informal, public or private. Also it can be many things and held in many ways and with and through different media. A hearing can still be a hearing even if no parties or their representatives are present, and the tribunal or official considers only physical objects, writings, photographs and other visual or oral material put before it.

At the one extreme, the informal model, in an effort to prevent arbitrariness, provides for notice of the problem and the option of a time to meet or a place to submit the facts of the defense. Such minimal fairness requirements were upheld in the Supreme Court of Canada case of *Radulesco v. Canadian Human Rights Commission* (1984) 14 D.L.R. (4th) 78 (S.C.C.). The Court ordered, at page 81, that the commission must:

...afford [the] appellant a reasonable opportunity to make written submissions before adjudicating the complaint.

In addition to notice and a hearing, natural justice has required that an administrative tribunal

deliver its judgment as an unbiased decision maker. Strictly speaking, this means that if the administrative tribunal makes its decision precisely "within the 'four corners' of the authority granted it by its governing statute", the administrative agency has the legal right to be wrong in its decision based on the facts presented to the tribunal members (Gall, 1977, 262).

Historically, a number of remedies have been available to the individual who considered himself unfairly treated during an administrative action. The dissatisfied person could apply for a writ of certiorari in an attempt to have the court quash the decision made by an administrative tribunal. Alternatively, an individual could apply for a writ of mandamus, by which a court could order an administrative body to perform its duties according to law. Currently in British Columbia, with the passing of The Judicial Review Procedure Act (B.C.), Chap. 25 in 1976, the process of judicial review of administrative actions has been simplified and has provided easier access to the courts. This Act, without altering or enlarging the court's jurisdiction to review administrative decisions, has facilitated the process of judicial review.

Recently, procedural fairness or "fundamental justice" became part of the Canadian constitution in s. 7 of the Charter of Rights and Freedoms, 1982:

Everyone has the right to life,
liberty and security of the person
and the right not to be deprived
thereof except in accordance with
the principle of fundamental justice.

If this section "merely constitutionalizes fair procedure, [it] offers no more assistance than does the common law" (Kushner, 1984, 639). In addition, s. 11 of the Charter, has guaranteed specific procedural rights to "any person charged with an offence", specifically criminal charges. It has been argued by Kushner (1984, 655), of the Faculty of Law, University of British Columbia, that "applicability of s. 11 to non-criminal penal proceedings shouldn't be ruled out". However, by the end of 1985 there had been comparatively few cases regarding school law based on Charter arguments, so it is difficult to predict the impact the Charter may have on education. Recent Canadian cases, one involving a medical doctor and the other three involving lawyers, concerned appearances in court following appeals to disciplinary committees. The major issue argued was whether the appellant was a person "charged with an offence" within the meaning of s. 11 of the Charter. The most persuasive reason for

judgment against the appellant was cited in the case of *Belhumeur v. Discipline Committee of Quebec Bar Association* (1983), 34 C.R.(3d) 279. In this case, Huggessen J. held that the guarantees in s. 11 of the Charter did not apply in a disciplinary allegation that is essentially a civil privilege conferred upon members of various professions. Huggesson J. said, at pages 281 and 286:

The primary question in issue is whether article 11(c) of the Charter applies to a person summonsed before the disciplinary authority of his (or her) own professional body. Both the text of the Charter itself and the principles of our professional disciplinary law require the question to be answered in the negative.

A reading of article 11 of the Charter shows that it is directed exclusively at procedure in criminal and penal matters. It relates to public law and particularly to the power of repression exercised by the state. It concerns "rights", a heritage common to all citizens, rather than privileges the enjoyment of which is restricted to certain classes or to particular groups.

The practice of a profession is a privilege. The law grants to certain groups a monopoly to carry on certain well-defined activities and imposes upon the members of those groups an obligation to prevent abuse and to ensure that the monopoly will be exercised for the public good. It is normal that those who enjoy these privileges should be subjected to a more rigorous discipline than that which applies to ordinary citizens. This discipline is peculiar to them

and is not part of penal law. In consequence of this, the right to silence preserved in Article 11(c) of the Charter does not apply to professional disciplinary law. One cannot claim in the same breath the so-called right to silence and the privileged status as a professional.

While the Charter is meant to guard certain rights of individuals, it is not designed to interfere with every interaction between governments and individuals in society (Kushner, 1984). A question that remains to be answered respecting termination of incompetent teachers and the Charter is as follows:

...whether job loss is a severe enough consequence that it is a threat to the security of the person is yet to be determined in the interpretation of the courts (Kushner, 1984, 639).

Employment Law

The common law relating to employment law was developed principally as a branch of contract law in nineteenth century English courts during the ascendancy of the laissez faire economic era. The ordinary principles of contract law applied to contracts of employment. For example, if a contract was formed for a term, it expired at the end of the term. Alternatively, if the contract was formed for an indefinite period, then termination was available by

either party upon reasonable notice without any cause. The notice was measured according to the length of a pay period, with some reference to employment service. For example, a person paid on a monthly basis would be entitled to one month's notice.

An employer or "master", however, could at any time summarily dismiss an employee or "servant" without notice or severance pay for "good cause". The cause generally referred to was misconduct, which involved some particular act or course of conduct incompatible with the servant's duty to his master. Dismissal for cause was defined in the English case of *Pearce v. Foster* (1886), 17 Q.B.D. 536 at page 539 as follows:

The rule of law is that where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him.

As early as 1858, the court ruled that cause could include incompetence. The dismissal case of *Harmer v. Cornelius* (1858), 5 C.B. (NS) 236, at page 245, extended the previously undisputed right of the employer to dismiss for misconduct to include the more elusive cause of incompetence:

Misconduct in a servant is, according to every day's experience, a justification of a discharge. The failure to afford the requisite skill which had been expressly or impliedly promised, is a breach of legal duty, and therefore misconduct.

Employers, however, could not dismiss their employees at whim. In *Carveth V. Railway Asbestos Packing Co.* (1913), 24 O.W.R. 151 at page 153, Middleton J. emphasized that a certain level of cause for dismissal was required:

...In every such hiring, at any time, the employee is taken to some extent for better or worse. There must be as I understand the cases, more than mere dissatisfaction with the result; there must be incompetence or misconduct.

In the event that an employee felt and could prove wrongful dismissal, the servant could recover damages from his employer. However, since the master, upon giving adequate notice, could have terminated the servant's contract at any time, the servant's damages were limited to the amount of pay he would have received during the notice period, less any earnings he received within the time frame of notice after dismissal. Damages, therefore, were quite limited and were small compensation for the loss of a job. Moreover, the common law did not permit the court to order the employer to reinstate the employee (Harris, 1980).

The common law relating to employment in the nineteenth century, influenced as it was by contract law, was based on the questionable assumption that the parties to a contract possessed an equality of bargaining power. The fact that employment law was referred to as the law of master and servant indicated an inequality of power. The fallacy of this assumption gave rise to the formation of labour unions and to collective bargaining. In the second half of the nineteenth century, organized labour pressured governments for legislative change. Therefore, the development of labour law was not a product of the courts, but of the legislatures who found the common law wanting so far as the protection of employees or servants was concerned. The result was the gradual development of labour law.

Presently in British Columbia, there is in force the Labour Code, R.S.B.C. Chap. 212, 1979 that provides for the right to union membership and collective bargaining, and that regulates unfair labour practices, strikes and lockouts. However, teachers are not employees, as defined by the Labour Code and specifically are excluded from the protection afforded by the Code. Any collective bargaining rights applicable to teachers are incorporated into the School Act. The School Act governs all dealings between

teachers and their employers, the school boards. These rights are restricted considerably compared to rights of the employee under the Labour Code particularly insofar as the right to strike is concerned.

There are other statutes in British Columbia that affect the common law relating to employees, but generally they are not relevant to the present study. The Employment Standards Act, S.B.C. Chap. 10, 1980 provides for wage protection and regulates hours of work, vacations and maternity leave. This statute also stipulates provisions relating to termination of employees for incompetence, including notice and severance pay. Moreover, The Employment Standards Act preserves the common law position that no notice nor severance pay need be given to an employee discharged for cause. This Act, however, provides only for minimum standards. Teachers, even with the limited collective bargaining rights allowed by the School Act, have been able to negotiate agreements that provide benefits at least equal to, and in most cases in excess of these minimum standards.

Summary

Since termination of a contract of a continuing teacher is a legal process, a legal background was presented for this study. The legal background

described legal terminology and legal principles considered pertinent to this study. Topics of discussion included the following: basic categories of law - substantive or procedural; sources of law - court judgments, statutes or subordinate legislation; administrative procedural fairness - natural justice provisions of notice, hearing and an unbiased decision maker; impact of the Canadian Charter of Rights and Freedoms; and, employment law considerations.

CHAPTER III

STATUTORY FRAMEWORK FOR PUBLIC EDUCATION
IN BRITISH COLUMBIA

The purpose of this study is to promote a better understanding of the termination of continuing teacher contracts for incompetence in British Columbia according to the provisions set down in the School Act and School Act Regulation. A second purpose is to examine and to analyze the outcomes of the 17 teacher appeals from termination placed before review commissions since the inception of this tribunal until 1985. The termination of the contracts of teachers in British Columbia is better understood if it is considered within the context of the overall statutory framework for the provision of public education. In particular, the statutory framework is presented as it relates to the employment and dismissal of teachers.

The Constitution

Section 93 of the Constitution Act, 1867, formerly the British North America Act, conferred upon the provincial legislatures exclusive legislative authority for education as follows:

In and for each province the
Legislature may exclusively make
Laws in relation to Education,

subject and according to the following Provisions:

(1) Nothing in any such Law shall prejudicially affect any Right or privilege with respect to Denominational Schools which any class of Persons have by Law in the Province at the Union:

The provincial legislatures, then, have exclusive jurisdiction subject to protection of denominational schools according to the the Canadian constitution and of minority language rights set down in s. 23 of the Charter of Rights and Freedoms, 1982.

The Provincial Legislation

The School Act, R.S.B.C. Chap. 375, 1979 governs the system of public schools in British Columbia administered by the Ministry of Education, a branch of the public service. The Ministry is presided over by the Minister of Education, an elected member of government and appointee to the provincial cabinet, who manages and directs the ministry (s. 2).

The Minister of Education has charge of the administration of the Act. Subject to the regulations, the Minister may make rules and orders he considers advisable to administer the Act effectively. The statutory duties of the Minister that are relevant to this study include the division of the province into district superintendencies, commonly known as school

districts; the supervision of all schools; the examination and direction of the system of instruction; the professional development of teachers; and, the issuance of certificates for teaching.

The Lieutenant Governor in Council, in effect the cabinet, as advised by the Minister of Education, is delegated the power to make regulations known as subordinate legislation to facilitate the implementation of the Act (s. 14). The Lieutenant Governor specifically is empowered to establish institutions to train teachers; to prescribe grades and classes of certificates of qualifications for teachers; to specify the form of contracts of engagement of teachers; and, to suspend or cancel for cause teacher certificates of qualification (s. 15).

The affairs of each school district established by the Minister of Education through Orders in Council (s. 13(1)) are conducted by a Board of School Trustees that is elected or appointed under the Act. Every Board of School Trustees is constituted as a corporation, with perpetual succession and common seal. A school board has the rights, powers, duties and liabilities set out in the Act (s. 80). It is the board's statutory duty to determine local policy, in conformity with the Act, for the effective and efficient operation of schools in the district and for the delegation of specific and

general administrative duties to employees of the board (s. 88(b) & (c)).

The trustees are to be advised and assisted in the exercise of their powers and duties by a district superintendent of schools (s. 6(1)(c)). The district superintendent is appointed by the minister on the recommendation of the board under the Public Service Act as an executive officer of the board (s. 7), in effect a liason between the ministry and the trustees. The district superintendent is responsible for general supervision and direction of the education staff of the district, which includes teachers, vice principals, principals and central office administrators, and is directed by regulation to visit schools and classrooms as he considers necessary (reg. 10). Furthermore, the district superintendent is empowered by statute and required, in certain circumstances, to inspect formally the work of teachers in the district and to submit reports in writing to the Minister on the teaching ability and efficiency of those teachers (s. 6(k) & (l)).

It is the responsibility of the school board to hire teachers. Section 119(a) of the Act says that the board:

...shall as required, after considering the recommendation of the district

superintendent of schools appoint or authorize the appointment of properly qualified persons as part time or full time teachers in the school district... and enter contracts with them as provided in this Act.

There are three main qualifications for employment as a teacher set out in the Act. First, with certain limited exceptions, a teacher must hold a valid and subsisting certificate of qualification issued by the Ministry of Education (s. 145). A certificate of qualification is issued only upon satisfactory proof that the person is of good moral character and a fit and proper person to be granted a certificate (s. 146). In fact, initial ministry certification is determined largely by the recommendation of a university faculty of education from which a prospective teacher graduated. In practice, the Ministry of Education reviews, on a perfunctory basis only, the records submitted by a teacher before granting an applicant a teaching certificate. Second, since 1973, the Act, again with specific exceptions (s. 141), requires as a condition of employment for teachers in this province, membership in the British Columbia Teachers' Federation (BCTF) (s. 140). Third, a teacher may not be engaged or regularly employed as a teacher after he attains the age of 65 years, except where the Minister determines his services are required in the interest of education.

The Minister may in such case, annually on the request of a board, authorize the re-engagement of the teacher until the person reaches 70 years of age (s. 147).

Subsection (2) of section 119 of the Act goes on to say that:

...every appointment made by a board, except a probationary or temporary appointment made under the regulations, and every contract relating to it, shall be deemed to be a continuing contract until terminated as provided in this Act.

The board may make any appointments probationary within the first nine months of hiring. Regulation 59 defines the power of the board "during the first 9 months of a teacher's appointment [to] terminate his continuing contract and place him on a probationary appointment" based on "consultation with the district superintendent of schools and consideration of any reports issued...". The teacher probation continues until rescinded by the board, after not less than six months or until the end of the school year following the school year in which the probationary appointment is made (reg. 6(1)). This type of appointment may be cancelled at any time before the probationary period expires on 30 days' notice in writing in accordance with reg. 61. If the probationary appointment is not cancelled before it is rescinded or before the probationary period expires, a

continuing contract automatically results (reg. 60). No right of appeal is granted from the cancellation of a probationary contract, although it may be argued that the basic rules of natural justice would apply to the cancellation procedure. The 1978 Supreme Court of Canada case of Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police (1978), previously cited in Chapter II, set precedent in favor of probationary employees in settling the dispute between a probationary policeman and the police board. This landmark case established the right of a probationary employee to an explanation of why his services no longer were required and the opportunity for a hearing. The allowing of this appeal made what once was a "matter of courtesy" a "legal duty".

By regulation, a temporary appointment is one for a period not exceeding one year to a position temporarily existing or temporarily vacant (reg. 76). At the expiration of the specified period of its duration, the temporary appointment is deemed to be terminated (reg. 77).

The term "continuing contract" is not defined anywhere in the School Act or School Act Regulation. A review of the present school legislation revealed a number of circumstances in which a school board is required or authorized to terminate a teacher's

continuing contract. First, a board may be required to terminate any appointment where a teacher loses his formal capacity or qualifications to teach. Second, a board may "lay off" a teacher on a continuing contract for reasons other than cause in the legal sense, due to reductions in service, changes in organizational structure or the amount of available operating funds (s. 130.1). Finally, the board may terminate a continuing contract on grounds that loosely may be referred to as "cause", including health reasons, misconduct, and incompetence, the last of which is the focus of this study.

A description of the statutory basis for the above circumstances that result in teacher contract termination is as follows. It readily is apparent that if a teacher is no longer a "properly qualified" person (s. 146), he should not be eligible for continued employment by a board. Where a teacher's certificate is cancelled, that person may not be employed as a teacher in a public school. Such a cancellation may occur pursuant to s. 15(g) "for cause", which is not defined further in the Act or Regulation; or where a teacher sends the Minister a required return which is misleading or false (s. 149); or finally, where a teacher fails in violation of the Act to fulfill his engagement with a board (s. 152). Presumably, any such

cancellation must result in termination of a teacher's contract forthwith by the board, although the legislation is silent on this point.

Ministry of Education records of teachers who have had their certificates cancelled or suspended show that since 1973, the ministry has cancelled 24 certificates and suspended six certificates. Of the 24 cancellations, 17 certificates have been removed in the last two years. Moreover, 15 of the 27 certificates have been cancelled following criminal convictions for gross indecency or sexual assault. By contrast, since 1891, when the record of cancellations and suspensions was started by the Ministry, only two certificate suspensions have referred to the cause of less than satisfactory teaching. First, in 1960, a female teacher had her certificate suspended because she falsified information in a teaching application after having received three less than satisfactory reports. Second, in 1971, a male teacher had his certificate suspended for poor teaching performance.

The BCTF may in accordance with its by-laws, which must be approved by the Lieutenant Governor in Council, expell a teacher from membership in the federation. By-law number seven of the federation provides for the termination of the membership of any member who has been guilty of conduct harmful or prejudicial to the

interests of the BCTF, or guilty of a breach of the code of ethics of the federation that articulates general rules of conduct in relation to pupils, colleagues, and the federation. To date, according to information obtained in an interview with the past-president of the BCTF, two teachers have had their federation membership suspended as follows: one suspension was the result of "conduct harmful to the federation" and the other suspension was for child abuse. Also, in 1954, a teacher's certificate was suspended because she failed to pay her fees to the BCTF.

A teacher who is expelled from membership in the BCTF has a right of appeal to the Lieutenant Governor in Council (s. 142(2)). Some leeway is granted to the board in dismissing a teacher expelled by the BCTF since the statute provides that where the board so determines, an expulsion shall not have the effect of terminating employment in a school before a date to be fixed by the board, although that date shall not be later than the end of the then current school year (s. 142(5)).

With respect to a teacher who attains the age of 65 years, unless the dispensation of the Ministry is obtained as previously explained, the board is prohibited from employment after the date of the

teacher's "retirement", which occurs at the end of the school year in which the teacher reaches 65 years of age. This provision may be subject to challenge under the equality provisions of the Canadian Charter of Rights and Freedoms. A British Columbia Supreme Court case, that may be particularly relevant to teachers, appeals the decision of a municipality to discharge an employee from his employ solely because he has reached the age of compulsory retirement. This petition to the courts has been placed on the trial list in Vancouver. In the interim, the discharged employee, in the case of *Hardie v. District of Summerland* (1985), 24 D.L.R. (4th) 257 (B.C.S.C.) at page 258:

...sought an injunction to restrain Summerland from dismissing him on the grounds the provision it relies upon is contrary to s. 15 of the Canadian Charter of Rights and Freedoms (the Charter). That section gives Canadians equal rights under the law and protects them from discrimination on account of age.

One issue, at page 260, in the action was "whether or not the Charter applied to an institution such as a hospital". The decision of Bouck J., at page 260, was that "the Charter did indeed apply to the respondents because they were within the authority of the provincial Legislature". Teachers, also, are within the authority of the provincial Legislature. The

petition was granted because of the length of time between the dismissal and the trial date based on what was defined at page 262 as the "balance of convenience" favouring the petitioner. Moreover, the decision to allow the interlocutory injunction that enabled the municipal worker to return to work pending his court appearance was based on a Charter case court precedent that said:

The interpretation should be... a generous rather than a legalistic one, aimed at fulfilling the purpose of the guarantee and securing for individuals the full benefit of the Charter's protection. At the same time it is important not to overshoot the actual purpose of the right or freedom in question, but to recall that the Charter was not enacted in a vacuum.

Any academic tenure consideration in the concept of a continuing contract was undermined in May 1985 with the addition of section 130.1 to the School Act. According to this section, a school board is permitted to "lay off" a teacher for the following reasons: a discontinuation, or reduction in the level, of a program, activity or service; a change in the organizational structure of the school district; or, the amount of available operating funds. It is clear that "cause" in the common law sense is not an element in a termination under this section, since any

collective agreement negotiated thereunder must include provisions respecting recall right and severance pay. If a board and an association cannot negotiate an agreement under the section before May 1 of each year, there is deemed to be a binding agreement in the form annexed as a schedule to the Act. Section 5 of the schedule provides that in determining which teachers should be laid off and which teachers should be retained, the board shall take into account current demonstrated ability, qualifications, and service seniority. Seniority shall prevail when current demonstrated ability and qualifications are met by two or more teachers with respect to an available position. In September 1986, the decision of an arbitrator in favour of the West Vancouver school board's decision to remove a teacher under s. 130.1 of the Act was quashed in the British Columbia Supreme Court. Judicial review in the case of West Vancouver Teachers' Association v. West Vancouver Board of School Trustees, School District 45 resulted in the decision that the board had committed a reviewable error of law. The arbitrator was ordered by Southin, J. to reconsider the case because the board had used s. 130.1 of the Act for an improper purpose in its attempt "to rid itself of a troublesome pedant" (Still, 1986, p.A11). Southin, J.

explained that the "Amending Act has but one purpose: to control expenditures" and:

It was not the object of this Act to enable school boards to terminate incompetent teachers, although that may be an incidental effect (Still, 1986, p. A11).

A board may have the option to dismiss a teacher according to statute in three circumstances that fall loosely within the common law concept of cause. The first option is very specific and of somewhat limited application. According to section 107 of the Act, the board, on the advice of the school medical officer may require a teacher to undergo a medical examination and if the teacher fails or refuses to be examined, he summarily may be dismissed (s. 107(2)). If the examination, when taken, shows that the physical, mental or emotional health of the teacher examined is such as to be injurious to the pupils of the school, the board is required to suspend that person for so long as this disability continues. However, the teacher cannot be dismissed because of this disability, he simply cannot be allowed to return to his duties until he delivers to the board a certificate signed by the school medical officer permitting his return.

The second circumstance in which a teacher may be dismissed for cause falls under the general heading of

"misconduct" and is by far the ground most often used for the dismissal of teachers. The Act provides a comprehensive code dealing with teacher suspensions and dismissals under this ground, from initial suspension on through dismissal and appeals. A board of school trustees, pursuant to s. 122, at any time may suspend a teacher with or without pay "for misconduct, neglect of duty, refusal or neglect to obey a lawful order of the board" (s. 122(a)) or "where the teacher has been charged with a criminal offence and the board believes the circumstances created by it render it inadvisable for him to continue his duties" (s. 122d(b)). A board that has suspended a teacher under s. 122 must appoint a date within seven days of the suspension when the teacher and his representative shall have the opportunity of meeting with the district superintendent and the board (s. 122(2)(a)).

Where the teacher is suspended pursuant to the misconduct provision rather than the criminal offence provision, the board is obliged within seven days of the meeting either to reinstate the teacher without loss of salary, or, after the notice prescribed in the regulation, dismiss him or take such other action as is permitted by the regulations (s. 122(2)(b)). Following the trial of a teacher suspended because of a criminal charge against him, and after the expiry of any final

appeal period, the board must reinstate a teacher who has been acquitted or has been given a conditional or absolute discharge; or, if the teacher has been convicted, the board, after the notice required by the regulations, may dismiss him or take any other action that is permitted by the regulations.

A teacher suspended for more than 10 days or dismissed pursuant to s. 122 may appeal under the regulations to the Minister of Education (s. 129), who must refer the appeal to a Board of Reference consisting of three members appointed by the Minister. The chairman of the Board of Reference must be appointed from among members of the Law Society of British Columbia nominated by the Chief Justice of British Columbia, that is, a lawyer; one member must be appointed from among persons nominated by the executive of the BCTF; and, one member must be appointed from among persons nominated by the executive of the British Columbia School Trustees' Association (BCSTA) (s. 129(2)). Legal counsel generally are retained by both parties at the hearing. The Board of Reference is empowered by statute to allow or disallow the appeal, or vary the decision made by the school board and make any order it considers appropriate in the circumstances. The decision of a Board of Reference may be appealed by either party to the County

Court or Supreme Court and thereafter, with leave, to the British Columbia Court of Appeal.

Finally, section 123 of the School Act refers to termination of continuing teacher contracts for incompetence. In stark contrast to the statutory provision for dismissal for misconduct, section 123 of the School Act is very vague, indefinite and gives little if any indication of its intended use. Section 123 reads as follows:

(1) Subject to section 120(9) and the regulations, either party to a continuing contract under section 119(2) may terminate the contract by giving in writing at least 30 days' notice to the other party, and the termination shall take effect at the end of a school term, or, by agreement, at an earlier date.

(2) Except as otherwise provided in this Act, a board shall, at least 30 days prior to the issue of a notice of termination of a contract, give the teacher a written notice of its intention to give a notice of termination and shall set a time for a hearing within 20 days of the issue of the notice of intention, at which the teacher shall have the opportunity to meet with the district superintendent of schools and the board, or with the district superintendent of schools and a committee of the board.

(3) The teacher may be accompanied by another teacher or by a member of the staff of the British Columbia Teachers' Federation, who may represent him or advise him during the interview referred to in subsection (2).

Section 120(9), to which s. 123(1) is subject, says very simply that a teacher transferred from one assignment to another may resign immediately by notice

in writing to the board if he does not wish to comply with the transfer order. This is of no real assistance in interpreting the section other than to confirm the right of a teacher to resign on not more than 30 days' notice. But under what circumstances may a board terminate a continuing contract under this section? The reference to 30 days' notice would suggest some reason other than "cause" in the common law sense, in which case no notice is necessary. In contrast to s. 122 dealing with misconduct, the word "termination" is used exclusively, rather than "dismissal".

The answer is to be found not in the statute itself, but in reg. 65 which provides that a board may terminate a continuing contract of a teacher only after receipt by the board of at least three reports, issued in accordance with the regulations, indicating that the learning situation in the teacher's classroom or the performance of the teacher is "less than satisfactory".

The only provision of the School Act directly relevant to the "termination" of the "less than satisfactory" teacher is section 130 which permits a teacher to request the Minister to direct that a review commission be assembled to review the termination. Legal counsel may represent either party at the hearing. The commission consists of three persons appointed by the Minister. As with the Board of

Reference, the BCTF and the BCSTA each nominate one member to the review commission. However, unlike the Board of Reference, the chairman is not a lawyer. Instead, the chairman of the review commission is an educator who was actively engaged in education either currently or within the five years immediately preceding the date of his appointment. The review commission either must confirm or reverse the action of the board and its decision is said to be final and binding, in contrast to the decision of a board of reference which may be appealed to the courts.

Summary

The termination of the contracts of continuing teachers for incompetence in British Columbia was considered within the overall statutory framework. The statutory framework is set down in the present British Columbia School Act and School Act Regulation. A discussion of the statutory framework provided a context for the specific study of termination of continuing teacher contracts for incompetence in British Columbia. Analysis of the Act revealed six measures to suspend, dismiss, lay off or terminate a teacher pursuant to the following sections:

- a) s. 107 - failure to pass or receive a medical

- b) s. 145 - examination required by the board
- cancellation of the teaching
certificate by the Lieutenant
Governor in Council
- c) s. 142 - suspension or expulsion from the
BCTF
- d) s. 130.1 - lay off for unsatisfactory current
demonstrated ability during these
times of economic restraint
- e) s. 122 - misconduct or criminal charges
- f) s. 123 - less than satisfactory learning
situation or administrative
performance

In addition to the above methods of ending the employment of a continuing contract teacher, according to s. 150 and reg. 58, appointment of a teacher as an officer in the Ministry requires that the teacher be released from contract on 24 hours' notice.

CHAPTER IV

HISTORY OF BRITISH COLUMBIA SCHOOL LEGISLATION AND A
COMPARISON TO PRESENT LEGISLATION IN WESTERN PROVINCES

The purpose of this study is to promote a better understanding of the termination of continuing teacher contracts for incompetence in British Columbia according to the provisions set down in the School Act and School Act Regulation. A second purpose of this study is to examine and to analyze the outcomes of the 17 teacher appeals from termination placed before review commissions since the inception of this tribunal until 1985. The purpose of this chapter is to answer the first question posed in this study: What is the historical origin of the legislation for employment and dismissal of teachers and for the review commission in British Columbia? It will be instructive to place the present legislation in context by reviewing the history of the legislation in British Columbia and by comparing briefly the present statutory provisions with those in other provinces in Canada.

British Columbia Public School Legislation

The Public School Act, S.B.C., 1872, No. 16 was the first statute in the Province of British Columbia that related to the establishment, maintenance, and

management of public schools. This legislation replaced certain colonial ordinances respecting "Common Schools" that had reflected the priority granted to public education in the newly established colonies of Vancouver Island and mainland British Columbia. The Act provided for the appointment by the Lieutenant Governor in Council of a six person Board of Education (s. 3) and a Superintendent of the province (s. 4). Both the Board and the Superintendent were remnants of the colonial system that were carried over into the legislation. Similarly, pre-existing school districts were continued (s. 5), although the districts then were to be under the charge of elected (s. 30) rather than appointed trustees. Teachers were appointed by the Board of Education, which also could remove them "upon good cause shown" (s. 7(8)). Teachers were required, as a condition of employment, to hold a certificate of qualification issued by the Board of Education (s. 7(6)).

Supervision of the conduct and competence of teachers was the duty of the Superintendent who was required to visit each public school once each year (s. 8(1)) and to examine, among other things, the "state and condition of the school as respects the progress of the pupils in learning", the "order and discipline observed", the "system of instruction", and the "mode

of keeping the school registers". Further, he was directed "to do all in his power to persuade and animate...teachers to improve the character and efficiency of the Public Schools..."(s. 8(3)).

A definite procedure was prescribed for suspending and alternately, for dismissing a teacher. The duties assigned to the Superintendent under section 8 of the Act included those set out in the following subsection 8(5):

To suspend the certificate of qualification of any Teacher granted by the Board of Education, for any cause which may appear to him to require it, until the next ensuing meeting of the Board of Education, of which meeting due notice shall be given by the said Superintendent to the Teacher suspended; and the Board of Education shall confirm or disallow the action of the Superintendent in suspending such Teacher, as a majority of the members of the Board present at such meeting shall think proper; and the cancellation or suspension of a Teacher's certificate, when confirmed by the Board of Education, shall release the School Trustees of the District in which such Teacher may be employed from any obligation to continue to employ him as such Teacher;

No reference to nor distinction between misconduct and incompetence is made, both of which fall within the common law concept of "good cause" that was imported into the legislation. The provision for notice to the suspended teacher, considered in the context of the

then existing common law relating to administrative boards, implied the right of the teacher to be heard prior to the cancellation of his certificate by the Board of Education. Notably, the procedure for dismissal from employment and for cancellation of a teaching certificate were one and the same.

The public school legislation, as it relates to formal qualifications of teachers, academic tenure, and dismissal, evolved gradually from 1872 to the present reflecting the growing size and sophistication of the system. Teaching certificates always have been a prerequisite to employment as a teacher, subject to certain very limited exceptions; and, the granting and cancellation of these certificates always has been the prerogative of the executive, which is, the Lieutenant Governor in Council or his delegates. In 1872, the Board of Education itself was directed to examine a prospective teacher as to his qualifications (s. 7(6)). Soon after, in the 1885 statute, a Board of Examiners was established to administer examinations to teacher candidates whose success in those examinations determined the class and grade of certificate issued. However, gradually the legislation came to grant exemptions from examinations to "graduates in Arts, or recognized British or Canadian universities" (1891, s. 57). The trend continued as Normal Schools and later

faculties of education at the provincial universities were established to the point that now, although the Lieutenant Governor in Council still regulates the granting of certificates, the testing of qualifications is left entirely to the universities and their teacher training programs.

Significantly, the statutory provisions for cancellation of certificates by the Lieutenant Governor in Council have changed little since 1872. That power still may be exercised "for cause" (s. 15(9)) without further elaboration as to what that "cause" may be, and no right of appeal from a cancellation is granted. This lack of development of a formal appeal procedure contrasts sharply with the history of legislation respecting teacher dismissals by school boards.

Age, as a formal qualification for employment of teachers, has been law since 1954. Since then, although the conditions for re-engagement after retirement or deferment of retirement have changed slightly from time to time, the age of compulsory retirement has remained 65 years.

Membership in the BCTF has been required of teachers since 1947 (S.B.C. 1947 Chap. 79 s. 101). Initially, at the date of enactment of the provision, an exemption was provided to any teacher or teacher in training who within six months of the enactment

notified the federation of the desire to be excluded from membership. This exemption was removed on November 29, 1973. The 1947 amendment to the Public Schools Act also provided for expulsion of members by the BCTF, but an aggrieved ex-member could appeal his expulsion to the Council of Public Instruction or alternatively, later apply to the same body, in effect the cabinet, for reinstatement.

In 1872, as indicated earlier, the power both to appoint and, upon cause to remove teachers, was given to the Board of Education (1872, s. 7(8)). However, the School Board soon gained these responsibilities. In 1876, the Trustees were empowered to select and appoint teachers, subject to the approval of the Board of Education and to remove or dismiss teachers with the consent of that Board (1876, s. 35). Total separation of powers with respect to hiring and firing took place in 1879 when the Public Schools Act was changed to provide that the Trustees were permitted to select and appoint teachers without further condition than that they hold certificates of qualification. In addition, they were permitted to remove and dismiss a teacher subject only to giving 30 days' notice of their intention to do so to the teacher involved (1879, s. 34). No reference to the concept of "good cause" was made and no right of appeal against the Trustees'

decision to dismiss was granted expressly. However, the provision for 30 days' notice implied some right of hearing. The intention of the legislature that such a hearing be made available was evidenced further in 1885. The statute was changed again to provide that in addition to 30 days' notice of dismissal, the teacher also was entitled to be advised of the reasons therefor (1885, s. 37).

In 1891, the first statutory attempt was made to expand the basis for teacher dismissal and to give a formal right of appeal. Section 50 of the new Public Schools Act of that year provided as follows:

The Trustees of any school district shall, from time to time, select and appoint (from amongst those persons properly qualified) the teacher or teachers in the school district of such Trustees, and may remove and dismiss such teacher or teachers upon giving at least thirty days' notice to the teacher or teachers of such intention of removal and dismissal, and the reasons therefor. The Trustees shall, upon notification from the Council of Public Instruction of the inefficiency or misconduct of the teacher, give such teacher thirty days' notice of dismissal. Nothing in this section shall be taken to confer on any teacher a right to such thirty days' notice, or salary in lieu of notice, where any teacher has been suspended by the Trustees for gross misconduct; Provided, always, that in any case where the Trustees have suspended or dismissed any teacher on a charge of gross misconduct, such teacher may appeal to the Council of Public Instruction, who shall have power to

take evidence and confirm or reverse the decision of the Trustees; but in case of a reversal of the decision the teacher shall not, without the consent of the Trustees, be reinstated in the same school.

Three circumstances are referred to that could give rise to a dismissal. First, the power of the Trustees to dismiss on 30 days' notice is continued. Second, the Board was required to dismiss any teacher about whom notification of inefficiency or misconduct was received from the Council of Public Instruction, presumably on information gathered by the Superintendent of Education. Third, reference is made to a dismissal for gross misconduct, which is distinguished from misconduct only in that a dismissal on a charge of misconduct was to be made without notice and that, only in the case of gross misconduct was right of appeal granted.

Provisions for these three situations of termination on notice, dismissal for inefficiency and summary dismissal for gross misconduct continually were incorporated in similar language in re-enactments of the Public School Act in 1905, Chap. 44; 1922, Chap. 64; 1958, Chap. 42; and, in fact survived through until 1972. Remnants of this early provision for termination on notice still can be seen in the present section 123, while dismissal for misconduct appears in section 122.

By amendment made in 1925, Chap. 46 s. 12, the right of appeal to the Council of Public Instruction was extended to include every teacher dismissed by a board for any reason. Further, perhaps in anticipation of an increased workload, the Council was authorized to appoint some responsible person to take evidence on the matter and to report to the Council. This is the first legislative provision for a "hearing" before someone other than the executive, although it remained for the Council, on consideration of the evidence so reported, to confirm or to reverse the action of the board.

In 1933, two significant amendments were made. First, the termination on notice provision of the Act was amended to require that such a dismissal be "for cause". This amendment explicitly prevented the Board from exercising its power capriciously under that subsection. Second, perhaps reflecting the increased number of appeals since the 1925 changes that extended the right of appeal, the statute was amended to provide for the constitution of a Board of Reference. The Council would refer an appeal to the Board of Reference for an investigation and a report. The composition of a Board of Reference has remained unchanged since 1933 and consists of three members: a lawyer nominee of the Chief Justice of British Columbia, who acts as

chairman; a nominee of the BCTF; and, a nominee of the BCSTA.

Fine tuning of the legislation relating to academic tenure and teacher dismissals continued on an almost annual basis. An amendment in 1937, introduced into the legislation for the first time, the word "continuing" in relation to a teacher's contract of employment (1937, S.B.C. Ch. 68 s. 8). This amendment provided that:

...every appointment made by any Board of School Trustees, except probationary or temporary appointments made pursuant to the regulations of the Council of Public Instruction, shall be deemed to be and to constitute a continuing engagement until terminated pursuant to the provisions of this Act...

To exactly the same effect is the present section 119(2), except that the phrase "continuing contract" is used rather than "continuing engagement".

In 1958, S.B.C. Chap. 42, a new Public Schools Act was passed in total for the first time since 1922 and it is this statute, which subject to amendments, remains today. However, this Act did not make any significant changes to the then existing grounds for teacher dismissal. Section 129 of this Act provided that the Board of a School District may:

(h) Dismiss for cause, subject to the provisions of subsection (1) of section

134, any teacher employed in the school district by giving him at least thirty days' notice thereof in writing stating the reasons for the dismissal and the date on which the dismissal is to take effect, which date shall be either the thirty-first day of December or the thirtieth day of June:

(i) Upon notification from the Council of Public Instruction of the inefficiency or misconduct of a teacher, dismiss the teacher at any time during the school-year by giving him thirty days' notice of dismissal:

(j) Dismiss summarily and without notice any teacher in the school district who is guilty of gross misconduct:

The new statute did provide, however, for a new step in the process governing appeals from dismissal to the Council of Public Instruction. Once the appeal procedure had been initiated by a teacher, the Superintendent of Education was empowered to direct that the appeal first be investigated by an Investigation Committee. Once again this committee was comprised of three members, one nominee each of: the Board of School Trustees; the local association of the BCTF; and, the Superintendent. After conferring with the teacher and the Board, and hearing representations, the Investigation Committee was required to report in writing its findings and recommendations to the Superintendent. However, if after receiving the written report the board wished the dismissal to stand, the teacher could continue his appeal to the Council of Public Instruction. The Council either could hear the

appeal itself or refer the appeal to a Board of Reference for hearing recommendations. In either case, it was left to the Council to decide the appeal. No provision was made for an appeal from the Council's decision.

The word "incompetence" made a somewhat brief appearance in the history of public school legislation in British Columbia beginning in 1961. The word "incompetence" was mentioned only with respect to the termination of administrative appointments and not in regard to teacher dismissals. An amendment passed that year (1961, S.B.C. Chap. 53) provided that a School Board could authorize the termination of the appointment of a teacher to any position as a principal, head teacher, vice principal or district supervisor:

...where it considers him inefficient
or incompetent in the discharge of his
his duties in that position, (s. 16 (b))

It is not known whether the use of both words, "inefficient" and "incompetent", is simply an example of redundant draftsmanship or rather is an indication that the legislature intended some distinction to be drawn. Nonetheless, a termination under this amendment was not subject to the usual appeal provisions for dismissal. Instead, such a termination could be

reviewed only by the Superintendent of Education, whose decision was to be final and binding.

In 1971, the provisions of the Public School Act relating to the appointment and dismissal of teachers were amended by substitution throughout the Act of the words "Lieutenant Governor in Council" for "Council of Public Instruction" and by the word "Minister" for "Superintendent of Education" (1971, S.B.C. Ch. 58 s. 13)).

In 1972, substantial amendments were made to that part of the Act relating to teacher tenure and dismissal. These amendments gave rise to the present system or scheme involving dismissal for misconduct under section 122 with appeals to a Board of Reference and termination under section 123 with the provision for appeals to a review commission. These provisions have been outlined previously and section 123 terminations will be reviewed subsequently in detail. Before leaving the legislative history of these sections, reference to the legislative intent in making these amendments is instructive. The then Minister of Education, the Honourable D. L. Brothers, in introducing the amending act to the legislature, said in part:

I now would like to turn to teacher tenure. For some time school boards

throughout the province felt that existing procedures under the Public Schools Act were so cumbersome it was virtually impossible to discharge an inefficient or incompetent teacher.

The investigation committee procedure which has been established in 1958, in the hopes of eliminating some of the costs of the appeals has not worked. In most cases even if the report of the investigation committee was unanimous the matter still went to a board of reference. And this has been a very costly and lengthy procedure.

There was considerable confusion in the minds of school board members and teachers concerning the very grounds on which teachers might be dismissed, which in turn created technical problems in addition to the issues themselves.

We discussed this matter in the Department of Education for some time and I decided after listening to their views to forward this matter to the select standing committee.

The committee was set up last spring and a number of groups appeared before the committee. Almost all these groups stressed one or more of these above problems that I mentioned, and over and over again it was emphasised that the real area of difficulty was in dealing with the teacher whose competency was questioned rather than with the teacher who committed some specific act which brought his or her suitability for teaching into question.

The select standing committee made a series of recommendations, most of which have been adopted entirely in proposed legislation. Not only have specific changes been made, but also some basic changes in philosophy (Legis. Assembly, March 13/73, p. 773).

Legislation Concerning Teacher Dismissals in Canadian Provinces East to Ontario

Finally, it also is instructive to look very briefly for comparative purposes at the legislation concerning teacher dismissals in the provinces east of British Columbia to Ontario.

All of the western provinces and Ontario provide some form of tenure for teachers. The methods of providing for tenure for teachers differs primarily in phraseology. The phraseology varies from terms such as "continuing contract" in British Columbia and Alberta to "permanent teacher" in Ontario. In each case, however, the meaning is essentially the same. A teacher's contract only can be terminated in accordance with the legislation. Generally a termination is for "cause" within the common law definition, but not simply upon reasonable notice as permitted by the common law. In each of the provinces referred to, a certificate of qualification issued by the appropriate ministry or department of education is a prerequisite to employment as a teacher.

In Alberta, R.S.A. 1980, Chap. S-3, there appears to be two statutory provisions for termination. One section provides that a school board may terminate a contract of employment upon 30 days' notice. According to this section, the board is required to specify the

reasons for the termination and to act "reasonably". A second section says that where a board has reasonable grounds for believing that a teacher has been guilty of gross misconduct, neglect of duty, or refusal or neglect to obey a lawful order of the board, or that the presence of a teacher is, for reason of mental infirmity, detrimental to the well being of the school, the board may suspend the teacher from performance of his duties. The teacher then may appeal the suspension to the Minister who is required to refer the appeal to the Board of Reference. The Board of Reference in turn must investigate the matter and subsequently either must confirm or reverse the decision of the board. If the Board of Reference confirms the suspension, the school board may terminate the suspension or terminate the contract of employment of the teacher.

The Alberta statute goes on to provide that in any case, apparently under either of the two sections, if a disagreement arises between a board and a teacher with respect to a termination of a teacher, an appeal goes to the Minister, who once again must refer the matter to the Board of Reference. The Board is required to make any investigation it considers necessary and to give the parties an opportunity to be heard. Then, the Board may make any order it considers to be just, which may include an order of reinstatement of the teacher

involved. No special provision is made for any further appeal from a decision of the Board of Reference.

The Saskatchewan Education Act R.S.S. 1978, Supp. C. E-0.1 provides that a board of education may terminate a contract of employment for the following reasons: firstly, without notice for gross misconduct, neglect of duty or refusing or neglecting to obey any lawful order of the board; secondly, on 30 days' notice where a teacher is employed in a teaching position that is no longer considered by the board to be necessary for the teaching requirements or educational programs of the district; or, thirdly, again on 30 days' notice, for professional incompetence, unprofessional conduct, immorality, neglect of duty, physical or mental disability, or any other cause which in the opinion of the board renders the teacher unsuitable for the position then held by him. In each case, the board must specify its reasons for termination. Also, an appeal is available to any teacher who has completed the equivalent of two consecutive years of employment with the board and who will not attain the age of 65 years before the end of the then current year. The appeal is to the Minister, who again must appoint a Board of Reference to investigate the matter and to offer a hearing to the concerned parties prior to confirming the termination

or ordering the continuation of the contract. The decision of the Board of Reference is said to be binding upon the parties, subject to the right to apply to Court for an order that the board erred in law or the board lacked or exceeded its jurisdiction.

The relevant provisions of the Manitoba statute are quite simple. Where a complaint is made to a school board respecting the competence or character of a teacher, the board may terminate a contract after communicating the complaint and affording the teacher an opportunity to answer the complaint (s. 92 (4)). A teacher who has had an aggregate of at least 20 months teaching service may require that the matter of the termination of the agreement be submitted to an arbitration board. The arbitration board must decide whether the reason given by the school board for terminating the agreement constitutes cause for termination and must make an order accordingly. Subject to a limited appeal, in the nature of judicial review, as provided in The Arbitration Act of Saskatchewan, the decision of the arbitration board is binding upon the parties.

Finally, the Education Act of Ontario, R.S.O. 1980, Chap. 129, in one section provides that where a matter arises which in the opinion of the Minister adversely affects the welfare of the school in which

the teacher is employed, the board may on 30 days' notice or pay in lieu of such notice, terminate the teacher's contract. Otherwise, the statute simply provides in s. 239 that the dismissal of a teacher, or the termination of a contract of a teacher by a board shall be by notice in writing. This written notice must state the reasons therefor, in accordance with the terms of the contract, which contract is to be in the form prescribed by regulation. Once again, an appeal against a dismissal or termination goes to the Minister, who after inquiry, may or may not refer the matter to a Board of Reference to be chaired by a county or district court judge appointed by the Minister. The board and the teacher each may then name a representative to the Board of Reference. After a hearing, the Board of Reference is required to direct the continuance or the discontinuance of the contract. A decision of the Board of Reference is subject to review only under the Ontario Judicial Review Procedure Act.

This superficial examination of the relevant legislation in Alberta, Saskatchewan, Manitoba and Ontario is made for comparative purposes only and shows that the British Columbia legislation has much in common with that of the other provinces. All these provinces pursued some form of review of the

termination of teacher contracts, which implies that some "cause" for dismissal is required. The expression or definition of grounds for dismissal varies considerably in wording but not in effect. In some legislation, there is a noticeable absence of any attempt to specify on an all inclusive basis the possible grounds for dismissal.

Some statutes specifically refer to competence or the want of it, while others do not. All the provinces provide for hearings before Boards of Reference, but only British Columbia provides a separate body altogether for appeals against termination on the basis of incompetence. Only British Columbia, albeit by regulation rather than by statute, provides a specific process, involving three less than satisfactory reports on the learning situation in the classroom of a teacher that leads to termination on the grounds of incompetence.

Summary

The purpose of this chapter was to summarize the historical origin of the British Columbia legislation relating to employment and dismissal of teachers and to the review commission. The statutory history spans from the original Public School Act of 1872 through to

the present. Since 1872, there have been eight new School Acts passed in the following years: 1872, 1876, 1879, 1885, 1891, 1905, 1922 and 1958. Six of these Acts, then, were legislated near the turn of this century over a span of 33 years. In the past 81 years, only two Acts have been passed, the last of which was written almost 30 years ago. Numerous amendments were identified and discussed.

In British Columbia, there always has been provision in the School Act for teacher dismissal for cause and cause could include incompetence. The procedure for teacher dismissal, with a right to notice and a hearing, was the same whether the cause was misconduct or incompetence. In 1972, a separate procedure was established for the termination of the contract of incompetent teachers as distinct from those being dismissed for misconduct. The procedure involved the establishment of a separate tribunal, the review commission, to review the school board decision to terminate a teacher contract for incompetence.

This chapter also examined briefly the legislation concerning teacher dismissal in the Canadian provinces of Alberta, Saskatchewan, Manitoba and Ontario. While many similarities between the legislation of British Columbia and the other Canadian provinces exist, significant differences were identified. The most

prominent difference in legislation between British Columbia and the other provinces was in the provision for a particular tribunal, the review commission, to hear teacher contract terminations for incompetence.

CHAPTER V

ANALYSIS OF LEGISLATION IN BRITISH COLUMBIA FOR THE
TERMINATION OF A TEACHER CONTRACT FOR INCOMPETENCE

The purpose of this study is to promote a better understanding of the termination of continuing teacher contracts for incompetence in British Columbia according to the provisions set down in the School Act and School Act Regulation. A second purpose is to examine and analyze the outcomes of the 17 teacher appeals from termination placed before the review commissions since the inception of this tribunal until 1985. Specifically, Chapter V addresses the second question posed at the beginning of this study: What are the legal requirements in the unique procedure of termination of a continuing teacher contract for incompetence in the present British Columbia School Act and School Act Regulation?

Section 123(1) of the Act, previously quoted in Chapter III, provides that a school board may terminate a continuing contract upon 30 days' notice. Regulation 65, however, limits the board's power to terminate a teacher contract to circumstances where the board has received three less than satisfactory evaluation reports on a teacher. Before notice of termination can be given to a teacher, subsection 2 of s. 123 requires that the board give the teacher notice of its intention

to terminate the contract and an opportunity for a hearing. Any teacher whose contract is terminated may appeal by applying pursuant to section 130 of the Act for a review of the termination by a review commission. The decision of the review commission, according to section 130(3), is final and binding on the teacher and the board. Accordingly, the statutory termination process involves not less than two and possibly three stages from administrative report writing; to a hearing before the school board; and, to the right of appeal to a review commission. This process can be complicated by the intervention of the courts. The school board and the the review commission as statutory tribunals are subject to review by the courts on jurisdictional or natural justice grounds pursuant to the Judicial Review Procedure Act.

Stage One: The Less Than Satisfactory Report

Regulation 65 pursuant to s. 123, speaks of the less than satisfactory report as follows:

Except as provided in section 59, a board may terminate a continuing contract under section 123 of the Act, and may recommend to the minister the suspension or cancellation of the certificate of that teacher, only after receipt by the board of at least 3 reports indicating that the learning situation in the class or classes of the teacher is less than satisfactory,

or, where a teacher is assigned pursuant to section 119 (3) of the Act, indicating that the performance of the teacher in carrying out his administrative or supervisory duties is less than satisfactory, issued in accordance with the following:

(a) the three reports shall have been issued in a period of not less than 12 or more than 24 months, except as provided in paragraph (e);

(b) at least one of the reports shall be a report of a district superintendent of schools, a superintendent of schools or an assistant superintendent of schools;

(c) the other 2 reports shall include only reports of

(i) a district superintendent of schools, a superintendent of schools or an assistant superintendent of schools,

(ii) a director of instruction, the reports to be issued in accordance with this regulation,

(iii) the principal of a school to which the teacher is assigned, provided that section 93 is applicable to that school and that the reports were issued in accordance with this regulation;

(d) where more than one of the 3 reports is written by the same person, at least 6 months shall have elapsed between the writing of the first and final report by that person;

(e) (i) where the board has, after the receipt of one or more such reports, recommended to the teacher, and the teacher has accepted the recommendation, that the teacher undertake an agreed program of professional or academic instruction, or both, the remaining report or reports shall be based on inspection of the learning situation or other duties of the teacher not less than 3, or more than 6, months after the teacher has returned to his duties and each report shall be issued within 2 weeks of the inspection,

(ii) section 125 (1) of the Act applies to an agreement under this section.

This lengthy regulation specifically provides that a school board may terminate a continuing contract, as

opposed to a probationary appointment. The regulation also appears to authorize the termination of a teacher assigned duties of a principal, vice-principal or district supervisor. However, unlike the classroom teacher who risks being terminated from his employment, the principal, vice-principal or supervisor is relieved of the administrative or supervisory duties and returned to a position of classroom teacher.

Regulation 65 also sets out requirements for the three reports including time limits and specified report writers. The three reports must be issued in a period of not less than 12 nor more than 24 months, except where the teacher on the recommendation of the board takes an education leave pursuant to s. 125(1) after one or two less than satisfactory reports. Following education leave, the remaining report or reports must be based on inspections not less than three or more than six months after the teacher has returned to his duties and each report must be issued within two weeks of inspection. The regulation also provides that where more than one of the three reports is written by the same person, at least six months must elapse between the writing of the first and the final report by that person. The length of the teacher improvement program and the subsequent inspection time restrictions necessitate strict observation of time

constraints. Therefore, any administrator responsible for report writing on a teacher who has returned from a leave of absence must comply with the regulations or risk having his evaluation declared null and void.

Of the three reports required, at least one must be a report of a superintendent, a district superintendent or an assistant superintendent. The other report or reports must be written either by a director of instruction authorized to inspect learning situations pursuant to reg. 49 or by the principal of the school to which the teacher is assigned. Regulation 49 provides that the report of the director of instruction when countersigned by the district superintendent "shall thereupon have the full force" of a report of the district superintendent. In order to meet his reporting obligation then, the district superintendent could limit his involvement to countersigning the report of a director of instruction. Regulation 51 specifically prohibits a supervisor from evaluating the work of any teacher in a written report. Regulation 65 also provides for a school board to recommend to the minister the suspension or cancellation of the certificate of a teacher who has received three less than satisfactory reports. As is apparent from the statistics relating to certificate cancellations, either the boards have not taken

advantage of this provision to recommend de-certification of incompetent teachers or the minister has chosen not to act upon these recommendations.

Nothing in regulation 65 suggests how the report writing process is to be initiated, nor does it define the content of the reports. These matters are dealt with in regulations 93, 94 and 95, but only insofar as reports by principals are concerned. Regulation 93, "Preparation of teacher assessment report", reads as follows:

- (a) may make a written report on the work of any teacher,
- (b) shall make a written report, if so directed by the district superintendent of schools, on the work of
 - (i) every teacher appointed to that school in that school year,
 - (ii) every other teacher not less than once in every 3 years, and
 - (iii) any teacher upon whom he is directed to write a report by the board or the district superintendent of schools, and
- (c) shall make a written report on the work of any teacher who requests, in writing, before January 31 of the school year, that such a report be made.

Presumably a principal "who is provided with time for supervision of instruction" means a principal who is not a full-time teacher, and not just a principal whose other administrative duties do not allow him sufficient time "for the supervision of instruction". Supervision of instruction is not one of the specific duties of

teachers assigned as principals set out in reg. 91. Nonetheless, it is the report of such a principal that may be considered under reg. 65. Regulation 93 allows for flexibility in the cyclical schedule of principal report writing for recently re-assigned teachers or for those teachers who have not received reports for three years. This means that principals may extend the time frame in schools where the report writing task involves an overwhelming number of teachers. Alternatively, the legislation stipulates an immediate response from a principal when the district superintendent or a teacher request an evaluation report. It is important to note that the provisions under reg. 93(b) apply only "if so directed by the district superintendent of schools".

Regulation 94 provides for the content of teacher assessment reports. However, this regulation refers only to the reports of principals under regulation 93 and not to the reports of superintendents, district superintendents, assistant superintendents or directors of instruction. The regulation says that reports under reg. 93 shall:

- (a) be based on a number of supervisory visits to the classroom of the teacher as well as on the general work of the teacher in that school,
- (b) be completed and filed on or before the last school day in April,
- (c) be made in quadruplicate,
- (d) contain an assessment of the learning

situation in the teacher's classes and such recommendations for improvement therein as he may consider necessary, and (e) contain a statement that, in the opinion of the principal, the learning situation is satisfactory or less than satisfactory.

Significantly, this regulation leaves the interpretation of the supervisory process up to the discretion of individual principals and school districts. While reg. 94 requires that the original and the three copies of the report by a principal be filed before the last teaching day in April, the regulations fail to establish a deadline for the filing of reports by the remaining authorized report writers. Strictly speaking, a first less than satisfactory teacher report that was written by a district superintendent, superintendent, assistant superintendent or director of instruction could be issued after the last teaching day in April.

Provision for the distribution of reports made under reg. 93 is set out in reg. 95. The original of every report is to be sent to the district superintendent of schools with copies to the teacher, the secretary treasurer of the school district and the principal who prepared the report. The district superintendent receives the original report, which suggests that the teacher evaluation report is issued

primarily for the district superintendent rather than for the teacher.

The only other regulations which make reference to reports on teachers are reg. 8 and reg. 9. The first regulation simply provides that every report of a district superintendent on a teacher will upon request of the teacher's principal be made available to that principal. Pursuant to reg. 9, if either a principal or a district superintendent "considers that the work of a teacher is less than satisfactory", he must notify the other and each then must "furnish a written report on the work of that teacher". Section 9 of the Act says that a superintendent or assistant superintendent appointed pursuant to that section has the same powers and duties conferred or incumbent upon a district superintendent. Accordingly, either a superintendent or assistant superintendent may furnish a report on a teacher under reg. 9. While reg. 9 fails to define the "work" of the teacher, it might be assumed that the reference is meant to encompass the same elements included within the meaning of the phrase "the learning situation in the class or classes of the teacher" in reg. 65. Moreover, the district superintendent may delegate his report writing obligation in this instance to a director of instruction. According to reg. 49, a report of a director of instruction must be

countersigned by the district superintendent and then is said to have the full force of a report issued by the district superintendent. Theoretically then, whenever the work of a teacher is considered to be less than satisfactory, two reports should be issued within a short period of time. The second report allows for another perspective on the learning situation in the classroom. If the second evaluation were satisfactory, the termination procedure would be forestalled as reg. 65 requires the receipt of a third less than satisfactory report on a teacher issued not less than 12 months after the date of the first less than satisfactory report before a school board will consider a teacher contract termination for incompetence.

An additional consideration is made in the regulations for assisting teachers who have received less than satisfactory reports. Regulation 94 requires that principals' reports include recommendations for improvement. Regulation 52 also provides for the appointment of teacher consultants who are directed "by observation, demonstration, consultation, and visitation" to assist teachers in improving classroom instruction. Moreover, by reg. 53, a teacher consultant specifically is forbidden from communicating to the principal or district superintendent any

evaluation of the teacher based upon the consultant's efforts to assist the teacher.

Finally, reg. 65 refers to programs of professional or academic instruction agreed to by a board and a teacher who has received one or two less than satisfactory reports. Section 125 of the School Act provides for leaves of absence for a teacher "for the purpose of professional improvement" or "for reason of illness or unavoidable quarantine". Regulation 65(a) suggests that when a program of instruction is agreed upon by the teacher and the board, the 12 to 24 month time requirement of the three less than satisfactory reports is avoided. Seemingly, such a program of instruction would extend the time period of the termination process. However, on a strict interpretation, the provision could be used to justify a teacher contract termination based on three reports received in less than 12 months. For example, a teacher after the receipt of two less than satisfactory reports issued in the spring term might agree to a program at university summer school. Then, upon return to teaching in the fall, the teacher contract could be terminated at the end of the December term after a third less than satisfactory report was completed pursuant to the three month waiting period prescribed in reg. 65(e)(1). If only two report writers were

involved in this abbreviated contract termination time line, then particular attention would have to be given to the requirement in reg. 65(d) of a six month time lapse between the reports by the same person. This consideration could be avoided if three different authorized report writers were used.

Remarks

Analysis of the statutory report writing procedure for termination of continuing teacher contracts for incompetence revealed a process that is extremely cumbersome and subject to contradictory interpretation. The procedure which is set down in reg. 65 and numerous attendant regulations is restricted by time lines that overlap one another and by prescribed duties of various administrative personnel. Notably, regulations 93, 94 and 95 direct only principals in the preparation, content and distribution of teacher assessment reports. Strictly speaking, none of these considerations apply to the report writing of district superintendents, superintendents, assistant superintendents or directors of instruction. Moreover, the schedule of report writing set down in regulation only is in force for a principal if the principal "is provided with time" for this administrative duty. However, once a principal

evaluates the learning situation of a teacher, reg. 94 and reg. 95 require the following: a number of supervisory visits to the teacher's classroom; a set date of filing the report; a set number of reports issued to specific personnel; "recommendations for improvement...as he may consider necessary"; and, the statement that "in the opinion of the principal, the learning situation is satisfactory or less than satisfactory". Because these regulations do not apply to the remaining authorized report writers, it has been argued that given agreement for professional instruction during university summer school between a board and a teacher who had received two less than satisfactory reports by June, legally that teacher contract could be terminated for incompetence in December following the filing of the third report in November. Finally, the suspension or cancellation of the certificate of a teacher by the ministry pursuant to reg. 65 was identified as an alternative method of terminating the contract of a teacher following the receipt by the board of three less than satisfactory teacher reports.

Summary

Critical considerations in the writing of teacher assessment reports may be summarized as follows:

- that at least one report must be written by the district superintendent, superintendent or assistant superintendent or alternatively by the director of instruction who may serve as a delegate of the district superintendent
- that the director of instruction, subject to regulations, may write reports
- that a report by either a principal or a district superintendent (or his delegate) should be followed by a report from the remaining report writer
- that a principal who is provided with time, subject to the regulations, may write reports on a teacher
- that the evaluation schedule identified in reg. 93 is subject to the discretion of the district superintendent
- that reg. 91 does not include supervision of instruction as a specific duty of teachers assigned as principals
- that reports of principals are based on a number of supervisory visits
- that reports of principals should include recommendations for improvement
- that reports of principals must be filed in quadruplicate on or before the last teaching day in April
- that all principal reports must contain the statement that "the learning situation is satisfactory or less than satisfactory"
- that reports of district superintendents, superintendents, assistant superintendents or directors of instruction are not subject to a specific filing date or to content required in principal reports
- that the supervisor of instruction may not write reports on a teacher
- that a teacher consultant may not make any evaluations of teachers in his discussions with the principal or district superintendent
- that there must be 6 months between the reports of the same report writer

- that leave of absence is available to the teacher
- that, generally, 3 less than satisfactory reports are filed within 12 to 24 months
- that teacher leave of absence allows the administration to avoid the 12 to 24 month termination process time line
- that inspection of the teacher after a leave of absence must occur 3 to 6 months after return to duty
- that once the inspection is completed, a report must be issued within two weeks
- that a board may recommend to the ministry the suspension or cancellation of the certificate of a teacher after the receipt of the board of three less than satisfactory reports on a teacher

Stage Two: Statutory Provisions for the Hearing before the School Board

Once three less than satisfactory reports on a particular teacher have been received in accordance with reg. 65, a board "may" terminate the continuing contract of a teacher. There is nothing in the regulations to assist a board or a teacher with this process that is dealt with in s. 123 of the Act. This section requires that "at least 30 days' notice of the proposed termination" is given in writing to the teacher prior to the teacher contract termination for incompetence. Moreover, s. 123(2) provides that the board must "at least 30 days prior to the issue of a notice of termination of a contract, give the teacher a written notice of its intention to give a notice of termination". At the same time, the board is required

to "set time for a hearing within 20 days of the issue of the notice of intention". No further guidance is provided either by the Act or the regulations as to the nature of this hearing, except that s. 123(3) permits the teacher to be "accompanied at the hearing by another teacher or by a member of the staff of the British Columbia Teachers' Federation, who may represent him or advise him during the interview referred to in subsection (2)". The use of the word "interview" in subsection 123(3) suggests a meeting that is more inquisitorial than the process suggested by the word "hearing". Nonetheless, it is clear that the courts have treated the procedure for teacher terminations by school boards as involving a hearing in the classic common law sense requiring the provision of natural justice for the teacher.

The legislation leaves unanswered the following questions: How important is compliance with the provisions of s. 123? What does the term "notice" mean? What is the nature of the hearing and who or what is to be heard? What is the effect of noncompliance with the statute or the requirements of natural justice? The answers to these questions are left by statute to the common law referred to earlier in Chapter II and can be illustrated by reference to

Canadian cases involving teacher dismissals for misconduct.

There have been no reported cases in British Columbia directly challenging a termination under s. 123 as opposed to a dismissal or suspension for misconduct under s. 122 of the Act. There is nothing in the Act to suggest that the nature of what is referred to as a "meeting" in s. 122 should be any different from what alternatively is referred to as a "hearing" and an "interview" in s. 123. This issue of legislative interpretation is clarified at page 573, in the case of *Young v. Board of School Trustees of School District # 47* (1982), 138 D.L.R. (3d) 571 (B.C.C.A.) as follows:

I note that the School Amendment Act 1980 (B.C.), c. 51, s. 6, changes "shall be an interview by" in s. 130(2)(a) to "shall have the opportunity of meeting with". I do not think that the different language changes the concept. The intention of the section is to give the teacher the opportunity to present his side of the issue. Section 130 contemplates suspensions without having heard any representation from the teacher. Whether the word be "interview" or "meeting", the concept is that of a hearing at which the teacher has the opportunity to present his case. In my opinion he is entitled to produce the evidence in support of that case and in that respect the board may not refuse to allow the teacher to put before it relevant material.

The right of a teacher to legal counsel at a hearing before a school board under s. 123 is an issue that has not been addressed yet by a court in British Columbia. The problem likely has not arisen because s. 123(3) provides that a teacher may be represented "by another teacher or by a member of the staff of the British Columbia Teachers' Federation". At present, the BCTF has two lawyers on staff and a teacher facing termination is entitled as a member of the BCTF to representation by one of the lawyers without cost. In practice, if the teacher lives outside the lower mainland, the BCTF frequently hires the services of a local lawyer. Therefore, it is unlikely that a teacher would choose to pay to be represented by legal counsel other than a lawyer designated by the BCTF. However, if a teacher were to choose independent counsel, a board should permit this representation for the following reasons. First, the BCTF already has established the precedent of representation by a lawyer and second, common law likely would require the board to allow such counsel to be present. At common law there is no absolute right to legal representation at oral hearings before quasi-judicial statutory decision makers. However, the trend is towards enlargement and entrenchment of the right to counsel. That right must be considered in the larger context of natural justice.

The question to consider is whether to deprive a person of counsel is to deprive that person of a fair hearing given the potential consequences of the hearing. In British Columbia it now appears that where a livelihood is at stake in a hearing, in fairness a person cannot be denied legal counsel to advise and assist him. With respect to legal counsel at a hearing, Carrothers J. A. in the case of *Joplin v. Chief Constable of City of Vancouver* (1982) 144 D.L.R. (3d) 285 (B.C.S.C.); affirmed (1985) 20 D.L.R. (4th) 314 (B.C.C.A.) said at page 318:

The Chief Justice ruled the prohibition to be ultra vires and, rather than say that Constable Joplin had a right to counsel, the Chief Justice directed that Constable Joplin must be allowed to have counsel if he so wished....Essentially, and with respect, I would adopt the reasons of the Chief Justice.

The importance of compliance with statutory and natural justice provisions is underlined by the British Columbia case of *Johnston v. Board of School Trustees, School district 35 (Langley)* (1979), 12 B.C.L.R. 1 (B.C.S.C.). In this case, the two petitioners were teachers employed by the respondent school district at a particular school. As a consequence of problems that had developed between a principal and several members of his teaching staff, the school board by letter

summoned the two petitioners to attend a meeting on a fixed date. However, the letters were not received by both teachers until either the day of or the day before the meeting date. Neither teacher attended the meeting and the board then suspended both of them without pay. Subsequently, the board summoned them by letter to attend a second meeting scheduled two weeks later to explain their involvement in the problems in the school. Both attended this meeting accompanied by a lawyer, but refused to answer any questions and challenged the authority of the board to order their attendance at the meeting. The board decided to suspend further the teachers for refusing to obey its orders. Eventually the board reinstated both teachers. The two teachers then applied to the British Columbia Supreme Court, pursuant to the Judicial Review Procedure Act, for a declaration that the actions of the board which resulted in their suspension and loss of salary were unlawful and for an order directing the board to pay any lost salary.

The application and relief sought were granted by Fulton J. The argument of the board was that since both teachers had been reinstated the issue was merely academic. The judge however, agreed with the teachers' argument that not only was there a matter of principle

and lost pay involved, but there also was the important consideration of the teachers' employment records.

Fulton J. explained that a school board has many administrative functions in deciding whether a teacher should be suspended or dismissed, but a board is not acting as a purely administrative tribunal. Rather, when a board is making a decision concerning a teacher dismissal, it is exercising a judicial or quasijudicial function and is bound to act in a judicial manner which includes acting in accordance with the principles of justice. In this particular case, he held that the conduct of the board in demanding the attendance of the teachers following insufficient notice and without furnishing any particulars of the complaint against them constituted a total denial of natural justice.

Fulton J. commented on the nature of the employment relationship between teacher and school board. Counsel for the board had argued that at common law an employer does have the right to call in its employees to discuss matters of concern regarding their employment. While Fulton J. did not disagree with this as a general principle of law, he stated that this particular employer, a school board, did not have the power it purported to exercise with respect to these two teachers. He explained that a body created by statute, such as a school board, is taken to have

only those powers expressed or by necessary implication conferred by statute. With reference to those respective rights and duties, he said the relations between the board and the teachers is far from an ordinary employer-employee relationship, but is on the contrary a very special relationship. In his view, the powers granted to a district superintendent by the School Act were more than ample to allow that administrator to question a teacher regarding a problem such as the one which arose in the present case. Moreover, the provisions of the Act contemplated by implication that the district superintendent should be the only one to do such questioning.

Fulton J. concluded that the function of the school board according to statute was to supervise generally the educational process within its jurisdiction and not to run schools and discipline teachers on a day-to-day basis, which was within the superintendent's domain. The judge, at pages 18 and 19 defined the roles of the superintendent and the school board as follows:

It must be remembered that the superintendent is a trained educator who is familiar with the day-to-day operations of public schools. On the other hand, the members of the board are laymen who, for the most part, have no experience in these matters. The

board members know what objects the school system should fulfill and, indeed, they are the proper body to determine this general policy. However, the superintendent and the other educational administrators must structure the day-to-day practices within the schools so that these objects can be met. The board cannot interfere, except as set out in the Act, with the day-to-day operation.

It follows that, lacking this power, the orders of the board requiring the attendance of the petitioners on the occasions in question were beyond its powers and unlawful, and thus that the suspensions imposed for failure either to appear or to answer questions thereat were similarly unlawful.

Although the Johnston and Ferry case indicates the courts will require that school boards strictly comply with statutory provisions, the courts will not necessarily be overly technical. The remedies afforded by the Judicial Review Procedure Act are discretionary and the object of the courts under that statute is to provide fairness. In an Ontario case, *Campbell v. Stephenson* (1984) 5 D.L.R. (4th) 676 (Ont. H.C.) a teacher sought judicial review of his dismissal by a school board after he had been convicted of two counts of indecent assault on a male. The Education Act of Ontario R.S.O. 1980, c. 129 provides that when a matter arises that in the opinion of the Minister of Education adversely affects the welfare of a school in which a teacher is employed, the board may, with the consent of

the Minister, give notice of immediate termination of a teacher's contract, together with one-tenth of the yearly salary of the teacher. After the teacher's conviction, the board employing the teacher requested the consent of the Minister for immediate termination, gave the teacher a letter of notice and asked the teacher to reply if he had any questions. The Minister without affording the teacher any notice or opportunity of a hearing, gave her consent, and the board accordingly wrote to the teacher advising that the Minister's consent had been obtained and that the board had terminated the teacher's contract. The board also enclosed a cheque for one-tenth of the year's salary which the teacher cashed. The teacher then applied for judicial review of the termination process.

The court held that the Minister's decision to consent to an immediate termination is the exercise of a statutory power that affects the rights of an individual. Therefore, there was a clear obligation upon the Minister to give notice of her intended action and the general reasons therefor to the person so affected, and allow him to make submissions to her. In this case, the Minister did not act fairly towards the teacher. In the absence of other considerations, the decision of the Minister granting consent would have been quashed. However, the court said at page 680 that

quashing of a decision was "not an automatic matter" since the court "has a discretion to refuse relief if there is a mere technical irregularity causing no substantial miscarriage of justice, or the party waived the tribunal's error". Although the board acted fairly to the teacher and the court doubted that the Minister's decision would have been any different if the teacher had been given an opportunity to be heard, the failure to give this opportunity was not a mere technical irregularity. Nevertheless, the court held that the teacher had waived the irregularity because although he had been advised by competent counsel from the time the criminal charges first had been laid, he did not challenge the Minister's decision as soon as he was advised of it, but raised the issue only as an afterthought late in the judicial review proceedings. Moreover, the teacher also had cashed the cheque which he received as part of his contract termination.

The requirement of "notice of termination" within the meaning of s. 123 of the Act is illustrated clearly in the reported cases of Johnston and Ferry and in that of Campbell. At common law, "notice" includes the obligation to advise the teacher not just of the termination, but also of the general reasons for the termination. A teacher cannot be afforded a fair

hearing unless he knows the allegations made against him.

The requirement that a teacher knows the allegations made against him should not be an onerous obligation with respect to contract terminations under s. 123 of the Act. That section only can be used when three less than satisfactory reports have been received by the board pursuant to reg. 65. Strictly speaking, other than the report of a principal made under reg. 93, the regulations do not require that a copy of a report be delivered to the teacher. However, a court almost certainly would require that a teacher receive copies of all three less than satisfactory reports relied upon by a board in terminating a teacher contract.

The previously cited British Columbia Court of Appeal case of *Young v. Board of School Trustees of School District # 47* addresses the nature of the hearing before the school board. The case concerned a hearing for a teacher suspended for misconduct. In response to a parent's letter complaining of a teacher's conduct towards her son, the board resolved to suspend the teacher for two days without pay for misconduct in the use of inappropriate language to a pupil. The board then set a date for a hearing and the question arose as to whether the teacher should be

permitted to call witnesses. The court said that the board must afford the teacher a hearing at which the teacher has the opportunity to present his case and the board may allow the teacher to put before it relevant material. The board may, but is not required, to hear witnesses in person. The form of evidence is for the board to decide. The board must give to the teacher an oral hearing, but a decision by the board to have the representations and evidence of others in writing would not be a denial of natural justice. In delivering the decision of the court, Hutcheon J. A. explained at page 573:

The problem in this case is not whether the teacher shall be heard. The statute is clear that he shall. The question is the extent of the representations he may make. The statute is not clear on that point. I think I can do no better than to paraphrase the well-known passage in Board of Education v. Rice et al [1911] A.C. 1979 at page 182: The board can obtain information in any way they think best, always giving to the teacher a fair opportunity for correcting or contradicting any relevant statement prejudicial to his position.

The failure of a board to follow proper procedure may be very costly as was the result in the Ontario case of Evershed v. The Queen in Right of Ontario (1984), 5 D.L.R. (4th) 340 (Ont. H.C.). After the teacher pleaded guilty to charges of possessing obscene

pornographic materials, of unlawfully importing materials and of possession of marijuana, the board wrote to the Minister requesting the Minister's consent to terminate immediately the teacher's contract. The Minister did consent and the board terminated the contract. But as in the Campbell case, the Minister did not give the teacher notice or an opportunity to be heard. For reasons which were not apparent, the teacher's application for judicial review in the court did not take place until more than three years after his termination. The court held that since the teacher was not given an opportunity to present his case to the Minister before her decision was made, the decision of the Minister must be set aside and the teacher must be reinstated as of the the date of his termination.

Steele J. commented on the "costly anomaly" of the result of reinstatement which entitled the teacher to over three years of back pay. Even though it is probable that the Minister would have made the same decision even if the teacher had been allowed to present his case to the Minister, Steele J. at page 344 emphasized that fair procedure must be followed regardless of the "inevitability of the result".

Although a court may set aside a termination of a teacher by a board because of procedural irregularity,

there is nothing to prevent a board from terminating a teacher contract a second time relying upon the same grounds. In the case of *Lange v. Board of School Trustees of School District No. 42 (Maple Ridge)* (1978), 9 B.C.L.R. 232 (B.C.S.C.), a teacher was given a hearing with respect to two specific allegations that on two particular dates he struck pupils. However, he was dismissed by the board not only on the basis of those allegations, but also on the ground, at page 233 "That he had engaged in similar conduct, and had used abusive or inappropriate language on other occasions". This third charge was contained in the written reasons for his dismissal. The teacher appealed the decision of dismissal to a board of reference on the ground that there had been a breach of the rules of natural justice because the school board had denied him the right to be heard on the third charge of misconduct. The board of reference agreed that there had been a denial of natural justice, allowed the appeal and ordered the reinstatement of the teacher. However, after this decision, the school board again suspended the teacher, held another hearing and dismissed him on the basis of the original charges of misconduct. The teacher then brought a petition to the court under the Judicial Review Procedure Act to review the second decision of the school board. Counsel for the teacher argued that

the decision of the board of reference setting aside his dismissal was the final and binding disposition of the dispute and that the board was without jurisdiction to re-open and re-hear the matter and render a second decision.

MacFarlane J. held that the decision of the board of reference was to nullify the dismissal order because the requirements of natural justice had not been met. The board of reference did not find in favour of the teacher on the merits of the allegations. MacFarlane J. explained the basis on which the appeal was allowed at page 237 as follows:

It was that Mr. Lange's employment had not been properly terminated because the requirements of natural justice had not been met. The board did not find in favour of the teacher on the merits but, to the contrary, held that Mr. Lange's dismissal was justified on that basis. They found that his dismissal could not stand because he had not been given a full hearing. The effect of that decision was to nullify the dismissal order of the school board and to reinstate the teacher with full pay. It did not dispose of the merits of the matter.

Accordingly, the board was not prevented from considering the merits afresh, as it had in this case. In support of his judgment, MacFarlane J. referred at page 239 to an excerpt from 1 C.E.D. (Ont. 3rd)

Administrative Law headed "Curing Procedural
Deficiencies -- (a) Rehearing":

94. When a decision has been reached in a manner contrary to the rules of natural justice, or there has been a failure to comply with statutory procedural requirements the breach can be cured if the decision-maker involved holds a reconsideration of the whole matter with a fair and open mind and corrects the errors of natural justice or other deficiencies which occurred at the first hearing. The mere fact that the tribunal may have already once determined the matter in issue contrary to affected persons' interests, does not prevent subsequent fair consideration.

MacFarlane J. also cited a precedent for his ruling in favour of allowing the board an opportunity to decide the question anew in his reference at page 239 to the statement of Lord Reid in the case of *Ridge v. Baldwin*, [1964] A.C. 40:

Next comes the question whether the respondents' failure to follow the rules of natural justice on Mar. 7 was made good by the meeting on Mar. 18. I do not doubt that if an officer or body realises that it has acted hastily and reconsiders the whole matter afresh after affording to the person affected a proper opportunity to present his case then its later decision will be valid.

Finally, Macfarlane J., at page 240, concluded that:

I do not think that the legislature, having in mind that persons elected to school boards are usually people without legal training, contemplated that

one procedural error, no matter how fundamental, would have the effect of barring a school board from taking justified disciplinary action against a teacher. Such an absurd intention should not, in my view, be attributed to the legislature.

Finally, s. 123(1) speaks of termination taking "effect at the end of a school term, or, by agreement, at an earlier date". In certain circumstances where agreement between a teacher and a board cannot be reached, this clause may have the effect of allowing a teacher who has been found incompetent by the administration, the board and possibly even the review commission to remain teaching in a classroom. This situation would result in severe administrative problems of justification to parents of children registered in the incompetent teacher's classes and to tax payers who are paying for unsatisfactory teaching.

Remarks

The rules for teacher suspension, dismissal and most particularly, for contract termination in British Columbia partly are determined by the Act and regulations and supplemented by the common law. The provisions for notice and hearing prior to removing a teacher from employment are basic legal requirements to ensure fair treatment of the teacher. Not only must

notice be adequate, but also it should include all the reasons for the teacher dismissal or contract termination. Lack of fairness in the procedure of the board likely would result in a court decision in favour of teacher reinstatement. Therefore, to be successful in teacher dismissals or contract terminations, the board precisely must follow time lines stipulated in the Act and must ensure natural justice provisions for the teacher. It is not necessary for a board to hear witnesses during the hearing with the teacher. If a board fails to terminate a teacher contract in the first instance because of procedural irregularities, the case against the teacher may be re-opened for the original reasons. Because the Act allows for the termination of a teacher contract for incompetence at the end of a school term unless an earlier date is agreed upon, this means that an incompetent teacher might be allowed to remain in the classroom and be paid for his services.

Summary

Critical features of the requirements of the statute and the common law regarding notice and hearing between the board and the teacher are as follows:

- written notice of board's intention to give a notice of termination must be sent to teacher at least 30 days prior to such notice
- teacher hearing with board must be set within 20 days of issue of notice of intention to terminate
- attendance of the teacher at the hearing is optional
- teacher may be accompanied at hearing by BCTF member, usually a lawyer, to advise him, but may not call witnesses
- teacher initially must present all evidence at the hearing with the board
- school board hearing is subject to judicial review in the courts
- if board fails in first instance to provide procedural fairness to teacher, board may re-enact events fairly and successfully terminate the contract of a teacher in a second hearing and/or court appearance
- teacher must be notified of all proceedings against him, including correspondence with minister of education
- teacher must be allowed to make submissions on all allegations against him
- termination usually occurs at end of a school term, unless board and teacher agree to contract termination forthwith
- teacher may terminate contract by giving in writing 30 days' notice to the board

Stage Three: Appeal to the Review Commission

A teacher whose continuing contract has been terminated under s. 123 of the Act has a right of appeal to a review commission according to s. 130 of the Act. Subsection 130(1) provides that the teacher "may...request the minister to direct that a review commission review the termination". However, pursuant to subsection 130(2), the minister has no discretion in the matter and once a request is received he "shall direct the chairman of one of the review commissions

established under this Act to proceed without delay with a review of the termination".

Pursuant to subsection 130(5), the minister is empowered to appoint as many review commissions as he considers necessary. Each review commission must consist of three members, with the chairman being appointed by the minister. The other two members also are appointed by the minister, but he must select one member from persons nominated by the BCTF and the other member from BCSTA nominees. According to s. 130(6)(b), all three persons must have been:

- (i) actively engaged in education in the Province, as evidenced by appointment to the staff of a board, college, provincial institute, university or some other educational institution or organization established under this Act, the College and Institute Act or the University Act; and
- (ii) not a member of the staff of either the British Columbia Teachers' Federation or the British Columbia School Trustees' Association.

The chairman's involvement in education need only have been sometime within the five years immediately preceding the date of his appointment, and not necessarily current. As compared to a board of reference, an attempt has been made to restrict membership in this tribunal to persons who at one time or another actively have been engaged in education in

the province. No such limitation is imposed on membership in a board of reference whose chairman is directed to be a member of the Society of British Columbia, that is, a lawyer.

As earlier indicated, the review process is initiated by the "request" of the teacher. Those requests according to reg. 68 and reg. 69 must be in writing, with copies to the board concerned and must like all relevant correspondence be transmitted by registered mail. The requests according to section 130(1) must be made "within 10 days of receipt of notice of termination" and not, it should be noted, within 10 days or any other period after the effective date of the termination.

The minister then must initiate the process of appointing a review commission. The process is not entirely clear under the Act. Presumably, the appointment of the chairman by the minister is rather straight forward. However, the appointment of the other two members is somewhat complicated by subsection 8 of s. 130 which provides as follows:

(8) If either party fails to notify the minister of its nominees within 14 days of receipt of his request for the names of nominees, or if both parties fail to notify the minister, the minister may appoint a suitable person as a member of the review commission on behalf of

the party that failed to nominate a member.

Neither the BCTF nor the BCSTA is a "party" to the review proceeding in the ordinary sense. The word party, which is used no where else in the Act or regulations, seems to refer respectively to the teacher who has been terminated and the board who had employed him. In practice, it seems that the minister may allow the teacher some input in the appointment of the BCTF member from a list of those nominated by the federation. A corresponding consideration may be extended to the board in the appointment of a nominee of the BCSTA. Section 130 also contains provisions for leaves of absence from the commissioner's engagement in education and for payment of review commission members who are said to hold office at the pleasure of the minister.

The minister also according to reg. 70 must notify the school board concerned of the receipt of a request for review. The board thereafter is required within five days receipt of the notice, to deliver to the minister a full statement of the reason for the notice of termination of contract and at the same time to provide the teacher with a copy. An additional obligation is imposed on the board by reg. 71 which requires the following:

Where a board submits reports under section 65 to a review commission, the commission shall require that the board also file any other such reports issued between the date of the first and the last such report.

The reference to reports submitted "under section 65" means the three less than satisfactory teacher reports that constitute the "reasons for the notice of termination of contract". However, the "other such reports" the regulation refers to are questionable since no reports are prepared "under section 65". Rather, reports are prepared under reg. 93 which governs principals' reports or reg. 9 which refers to reports of district superintendents or his delegates. This interpretation is very legalistic and the regulation likely intended to provide simply that the board forward copies of all evaluation reports received on a teacher between the issuance of the first and third less than satisfactory report.

While the review commission is directed "to proceed without delay with a review of the termination", little is said regarding the nature of the hearing itself. Since subsection 130(10) of the Act expressly confers upon the commission certain powers under the Inquiry Act R.S.B.C. 1979 c. 198 which are not available to a school board, it may be assumed that the proceeding is intended to be more formal than

the hearing before the school board. These powers include the power by summons to require the attendance of a person as a witness to give evidence under oath and to obtain relevant documents, writings, books and papers. Regulation 72 distinguishes between an appeal before a board of reference where "a teacher may be accompanied or represented by counsel" and a hearing before a review commission at which the regulation provides only for representation "by another teacher or by a member of the staff of the British Columbia Teachers' Federation". Despite reg. 72, however, it is highly likely that a court by common law would allow representation by counsel at a hearing before a review commission for the reasons indicated previously in the discussion of the right to counsel at a hearing before a school board. Although the legislation is not specific as to the intended formality of the hearing before the review commission, the nature of the hearing generally will be determined by the common law in accordance with the principles earlier discussed.

Another issue not specifically addressed by the legislation is the grounds upon which a termination successfully may be appealed by a teacher. Subsection 130(3) simply requires the commission to "investigate and review the matters referred to it, and confirm or reverse the action of the board" without indicating why

or in what circumstances a commission might confirm or reverse a termination. Is the board's action to be confirmed in every case in which the board had before it three less than satisfactory reports issued with the requisite time frame and otherwise in accordance with the regulations? Or is the commission entitled to look beyond or behind the individual reports to question whether in all the circumstances the learning situation in the classroom of the teacher has been shown to be less than satisfactory? Does the review commission simply examine whether procedurally the three less than satisfactory reports have been issued in accordance with the regulations or is that tribunal intended or authorized to investigate generally on the merits the question of the teacher's competence?

The role of the review commission from 1974 to 1985 in considering appeals of teacher contracts for incompetence has been examined by the courts in British Columbia in one instance. In the case of the Board of School Trustees of School District No. 31 (Merritt) v. Sederberg (1979), 16 B.C.L.R. 149, Verchere J. of the British Columbia Supreme Court was called upon to hear a petition for judicial review brought by a school board whose termination of a teacher's contract had been reversed by a review commission. The essence of the argument advanced by the board, although broken

down to several grounds, was that the review commission had exceeded its jurisdiction by considering matters and evidence extraneous to the issue before it and by failing to deal with the question remitted to it and instead the commission had decided some other question. Counsel for the board argued, at page 154, that the review commission was restricted to considering whether the three less than satisfactory reports which led to the teacher's termination were "justified". In addition the board's counsel suggested that the commission had erred in taking into account the failure of the district superintendent in his report writing to look at the results achieved by the teachers pupils; the failure of the board to consider the option of medical or educational leave for the teacher; and, the failure of the board to accede to the teacher's requests for transfer from the school in which she had taught for over 16 years. Finally, it was argued that the review commission had erred in considering as evidence matters which had occurred outside of the limits of the period between the first and third statutory reports.

Verchere J. interpreted the phrase "matters referred to it" that the review commission pursuant to s. 130(3) was directed to investigate and review. The judge referred to reports of other review commissions

which established that as a matter of practice the commissions did more than simply study the statutory reports. In each instance, the commission had permitted examination and cross-examination of the report writers and had gone outside the bounds of those reports in consideration of evidence other than the report content. In fact, Verchere J., at page 154, decided that the review commission had reviewed the statutory reports "as a step on the way to its final conclusion". After noting that "every commission is comprised of persons 'actively engaged in the practice of education', to whom the importance of the statutory reports as the basis for the impugned decision would be apparent", Verchere J., at page 155, concluded as follows:

In summary, it seems to me that the question before the commission was the same as that which was before the board, and that it would similarly almost always be before every board acting under s. 130A and as well before any commission reviewing that board's decision. To paraphrase Reg. 62, that question, it seems to me, must be whether the learning situation in the class or classes of the teacher concerned was less than satisfactory. It does not seem to me that in seeking to determine that question a commission, and in particular the commission here, is circumscribed by the Act or the regulations. Therefore, in my view, it would be wrong to say that a

commission's investigation and review must be confined entirely to the consideration of what seems to me to be only an interlocutory matter, namely, whether the opinions expressed in the reports before it were justified.

Accordingly, the judge, at page 155, held that "it was proper, that is to say, within its jurisdiction, for a majority of its members to form the opinion that 'the case against Mrs. Sederberg has not been proven by the testimony and evidence presented to it'". Therefore, Verchere J. dismissed the board's application.

The importance of the Sederberg case cannot be underestimated. However, this single case legally could be overruled by a Court of Appeal or distinguished by a different judge in the British Columbia Supreme Court. Nonetheless, this case has established that the issue in termination proceedings before both the school board and the review commission is the same: whether the learning situation in the class or classes of the teacher concerned is less than satisfactory. Neither the board nor the review commission on the authority of the Sederberg case are to be limited to a consideration of the statutory reports, but may consider whatever evidence they feel is relevant to the issue of teacher competence. Regulation 73 requires that the review commission

conduct a hearing and make its decision within 30 days after the minister has directed the review. However, reg. 73(2) makes provision for the possibility of the minister to grant an extension to a review commission upon notification of the reason for delay by the chairman of the commission.

The decision of the board according to s. 130(3) must be either to "confirm or reverse the action of the board" and no jurisdiction is conferred upon the board by the Act or regulations to make any ancillary orders. That decision is to be "final and binding" on the teacher and the board. While no further appeal is provided by the legislation, the decision may be subject to judicial review in court.

Section 130(4) provides that "where a review commission directs that the action of the board be reversed, the board shall promptly reinstate the teacher". The legislation does not specifically say that the reinstatement should be retroactive, although that appears to be presumed. In the Sederberg case, the review commission had ordered that the board's action be reversed effective the date of the termination, which was 10 weeks earlier. This disposition was not questioned in the proceedings before Verchere J.

Once a decision has been reached, the chairman of the review commission is required by reg. 74 to notify within 3 days the teacher, the board and the ministry. In addition, reg. 74 requires that the chairman forward to the ministry "the documents or certified copies thereof" that were examined by the review commission. The ministry is directed by reg. 75 to retain these documents for not less than 60 days.

In practice, the chairman informs the teacher and the board orally by telephone of the resolution of the review commission either to confirm or reverse the termination. Notice to the ministry includes a report of the the chairman giving the reasons of the commission for its decision. The report also may include the comments of any dissenting commissioner. A copy of the same report that is sent to the minister is forwarded to the teacher and the school board. Subsequently, in practice, all the documents and reports examined by the commissioners have been retained by the ministry beyond the 60 days referred to in reg. 75. Until this study, all these materials have been recorded on microfiche and treated as confidential by the ministry. In one instance, a written transcript of all the evidence adduced before the commission had been forwarded to the ministry.

Remarks

Section 130 of the British Columbia School Act and regulations 68 to 75 inclusive of the School Act Regulation refer to the review of teacher contract terminations for incompetence before the review commission. Review of contract termination for incompetence is separated from other causes for teacher contract termination. This final stage of the termination proceeding, similar to the previous two stages, is subject to a number of strict time lines. Moreover, the legislation governing stage three has been interpreted in the British Columbia Supreme Court in the case of School Trustees of District 31 (Merritt) v. Sederberg. The interpretation of "matters" referred to the review commission was interpreted by the court as consideration by the school board and the review commission not only of the statutory reports, but also of all testimony and evidence presented to them. Moreover, the evidence before the review commission may be weighted by the commissioners according to their judgment as educational experts. The decision of the school board to terminate the contract of Mrs. Sederberg for incompetence failed not only before the review commission, but also before the court. Specifically then, review commissions, are free, as

part of decision making, to consider "matters" such as the following issues cited in the Sederberg case: the absence of student progress results; teacher transfer denials; inadequate recommendations and opportunity for teacher improvement; or, the prolonged presence of a "troublesome repeater" in the classroom.

Summary

The following statutory time lines and limitations before the review commission complete the final stage of teacher contract termination for incompetence in British Columbia (refer to Table 1, Table 2 and Table 3). Specific concerns in stage three were as follows:

- the teacher, within 10 days of receipt of the notice of termination, writes a registered letter to the minister, with a copy to the board, asking the minister to direct that a review commission be formed to review his contract termination for incompetence
- the minister appoints the chairman of the review commission
- the BCTF and the BCSTA have 14 days to nominate their member of the commission or the minister shall nominate their representatives
- the three members of the commission recently must have been engaged actively in education in the province
- the board has five days upon receipt of the notice from the minister of a review to deliver to the minister and to the teacher a full statement of reasons for termination and any reports issued during the official report writing period
- the teacher may have a BCTF staff member, who generally has been a lawyer, accompany him at the hearing and seemingly, at common law, may not be denied the right to counsel

- the review commission has the authority under the Inquiry Act to summon witnesses and to require the production of evidence
- review commission has 30 days, with a possibility for an extension granted by the minister, to make a decision to confirm or reverse the decision of the board to terminate a continuing teacher contract for incompetence
- if the review commission directs that the action be reversed, the board promptly shall reinstate the teacher
- chairman of the review commission, within three days of reaching a decision, shall notify the teacher, the board and the minister
- the minister shall retain all documents of the review commission for at least 60 days
- the decision of the review commission is final and binding for the teacher and the board
- petitions to the British Columbia Supreme Court for judicial review of the decision of the review commission are available to the teacher or the board, with the possibility for further review in the British Columbia Court of Appeal and finally, the Supreme Court of Canada

TABLE 1

Legislation pursuant to Termination of Continuing Teacher
Contracts for Incompetence in British Columbia

STAGE 1: The Less than Satisfactory Report

- s. 119(2) - teacher on continuing contract with board
- s. 123(1) & - termination of continuing contract for incompetence
reg.65 after 3 less than satisfactory reports are received
by the board in 12 - 24 months
- reg. 8 - report of superintendent to be available to
principal
- reg. 9 - joint notification of principal and superintendent
of the presence of a less than satisfactory teacher
- principal and superintendent (or assistant
superintendent or director of instruction) both must
write a report on the teacher
- reg. 49 - if report is written by a director of instruction,
it must include the signature of the superintendent
and then has full force of superintendent's report
- reg. 51 - supervisor not to make written reports on teachers
- reg. 52 - teacher consultant upon request shall assist
teachers in improving classroom instruction
- reg. 53 - teacher consultant shall not evaluate teachers in
discussions with principals or superintendent
- reg. 93-95 - directions for report writing of a principal

STAGE 2: The Hearing before the School Board

- s. 123(2) - board receives 3 less than satisfactory reports
pursuant to stage 1 and
 - i) sends teacher written notice of intention of
board to terminate contract
 - ii) sets hearing within 20 days
 - iii) issues termination notice 30 days after
"intention to terminate" letter
- s. 123(3) - teacher may be accompanied by BCTF member at hearing

TABLE 1 --Con'tSTAGE 3: The Hearing before Review Commission

- s. 130 - teacher requests minister of education within 10 days of receipt of notice of termination to direct a review commission to review termination and the minister shall form the commission whose decision is final and binding on both parties with the possibility of judicial review in court
- reg. 68 - all requests must be made in writing
- reg. 69 - all correspondence must be by registered mail
- reg. 70 - board must send ministry the reason for termination
- reg. 71 - board must send ministry all teacher reports issued during termination procedure
- reg. 72 - teacher may be accompanied at hearing by BCTF member
- reg. 73 - review commission decision to be made in 30 days unless an extension is requested of the minister
- reg. 74 - chairman must notify all parties of decision within 3 days of deciding a case
- reg. 75 - minister must retain documents for at least 60 days

TABLE 3

Control Sheet for Legal Termination of Continuing Teacher
Contracts for Incompetence in British Columbia

STAGE 1:

1. Teacher on continuing contract _____
2. Teacher receives first less than satisfactory report _____
3. First less than satisfactory report written by _____
4. Possible teacher rebuttal letter _____
5. Supervision schedule of visits of administrator _____
6. Teacher receives second less than satisfactory report _____
7. Possible teacher rebuttal letter _____
8. Recommendations for teacher improvement
 - Memoranda _____
 - Class visitations _____
 - Supervisor of instruction assistance _____
 - In-service _____
 - Professional articles _____
 - Other _____
9. Other considerations
 - Parent comments _____
 - Transfer _____
 - Leave of absence _____
10. Teacher receives third less than satisfactory report _____

STAGE 2:

1. Board receives 3 less than satisfactory reports _____
2. Notification and reasons for teacher contract
termination by board _____
3. Date of teacher hearing with superintendent and board _____
4. Teacher termination notice by board _____

STAGE 3:

1. Notice of appeal to minister by teacher with copy of
appeal to board _____
2. Board notified by ministry of appeal and requested to
forward supporting material _____
3. Request for review commission nominees by minister _____
4. Appointment of review commissioners - Chairman _____
- BCTF member _____
- BCSTA member _____
5. Location of hearing _____
6. Dates of hearing _____
7. Extension time for hearing, if required _____
8. Decision letters to - Ministry _____
- Teacher _____
- Board _____
9. Petition of the British Columbia Supreme Court for
judicial review _____

CHAPTER VI
BRITISH COLUMBIA REVIEW COMMISSION DECISIONS
BETWEEN 1974-1985

The purpose of this study is to promote a better understanding of the termination of continuing teacher contracts for incompetence in British Columbia according to the provisions set down in the School Act and the School Act Regulation. A second purpose is to examine and to analyze the reports of the 17 reviews initiated since the inception of the review commission until 1985. The specific purpose of Chapter VI is to provide an answer to the following questions posed at the beginning of this study: First, what are the results of the 17 applications for review of termination placed before the review commission since its inception in 1972? Second, what standard of competence for teachers in British Columbia has been determined through the decisions of the review commissions?

In 1972 legislation was passed in British Columbia for the provision of a review commission to hear appeals for school board terminations of continuing teacher contracts for less than satisfactory teaching. Since the inception of the review commission, the minister has received only 17 requests pursuant to s. 130 of the Act that direct him to appoint a review

commission to review a school board's teacher contract termination for incompetence. According to reg. 74, the chairman of a review commission is required to "forward to the ministry the documents" and a report of the decision, which in practice has been microfiched and filed as confidential at the ministry of education in Victoria.

The confidential files were made available for purposes of this study with the understanding that the names of the teacher, the school district and other personnel involved in the hearing would remain confidential. Apart from the year of the case, the sex of the teacher, the assignment and teaching level of the teacher, details were not available for four cases settled by cash pay outs to the teacher by the board prior to the hearing before the review commission and for two cases that were abandoned by the teacher. Of the remaining 11 cases before the review commission, all review commission reports have been subjected to the same framework of analysis based on the following law case components identified by Dernbach and Singleton (1981): facts, issues, argument of the teacher, argument of the school board, decision and reasons. Each case has been analyzed in chronological order according to the filing date at the ministry and has been followed with remarks.

In the early years of the review commission, the reports of the commissioners and the documents provided contained limited information. Unlike judges' reasons for judgment which are written for the purpose of scrutiny and study by lawyers and students, these reports were meant to be confidential reports to the teacher, the school board and the ministry. While the commissioners' reports were not written to make known standards of teacher competence in British Columbia, examination of reasons for the decisions of the commissioners revealed factors that taken together constituted teacher incompetence.

Review Commission in British Columbia 1974-1985

Of the 17 review commissions convened in British Columbia between 1974 and 1985, two were abandoned by the teacher, four were resolved through the parties reaching a settlement outside the hearing, three upheld the teacher's appeal and ordered the reinstatement of the contract between the teacher and the board, and eight supported the action taken by the board in terminating the teacher's contract (refer to Table 4, Table 5(a) and Table 5(b)). Three of the cases were improperly directed to the review commission in 1975 as they were not concerned with incompetence, but rather

TABLE 4

Review Commissions in British Columbia 1974-1985:
 Characteristics of the Parties and the Resolution

<u>Year</u>	<u>Case Code</u>	<u>Sex</u>	<u>Years of Experience</u>	<u>Position</u>	<u>Formal Education</u>	<u>Teaching Level</u>
1974	1	F	18	Teacher	B.A.	H. Sch.
1974	2	F	14	Teacher	Normal Sch.	Elem.
1975	3	M	-	Vice-Pr.	-	Elem.
1975	4	M	-	Vice-Pr.	-	Elem.
1975	5	M	-	Vice-Pr.	-	Elem.
1976	6	M	15	Teacher	B.Sc.	H. Sch.
1978	7	M	7	Teacher	M.Ed.	H. Sch.
1978	8	M	29	Teacher	B.Ed.	H. Sch.
1979	9	F	25	Teacher	B.A.	Elem.
1979	10	F	21	Teacher	Normal Sch.	Elem.
1979	11	F	-	Teacher	-	Elem.
1979	12	M	-	Teacher	-	Elem.
1981	13	M	-	Teacher	-	H. Sch.
1984	14	M	-	Teacher	-	Elem.
1985	15	F	9	Spec. Ed. Teacher	B.Ed.	E.M.H. Elem.
1985	16	F	17	Teacher	B.Ed.	H. Sch.
1985	17	M	-	Teacher	-	Elem.

TABLE 4 --Con't

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Transfer	Medical Leave	Dates and Authors of Less Than Satisfactory Reports			Case Resolution	Court
		#1	#2	#3		
-	-	D.Inst. 72/12/6	Prin. 73/11/23	Supt. 74/02/26	Board	-
Yes	Sept.- Oct./74	Prin.#1 73/04/10	Supt. 73/06/05	Prin.#2 74/04/19	Board	-
-	-	-	-	-	Abandoned	-
-	-	-	-	-	Board	BCSC
-	-	-	-	-	Board	BCSC
-	Mar.- June/76	Prin.#1 75/04/26	Supt. 75/06/13	Prin.#2 76/04/29	Board	-
Yes	-	Prin. 77/04/27	D.Inst. 77/05/24	Supt. 78/05/18	Board	-
Yes	-	D.Inst. 77/03/03	Supt. 77/04/28	Prin. 78/04/26	Board	BCSC/ BCCA
Yes	-	Prin. 77/12/15	A.Supt. 78/05/02	D.Inst. 79/04/11	Teacher	-
Yes	Jan/June/77 Dec/Feb/78	Supt. 76/12/14	Prin. 76/12/17	Supt. 78/10/30	Teacher Majority	BCSC
-	-	-	-	-	Settlement	-
-	-	-	-	-	Abandoned	-
-	-	-	-	-	Settlement	-
-	-	-	-	-	Settlement	-
-	1982/Sept. 84/Feb.85	Prin.#12 83/04/26	D.Inst. 83/06/13	A.Supt. 85/04/25	Teacher	-
Yes	-	Prin. 84/04/30	Supt.#1 85/02/28	Supt.#2 85/05/01	Board	-
-	-	-	-	-	Settlement	-

* Prin. = Principal
 D.Inst. = Director of Instruction
 A.Supt. = Assistant Superintendent
 Supt. = Superintendent

TABLE 5(a)
Resolution of Review Commissions 1974-1985
Number and Percent of Teachers

Year	Cases Resolved - Number and Percent of Total								Total Cases	
	Abandoned		By Settlement		In favour of				#	%
	#	%	#	%	Teacher		Board			
#	%	#	%	#	%	#	%	#	%	
1974							2	12	2	12
1975	1	6					2	12	3	18
1976							1	6	1	6
1977									0	
1978							2	12	2	12
1979	1	6	1	5	2	12			4	23
1980									0	
1981			1	6					1	6
1982									0	
1983									0	
1984			1	6					1	6
1985			1	5	1	6	1	5	3	17
Total	2	12	4	23	3	18			47	100

TABLE 5(b)
Resolution of Review Commissions 1974-1985-
Annual Number and Percent by Line Sub-Total

Year	Cases Resolved - Number and Percent by Line Sub-Total								Total Cases	
	Abandoned		By Settlement		In favour of				#	%
	#	%	#	%	Teacher		Board			
#	%	#	%	#	%	#	%	#	%	
1974							2	100	2	100
1975	1	33.3					2	66.7	3	100
1976							1	100	1	100
1977									-	-
1978							2	100	2	100
1979	1	25	1	25	2	50			4	100
1980									-	-
1981			1	100					1	100
1982									-	-
1983									-	-
1984			1	100					1	100
1985			1	33.3	1	33.3	1	33.4	3	100

involved the demotion of vice-principals to classroom teachers. In fact, there only are nine reports of review commissions, eight of which deal with incompetence. The majority of all the cases before the review commission was heard in the seventies.

High School Teacher v. School Board (1974), Code #1
Hearing - May 15, 1974.

Facts - The review involved the appeal of a school board contract termination of a secondary school teacher with 18 years experience. The three less than satisfactory reports were written, respectively, by the director of instruction on December 6, 1972, the principal on November 23, 1973 and the district superintendent on February 26, 1974, over a 14 month time period. Each of the three reports referred to deficiencies in teacher planning, instruction and discipline. In addition, a record of parental hostility and comprehensive memoranda from the principal to the teacher regarding suggestions for improvement were presented as evidence. Four witnesses were called.

Issue - Was the content of the three less than satisfactory reports erroneous?

Argument for teacher - Opinions contained in the reports were erroneous as the teacher was well qualified to teach.

Argument for board - The teacher had been given specific suggestions in the form of written clinical supervision notes and memos on how the teacher might improve the less than satisfactory teaching described in the reports and she had given little or no indication of improvement.

Decision - unanimous to confirm the action of the board in the termination of the teacher contract for a less than satisfactory learning situation.

Reasons - The review commission reported as follows:

- Reports met statutory requirements.
- Teacher had received copies of the reports.
- Teacher had been given suggestions on improvement.
- Teacher had made little or no indication of improvement in reporting period between December 6, 1972 and February 6, 1974.

Remarks

The first hearing held before a review commission confirmed the action of the school board to terminate

the teacher contract for incompetence on June 30, 1974. In case code #1, the commissioners applauded the clinical supervision approach of the administrators that resulted in objective behavioural records of teacher performance. For example, there were records of students' "time on task" during an observation period and of the number of "sharp exchanges" between the teacher and her students during a 55 minute class period. The few students "on task" or working productively and the "sharp exchanges" in the noisy class that were followed by derisive student mimicry of the teacher were submitted as evidence of lack of student support and control. Moreover, the teacher was criticized for poor voice control, poor questioning techniques, a heavy reliability on text books and a general inability to interest her students. The summary statement in the final report written by the district superintendent said:

The fact that [the teacher] conducted five 55 minute classes without actively engaging students in positive learning situation raises the question of [the teacher's] competence to teach.

Teacher lessons were described as "sterile" with no effort to provide review, to undertake instruction or to create a good working environment that actively engaged students in learning. Seatwork consisted

mainly of worksheets. Her teaching was described as having "lost its spark". Also, reference was made to documentation of specific suggestions for teacher improvement and of the teacher's lack of effort to improve. Parental hostility was an additional consideration in the decision making of the review commission.

As a result of the suggestions and assistance to the teacher and of the documentation of the efforts of the administration, the case against the teacher was made effectively. The reasons for the decision of the commissioners emphasized procedural aspects rather than the merits of the less than satisfactory reports.

Elementary Teacher v. School Board (1974), Code #2
Hearing - June 26, 1974.

Facts - The female teacher in this case held the lowest level of teacher certification, which restricted her teaching to elementary school grades. Four witnesses gave evidence at the hearing. The three less than satisfactory reports were written respectively by one principal on April 10, 1973, by the district superintendent on June 5, 1973 and by another principal on April 19, 1974, just beyond the minimum amount of time required according to regulation, which is 12 months. Following classroom visits, both principals

sent memos to the teacher that summarized their classroom observations and their suggestions for improvement.

After her first less than satisfactory report, the teacher requested and received a transfer to another school to allow her a fair chance to succeed in subsequent evaluations. However, witnesses reported that parents from her previous two schools biased parents against the teacher by issuing a "red alert" on the teacher prior to her arrival. A second transfer assignment to a different grade was arranged. The teacher went on medical leave from September 5 to October 11, 1974.

Issue - If two different principals issue less than satisfactory reports, are the statutory requirements of teacher contract termination being met pursuant to reg. 65(c)?

Argument for the teacher - Two reports had been written by different principals, which was a violation of reg. 65.

Argument for the board - Reports had met statutory requirements. Suggestions had been given for teacher improvement in comprehensive memoranda from principals

and from help offered by the director of instruction, but the learning situation worsened.

Decision - unanimous to confirm the action of the board in the termination of the teacher contract for a less than satisfactory learning situation.

Reasons - The review commission reported as follows:

- Reports had met statutory requirements.
- Teacher had received copies of the reports.
- Teacher had been given suggestions on improvement.
- The learning situation continues to be less than satisfactory.

Remarks

The second hearing was held before the same board of review commissioners and the reports of the hearings were composed in the same format. The review commission confirmed the decision of the board to terminate the teacher contract for incompetence on June 30, 1974. In both cases, extensive documentary evidence of suggestions for teacher improvement was presented to the commissioners in areas of planning and organization, of instruction and most emphatically, of discipline and management. Specifically, written memos

were sent by the principals to the teachers. Moreover, the school district in case code #2 provided concrete assistance to the teacher with a short-term medical leave and transfers to two different schools at two different grade levels. As a result of the suggestions and assistance to the teacher and of documentation of the efforts of the administration, both review commissions arrived at a unanimous decision to confirm the decision of the school boards to terminate the contracts of the teachers for incompetence.

The three reports consistently referred to poor instruction, organization and discipline as follows. The teacher was faulted for poor methods of distributing materials to students, for poor questioning techniques and for having a disorganized, unattractive classroom. Her teaching programs were described as not meaningful in relation to stated objectives. Failure to challenge students and low expectations resulted in an inadequate standard of student work. Her relations with students were described as tense, strained and defensive. By the time the third report was written, the frustration of the teacher had increased to the point that the principal observed the teacher reply to a student's question saying, "Read a thick book and don't interrupt me for twenty minutes". Suggestions were made to the

teacher to plan more carefully, to give directions more specifically, to set expectations more clearly and to use encouragement instead of threats with students, which the teacher failed to implement in what was described as a steadily worsening learning situation.

Elementary Vice-Principal v. School Board (1975), Code # 3

Case code #3 concerned the termination of a June assignment of a probationary elementary vice-principal position. The issue in case code #3 was whether a probationary temporary assignment to vice-principal in June constituted an appointment to the position. The school board reassigned the teacher as a classroom teacher in September. This case was placed wrongly before the review commission as the demotion did not result from less than satisfactory performance reports. Other details of the case were not available because the review was abandoned by the teacher.

Elementary Vice Principals v. School Board (1975), Code #4 and #5.

Hearing - June 18, 1975.

Facts - Two elementary vice-principals, employed by the same school district, applied to the minister to direct that a review commission review their demotion from vice-principal to classroom teacher. The two

teachers were heard together. Regulation 65 refers to terminations based on less than satisfactory performance as an administrator. Contradistinctively, these vice-principals had received satisfactory performance reports, yet teachers with less seniority had been assigned to new vice-principalships in the district. Evidence included teacher reports, BCTF policy and district policy.

Issue - Did the board act correctly as to its statutory obligations in that the vice-principals had not received less than satisfactory reports and its procedural obligations inasmuch vice-principals with most seniority should be reassigned first because the then s. 156(3) of the Public School Act protects the positions of teachers with most seniority?

Argument for the teacher - The vice-principals had not received any less than satisfactory reports. The basic principle of seniority is that if a vice-principle appointment must be terminated due to declining enrolment, the least senior staff member should be reassigned as a regular classroom teacher.

Argument for the board - The board acted according to its own policy. The board policy was that vice-principals are assigned to specific schools and

that when school enrolment is less than 364 students, the school no longer needs a vice-principal.

Decision - unanimous in favour of termination of the positions of vice-principals according to district policy and of reassignment of these teachers to regular classroom instruction.

Reasons - The board acted correctly as to its statutory and procedural obligations.

- Section 156(3) of the Act (1975) protects the employment of teachers with seniority, but not for specific assignments.
- The board followed its own policy, "albeit a poor one".
- The review commission added the following recommendations indicating that the board should have:
 - a) considered patterns of enrolment in a school
 - b) developed policy on vice-principals and some mechanism for dealing with declining enrolment.
 - c) found an alternative method of dealing with vice-principal situations to provide amelioration and then these cases need not have gone to review commission as they are not dealing with less than satisfactory reports.

Remarks

Case code #4 and #5 were the only administrative cases heard by the review commission since its inception in 1972 until 1985. The reason for the demotion of these administrators was based on district policy that provided for the appointment of a vice-principal to a specific school rather than to the district at large. The school district policy required a minimum school population of 364 students in order to continue the position of vice-principal in an elementary school. As a result of declining student enrolment in three schools, the position of vice-principal no longer was needed in those schools. The three administrators were reassigned as classroom teachers, while the board hired two other vice-principals for two vacant positions in the district. The newly appointed vice-principals possessed less seniority than the administrators whose jobs had been terminated. Two of the three demoted vice-principals requested the minister to direct that a review commission review the termination. Since the vice-principals were not terminated under s. 130 of the Act, they had no right to request that a review commission review their "termination".

The second issue in case code #4 and #5 was whether vice-principals whose positions had been eliminated due to district policy on declining student

enrolment must be rehired as vice-principals in order of district seniority. This issue was beyond the jurisdiction of that administrative body. Nonetheless, the review commission confirmed the decision of the board in case code #4 and #5 to terminate the appointments of these vice-principals and to re-assign them in the district as regular classroom teachers. The teacher in case code #4 petitioned the British Columbia Supreme Court on October 6, 1975 in the case of McGregor v. Review Commission (1975), X8419/75. The court upheld the decision of the review commission in favour of the board. The court ruled that although the problem was one of district policy that should be changed, the district had followed its own policy and it was beyond the jurisdiction of the court to vary the policy decision of a school district. The attention of the court was not directed to the jurisdictional issue under s. 130.

High School Teacher v. School Board (1976), Code #6
Hearing - July 6, 19, 20, 1976.

Facts - This high school physical education teacher with 15 years experience received three less than satisfactory reports that were written over a period of 12 months and four days by the following report writers: a principal on April 25, 1975, a

superintendent on June 13, 1975 and a second principal on April 29, 1976. Based on these reports, the school board terminated the contract of the teacher for incompetence on June 30, 1976. Instead of using the concluding statement "less than satisfactory" that was required pursuant to regulation 94, these report writers substituted the following words: "unsatisfactory", "fair learning situation", and "marginally satisfactory".

The statutory report content referred to less than satisfactory preparation, instruction and supervision. A satisfactory teacher report dated August 28, 1973 was submitted as evidence. The principal sent memos to the teacher urging him to improve class preparation and to present "warm-ups" in his gym classes. The superintendent observed that instead of receiving instruction, the students only played games. The teacher had a back problem and was unable to demonstrate and he failed to use students for demonstrating. A major portion of the materials required for two other classroom subjects taught by the gym teacher were obtained from other teachers. Supervision provided by the teacher during study period was inadequate. The teacher went on medical leave from March 1 to June 30, 1976. Six witnesses were called before the commission.

Issues - Were the formal reports fairly and conscientiously composed according to statute and were the report conclusions that were used instead of the phrase specified in the statute ambiguous?

Argument for the teacher - Report conclusions of unsatisfactory, fair and marginally satisfactory are not specified by statute and are ambiguous.

- Reports two and three are not clear and detailed. Report three involved no formal inspection, but rather viewing from the doorway and from the corridor outside the classroom.
- Superintendent's report was issued while the teacher was on medical leave.

Argument for the board - The content of the reports conveyed that the learning situation was "less than satisfactory" even though that rating was not used.

Decision - unanimous to confirm the decision of the board to terminate the teacher contract for a less than satisfactory learning situation.

Reasons - The review commission reported as follows:

- Reports indicated a less than satisfactory learning situation.

- The teacher had copies of the reports.
- The teacher failed to act upon suggestions for improvement.

Remarks

Two of the three members of the review commission, one of which was the chairman, were the same commissioners who had been appointed to hear all five of the appeals held by the tribunal since its inception in 1972. The emphasis of the decision making of the commissioners was on procedure rather than on merits of the case. Moreover, this group of commissioners in every instance resolved the dispute in favour of the board.

Notable similarities between case code #6 in 1976 and case code #2 in 1974 were as follows: the three less than satisfactory reports were written and filed in just over the minimum statutory time line of 12 months; the same combination of report writers was used, that is, principal #1, district superintendent, principal #2; principals sent written memos to the teacher with specific suggestions for improvement; and, both teachers took short-term medical leave after receiving two less than satisfactory reports. Unlike previous administrative reports placed before the

commissioners that concluded with the rating of the teacher as less than satisfactory as specified by regulation, the report writers in case code #6 substituted various conclusions that could be misconstrued by the teacher. The review commission recommended that less equivocal language be used in the concluding statement. Also, some of the teacher evaluation reports in case code #6 lacked detail and clarity. Nonetheless, the commissioners judged that the reports indicated that the learning situation in the classroom was less than satisfactory because of the lack of planning and organization and the lack of actual instruction.

Specifically, comments in the administrator's reports included reference to lack of supervision during study periods; to failure to provide instruction in physical education, refusal to do warm-ups, no gymnastic demonstrations, and a program consisting of playing games; and, to deficient preparation reflected in poor record keeping and by the fact that the major portion of materials for classroom subjects was obtained from other teachers. However, the paramount consideration of the review commission in confirming the decision of the board to terminate the continuing contract of the teacher was the fact that this teacher, like the teachers whose cases were placed

before the review commission in 1974, failed to act upon suggestions for improvement provided to him by the two principals and the superintendent.

High School Teacher v. School Board (1978), Code #7
Hearing - March 13, 14, 16, 23; April 18, 19, 20, 21;
May 11, 1979.

Facts - The teacher was a junior secondary teacher who had obtained a Master of Education degree and had seven years teaching experience, largely as a French teacher. The three report writers, who filed their less than satisfactory teacher reports at the school board office within a 13 month period, were the principal on April 27, 1977, the director of instruction on May 24, 1977 and the district superintendent on May 18, 1978. The conclusion of the report issued by the director of instruction rated the learning situation as "fair", a word intended to indicate "less than satisfactory". The three report writers referred to poor preparation and organization, to poor instruction, and to poor student rapport and discipline.

The school board had intended to terminate the teacher's contract for incompetence on June 30, 1978. However, because of the lateness of the superintendents's May 18 report, the school board pursuant to s. 123 could not terminate the teacher

contract until December 31, 1978. As a result, when the teacher returned in September, the board assigned the teacher to the position of a relieving teacher, district staff. Six witnesses were called to the hearing.

Issue - Was the content of the teacher assessment reports accurate and can it form the basis of the termination of the continuing contract?

Argument for the teacher - First, the teacher argued that the content of the report was wrong.
- In the course of the hearing, the teacher changed his argument and defended himself as follows:

- Adequate remedial assistance had not been extended to him.
- The assignment as relieving teacher made improvement difficult.
- Control problems were the result of "markedly contrasting advice from successive principals over two years".
- Personal problems, as follows, accounted for teaching difficulties:
 - a) marriage break up
 - b) mother ill in France
 - c) resurgence of an old back injury

- A good evaluation as a student at college provided evidence of his ability.

Argument for the board - The content of the three less than satisfactory reports clearly presented evidence of the failure of the teacher in the areas of preparation and organization, instruction, and student management.

Decision - unanimous to confirm the decision of the board in the termination of the contract of the teacher for a less than satisfactory learning situation.

Reasons - The teacher had a history of problems revealed in prior reports in 1971, 1972 and 1973.

- Personal problems and being a good college student were declared invalid as evidence.
- The excuses offered by the teacher did not constitute valid reasons for performance so long at such a low standard.

Remarks

A completely new group of commissioners was appointed to the review commission for case code #7. The teacher had his contract terminated by the board in 13 months, near the minimum amount of time allotted

according to statute. Once again, the dispute between the teacher and the board was resolved in favour of the board. This male high school teacher is distinguished because he had the least amount of teaching experience, which was seven years, of any teacher who appeared before the review commission from its inception until 1985.

Consistent with the pattern revealed in previous hearings, this teacher experienced difficulties in planning and organization, in instruction, and most particularly, in student rapport and discipline. Evidence of these shortcomings were in the failure of the teacher to complete the curriculum due to poor time use, in the superficial marking of student assignments, in his lack of enthusiasm, and of the poor attitude of his students. The teacher chose not to attend a workshop which might have been helpful to him.

Transfer was a particularly thorny issue in case code #7 because the board chose to re-assign the French teaching specialist as a district relieving teacher in the fall pending contract termination for incompetence. The school board explained that the teacher was assigned as a substitute in September in an effort to obtain "value for the dollar" pending the termination of the contract. As in case code #6, the director of instruction in case code #7 rated the teacher as

"fair", which was intended to mean less than satisfactory. The teacher weakened his defense by changing his argument in the course of the hearing from asserting that the report content was wrong to offering excuses for a less than satisfactory learning situation in his classes. The review commission reprimanded the board and senior administration for appointing the teacher as a relieving teacher in the district pending termination saying:

- Three less than satisfactory reports and the aborted attempt to terminate June 30 foretold the intention of the board, yet the board continued the teacher's assignment as a substitute teacher in September.
- The teacher originally had been hired to teach French and likely would have problems in other areas.
- The excuse of the board chairman for continuing the teacher's assignment was to receive "value for the dollar" - "What kind of value could the board have expected from a teacher who they were convinced was incompetent?"
- The board did not consider the effects on the students nor the quality of service provided.
- The board received no resistance from its Education Committee or senior administration.

High School Teacher v. School Board (1978), Code #8
Hearing - July 24, 27, 28; August 8, 9, 14, 15, 16,
17; September 13, 18, 19, 20, 25, 26, 27; October 2,
3, 4, 10, 17.

Facts - The teacher was a Grade 10 and 11 social studies and mathematics teacher with 29 years experience. The three reports considered by the school board were written, respectively, by the director of instruction on March 3, 1977, the district superintendent on April 28, 1977 and a principal on April 26, 1978. The reports were completed in just over 13 months, a time frame that meets the minimum time requirement set down in the School Act Regulation. The content of the three reports referred to failure of the teacher in preparation and planning, in delivery of instruction, and in student rapport and discipline. Careful attention by the report writers in numerous classroom visits was given to thorough observation and to precise recommendations for improvement. While the teacher accepted the facts in the reports, he refuted the tone of the report writers. The facts included lack of variety and method in his instruction, failure to fulfill current provincial objectives in social studies, numerous student transfers out of his class, and serious problems involving student integrity and discipline. Evidence presented to the commissioners proved that the teacher's course content was out of

High School Teacher v. School Board (1978), Code #8
Hearing - July 24, 27, 28; August 8, 9, 14, 15, 16,
17; September 13, 18, 19, 20, 25, 26, 27; October 2,
3, 4, 10, 17.

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date and that his program included too much testing. Also, reference was made to poor student attendance, to little student "time on task", and to the presence of distractive student behaviour, such as affected coughing. Additional evidence, obtained through reference to other documents such as parent letters, previous reports and the testimony of witnesses corroborated with the findings presented in the three reports. Previous reports referred to the presence of on-going problems with staff members and parents.

At the teacher's request, he was transferred in 1972 from an elementary remedial class to a secondary placement because of difficulty in the management of students. Office records revealed a history of sending numerous students to the office for discipline purposes.

Documentary evidence and witness testimony identified instances of strange teacher behaviour such as the use of coarse, lewd language in class, for example, "diseased testicle", and the presence of inappropriate personal mannerisms, such as shaving and gargling in the classroom after the bell had rung. At one point the teacher was required to make a personal apology to the school board for "indiscretion in communication with a student".

Evidence showed that little help had been offered by the district to assist the teacher and that no help had been solicited by the teacher. It was explained that "this was in large measure due to the strained relation" between the teacher and the administrative staff as the teacher appeared loathe to accept adverse criticism.

Issue - Did the report writers genuinely use the statutory discretion imposed upon them in good faith and within the scope of the statute while performing their statutory duty of teacher assessment?

Argument for the teacher - The teacher refuted the tone of the reports, suggested collusion and harassment, but accepted the facts in the three reports.

- Little assistance for improvement was offered to the teacher.
- Academic level of the students in the teacher's classes was superior to provincial standards.

Argument of the board - The report writers had acted reasonably and not arbitrarily nor capriciously.

- Conclusions of less than satisfactory in the reports are reasonable in all the circumstances on the basis of the evidence.

- It is inconsistent and untenable for the teacher to refute the tone yet accept the facts in the three reports.
- The learning situation in the classes of the teacher is unsatisfactory.
- The teacher's resistance to criticism prevented improvement.

Decision - majority opinion of two to one to confirm the decision of the board in the termination of the contract of the teacher for a less than satisfactory learning situation.

Reasons - The majority findings reported by the commissioners was that on the balance of probabilities based on the evidence considered (between September 1, 1976 and June 30, 1978) the learning situation was less than satisfactory because:

- a) even though there was some improvement in the teacher strategies, classroom management persisted as a problem
 - b) the teacher refused to accept adverse criticism
 - c) teacher conduct was inappropriate.
- The minority report issued by the BCTF representative who had been selected by the teacher identified three concerns: questioning of certain facts in the report; procedural irregularities which involved the calling of

rebuttal witnesses who were not presenting new evidence; and, the fact that the other commissioners selectively accepted or rejected certain points in the three less than satisfactory reports, instead of either accepting or rejecting the report as a whole.

- The minority report cited "substantially incorrect assumptions and information" as follows:

- a) only one negative parent letter regarding lack of essay writing
- b) repeated visits by administrators was "harrowing if not intimidating"
- c) "unusual mannerisms" focused on by the review commission were not written into the three reports
- d) inconsistency of commissioners in that they mention improvement in teaching materials, style and lessons, yet describe the teaching as shallow in spite of the improvements.

Remarks

A completely new group of commissioners was appointed to the review commission for case code #8. This was the first instance of a majority decision by the review commission in favour of the school board. As opposed to the male secondary school teacher in case code #7 with a minimum amount of experience, the

teacher in case code #8 had 29 years of teaching experience, which was the greatest amount of experience possessed by any teacher who appeared before the review commission from its inception until 1985.

Case code #8 wrestled with the issue of teacher improvement. The decision of the majority of the the review commission, consisting of the chairman and one member of the review commission, was that although there had been some improvement in planning and instruction, the problem of student rapport persisted unchanged so that the learning situation in the classes of the teacher remained less than satisfactory.

In fact, four less than satisfactory reports had been written about the teacher, but the first principal report issued May 9, 1975 was not used by the school board because of a prior difference between the principal and teacher due to a reprimand from that principal. The difference developed because the teacher had failed to attend a district workshop. The teacher's response to the reprimand was to attack the principal because the principal had denied the teacher access to his own personal file. The teacher maintained that the principal kept a file of unsubstantiated evidence on selected teachers. This particular principal was removed from his assignment and seconded to the education ministry for a year. The

teacher had requested and obtained a transfer to another school.

This teacher was involved in the most prolonged, expensive hearing on the review commission record. The commissioners met 25 times. In addition to the standard amount of documentary evidence presented to the review commission that the ministry records on microfiche, the teacher supplied material which filled over 3200 frames on a spool reader. This evidence included parents' letters, previous reports, daybooks, worksheets and texts used by the teacher and the transcript of extensive questioning of witnesses. Due to unforeseen delays in establishing this review commission, the difficulty in obtaining agreement on dates for the hearing and the vast amount of evidence placed before the commissioners, this review commission was granted an extension by the ministry beyond the prescribed 30 days to complete the hearing. In 1978, the cost of this hearing to the tax payer was approximately \$20,000.

Following the resolution of the review commission, the teacher in case code #8 filed a personal suit in the British Columbia Supreme Court for libel against the school board and the three report writers. This appeal was dismissed and then was appealed to the British Columbia Court of Appeal in 1981 in the case of

Raison v. Fenwick (1981), 120 D.L.R. (3d) 622. In 34 passages cited by Raison in his statement of claim, the court of appeal found only one allegation of libel, identified as "the essay allegation". Nemetz J., at page 632, explained that the principal in his report had said that the teacher, wrongly, had accused a student of plagiarism and this allegation "concerns not only incompetency but also the ethical standards of the plaintiff". The appeal was dismissed concerning the school board and two of the report writers, but it was allowed in part with respect to one of the report writers. The court case remains unresolved.

Elementary Teacher v. School Board (1979), Code #9
Hearing - November 27, 28, 29, 30; December 12, 13, 1979.

Facts - This elementary school teacher had 25 years of teaching experience. Principals' reports over the last five to ten years referred to a deterioration in the teacher's ability to control and to manage efficiently a class of students. Three less than satisfactory reports were written over a 16 month time period, respectively, by a principal on December 15, 1977, by an assistant superintendent on May 2, 1978, and by a director of instruction on April 11, 1979. The three reports consistently referred to problems with student routines, rapport, grabbing and shouting

that combined to result in little effective instruction taking place in the classroom in spite of the teacher's preparation of academic materials. The teacher requested and obtained a transfer following her first less than satisfactory report. Also, the primary consultant made six visits to the teacher's classroom in an effort to help the teacher improve her teaching strategies.

Each report writer referred to emotional problems that were affecting the situation in the teacher's classroom. None of the officials reported this condition to the district superintendent, to the board or to the school medical officer who could have reported on the medical condition of the teacher. After the second less than satisfactory report, the teacher obtained a letter from her medical doctor requesting medical leave. The board refused to grant medical leave and instead gave her notice of termination for June 30, 1979.

Issue - Did the teacher whose classroom learning situation was less than satisfactory have the right, according to s. 125(2) of the statute, to obtain medical leave for reason of illness and to take a program to help improve her teaching?

Argument for the teacher - Teacher had more than 20 years experience and service in the district with a record of diligence, thoroughness of preparation, willingness to pursue university courses and classes beyond those required for certification, and she had a fine professional attitude.

- The teacher's home situation was causing stress and the teacher's medical condition should have been brought to the attention of the board long before the termination proceeding by the board.

- All reports indicated that the teacher had emotional problems that were affecting her classroom situation, yet none of these officials reported formally on the teacher's health condition to the superintendent of schools and the board. Had this been done, the board could have asked the school medical officer to report on the teacher's medical condition under s. 115 of the Public Schools Act.

- Section 132 of the Public Schools Act, concerning absence for illness with pay, would be binding upon the school board in view of the letter from the doctor requesting leave as a result of the stress involved for the teacher in the care of a sick brother.

- The board was in a position to grant the teacher leave under reg. 62(e)(i) of the statute to take a program to help improve her teaching.

Argument for the board - The teacher agreed with the reports and identified the content of the reports as an accurate portrayal of her classroom.

- The teacher showed a deterioration of the fundamental skills of control and management that resulted in a less than satisfactory learning situation in her classroom.

Decision - unanimous decision to reverse the decision of the board in the termination of the teaching contract for a less than satisfactory learning situation.

Reasons - The teacher's removal from the classroom should have resulted from s. 107, a medical examination or from statutory s. 125(1) of the Public Schools Act, a medical leave with pay. Such an action conceivably could have allowed the teacher to "put her personal and professional affairs in order" and the board would have retained its "right to make a judgment on the teacher after having given her this opportunity".

Remarks

In 1979, both reviews that were held before the review commission were decided in favour of the female teachers who had been rated as incompetent by their

school boards. For the first time in the history of the review commission, the resolutions favoured the reinstatement of the teachers. Case code #10 was heard by the review commission prior to case code #9. Nonetheless, case code #10 was filed at the ministry after case code #9 because the length of time to resolve case code #10 was extended due to judicial review in court. According to the 1979 Sederberg court decision in the judicial review of case code #10, the job of the review commission was to decide whether the opinions expressed in the reports before it were justified in their total context.

The decision in case code #9 was unanimous in favour of the teacher because the board had failed to assist the teacher by allowing medical leave that was requested, pursuant to the Act, in a letter from her physician. Instead, the board requested that the teacher resign or face termination for the less than satisfactory learning condition in her classroom. The board had assisted the teacher by allowing her to transfer to another school following the receipt of her first less than satisfactory report.

Lesson planning and preparation were not considered to be problematic for the teacher, but poor student control and ineffective instruction resulted in a less than satisfactory learning situation. The

teacher agreed that the reports were an accurate portrayal of her classroom learning situation. Therefore, the merits of the case were not a matter of dispute between the parties before the review commission. Despite behavioural evidence of incompetence such as lack of classroom routines and procedures, and grabbing students to control them, the teacher was reinstated.

All the reports in case code #9 contained errors of fact. The reports were amended and submitted in their corrected form to the review commission so that they could be admitted as evidence. The first report used the word "homogeneous" when the word "heterogeneous" was appropriate; the second report referred to "several students" when "two students" was accurate; and, the third report contained an error in the employment history of the teacher. Moreover, similar to previous case code #6 and #7, the wording in the conclusion of the reports of case code #9 substituted the prescribed wording of "learning situation" for the unsynonymous wording of "teaching-learning situation".

Although the review commission possessed "no power to direct a school board to grant a teacher a leave of absence upon reinstatement", the commission recommended a leave with four characteristics:

- a) opportunity to put personal and professional affairs in order
- b) sections 132 and 129 of the Public Schools Act should be used to assist the teacher
- c) co-operative determination by board's officials and the teacher pursuant to statutory section 62(e)(1) regarding a program of personal studies for the teacher
- d) board should give careful consideration to the assignment of the teacher when she returns to duty and the teacher "should be involved in the making of the decision in her assignment".

The commissioners in case code #9 added an appendix to their report. In the appendix, the commissioners offered the following recommendations to the minister of education as a basis for instructions to those persons authorized to write reports on teacher.

1) That in reporting on teachers the report writers follow both the "letter and intent" of the Public Schools Act and its regulations.

2) That supervisory practices employed by the school board personnel should be the most current and knowledgeable in terms of their appropriateness and acceptability as sound educational practice, for example there should be pre-conferences with the

teacher, appropriate data collection and post conferences.

3) That on finding an unsatisfactory learning situation, care must be exercised to ensure that,

A. every avenue of help for the teacher is investigated, and

B. the board has complete and accurate information upon which to consider its action under s. 130 of the Public Schools Act, that is

a) the report writers should ensure that the teacher understands the implications of the three statutory reports and that they should take the action required to assure that appropriate advice and guidance is available to the teacher

b) the report writers should ensure that every avenue of help for the teacher has been investigated before filing the third statutory report, for example, the selection of an alternative teaching assignment

c) the report writers should seek an explanation for any change in teaching performance

d) the board may expect

i) that all reports presented to it are factually correct

- ii) that the support data from which the three statutory reports have been developed has been retained on file
- iii) that it has been provided with all the information required as a basis for its decision.

Elementary Teacher v. School Board (1979), Code #10
Hearing - March 3, 4, 1979.

Facts - This elementary school teacher had 25 years of experience, with 17 years of that experience at the same elementary school. Complaints concerning classroom control and management were mentioned in the three less than satisfactory reports that resulted in the board's termination of the teacher's contract on June 30, 1979. Over a 22 month period, the report writing schedule was as follows: district superintendent on December 15, 1976; principal on December 17, 1976; and, a second report by the district superintendent on October 30, 1978. Six weeks prior to her first two less than satisfactory reports that were written within two days of each other by the district superintendent and the principal, the teacher received a memo from the principal that identified good tone in the classroom, enthusiastic students and a high standard for student assignments. All of these

assertions were refuted in the less than satisfactory reports of the district superintendent and the principal.

Instead of following the prescribed wording of the statute, the concluding statements in the three less than satisfactory reports included the following ratings which according to district policy meant slightly less than satisfactory: "fair", "unsatisfactory" and "fair to poor". None of the report writers made specific recommendations for improvement, nor was the assistance offered by the supervisor of elementary instruction adequate due to his time constraints and his other responsibilities. Immediately following the receipt of two less than satisfactory reports, the teacher obtained a letter from her medical doctor that recommended the teacher be relieved of her duties for the remainder of the school year and that she begin the following school year with a younger age group. The doctor explained that the teacher was experiencing emotional problems both at home and at school as a result of the discipline required in the management of the children in the eight to ten year old range. Accordingly, the teacher was on leave of absence from January 1 to June 30 of 1977. A BCTF staff representative who investigated the case

suggested an additional leave to attend courses on classroom management such as Project TEACH.

The record showed that the teacher requested and was refused transfer in June 1977 and again in June 1978. The final less than satisfactory report by the district superintendent assessed the teacher's new assignment in a grade two and three class. Written at least three to six months after the teacher's return from her leave of absence, pursuant to reg. 65(e)(ii), this report stated that the problem of classroom discipline persisted in the management of the younger age group of students.

Issue - If less than satisfactory teacher assessment reports fail to include recommendations for improvement as required by reg. 94(d) and assistance to improve, can the reports be considered valid in the contract termination of a teacher?

- Can pupil control be considered a problem if it is caused by one student?

Argument for the teacher - Suggestions for improvement were lacking or vague.

- The Supervisor of Elementary Instruction did not give specific instructions or follow up on suggestions.

- Poor pupil control cited as major problem when in fact problem centers on one problem student who should have been removed.
- There is a lack of documentary evidence to support the case of a less than satisfactory teacher.
- The teacher was denied two requests for transfer.
- There was no evidence of unsatisfactory student achievement results.
- There was a contradiction between the principal's commendable memo to the teacher and the unsatisfactory formal report.
- Trained to teach at normal school, this teacher was one of only 600 British Columbia teachers who hold the lowest level of certification and correspondingly, receive the lowest salary of teachers at maximum on the pay scale. This means that should this teacher elect to resign, her pension would fail to provide adequately for her own support.

Argument for the board - The less than satisfactory student management and control resulted in a less than satisfactory learning situation.

Decision - majority opinion of two to one that the case against the teacher had not been proven by testimony and evidence, and the decision of the board

to terminate the contract of the teacher should be reversed.

Reasons - Suggestions for improvement were lacking or vague from the Supervisor of Elementary Instruction as he did not give specific suggestions or follow up on suggestions.

- A major complaint in the report was poor pupil control that was caused largely by one pupil over two years and this pupil was not removed from the classroom.

- Apart from pupil control, other parts of the report were satisfactory.

- There was no documentary evidence to support an unsatisfactory learning situation:

- a) no assessment by testing student achievement
- b) no evidence of unsatisfactory work being done by the pupils
- c) no teacher receiving a class during the year following complained of unsatisfactory pupil progress.

- There was a vast discrepancy in notes by the principal between October 28, 1976 and December 17, 1976 from commendable to unsatisfactory.

- There was a denial of two teacher requests for transfer.

Remarks

Similar to case code #9, the resolution of case code #10 at review commission was in favour of reinstatement of the teacher. Case code #9 and #10 both concerned female elementary teachers who had difficulty with classroom management and discipline. While the classroom learning situations were less than satisfactory, the decisions of the school boards were reversed at review commission because of failure of the boards to provide adequate assistance to the teachers. The board failed to assist the teacher in case code #10 in its denial of her two requests for transfer out of a school she had been assigned to for 17 years, in its failure to provide adequate assistance from the Supervisor of Instruction, and in its failure to remove a serious discipline problem student from her classroom. Like case code #2 and #6, the teacher in case code #10 took a medical leave after the receipt of her second less than satisfactory report. The board in case code #10 did assist the teacher by allowing her to transfer to another grade level. The board's case against the teacher was undermined by lack of documentary evidence, such as student achievement test results and by the notable contradiction between the positive content of a principal's memo to the teacher

and the negative content of the principal's less than satisfactory report written by him six weeks later.

Case code #10 was judicially reviewed in the British Columbia Supreme Court case of Board of School Trustees of School District No. 31 (Merritt) v. Sederberg (1979), 16 B.C.L.R. 149. The decision of the court supported the reinstatement of the teacher. Verchere J., at page 155, identified the proper question before the tribunal as "whether the learning situation in the class or classes of the teacher concerned was less than satisfactory". The judge continued at the same page saying that in order to answer this question, the commission is "free to consider all the evidence before it and, having done so, to reach the several conclusions" it reported. Furthermore, at page 156, Verchere J. pointed out that the statute in no way "circumscribes the conduct of the commission in any way in the performance of its functions...[and the "weight" of the statutory reports] as evidence is clearly a matter for the tribunal concerned". The interpretation of the court, at page 159, confirmed that it was not "outside the commissioner's jurisdiction to look at anything that had occurred beyond the limits of the period covered by the statutory reports". Specifically, review commissions were free, as part of decision making, to

consider "matters" such as the following issues cited in the Sederberg case: the absence of student progress results; teacher transfer denials; inadequate recommendations and opportunity for teacher improvement; or, the prolonged presence of a "troublesome repeater" in the classroom.

The minority report of the dissenting commissioner in case code # 10's majority vote in favour of the teacher stated the following:

1. reports clearly established an unsatisfactory teaching level

2. not one student problem with control, but a problem over time that was getting worse; poor rapport with students

3. lack of poor achievement results are not the only measure of student progress, even if they are available; poor achievement may not show up until later; results may be low interest and low achievement

4. teacher did not ask for help and not enough help was forced on her; transfer was not granted as the other schools "had more demanding sets of parents"

5. "to make future students pay for this situation cannot be the proper response".

Immediately following case code #9 and #10, the board members, in case code #11, in an unprecedented action, provided the female elementary teacher judged by them to be incompetent with a financial settlement prior to meeting for a hearing before the review commission. The resolution of a financial settlement was not available according to statute or at common law for a teacher whose contract had been terminated for incompetence. There were no other facts available.

Elementary Teacher v. School Board (1979), Code #12

Case code #12, like the previous case code #3, was abandoned by the female elementary teacher. There were no other facts available.

High School Teacher v. School Board (1981), Code #13

Case code #13 involved a male high school teacher who, like case code #11, reached a settlement with the school board prior to the hearing with the review commission. There were no other facts available.

Elementary Teacher v. School Board (1984), Code #14

Case code #14 involved a male elementary school teacher who, like the teachers in case code #11 and

#13, reached a settlement with his school board prior to the appeal. There were no other facts available.

Remarks

In the first six years of the review commission, there were 10 cases where teachers requested the minister to direct that a review commission review their termination for incompetence. Alternatively, in the five years between the 1979 Sederberg court case and 1984, there only were four cases presented for review. Moreover, none of the cases from 1979 to 1984 were heard by the commissioners. Instead, one of the cases was abandoned by the teacher and the other three cases were resolved prior to the hearing. The three negotiated cases were resolved by the board by giving a monetary settlement to the teacher that they had held to be incompetent. Therefore, no review commission appeals were heard since 1979 when the commissioners had decided in favour of the two teachers in case code #9 and #10 and more significantly, when the court in judicial review of case code #10 decided in favour of the teacher, Mrs. Sederberg.

Elementary Special Education Teacher for the Educable Mentally Handicapped v. School Board (1985), Code #15
Hearing - July 18, 19, 20, 30, 1985.

Facts - The teacher in this case instructed in an elementary class of 12 educable mentally handicapped (EMH) students. She had nine years teaching experience. The record shows two leaves of absence for the teacher. The first leave was for a nervous breakdown in February 1982 and the second leave was for illness from September 1984 to February 1985. Over a year after the teacher's nervous breakdown, the first less than satisfactory report on the learning situation in the teacher's classroom was issued by her principal on April 26, 1983. This report was followed by a second less than satisfactory report written by the director of instruction on June 13, 1983. The final report was written by the assistant superintendent exactly two years after the filing of the first less than satisfactory report on April 25, 1985.

The principal's report referred to inadequate planning and preparation which resulted in a classroom that was not conducive to learning and to an inferior teaching style wherein the teacher instructed from a sitting position. The second less than satisfactory report, written by the director of instruction on June 13, 1983 identified failure of the teacher to meet individual student differences and of overuse and misuse of workbooks. Pursuant to reg. 65(e)(ii), a three to six month time period following the teacher's

leave of absence was observed to allow the teacher to reacquaint herself with her class before her final inspection. On April 25, 1985, the third less than satisfactory report, written by the assistant superintendent, described the learning expectations of the teacher as unrealistic, the instructional skills as weak and the organization of Individual Educational Programs (IEP) for each student as inadequate. The director of instruction and the assistant superintendent substituted the prescribed wording of the conclusion respectively with the word "poor" and "fair", that according to district policy indicated a less than satisfactory learning situation.

The district, in adoption of policy to implement an IEP for each educable mentally handicapped pupil, had changed the forms three times during the evaluation period of the teacher. The district had failed to assist the teacher in the expected use of the forms. In addition, the teacher admitted to having difficulty employing a variety of instruction in her classroom and requested assistance from a colleague who worked in the same type of class. The teacher had accepted suggestions to vary materials and to use aides to maximize the learning in her class. Furthermore, as witnessed by a human resource employee and by a foster parent, the teacher was very co-operative both inside

and outside school hours. Moreover, there was no concern for student discipline, learning attitude or academic progress and parents supported this learning situation.

The teacher wrote a letter of rebuttal concerning the comments in the first report. In her letter, the teacher charged the principal with bias, with limited observations and with unfair use of the criteria employed to evaluate a regular classroom teacher superimposed on a special education classroom teacher.

Issues - If insufficient help is given to a teacher in implementing a new planning format, can the learning situation in the teacher's classroom be described as less than satisfactory?

Argument for the teacher - The teacher never had been shown how an IEP, a detailed plan for each student, should be recorded and the format of the plan had been changed repeatedly.

- There was evidence that the teacher had been "very co-operative both inside and outside school hours" and the teacher had parental support.
- Student discipline and achievement were satisfactory.
- The teacher admitted to difficulties with student grouping and requested assistance from a colleague.

Argument for the board - The teacher was either "unwilling or unable" to change in the aspects of her teaching related to:

1. Planning and implementation of an IEP
2. Application of instruction skills in large groups and small groups.
3. Utilization of teaching aids/aides to maximize learning.

Decision - unanimous decision to reverse the decision of the board in the termination of the teaching contract for a less than satisfactory learning situation.

Reasons - The school district responded to the teacher's requests for help, but assistance given did not relate in sufficient specificity to the needs of this teacher in an EMH classroom.

- The teacher was not able to adjust to the proposed changes in the IEP format as quickly and as totally as the District Staff required, although, there was evidence that the teacher was willing and able to change in many of the areas suggested. The commissioners said:

The School District was concerned that the use of this material was not at the level it required, but the Commission is of the opinion that there was sufficient

progress made by [the teacher] and that additional assistance within the District with regard to documentation and recording procedures still would be of assistance to the teacher.

- There was no evidence of administrative concern for discipline of pupils, student attitude to learning or student academic progress and parents support the learning situation.
- The use of the daybook, as a planning tool was unsatisfactory, however that deficiency did not indicate that learning was not taking place in the classroom.
- The teacher had responded to suggestions for the use of the teacher aide and had shown significant progress in this area.
- The teacher was having difficulty employing individual, large group and small group instruction with her EMH class and she was "requesting the assistance of a practicing teacher of EMH pupils".

Remarks

After six years without a hearing before the review commission, there was a return to the use of this tribunal in 1985. The first hearing, case code #15 reversed the decision of the school board to terminate the teacher contract. Arguments presented by

the teachers and the boards in this case reflected the factors identified in the reasons for judgment in the Sederberg court case. Significant factors mentioned both by the judge in the court and by legal counsel in case code #15 were as follows: classroom management and discipline; offers of assistance and teacher response; and, parent-teacher relations.

The less than satisfactory rating of the teacher in case code #15 was similar to the high school physical education teacher in case code #6 inasmuch both teachers experienced problems with planning, preparation of lessons and teaching style. However, unlike the teacher in case code #6 whose contract termination was confirmed by the review commission, the teacher in case code #15 admitted to the described shortcomings, requested assistance and implemented suggestions at a minimal level. Therefore, the teacher in case code #15 demonstrated a willingness and an ability to change that contributed to refuting the board's allegations of incompetence.

Initially, the principal filed his report on April 12, 1983. Subsequently, the principal discovered that in his concluding statement he referred to regulation 96 when he should have said regulation 94. Inasmuch as only the regulation number of the report required amending, the principal re-issued the identical report

with the correct regulation number and the new date, April 26, 1983. The teacher agreed to the technical changes in the principal's report, but she filed a second separate, though identical, rebuttal letter.

Case code #15 failed to make a case for incompetence before review commission due to a combination of the lack of assistance from the board in the use of IEP and the effort of the teacher to improve. Criteria presented in the board's case for incompetence include the following: first, in instruction, the teacher conducted most lessons from a sitting position and she overused and misused workbooks; and, second, in planning, students were observed informing the teacher that they already had done an assigned reading activity.

The report and the procedures of this hearing were more formalized than the review commission hearings in the seventies. The hearing was tape recorded and the report was more detailed and more extensive.

After the review commission heard the appeal and unanimously decided to reverse the termination decision of the school board, the entire proceeding was brought into question by the school board as a result of the circumstances described above surrounding the date on the first less than satisfactory report. Pursuant to reg. 65(a), the three less than satisfactory reports

used as the basis of the termination of a teacher contract must be issued in a period of not less than 12 or more than 24 months. If the principal's report were considered to be issued on the date it was revised, the three reports were filed just within the statutory time line. However, if April 12, 1983, the first date the report was issued, were to be considered the actual date of that report, then the assistant superintendent's report would fail to meet the statutory time frame. Accordingly, the entire proceeding would have to be abandoned as the review commission would have been without jurisdiction to make any finding on the review.

When the request for abandonment was referred to the ministry by the board, the request was denied because the unanimous decision of the commission had been rendered in accordance with s. 130(3) of the Act. Therefore, the commission was under no obligation to provide either party in the dispute with further reasons for the decision.

Frustrated by the resolution of the review commission, the assistant superintendent submitted a letter with observations regarding the review commission process. First, she stated that:

- a) the review process is necessary to protect teachers from unfair personnel practices

b) "we must protect the children in our care and ensure they receive the best education we can provide"

Second, she identified concerns with the review commission process which were as follows:

1. prejudgment by commissioners
2. lack of guidelines for commissioners, for example, the question of reliability of teacher evidence or the question of due consideration of board evidence

Third, she pointed out that:

Terminating, or attempting to terminate, incompetent teachers is costly and ineffective. As many of them can't be terminated, it makes mockery of the Ministry's desire to improve the quality of instruction in this province.

High School Teacher v. School Board (1985), Code #16
Hearing - August 28, 29, 30; October 28, 29, 30, 1985.

Facts - The teacher in this case was a secondary teacher who had taught for 17 years. The three reports were written over a period of a year and one day, respectively, by the principal on April 30, 1984, by the local district superintendent on February 28, 1985 and a second district superintendent brought in from another school district on May 1, 1985. The three reports identified concerns with planning, instruction

and discipline. Also, previous reports referred to long-term discipline problems, lack of planning and resistance to change. The principal used the word "poor" in the rating of the teacher, instead of the required statement of less than satisfactory. Organizational deficiencies of the teacher were reported as lack of a daybook, a mark book or any unit plans and of no provisions for individual differences or for abilities in the assignments she gave to students. References to management and discipline problems included observations of students "sleeping undetected for periods of up to ten minutes", of students walking behind the teacher as she moved around the classroom, of students throwing orange peels at the teacher, of students telling the teacher to "shut up" and of students freely wandering in and out of class during a lesson.

In addition to the numerous discipline problems directed to the administrators, the principal received two serious parental complaints and a number of parental requests not to have their children placed in that teacher's class. When confronted by the administration to make changes to her program or her teaching style, the teacher said that it was not necessary for an experienced teacher to alter her program and methods.

Due to the lateness of the final reporting date, termination proceedings continued into the next school year. In the fall, the teacher was removed from the classroom and was transferred to the position of district resource teacher.

Issues - If the school board failed to request that the teacher take a professional improvement leave and completed the termination proceedings against the teacher in the minimum amount of time, was the teacher treated fairly according to statute?

Argument for the teacher - Regulation 65 specifies the time frame of reports and this case employs the absolute minimum time.

- The board had power to request that the teacher take professional improvement leave, but this was not done.
- Regulation 94 requires that the principal make a comment on the general work of the teacher and this was not done.
- The commission must investigate matters for alleged cause, that is, incompetence. It is the board's responsibility to establish that "cause", under a balance of probabilities, which was not done.
- The commission must consider "the whole of the evidence" before the decision is made.

- Past reports contradict the same matters that current reports cover and criticize.
- The principal could have chosen alternatives to writing a formal report. Therefore, the teacher's defensiveness and antagonism are understandable.
- There were factual errors in the local superintendent's report.
- There was no evidence of providing the teacher with assistance in recommended areas of improvement.
- The teacher did not have adequate opportunity to deal with the recommendations before termination.
- The district had an obligation to consider alternatives to dismissal, such as transfer or leave of absence, and no clear evidence suggested consideration of alternatives.
- There were no achievement records submitted to show that student learning was not taking place.
- Pending the finalizing of the termination proceedings, the school board reassigned the teacher to the position of District Resource teacher in September, which was prejudicial to her appeal.

Argument of the board - Clear evidence was presented to show that the learning situation was "less than satisfactory".

- There was evidence of a long-term problem of classroom management.
- The school record of students sent to the office for disciplinary reasons showed that during the year of the reporting period, the teacher had sent 79 students to the office. This number of students accounted for 27.7% of the total number of students that had been sent to the office for disciplinary reasons during that time period. The next highest number of discipline cases sent to the office by a single teacher was 29 students, which accounted for 10.2% of the total number of students sent to the office for disciplinary reasons.
- The teacher blamed administration for discipline problems and refused to accept suggestions for change or improvement.
- The lack of effective planning led to student loss of respect and resulted in discipline problems.
- The teacher claimed that detailed unit and daily plans were unnecessary for an experienced teacher.
- The school district is small and in fairness the board went outside the district for an independent third report writer.
- Assistance to the teacher brought no positive results and often ended in confrontation.

- "Evidence led one to the conclusion that many of [the teacher's] responses to questions at the hearing were possible reconstructions and not true."
- Alternatives to her teaching assignment were considered and were not feasible.
- "The purpose of the commission is to determine the competence of a teacher, and the evidence shows that the students were not being well served by this teacher."

Decision - unanimous to confirm the action of the board in the termination of the contract of the teacher for a less than satisfactory learning situation.

Reasons - The commissioners reported as follows:

1. Teacher evaluation and report procedures:

- believed the administrators' use of the model of supervision of instruction (a repeating cycle of pre-conference between the supervisor and the teacher; observation of the teacher; and, post-conference between the supervisor and the teacher) is acceptable
 - questioned the lack of evidence given on the timing of the implementation of the supervision model
 - questioned the absence of a district-wide model of teacher evaluation

- suggested that such a model developed in consultation with the local teachers' association would be helpful in the improvement of instruction

2. Classroom management and discipline

- clear evidence that serious problems existed in classroom management

3. Offers of assistance and teacher response

- documented suggestions for improvement that teacher did not take advantage of

- classroom intervisitations
- demonstration lessons
- professional articles
- inservice such as Project TEACH

4. Parent-Teacher relationships

- evidence of two serious complaints
- serious communication problems

Remarks

Since the Sederberg court case in 1979, case code #16 was the first review commission hearing to confirm the decision of the board to terminate a teacher contract for incompetence. As in case code #15 which resulted in the reinstatement of the special education teacher, the arguments of the teacher and the board in case code #16 paralleled the critical factors referred

to by Verchere J. in the Sederberg case. While the teacher in case code #15 performed favourably in classroom management and discipline, parent-teacher relations and receptivity to assistance, the teacher in case code #16 experienced serious difficulty in these areas. The teacher in case code #16 refused to accept responsibility for her classroom discipline problems, blamed others for her difficulties and refused to make any suggested changes in planning or in classroom management. The teacher explained that the reason for her difficulties with student discipline was the poor, weak administration in the school. As the teacher in case code #15, this teacher wrote a letter of rebuttal to the principal's report. As in case code #6, #7, #9 and #10, various conclusions were substituted for the prescribed rating of "less than satisfactory learning situation".

The uncustomary approach to the selection of evaluators was in an effort to ensure the unbiased assessment of the teacher because the school district she taught in was very small. Therefore, the board invoked the judgment of an outside evaluator in order to reduce the possibility of allegations of bias from this teacher whose belligerent attitude towards the administration is reminiscent of the veteran teacher in case code #8.

Case code #16 revealed the following behavioural evidence in support of teacher incompetence: first, discipline and management criteria included regularly sending students to the office for discipline purposes and sometimes sending the wrong student, students sleeping in class, students arriving late to class, students wandering around in class, students leaving the room without permission, students exchanging notes, students throwing objects, students calling out, failure to attend parent nights and no follow-up by phone to parents; second, poor instruction included too few tests, poor discussion techniques and no provision for individual differences and abilities in assignments; and, third, poor preparation included no unit plans, a poor seating arrangement, out-of-date classroom displays, failure to return student work unless parents requested it, failure to meet report card deadlines and inadequate plans available for substitute teachers.

The principal employed a clinical model of supervision of instruction that resulted in a thorough, detailed report. However, the principal failed to explain the procedure of identifying the criteria to be evaluated and of setting up an objective means of recording the teacher's performance on the criteria. The misunderstanding of the teacher is revealed in her

rebuttal letter comment where she accusingly points to the principal "drawing maps of her room".

The review commission mentioned concern with the lack of identification of some teacher strengths in the reports and with the short time-frame between the outside evaluation and termination. The commission also criticized the lack of evidence on student achievement. Nonetheless, the teacher's classroom problems were identified repeatedly in the content of the three reports and in other evidence at the hearing. The review commission referred to the necessity of school policy guidelines and expectations because:

It is difficult for a commission to assess the competence of a professional teacher when there is little evidence presented on school policies, practices and expectations for staff. [Policy should be included] on such matters as teacher evaluation methods, planning expectations, substitute teachers, and examination practices in the school [and these policies must be] readily available and understood by the teacher.

As in the increased formalization of the review commission report and procedure in case code #15, case code #16 presented a very detailed, lengthy report. For example, the report in case code #16 is organized into the following headings: evaluation and report procedures; classroom management and discipline; offers of assistance and teacher response;

parent-teacher relations; and, written school policy guidelines and expectations.

High School Teacher v. School Board (1985), Code #17

The final case where a teacher requested that the minister direct that a review commission review the termination was resolved by a monetary settlement given to the teacher by the board prior to the hearing. There were no other facts available.

The resolution of case code #17 brought the number of disputes resolved by monetary settlement prior to a hearing scheduled with the review commission to almost 25% of the total number of cases placed before this tribunal. Moreover, this alternative means of resolution of the dispute between the allegedly incompetent teacher and the board accounted for almost 60% of the cases presented to a review commission after the Sederberg case.

Summary

A number of generalizations may be drawn as a result of the findings in the six review commission reports confirming the decision of the board to terminate a continuing contract and in the three review commission reports reversing the decision of the board.

On the one hand, in all cases where the review commission confirmed the action of the board, the teachers had been given suggestions and an opportunity to improve and were either unwilling or unable to improve. Previous reference to the Harmer v. Cornelius case in Chapter II showed that according to common law, regardless of whether employee unwillingness or inability accounts for failure of job performance, either reason constitutes a case for incompetence. In most instances, documentation in the form of memos to the teachers, provided concrete evidence of help. Approximately half of the aggrieved teachers had taken the opportunity of a leave of absence or of a transfer to a different assignment. Frequently, teacher records revealed negative relations with parents and earlier negative reports that suggested a pattern of problems with any or all of the three critical teaching competencies of planning and organization, instruction, and management and discipline. All these factors fairly combined within the strict confines of procedural time lines set down in the School Act and School Act Regulation made a case for teacher incompetence. Moreover, administrator's comments on the teacher reports served as data for the review commission in its decision on the competence or incompetence of a teacher in British Columbia. A

combination of the report comments, particularly in the cases confirmed by the review commission, provides a profile of an incompetent teacher. If the behaviours identified in these incompetent teacher profiles were rephrased positively, a standard of competence for teachers in British Columbia results as follows.

First, discipline and management should include:

- a quiet, orderly, routinized environment
- a high level of students on task
- a high standard of student work
- a relaxed, congenial working atmosphere
- teacher warmth, friendliness, good humour
- close supervision of students
- encouragement of students
- parental support
- teacher accepting responsibility for classroom discipline

Second, instruction should include:

- a positive, enthusiastic approach to teaching
- good techniques of questioning and discussion
- varied student materials and methods
- smooth lesson pacing and change-overs
- a clear separation of instruction and seatwork time
- purposeful use of worksheets and workbooks
- review and testing

- completing and enriching curriculum
- materials reflecting realistic learning expectations

Third, planning should include:

- a carefully prepared daybook
- adequate planning for substitute teachers
- unit plans based on current course of study
- thorough marking of student work
- good record keeping
- return of all marked and recorded student work
- an organized, attractive environment
- up-to-date displays
- an orderly seating arrangement
- meeting report card deadlines

On the other hand, in the three cases where the teachers were reinstated by the review commission, all the teachers expressed a willingness to change and an effort to improve. Specific issues in each of these cases led to the reinstatement of the teacher. In case code #9, the learning situation of the teacher clearly was "less than satisfactory". However, the teacher should have had the opportunity to take medical leave before she was inspected for the third time. In case code #10, lack of suggestions or follow up to help the teacher and failure to allow a transfer to another school constituted the major arguments against the

board. In case code #15, while assistance was given to help the teacher with planning and instruction, it was not given in sufficient specificity. Consequently, if all the help and assistance that the statute and the district can provide to the teacher are not afforded to the aggrieved teacher prior to the filing of the third report according to statute, the review commission will reinstate the teacher in spite of the fact that a case has been made to show that the learning situation in the classroom is less than satisfactory.

Moreover, the 1979 the Sederberg court case has provided a significant precedent for legal counsel, commissioners, administrators and teachers who appear at subsequent review commission hearings. While tribunals, unlike courts, need not follow precedent, legal counsel in cases before the review commission since 1979 conscientiously have addressed the critical factors presented in the Sederberg court case. In addition to the impact of the Sederberg court case on the substance of the arguments presented by legal counsel before the review commission, this court case also positively has influenced the report writing of the commissioners. The review commission has responded by providing extensive, detailed reports of the proceedings and the reasons for their decisions. In addition, there has been an increased formalization of

the procedure at review commission that includes tape recording the hearings. Also, recent reports on teachers referred to the review commission indicate that administrators have adopted a clinical supervision technique of evaluation and have documented their interactions with teachers. As a result of these administrative changes, instead of abdicating their statutory responsibility and providing allegedly incompetent teachers with monetary settlements, some administrators and school boards once again are attending review commission hearings. Teacher's rights to assistance for improvement in areas of deficiency, including transfer or leave of absence, now have been defined clearly.

CHAPTER VII

INTERVIEWS WITH CHIEF ADMINISTRATORS IN BRITISH
COLUMBIA SCHOOL DISTRICTS

The purpose of this study is to promote a better understanding of the termination of continuing teacher contracts for incompetence in British Columbia according to the provisions set down in the School Act and School Act Regulation. A second purpose is to examine and to analyze the outcomes of the 17 teacher appeals from termination placed before review commissions from the inception of this tribunal until 1985. Thus far, this study has presented a legal analysis as follows: firstly, of the statutory procedure for the termination of teacher contracts for incompetence and secondly, of the 17 cases presented to the review commission. The purpose of this chapter is to report how chief administrators say they functionally manage the presence of incompetent teachers in the education system. Chapter VII proposes to answer the final question posed at the beginning of this study, which is: What are the responses of various urban and rural British Columbia district superintendents or assistant superintendents regarding the termination of teacher contracts for incompetence in their districts?

Interviews were obtained with ten chief administrators from school districts over the province representing the lower mainland, the island, the interior and northern British Columbia. An attempt was made to provide a representative sample of urban and rural districts and of large and small school districts. Nine of the chief administrators were male and one was female. In order to encourage candid responses from the superintendents, deputy superintendents and assistant superintendents who were interviewed, assurance was given that their comments would be reported anonymously and that the names of their school districts would be withheld. The replies of the ten chief administrators are presented below following each of the eight interview questions. Chapter VII provides a statement of the actual response of administrators to the subject of termination of incompetent teachers from the education system in British Columbia.

Interview Question 1

Does your district have any written policy or guidelines for principals on the writing of teacher evaluation reports?

In just over half of the districts represented by the administrators that were interviewed, formal

written policy for principals on the writing of teacher evaluation reports was available. The policy had been formulated by joint committees of local administrators and teachers.

Generally, the administrators emphasized the fact that their district policy was not intended to prescribe a rating scale, but rather was to be used as a starting point for principals. With the exception of one district, report writing policy was described as an "evaluative guide" or "framework". The chief administrator in the exceptional district was "moving from an optional process towards a mandatory process" of teacher evaluation that included set criteria for evaluation to be applied equally to every teacher who is evaluated. The administrative rationale behind the implementation of a mandatory, uniform process was to avoid any allegations of bias from a teacher who receives a less than satisfactory report.

Alternatively, another district administrator, reported that the teachers in his district had requested a mandatory, uniform evaluation process that would be based on a specific set of criteria, but he preferred a flexible process involving optional guidelines.

Interview Question 2

What assistance is given to principals in report writing on teachers?

All administrators reported that their districts provided professional development programs for principals in report writing on teachers, particularly to newly appointed principals. In addition, all administrators expressed concern with the general standard of reports and with the reluctance on the part of principals to write less than satisfactory reports. The reason for the principals' hesitation to write less than satisfactory reports was attributed to their collegial relationship with staff and the BCTF; the uncertainty of principals of how to document a "watertight" report that would stand up before a review commission; the lack of definition for principals of what is the "meat" of teacher evaluation criteria; the lack of understanding by administration of "due process"; the lack of support for principals provided in court; and, the fear of failure subsequent to the time consuming effort required of principals to remove an incompetent teacher from the classroom.

Two administrators identified "increased quality" and "more honesty" in a "slow growth" process in their districts towards a thorough evaluation of teachers which had resulted from a long-term professional development program or in-service for principals.

Their district in-service included both the identification of the mechanics of the evaluation process and a "potpourri" of substantial evaluative factors compiled from neighbouring district policies and from the literature. Moreover, the administrator whose district has been involved in almost a decade of in-service in teacher evaluation, reported that the process prescribed by statute has become the method of choice to terminate a teacher contract for incompetence.

Administrators also referred to a noticeable "change" in the approach and accountability of principals and boards over the past few years. Principals, who have increased their skills in teacher evaluation, confidently are choosing to write less than satisfactory teacher reports on an incompetent teacher; and boards, because of economic restraint, "no longer can afford to carry people" nor "to set up a differential assignment" for incompetent teachers. One administrator explained how it used to be possible to "hide" a teacher in the system. However, the extensive staff reduction over the past decade has eliminated this method of managing incompetent teachers.

One administrator commented on how the trustees in his school district had questioned the remarkably low incidence of teacher reports that rated a teacher as

less than satisfactory. While this administrator suggested that as a result of the outstanding number of professional development opportunities available in his district the percentage of incompetent teachers might be lower than the norm, he conceded that there probably should be more less than satisfactory reports filed in his district.

Significantly, some administrators emphasized the fact that "part of the evaluation of principals is how they manage their staff" and it is the statutory duty of a principal to "write a less than satisfactory report if it's due". It was explained by one administrator that if principals failed to write a less than satisfactory report on a teacher when one is due, the principals, in turn, may receive a less than satisfactory evaluation from their supervising assistant superintendent. Once a principal writes a less than satisfactory teacher report, administrators agreed on the importance of "close consultation" with central office staff for assistance and for due process guidelines.

Interview Question 3

How does your district assist a teacher who has received a less than satisfactory report?

All districts provided assistance from central office staff once a teacher has received a less than satisfactory report. Specifically, assistance to the teacher included the following: demonstration lessons from consultants; the provision for interclassroom visitations; the opportunity to register in relevant university courses; and, registration in pertinent workshops or re-training programs provided by the district, by the BCTF or by the community. Moreover, the majority of the administrators referred to the option of "counselling the teacher out of the profession" after the teacher has received one or two less than satisfactory reports.

Most administrators said that "reports are designed to improve instruction". Therefore, administrators emphasized that reports for all teachers should include documented suggestions for teacher improvement. Half of the administrators focused on the importance of the principal's assistance to the teacher because "you only can build a case by working with a teacher and then writing a report". One administrator commented that "while the board must provide support, sometimes you lose sight of the fact that it's the teacher who's doing the less than satisfactory work and that the responsibility for improvement lies with the teacher".

Transferring a teacher to a more suitable assignment to allow the teacher a fresh start in a new school was another means of managing a teacher who had received a less than satisfactory report. It was suggested by some administrators that periodically "part of the job" of a principal was to "take a turn" working with a struggling teacher. It was explained that the duty of that principal is to assist the teacher who has been rated as less than satisfactory and then to write a less than satisfactory report if the teacher fails to respond adequately to the assistance. One district superintendent outlined a school transfer "pattern" of the less than satisfactory teacher as follows: the teacher who "survives by moving" and "hanging on" one year here and another there. The same administrator said that in his experience, teachers charged with incompetence who take advantage of professional leave usually are found to be less than satisfactory when they return to the classroom following the leave.

The practice of a few chief administrators was to communicate directly with the teacher immediately following the first less than satisfactory report and to offer assistance for the improvement of the teacher. Three districts had an "automatic process" that was to be followed when the learning situation of a teacher

was rated as less than satisfactory. Two districts had established a very similar process, that is outlined as follows. First, both districts required that the principal write the initial less than satisfactory report. Second, both districts also required that this report was to be followed by a meeting, with the superintendent in one district and with the director of instruction in the other district, to plan and set down a program of assistance within a specific time frame. Third, the second report was to be written by the assistant superintendent in one district and by the director of instruction in the other district. Finally, in both districts, if a third report were required, it was to be written by the district superintendent. The automatic process in the third district was patterned after the concept of the individual education program that has been used in planning programs of instruction for special education students. For the past four years, this district has set up "individual growth plans" for teachers. Implementation of the plan requires extra help for the teacher from the principal in conjunction with assistance from central office staff. Central office staff are meant to facilitate the "individual growth plan" and to document in writing any teacher assistance offered to a teacher.

Interview Question 4

Are there clauses in the collective agreement in your district related to teacher re-engagement or employment that cause you concern about teacher competence?

The majority of the school districts were experiencing declining student enrolment and the administrators cited clauses in their teacher contracts related to teacher layoff and recall in order of seniority. Generally, it was agreed that while it is "fair to first consider those that had worked in the district", the single criterion of teacher seniority was not adequate. One administrator referred to the problem of employing a teacher retroactively where in certain instances the initial hiring did not involve a rigorous screening procedure. Moreover, the same administrator pointed out that certain areas of teacher scarcity, such as French immersion, allow for little screening of personnel. Nonetheless, according to a few administrators, "seniority dominates to the extent that if a teacher doesn't have a less than satisfactory report, then teachers must be rehired in order of seniority".

Administrators made reference to collective agreement clauses such as "demonstrated ability" of a teacher, "proven qualifications" of a teacher and "appropriateness of the teacher for the needs of a

particular school or a district". In practice, these clauses allowed for the consideration of teacher performance and suitability as well as seniority when teachers are competing for a staffing vacancy. In one district where teachers had been hired without a grievance according to "appropriateness" instead of seniority, the chief administrator explained that this had been "achieved as a result of continuous dialogue and good relations with the local teachers' association".

Alternatively, one administrator criticized the present lack of "trust" between administrators and teachers that requires everything be put into contract in an effort to protect the rights of teachers. He cautions teachers that clauses negotiated as a "shield" may "turn to a sword". An example of such a turnabout is one administrator's interpretation of a section in his local teachers' contract that he believed will allow the administration, over time, to remove marginal teachers according to contract. One administrator expressed a reluctance to "build in an effectiveness clause with layoff and rehiring when the Act already contains a section regarding terminating a contract".

In the last decade, there has been a reduction in force of 1500 teachers in B. C. Yet, only 17 teacher contract terminations for incompetence have been referred to the review commission. One Canadian researcher suggested that approximately 1% of the teacher population might be incompetent. Statistically then, a vast discrepancy is indicated. Can you comment on how administrators have managed the presence of incompetent teachers in the system during that time?

Administrators suggested that statistics do not reflect the "back door" or extra legal methods of managing incompetent teachers in the system. The first six extra legal methods were mentioned most frequently by chief administrators. Reported administrative solutions to the problem of the presence of an incompetent teacher in a district were as follows:

- teacher is "counselled out" of the profession
- teacher seeks early retirement, which has been described as a graceful "win win"
- teacher resigns as a result of "subtle pressure"
- teacher transfers to "find a position for success" or to "buy two or three years"
- teacher is "shuffled" or is "spread around" until parents and/or principal complain vociferously
- teacher is "bought out"
- teacher is "threatened" with a less than satisfactory report and resigns
- teacher voluntarily resigns after one or two less than satisfactory reports

- teacher seeks alternative employment
- teacher moves to another district or province
- teacher works part-time as teacher and becomes involved in an improvement program
- teacher improves "enough" to attain a "mediocre" level of teaching
- teacher is "propped up" in the system
- teacher is "hidden" in the organization, for example, as a full-time substitute at regular salary
- teacher is offered a career re-training program
- teacher is offered study leave and never returns
- teacher is offered a leave to try other employment and never returns
- teacher goes on "long-term disability" leave
- teacher goes on a leave of absence and obstructs the successful maintenance of the statutory time line for legal termination of contract
- teacher is referred to employee health services
- notably, only one administrator of those interviewed preferred the statutory process of termination rather than some negotiated or "back door" method of getting rid of the incompetent teacher

Since the Sederberg court case in 1979 that supported the review commission decision to reinstate a teacher rated incompetent by the Merritt school board, my research has revealed a new resolution of the cases placed before the review commission. In 50% of the cases since 1979 (or 25% overall), school boards have provided these "incompetent" teachers with monetary settlements prior to the hearing before the review commission. What comments do you have on this practice?

While only one of the administrators interviewed preferred the statutory process of termination to a private negotiation between the incompetent teacher and the school board, many of the administrators reacted negatively to the prospect of a monetary settlement to get rid of the incompetent teacher. Comments from administrators on the above practice of school boards varied from "disgraceful", "unfortunate", "astonishing", "abrogating responsibility" and "illegal" to "pragmatic", "reasonable" and "it's happening all the time in the public sector".

A number of administrators pointed out that while such a practice is not available under law, administrators have chosen this method of getting an incompetent teacher out of the classroom instead of going to review commission where an incompetent teacher might be returned to the classroom due to legal technicalities at enormous financial cost and public embarrassment. On the one hand, one administrator described the practice of providing monetary

settlements to incompetent teachers as "grossly unfair and unreasonable" because "if due process is followed, there should not need to be any other recompense built in". Moreover, the same administrator suggested that a monetary settlement to an incompetent teacher is an "acknowledgement that administrators have failed to do their job" in providing due process to the teacher or building an adequate, documented case against a teacher. However, the majority of administrators agreed that if administrators have failed to do their job, the reported practice of providing an incompetent teacher with a monetary settlement, or what was described as "a forced early retirement plan with compensations", is a viable alternative "on behalf of the kids".

On the other hand, one administrator maintained that with standard criteria of evaluation, a standard process of evaluation and a keen awareness of due process, administrators can win before review commissions. Alternatively, another administrator, who focused on shortcomings of the legislation rather than of the administration, objected to "circumventing the mechanism rather than asking for changes in legislation to improve it".

The Act is being revised. If you were asked to give recommendations for changes to improve the present procedure for termination of incompetent teachers, what suggestions would you make?

First, the majority of the administrators referred to difficulty with the statutory time frame. The administrators commented as follows concerning the present statutory process for the termination of the contract of incompetent teachers: cumbersome, difficult, convoluted, a complicated mechanism, needs simplification, not easy to activate, "a teacher protection vehicle", many risks involved, too many steps and opportunities for legal hassles, more support needed for principals, need specific criteria of competence, frustrating and expensive. Many administrators found the 12 to 24 month time line too long when children "are being negatively affected" and are not receiving "proper instruction". Twelve months instead of 24 months was identified by some administrators as a "long enough" time frame to be fair to the teacher and to allow the teacher time for improvement. Similarly, two reports, instead of the three reports prescribed by statute, were considered by some administrators to be sufficient.

One administrator referred to the difficulty of justifying to angry parents, whose children are registered in the classroom of an incompetent teacher,

the importance of allowing a less than satisfactory teacher the opportunity to improve. Some administrators felt there should be a provision "to allow a board to move more quickly in extraordinary circumstances".

Administrators commented that the opportunity for leave of absence for professional improvement or for medical leave further complicates the time frame and may obstruct the entire termination procedure. To remedy this problem, one administrator proposed that you "count the statutory time line only for 'active service' time".

Most administrators identified the lack of criteria for teacher competence as a legislative shortcoming that is exacerbated by differing standards for competence of various principals. For example, administrators cited instances where one principal has written a less than satisfactory report about a teacher and this report is followed by a "glowing" report by another principal. One administrator suggested that a solution to this problem is to set and define "the critical factors that make a difference in teaching" with an exemplary backdrop of teacher behaviour. The present legal process for termination of teacher contracts for incompetence was considered by some administrators to be better than repeated "transfers".

While administrators agreed that it is necessary to be fair and to protect teachers in such a serious process where a teacher's livelihood is at stake, they felt that principals also deserve protection when they are being asked to "demonstrate in a finite way that a teacher is less than satisfactory". Certain administrators suggested that what is needed more than a change in the present legislation, is an increase in district understanding of the process.

Two administrators proposed that the principal should be involved only in the writing of the first less than satisfactory report. The first negative report could be considered as a "warning" to the teacher that improvement is necessary. Therefore, the collegial relationship of the principal with the staff would not be jeopardized unduly. After that, these administrators recommended that authorized central office staff, including the director of instruction, the assistant superintendent and the superintendent, should follow up on the contract termination procedure.

Alternatively, a number of administrators advised that a change should be made in the certification process for teachers so that every three to five years every teacher would be required to re-certify pursuant to carefully set down, province-wide criteria of competence for teachers. A few administrators took

issue with the fact that the review commission, which was intended to be a professional body constituted of "a jury of peers", has become a forum of legal technicalities "that does not deal primarily with competence". One administrator believed that more onus should be placed on the teaching profession to police itself.

Interview Question 8

Do you have any additional comments on my topic?

Without exception, every chief administrator had additional comments. In addition to the problem of the incompetent teacher, administrators expressed concern with the presence of the "borderline" or "mediocre" teacher in the British Columbia education system supposedly committed to "education for excellence". While most administrators experienced frustration with the contract termination procedure for teacher incompetence, contrastingly, a few administrators perceived the termination procedure as problematic only if the district has no plan to manage the procedure effectively. Administrators expressed a need in school districts for more intensive training in this area for principals to increase awareness and to reduce fear of the termination process. Also, social and emotional

factors associated with principals' collegiality with staff and affiliation with the BCTF were considered mitigating factors in the resistance of administrators to write less than satisfactory reports. Administrators asserted that incompetent teachers are a "small group of teachers that demand a large amount of time". Two administrators suggested that time and energy of administration would be spent more profitably on developing teacher improvement programs for all teachers rather than on focusing on teacher incompetence. Nonetheless, these administrators agreed with the majority who advocated that this small group of incompetent teachers should not be ignored because an incompetent teacher "is bad for the morale of all teachers and administrators". Moreover, these chief administrators recognized the impact of one incompetent teacher on the parent and the student experiencing a less than satisfactory learning situation. In the words of one district superintendent, he "wouldn't want an incompetent teacher to teach his child".

Another administrator pointed to the problems created for central office administrative staff by angry parents of children who are placed in the classroom of a teacher who has received one or two less than satisfactory reports. Nonetheless, chief administrators explained that they "are not out to

destroy people" and recognize the fact that while a person may be a "bad" teacher, he may be a very "good" person.

An additional consideration suggested by one administrator concerned the "nature of education". He explained that because education is "oriented to being positive, humanitarian and tolerant", it is "only when a teacher is very incompetent to a 'community standard' that administrators, without any risk, terminate a teacher".

The same administrator shifted the focus of the problem with teacher termination for incompetence from the legal process to the "blurred" standard of what constitutes a "less than satisfactory" learning situation. The administrator said that the lack of a standard of teacher competence places a "tremendous onus on the principal". While all administrators emphasized the importance of fairness and of affording every protection to a teacher subject to such a serious process, many administrators believed the risks for the principal who must implement the termination process should be reduced. At present, due to the apparently complicated mechanism, administrators explained that many principals have "shied away" from the process. While administrators agreed that more effort is required in the encouragement of the use of the less

than satisfactory report to terminate incompetent teacher contracts, most contract terminations seemingly are being achieved by extra legal or "back door methods".

Administrators recognized that use of "back door methods" as opposed to the application of the designated sections of the statute means that "there's nothing stopping [incompetent teachers] from going to another district". Such methods force administrators to rely exclusively on the "old boy network". Administrators suggested that the teaching profession should take a more active role in termination of teacher contracts for incompetence. The proposal of administrators was that instead of being bound by "automatic defence" of a teacher, consideration should be given to "counselling out" less than satisfactory teachers and avoiding many problems for the federation, the teacher and the board.

Administrators concurred that the "court-like atmosphere" of the review commission serves as a barrier to dealing with the issue of teacher competence and has come to mean that "teachers must be grossly incompetent before they can be terminated". One administrator stated that "a jury of peers should be sufficient cause to end a contract for incompetence". Certificate renewability every five years was

identified as a method to provide a check and balance for teacher currency and teacher competence.

Administrators in two districts which have been piloting projects in peer supervision, a system designed to improve teacher instruction by having teachers observe and constructively criticize one another, reported that they have achieved minimal success in this area. One of these administrators has decided that it is "better to have administrators report than peers as generally administrators are more charitable in their appraisal of a teacher".

Summary

In this chapter, a summary of the interview responses of ten chief administrators has resulted in a statement of how administrators functionally manage the presence of incompetent teachers in the British Columbia education system. The findings were as follows.

First, the majority of the school districts had written policy or guidelines for principals on the writing of teacher evaluation reports that was created by a joint committee of local administrators and teachers.

Second, all districts provided in-service for principals on report writing on teachers, a duty that is statutorily prescribed for principals. A few districts had been engaged in long-term programs to improve the standard of principal reports on teachers and observed successful progress in this area. While most districts referred to report writing policy as guidelines only, one administrator was working towards a mandatory format for principals to follow in the evaluation of teachers. Generally, chief administrators identified the reluctance of principals to write less than satisfactory teacher reports because of the collegial relationship that exists between principals, teachers and the BCTF. Chief administrators reported that there is increased confidence of principals in the successful use of the statutory process for the termination of the contracts of teachers for incompetence. This confidence has resulted from training of principals in report writing, documentation and due process, and from strict attention to the Act and regulations.

Third, all districts provided assistance to a teacher who has received a less than satisfactory report. Assistance included demonstration lessons, interclassroom visitations, workshops and courses, transfer to other schools, or leaves of absence.

Administrators suggested that a formal documented teacher assistance program should be provided immediately following the first less than satisfactory teacher report.

Fourth, some chief administrators criticized seniority clauses in teacher contracts that promoted the re-engagement of borderline teachers in an education system committed to excellence.

Fifth, administrators referred to numerous "back door" methods of ending teacher contracts. Administrators explained that lack of success in the past in attempts of administrators to remove incompetent teachers by writing less than satisfactory reports has caused administrators to seek alternative resolutions to the problem. Alternatives included the following: counselling teachers out of the profession; offering teachers early retirement; transferring teachers to another grade assignment or to another school; teachers voluntarily resigning; teachers re-training and seeking alternate employment; teachers applying to another school district; teachers going on a professional leave or on a long-term disability leave; or, teachers being "bought out" by the board. Sixth, even though administrators admitted to the use of extra legal or "back door" methods of removing incompetent teachers from the system, generally they

commented unfavourably on the practice of school boards, faced with the prospect of a hearing before a review commission, of providing monetary settlements to teachers who had received three less than satisfactory reports. A few administrators preferred this resolution to risking losing before a review commission. Alternatively, some administrators viewed a monetary settlement to a less than satisfactory teacher as an abdication of administrative responsibility.

Seventh, chief administrators mentioned the following concerns with the statutory process: the time line is too long and 12 months would allow the teacher sufficient time to improve; two reports is adequate, with the first report being written by the principal and the second report being written by an authorized central office administrator; a standard, province-wide set of criteria for teacher competence should be provided; if a teacher is granted a professional improvement leave, the time line should include only the actual teaching time; an emergency measure for the immediate removal of a particularly incompetent teacher should be available; the review commission should be concerned primarily with the question of teacher competence rather than with legal

technicalities; and, teacher certificate removal should be a more readily available alternative. Some administrators referred to lack of support for the principal who implements the statutory process for the termination of teacher contracts for incompetence.

Finally, additional comments of administrators included the following suggestions. A few administrators recommended the institution of a province-wide conditional re-certification program for teachers that would be required every three to five years. An additional persistent concern of many chief administrators was with the presence of "borderline" teachers in the system. Administrators pointed out that while incompetent teachers accounted for a very small number of the British Columbia teaching professionals, this minority group demanded a large amount of time and energy from the administrative staff. Nonetheless, administrators recognized the necessity of removing incompetent teachers from the education system for the following reasons: to provide a satisfactory level of education to students; to secure the confidence of parents and other tax payers; to maintain teacher morale; and, to promote excellence in the British Columbia education system.

CHAPTER 8

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

The purpose of this study was to promote a better understanding of the termination of continuing teacher contracts for incompetence in British Columbia according to the provisions set down in the School Act and School Act Regulation. A second purpose was to examine and analyze the outcomes of the 17 applications for review before the review commissions from the inception of this tribunal until 1985.

This study was conducted because the issue of termination of teacher contracts for incompetence had become topical in professional journals and the popular media in some other provinces in Canada and in the United States, yet there was no research on the topic in British Columbia. Prior to this study, the reports of the decisions of the review commissions had been filed as confidential records in the British Columbia Ministry of Education. In addition to analyzing the reports of the review commission, this study also has examined pertinent common law and employment contract law, traced the historical development of the statute from 1872 to the present, compared briefly present British Columbia legislation with provinces east to Ontario, collated the legislation that sets down the

current statutory process for teacher contract termination for incompetence and cited relevant case law that interprets the legislation. Moreover, this study included the findings of 10 interviews with district superintendents, deputy superintendents or assistant superintendents that were conducted to determine how administrators functionally manage the presence of incompetent teachers in their school districts.

This study was primarily a legal study. First, analysis of the statutory process involved a section by section review of all legislation related to teacher contract termination for incompetence and the organization of the pertinent legislation on a three stage time line. The interpretation of pertinent legislation by the court supported the statutory analysis.

Second, analysis of the reports of the review commission was based on a classical method of legal case analysis outlined by Dernbach and Singleton (1981). The analysis included the following basic components of Dernbach and Singleton: facts, issue, decision and reasons. A fifth component, argument, located between issue and decision, was added to the legal case analysis and remarks were included. Percentages were computed and tabled for

characteristics of the parties involved in the dispute corresponding to the resolutions of the review commissions.

Third, the comments of the chief administrators to eight interview questions were reported to provide the administrative response to the presence of incompetent teachers in the education system.

Summary of Findings

The findings of the study are presented in five parts following each research question. The major findings of the study are summarized as follows:

Question 1: What is the historical origin of the present British Columbia public school legislation for employment and dismissal of teachers and for the review commission?

1. There have been eight Acts passed in the following years: 1872, 1876, 1879, 1885, 1891, 1905, 1922 and 1958.
2. Just over a century ago, in 1885, teachers were certified upon successful completion of an examination. Review of the literature revealed that the United States has reinstated teacher testing for certification.

3. Since 1879, teachers have been certified by the ministry but fired for incompetence by the school board.
4. In 1891, the statute expanded the basis of dismissal to "inefficiency or misconduct" and gave a formal right of appeal. Review of the case law revealed that the 1858 English case of Harmer v. Cornelius had extended the previously undisputed right of the employer to dismiss for misconduct to include the more elusive cause of incompetence. This case defined incompetence as a pattern of misconducts.
5. In 1925, the statute allowed for appeal of all teacher dismissals to the Council of Public Instruction, which was in effect, the Lieutenant Governor in Council.
6. In 1937, the word "continuing" was applied to a teacher's contract.
7. The Board of Reference appeal body was instituted in 1933.
8. In 1958, the Investigation Committee for dismissals was formed. This committee was required to report to the then "Superintendent of Education" that in 1971 was changed to the "Minister of Education".
9. In 1972, British Columbia legislation was amended to provide for the formation of review commissions to hear appeals for teacher contract terminations for

incompetence as separate from misconduct. British Columbia is the only province in Canada which has a specific process that leads to termination on the grounds of incompetence and provides a separate appeal body for contract termination for incompetence.

Question 2: What are the legal requirements in the unique procedure of termination of a continuing teacher contract for incompetence in the present British Columbia School Act and School Act Regulation?

1. Data in Table 1 and Table 2 show:

- a) The legal procedure for termination of a teacher contract for incompetence may be divided into three stages: less than satisfactory report writing; teacher notice and hearing with the board; and, teacher hearing before the review commission.
- b) According to s. 123(1) and reg. 65, termination of a continuing teacher contract for incompetence may occur only after the receipt by the board of 3 less than satisfactory teacher evaluation reports over a 12 to 24 month period.
- c) The teacher evaluation reports may be written by a principal, assistant superintendent, district superintendent or director of instruction. The order of the evaluations is undefined.

d) When a principal or district superintendent write a less than satisfactory report, according to reg. 9, there must be joint notification between the two administrators and the other shall write a report on that teacher.

e) When a principal evaluates a teacher in a formal report, he is subject to regulation 93, 94 and 95 regarding preparation, content and distribution of reports. Each report must contain a statement of opinion that the learning situation is satisfactory or less than satisfactory.

f) Section 123(2) requires that the teacher be given written notice of the intention of the board to terminate his contract 30 days prior to the actual termination notice letter referred to in s. 123(1) which provides for an additional 30 days' notice before the actual contract termination at the end of a school term or an earlier date, mutually acceptable to the teacher and the board. Moreover, the board must set a time for a hearing with the teacher within 20 days of the writing of the letter of intention.

g) S. 130 and reg. 68 - 75 outline the teacher termination hearing before the review commission. The teacher must request in writing within 10 days of receipt of notice of termination, with a copy

to the board, that the minister direct a review commission to review the termination. Within 5 days, the board must send copies of the 3 teacher reports to the review commission and must identify the reasons for termination. The commission has 30 days to make a decision, a time line that may be extended with permission from the minister. Within 3 days of making a decision, the chairman must report the decision of the review commission to the teacher, the board and the minister. All documents of the commission must be sent to the minister where they are kept for at least 60 days. The decision of the review is final and binding and therefore, is not subject to appeal in the court.

h) According to the Judicial Review Procedure Act, any statutory tribunal, such as a school board or review commission is subject to judicial review. However, on such an application, the court is restricted to consideration of first, whether natural justice in the form of notice and a fair hearing were given to the teacher and second, whether the tribunal acted within the jurisdiction provided by statute.

Question 3: What are the results of the 17 applications for review of teacher contract terminations placed before the review commission from the first case in 1974 until 1985?

1. Data in Table 5(a) show that the resolutions of the 17 cases placed before the review commissions between 1974 and 1985 were as follows :

a) 12% were abandoned by the teacher; 23% were resolved by a settlement between the teacher and the board prior to the review commission hearing; 18% were resolved in favour of the teacher; and, 47% were resolved in favour of the board.

b) Approximately 75% of the cases were placed before the review commission in the first five years between 1974 and 1979 and 25% of the cases were presented in the last six years between 1980 and 1985.

c) Of the cases decided by the review commission between 1974 and 1979, 78% were resolved in favour of the board and 22% were resolved in favour of the teacher.

d) Of the cases heard by the review commission between 1980 and 1985, one case was resolved in favour of the teacher and one case was resolved in favour of the board. 60% of the cases placed before the review commission during that time have been resolved by a settlement between the teacher and the board prior to a hearing before the review commission.

2. Data in Table 5(b) show:

- a) Between 1974 and 1978, all cases that were resolved by the review commission were resolved in favour of the board.
 - b) In 1979, when 23% of the total number of cases studied were placed before the review commission, 50% of those cases were resolved in favour of the teacher and the remaining two cases were abandoned or settled.
 - c) Between 1980 and 1984, only two cases were placed before the review commission and both were settled prior to the hearing.
 - d) In 1985, three cases were placed before the review commission with the following resolutions: one in favour of the teacher; one in favour of the board; and, one settlement.
3. Data in Table 6(a), Table 6(b) and Table 7 show that between 1974 and 1985:
- a) The majority of cases placed before the review commission, 58%, have been presented by male teachers.
 - b) Over 60% of the cases resolved in favour of the board have involved male teachers.
 - c) All cases resolved in favour of teachers involved female elementary teachers.
 - d) All cases abandoned by teachers involved male teachers.

TABLE 6(a)

Sex of Applicants for Review Commissions in
British Columbia 1974-1985 and Resolution -
Number and Percent of Total

Sex	Cases Resolved - Number and Percent of Total								Total Cases	
	Abandoned		By Settlement		In Favour				#	%
	#	%	#	%	of Teacher		of Board			
#	%	#	%	#	%	#	%	#	%	
Female			1	6	3	18	3	18	7	41
Male	2	11	3	18			5	29	10	59
Total	2	11	4	24	3	18	8	47	17	100

TABLE 6(b)

Sex of Applicants for Review Commissions in
British Columbia 1974-1985 and Resolution -
Number and Percent by Line Sub-Total

Sex	Cases Resolved - Number and Percent by Line Sub-Total								Total Cases	
	Abandoned		By Settlement		In Favour of				#	%
	#	%	#	%	of Teacher		of Board			
#	%	#	%	#	%	#	%	#	%	
Female			1	14	3	43	3	43	7	100
Male	2	20	3	30			5	50	8	100

TABLE 7

Sex of Applicants for Review Commissions in
British Columbia 1974-1985 and the Annual
Resolution of the Application

=====						
Category Year	Applicants		Resolution of Application			
	Male	Female	Confirm Board	Reverse Board	Abandon Case	Settle Case
1974 - 1		1	1			
- 2		1	1			
1975 - 3	1				1	
- 4	1		1			
- 5	1		1			
1976 - 6	1		1			
1977 -						
1978 - 7	1		1			
- 8	1		1			
1979 - 9		1		1		
- 10		1		1		
- 11		1				1
- 12	1				1	
1981 - 13	1					1
1982 -						
1983 -						
1984 - 14	1					1
1985 - 15		1		1		
- 16		1	1			
- 17	1					1
Totals	10	7	8	3	2	4

e) 75% of the cases resolved by a settlement between the teacher and the board prior to a hearing before the review commission involved male teachers.

4. Data in Table 8 show that between 1974 and 1985:

a) No teachers with less than five years teaching experience appealed a termination to the review commission.

b) 22% of the cases placed before the review commission involved teachers with less than ten years experience.

c) 22% of the cases placed before the review commission involved teachers with between 11 and 15 years experience.

d) 67% of all the cases placed before the review commission involved teachers with over 15 years experience.

5. Data in Table 9(a) and Table 9(b) show that between 1974 and 1985:

a) 65% of the cases placed before the review commission involved special class, supervisory or regular elementary classroom educators.

b) 17% of the cases placed before the review commission involved administrators.

c) 66% of the cases involving administrators were resolved in favour of the board and the remaining case was abandoned by the teacher.

TABLE 8

Years of Experience of Teachers before Review
Commissions in British Columbia
1974-1985 and Resolution

Years of Experience of Teachers	Number and Percent of Total Cases In Favour of				Total Cases	
	Teacher		Board		#	%
	#	%	#	%	#	%
0 - 5					-	-
6 - 10	1	11	1	11	2	22
11 - 15			2	22	2	22
16 - 20			2	22	2	22
21 - 25	2	22			2	22
26 - 30			1	12	1	12
Total	3	33	6	67	9	100
0 - 10	1	11	1	11	2	22
11 - 30	2	22	5	56	7	78
Total	3	33	6	67	9	100
0 - 14	1	11	1	11	2	22
15 - 30	2	22	5	67	7	78
Total	3	33	6	67	9	100

TABLE 9(a)

Teaching Level of Applicants for Review Commission
in British Columbia 1975-1985 and Resolution-
Number and Percent of Total

Teaching Level	Cases Resolved - Number and Percent of Total								Total Cases	
	Abandoned		By Settlement		In favour of Teacher		In favour of Board		#	%
	#	%	#	%	#	%	#	%		
Elementary	1	6	3	17	2	12	1	6	7	41
Administrative	1	6					2	12	3	18
Special Class					1	6			1	6
High School			1	6			5	29	6	35
Total	2	12	4	23	3	18	8	47	17	100

TABLE 9 (b)

Teaching Level of Applicants for Review Commission
in British Columbia 1974-1985 and Resolution
Number and Percent by Line Sub-Total

Teaching Level	Cases Resolved - Number and Percent by Line - Sub-Total								Total Cases	
	Abandoned		By Settlement		In favour of Teacher		In favour of Board		#	%
	#	%	#	%	#	%	#	%		
Elementary	1	14	3	43	2	29	1	14	7	100
Administrative	1	33					2	67	3	100
Special Class					1	100			1	100
High School			1	17			5	83	6	100

d) 83% of the cases placed before the review commission involved teachers, rather than administrators.

e) 60% of the teacher cases placed before the review commission involved elementary school teachers between grades one to seven.

f) 40% of the teacher cases placed before the review commission involved high school teachers from grades 8 to twelve.

g) 83% of the high school teacher cases were resolved in favour of the board; 17% were resolved by settlement; and, none were resolved in favour of the teacher.

h) 37% of the elementary school teacher cases were resolved in favour of the teacher; 37% of those cases were resolved by settlement; 13% were abandoned; and, 13% were resolved in favour of the board.

6. Data in Table 10(a) and Table 10(b) show that between 1974 and 1985:

a) 54% of the cases involved the factor of transfer.

b) Transfer was not an issue in cases involving administrators.

TABLE 10(a)

Transfer of Teachers in Cases Placed before Review
Commissions in British Columbia 1974-1985 and Resolution

Transfer in Teacher Cases	Cases Resolved - Number and Percent of Total in Favour of								Total Cases	
	Teacher				Board					
	Elementary		H. School		Elementary		H. School		#	%
	#	%	#	%	#	%	#	%	#	%
1974					1	17			1	17
1975										
1976										
1978							2	33	2	33
1979	2	33							2	33
1981										
1984										
1985							1	17	1	17
Total	2	33			1	17	3	50	6	100

TABLE 10(b)

Comparison of Resolutions of Review Commissions in British
Columbia 1974-1985 when Transfer or No Transfer is
Involved in Cases Placed before the Commissions

Category Year	Transfer in Cases Resolved in Favour of				No Transfer in Cases Resolved in Favour of				Total Cases	
	Teacher		Board		Teacher		Board			
	#	%	#	%	#	%	#	%	#	%
1974			1	9			1	9	2	18
1975							2	18	2	18
1976							1	10	1	10
1977										
1978			2	18					2	18
1979	2	18							2	18
1980										
1981										
1982										
1983										
1984										
1985			1	9	1	9			2	18
Total	2	18	4	36	1	9	4	37	11	100

c) Of the cases that involved the board allowing teacher transfer prior to termination, 75% of the cases were resolved in favour of the board.

d) Of the total number of cases resolved in favour of the board, half the cases involved transfer of the teachers prior to termination and the other half did not allow transfer.

7. Data in Table 11(a) and Table (11)(b) show that between 1974 and 1985:

a) 28% of the cases involved the factor of medical leave.

b) In cases where medical leave was a factor, 75% of the cases involved elementary school teachers.

c) In the majority of elementary school cases where medical leave was an issue, the cases were resolved in favour of the teacher.

d) The case of the high school teacher that involved the issue of medical leave was resolved in favour of the board.

8. Data in Table 12(a) and Table 12(b) show that between 1974 and 1985:

a) In most instances, the first of the 3 less than satisfactory reports was written by a principal.

TABLE 11(a)

Medical Leave of Teachers in Cases Placed before Review Commissions in British Columbia 1974-1985 and Resolution

Medical Leave in Teacher Cases	Cases Resolved - Number and Percent of Total in Favour of								Total Cases	
	Teacher				Board				#	%
	Elementary		H.School		Elementary		H.School			
#	%	#	%	#	%	#	%	#	%	
1974					1	25			1	25
1975										
1976							1	25	1	25
1978										
1979	1	25							1	25
1981										
1984										
1985	1	25							1	25
Total	2	50			1	25	1	25	4	100

TABLE 11(b)

Comparison of Resolutions of Review Commissions in British Columbia 1974-1985 when Medical Leave or No Medical Leave is Involved in Cases Placed before the Commissions

Category \ \ Year	Medical Leave in Cases Resolved in Favour of				No Medical Leave in Cases Resolved in Favour of				Total Cases	
	Teacher		Board		Teacher		Board		#	%
	#	%	#	%	#	%	#	%		
1974			1	9			1	10	2	19
1975							2	18	2	18
1976			1	9					1	9
1977										
1978							2	18	2	18
1979	1	9			1	9			2	18
1980										
1981										
1982										
1983										
1984										
1985	1	9			1	9			2	18
Total	2	18	2	18	2	18	5	46	11	100

TABLE 12(a)

Combinations of Teacher Evaluators in Cases Placed
before Review Commissions in British Columbia
1974-1985 and Resolution

Combinations of Teacher Evaluators	Cases Resolved - Number and Percent by Total in Favour of				Total Cases	
	Teacher		Board		#	%
	#	%	#	%		
Prin.#1/Supt./Prin.#2			2	22	2	22
Prin./D.Inst./Supt.			3	34	3	34
Prin./D.Inst./A.Supt.	2	22			2	22
Prin./Supt.#1/Supt.#2			1	11	1	11
Supt./Prin./Supt.	1	11			1	11
Total	3	33	6	67	9	100

TABLE 12(b)

Combinations of Evaluators in Order of Filing of Reports
in Cases Placed before Review Commissions in
British Columbia 1974-1985 and Resolution

Combinations of Evaluators in Order of the Filing of the Three Teacher Reports	Cases Resolved - Number and Percent by Total in Favour of				Total Cases	
	Teacher		Board		#	%
	#	%	#	%		
D.Inst./Prin./Supt.			1	11	1	11
Prin./D.Inst./Supt.			1	11	1	11
D.Inst./Supt./Prin.			1	11	1	11
Prin./D.Inst./A.Supt.	1	11			1	11
Prin./A.Supt./D.Inst.	1	11			1	11
Supt.#1/Prin./Supt.#2	1	11			1	11
Prin./Supt.#1/Supt.#2			1	11	1	11
Prin.#1/Supt./Prin.#2			2	23	2	23
Total	3	33	6	67	9	100

- b) There was one instance where the same evaluator was used twice to evaluate a teacher and the case was resolved in favour of the teacher.
- c) All cases were resolved in favour of the board when the following combinations of evaluators were used to write teacher evaluation reports:
principal #1/superintendent/principal #2;
principal/superintendent #1/superintendent #2; or
principal/director of instruction/superintendent.
- d) All cases were resolved in favour of the teacher when the following combinations of evaluators were used to write teacher reports:
superintendent/principal/superintendent or
principal/director of instruction/superintendent.
9. Data in Table 13 show that between 1974 and 1985:
- a) The majority of the closing statements used on teacher assessment reports were not drafted according to reg. 94.
- b) All the cases that used the authorized teacher rating phrase in the assessment report were resolved in favour of the board.
- c) 65% of the cases that failed to use the authorized rating phrase in the assessment report were resolved in favour of the teacher.

TABLE 13

Closing Statements in Teacher Assessment Reports
Placed before Review Commissions in British
Columbia 1974-1985 and Resolution

Closing Statement in Teacher Assessment Reports According to Regulation 94	Reports in Resolved Cases - Number and Percent of Total In Favour of				Total Reports	
	Teacher		Board		#	%
	#	%	#	%		
*LESS THAN SATISFACTORY LEARNING SITUATION			13	48.7	13	48.7
Less than satisfactory teaching-learning situation	3	11.1			3	11.1
Fair learning situation	2	7.5	2	7.5	4	15.0
Marginally satisfactory learning situation			1	3.6	1	3.6
Fair to poor learning situation	1	3.6			1	3.6
Poor learning situation	1	3.6	1	3.6	2	7.2
Unsatisfactory learning situation	1	3.6	1	3.6	2	7.2
Less than satisfactory according to regulation 93	1	3.6			1	3.6
Total	9	33	18	67	27	100

* - actual closing statement of teacher reports prescribed by regulation 94.

10. The issue, argument, decision and reasons for judgment in the cases before the review commission between 1974 and 1985 may be summarized as follows:

a) Issues resolved in favour of the board included:

- whether the basis of the decision of the board to terminate the contract of the teacher is the three less than satisfactory reports
- whether report content must be accurate
- whether the statute provides for two principals as report writers
- whether a vice-principal on probation in June constitutes an appointment to that position
- whether the Act protects teachers with most seniority
- whether reports were composed fairly according to statute
- whether ambiguity of unspecified report conclusions invalidates reports
- whether report writers are biased
- whether failure of board to provide opportunity of professional improvement invalidates report
- whether re-assignment of teacher as resource teacher/substitute prejudices appeal

b) Issues resolved in favour of the teacher

included:

- whether a teacher has a statutory right to medical leave and to take a program to help improve her teaching
- whether a teacher should be allowed to obtain a transfer to help her improve
- whether a board must include recommendations for improvement in a teacher report
- whether a board must provide adequate and specific help in implementing a new program

c) Reasons in favour of the board included:

- teacher changed his defense
- history of low standard of teaching in prior formal teacher evaluation reports
- other evidence at the hearing before the review commission corroborates evidence provided in reports
- teacher did not take advantage of assistance
- teacher refused to accept criticism
- classroom management problems of the teacher persist although some improvement occurs in other areas of teaching

- serious problems of teacher with parent-teacher communication

- clinical model of supervision of instruction was used in teacher evaluation process

- evidence presented to commission on school policy guidelines and expectations that were employed to assess teacher competence

d) Reasons in favour of the teacher included:

- removal of teacher from classroom should have resulted first from medical leave

- lack of suggestions or follow-up to the teacher from the district supervisor

- assistance given to the teacher, but not with sufficient specificity

- teacher was willing and able to change, although improvement was not achieved as quickly or as totally as district requires

- student discipline and attitude was not a concern in the classroom

- student achievement was not a concern in the classroom

- no documentary evidence of poor student achievement in the classroom

- parents support the learning situation

- poor pupil control largely caused by one student who should have been removed from the class
- one persistent problem area of discipline while majority of teacher report is satisfactory
- vast discrepancy in content of principal's memo and his subsequent formal report
- two denials of request for transfer by teacher

Question 4: What standard of competence for teachers in British Columbia has been determined through the decisions of the review commissions?

1. Data in Table 14 shows that with one exception, all less than satisfactory teacher reports submitted to the review commission indicated problems with discipline and management.
2. Teacher #15, whose reports contained no mention of discipline problems, was reinstated by the review commission.
3. Reinstatement of teacher #9 and #10 were due to the failure of the board to assist the teachers respectively through provision for medical leave or transfer, rather than for reasons of competence.
4. Administrators' comments indicating teacher incompetence that were confirmed by the review commission were as follows:
 - a) discipline and management

TABLE 14

Comments From Less Than Satisfactory Reports Placed
Before The Review Commission 1974-1985

Case Code	Decision in favour of	Report	Categories of Criteria				Parent Comment
			Organization and Planning	Instruction	Discipline/Management		
1	Board	1st	-inadequate daybook	-poor voice control -poor questioning -reliance on texts -inability to interest	-noisy -lack of student support		
		2nd	-ill prepared	-poor instruction	-unruly and disorderly students		
		3rd		-students not actively engaged in positive learning situation -no review	-low number of students on task -students idle, loud -sharp exchanges -students mimic the teacher	-parent hostile towards teacher	
2	Board	1st	-dis-organized, unattractive environment	-program lacking meaning in relation to stated objectives -failure to challenge students	-poor student rapport and discipline -tense, strained, defensive environment	-"red alert" from former school	
		2nd		-poor questioning	-loses the interest during seat work		
		3rd	-little preparation	-many work-sheets -"teaching has lost its spark"	-threatens students to finish seat work -inadequate expectation	-new school to avoid bias of parents	

TABLE 14 --Con't

					that causes low level of student seatwork -told a student to "read a thick book and don't interrupt me for 30 minutes"
6	Board	1st	-deficient preparation -poor record keeping	-no warm-up in P.E. classes -principal sent memos	-inadequate supervision during "study" periods
		2nd		-no student gym strip -no formal instruction -only "play games" -teacher's back prob- lem given as reason for no demonstra- ting; no students used for demonstra- ting	
		3rd	-major portion of materials for class- room subjects obtained from others	-no warmup, no drill	
7	Board	1st	-poor time use	-incomplete curriculum -lacks enthusiasm	-poor discipline -poor attitude
		2nd	-superficial marking	-incomplete curriculum	-poor student rapport

TABLE 14 --Con't

		3rd	-inadequate preparation and lesson organization	-poor lessons	-poor student rapport	
8	Board	1st	-lack awareness of course of study	-lack of variety and method	-students transfer out	
		2nd	-not fulfilling course of study	-many worksheets, old text	-problems with pupil integrity, discipline e.g. shaves and gargles in class	-parent complaints
		3rd	-poorly prepared materials	-shallow approach -lesson development is weak	-weak management	
9	Teacher	1st			-discipline problems -poor class control -lack of set of well organized, consistent classroom routines	
		2nd			-lack of control -more time spent on discipline and attempt to gain undivided attention than on teaching the lesson -must not grab pupils to gain attention	
		3rd		-little effective instruction	-students careless with	

TABLE 14 --Con't

					materials -problems in rapport routines, grabbing, shouting
10	Teacher	1st	-poor desk arrangement -preparation neutralized by poor con- trol and organization	-loss of instruction time due to weak con- trol and routines	-routines and control ineffective -poor tone and pupil- teacher relations -dour manner -student work stan- dard low in amount and neatness
		2nd		-teacher frequently interrupts lesson for discipline reasons	-untidy notebooks -poor pupil attitude -lack of pupil- teacher rapport -needs a positive approach to teaching
		3rd	-poor desk arrangement	-lacking effective- ness	-ragged change-over -routines, procedures not well established -control is inconsis- tent -poor tone -question and answer- ing tech- nique of raising hands isn't enforced

TABLE 14 --Con't

					-lacking warmth, friendli- ness, good humour -does not appear to enjoy teaching	
15	Teacher	1st	-inadequate preparation -students informed the teacher that they'd done an assigned reading activity already	-class not conductive to learning -teacher conducts lessons most often from a sitting position		
		2nd	-poor organ- ization of IEP -not realis- tic learning expectations	-weak skills		
		3rd		-not meeting individual differences -overuse and misuse of workbook		
16	Board	1st	-no unit plans -inadequate daybook for substitute teachers -poor seat- ing arrange- ment -displays out-of-date -report card deadlines not met -cancelled a class to finish	-too few tests (four per term) -no provi- sion for individual differences and ability in assign- ments -poor discussions -up to 50% pupils off task at times	-regularly sends stu- dents to office and sometimes sends wrong student -"students have been observed to sleep unde- tected for periods up to ten minutes"	-not at parent nights -no follow up by phone -pupil work re- turned only upon parent request

TABLE 14 --Con't

		reports and sent pupils to library without permission				
	2nd	-poor planning	-poor teaching style	-students leave room without permission, move desks, exchange notes, throw ob- jects, walk behind the teacher as she moves -many pupil sent to the office -pupils not motivated, directed, challenged -teacher accepts no responsibi- lity for discipline -teacher refers to poor admin- istration		
	3rd		-students not on task -lack of teacher strategies -little class participa- tion	-students wandering, late, leave class -students defy authority -poor class management		

- lack of set of well organized, consistent, well-established classroom routines
- question and answering technique of raising hands is not enforced
- unruly, noisy, disorderly classroom
- sharp exchanges between teacher and students
- students mimic teacher
- tense, strained, defensive environment lacking warmth, friendliness and good humour
- teacher has dour manner and "does not appear to enjoy teaching"
- poor student rapport and attitude
- teacher loses student interest during seatwork
- low number of students on task
- inadequate expectations of teacher results in lack of neatness and output of student seatwork
- students careless with materials
- ragged change-over from one lesson to the next
- teacher appears frustrated
- teacher threatens students
- teacher grabs students
- "more time spent on disciplining students and attempting to gain [students'] undivided attention than on the teaching of the lessons"
- student told by teacher to "read a thick book and don't bother me for thirty minutes"

- inadequate supervision during "study" period
- students transfer out of class
- teacher accepts no responsibility for discipline and regularly sends students to office for discipline and sometimes sends wrong student
- students sleeping undetected in class
- students arriving late to class and leaving room without permission
- students moving desks, exchanging notes, throwing objects, walking behind teacher as she moves about the room
- hostile parents

b) instruction

- teacher reliance on texts and worksheets
- little class participation in lessons
- poor voice control of teacher
- teacher conducts most lessons from sitting position
- lessons lack variety, shallow, weakly developed
- poor questioning of teacher
- no review by teacher
- failure of teacher to challenge students
- program not meaningful in relation to stated objectives of teacher
- "teaching has lost its spark", lacks enthusiasm

- gym classes without gym strip, warm-ups, demonstrating or formal instruction
 - major portion of materials obtained from other teachers
 - teacher fails to complete curriculum
 - outdated text used by teacher
 - overuse and misuse of workbooks by teacher
 - teacher frequently interrupts lessons for discipline
 - program not meeting individual student differences
 - teacher gives too few tests
- c) planning and organization
- inadequate daybook
 - inadequate daybook for substitute teacher
 - disorganized, unattractive environment
 - poor desk arrangement
 - poor record keeping
 - poor time use
 - superficial marking and failure to return work to students
 - lack of awareness of course of study
 - not fulfilling course objectives stated in curriculum guide
 - poorly prepared materials

- students inform teacher that they already have done an assignment
- inadequate IEP
- no unit plans
- displays out-of-date
- report card deadlines not met

Question 5: What are the responses of various urban and rural British Columbia district superintendents or assistant superintendents regarding the termination of teacher contracts for incompetence in their districts?

1. The majority of school districts had written policy or guidelines for principals on the writing of teacher evaluation reports.
2. All districts provided some professional development programs for principals on report writing.
3. A few districts had been engaged in long-term programs to improve the standard of principal reports on teachers and had observed improvement of principal reports.
4. One district administrator was working towards a mandatory format for principals to follow in the evaluation of teachers.
5. Chief administrators identified a reluctance of principals to write less than satisfactory teacher reports because of:

- a) the collegial relationship between principals, teachers and the BCTF
- b) the fear of failure due to past lack of success of administrators who attempted to remove incompetent teachers by writing less than satisfactory reports
- c) the cumbersome, energy-consuming and time-consuming statutory process
- d) the lack of statutory support for the administrator involved in the statutory process
- e) the lack of a definition of what constitutes less than satisfactory teaching
- f) the nature of education "to be oriented to the positive, to humanitarianism and to tolerance"
- g) the insufficient district in-service for principals on the process of report writing
- h) the emphasis on legal technicalities in the termination process

6. In districts where principals had received extensive in-service on report writing on teachers, chief administrators felt that there was increased confidence and increased use of the prescribed statutory process to remove incompetent teachers from schools.

7. Chief administrators in all districts reported that they provided assistance to teachers who received less than satisfactory reports in the following ways:

- a) demonstration lessons from consultants
- b) interclassroom visitations
- c) opportunity to register in courses or workshops
- d) counselling the teacher out of the profession
- e) transferring the teacher to another assignment
- f) professional leave of absence
- g) district policy that sets down a specific plan of assistance, documentation and evaluation within a time frame

8. The majority of the chief administrators referred to clauses in their teacher contracts related to teacher layoff and recall in order of seniority. Seniority was considered to be a fair, but not adequate, reason for employment recall. Reference was made to the importance of ability, qualifications and appropriateness of the teacher to placement in a particular school.

9. Alternative resolutions referred to by chief administrators to the prescribed statutory method for dealing with the problem of incompetent teachers in the system were:

- a) counselling teachers out of the profession
- b) offering teachers early retirement

- c) transferring teachers from one grade assignment to another or to a different school
- d) teachers resigning voluntarily after one or two less than satisfactory reports
- e) teachers "subtly pressured" into resigning
- f) teachers "threatened" with a less than satisfactory report and then resigning
- g) teachers applying to another school district or to another province
- h) teachers going on a professional leave, medical leave or a long-term disability leave
- i) teachers are "bought out" by the board
- j) teachers offered career re-training
- k) teachers seek alternate employment
- l) teachers "improve enough" and "shuffled around in the system"
- m) teachers "propped up" or "hidden" in the system, for example, as a full time substitute
- n) teachers offered study leave or an opportunity to try other employment and never return
- o) teachers go on a leave of absence and obstruct the successful completion of the statutory time line for legal termination of contracts
- p) teachers referred to employee health services and removed from teaching for health reasons

10. The recent practice of boards to provide a monetary settlement prior to a hearing with the review commission to teachers whose contracts were terminated in the district for incompetence was judged by chief administrators variously as:
- a) disgraceful, unfortunate, astonishing, abrogating responsibility, a circumvention of the statutory mechanism and illegal
 - b) pragmatic, common and reasonable
 - c) less costly financially than review commission and court fees
 - d) saving the embarrassment of losing before a review commission or in court
 - e) grossly unfair and unreasonable because if due process is followed, there should not need to be any other recompense built in
 - f) an acknowledgement that administrators have failed to do their job in providing due process to the teacher or building an adequate, documented case against a teacher
 - g) a viable alternative on behalf of the students
11. Specific recommendations suggested by chief administrators concerning the present statutory process to remove the contract of incompetent teachers were:

- a) restrict the time line to 12 months as this would allow sufficient time for the aggrieved teacher to improve
- b) provide a formal, documented teacher assistance program immediately following the first less than satisfactory report
- c) two reports are adequate, with the first report being written by the principal and the second report being written by an authorized central office administrator
- d) the availability of a standard, province-wide set of criteria for teacher competence with examples of acceptable behaviour
- e) increase statutory support for the principal
- f) if a teacher is granted a leave of absence during the termination process, only the actual teaching time is counted in the statutory time line
- g) the availability of an emergency measure for the immediate removal of a grossly incompetent teacher
- h) the primary concern of the review commission should be teacher competence and not legal technicalities
- i) teacher certificate removal should be more readily available

j) the institution of a province-wide re-certification program for all British Columbia teachers every three to five years to provide a check and balance for teacher currency and teacher competence

12. Additional pertinent comments of chief administrators included:

- a) concern with the presence of "borderline" teachers in the system
- b) the importance of a district plan to manage the statutory procedure for the effective removal of incompetent teachers
- c) the need for more intensive training for principals in report writing, due process and documentation
- d) incompetent teachers are a small group of teachers that demand a large amount of time and energy
- e) incompetent teachers are bad for the morale of a staff and a district
- f) one incompetent teacher is significant when you consider the impact on the students
- g) incompetent teachers create problems for central office staff as a result of complaints from angry parents
- h) an incompetent teacher may be a "good person"

- i) the statutory process is a teacher protection mechanism
- j) using "back door" methods to remove a teacher from the system means there is nothing stopping an incompetent teacher from working in another district
- k) the BCTF should not be bound by "automatic defence" of every aggrieved teacher
- l) place the onus on the teaching profession to police itself
- m) the court-like atmosphere of the review commission serves as a barrier to dealing with the issue of teacher incompetence and has come to mean that teachers must be grossly incompetent before they can be terminated
- n) a jury of peers should be sufficient cause to end a teacher contract for incompetence
- o) peer supervision has not been successful

Discussion of Findings

The following discussion of the research questions is based on the findings of this study:

Question 1

Historically, the provision of public education in British Columbia has been organized on a local basis with teachers being employed by district school boards. Those boards only could employ teachers who had been certified as competent by the provincial government through the ministry of education. The subsequent removal of incompetent teachers has been left to the school boards to be dealt with as a contractual matter between employer and employee. For many years, in addition to provincial certification, membership in the BCTF has been a prerequisite to employment as a teacher. Theoretically, the issue of competence could be dealt with on any one of three levels: by the ministry through cancellation of certification; by the BCTF through suspension or cancellation of membership; or, as has been the case, by the school board through contract termination.

The trend at the provincial level has been to abdicate responsibility for competence testing for certification to the universities and to exercise the discretion to cancel certification only in the most flagrant of cases. Usually certificate cancellation has involved sexual offences. The BCTF has not succeeded in acquiring the status of a self governing professional body responsible for the discipline and competence of its members. Accordingly, the job of

overseeing the competence of those persons teaching in the public school system has been left to elected school boards that generally are comprised of lay persons having no formal training in education nor in the law of contract dismissals. At the annual general meeting of the British Columbia Trustees' Association, it was recommended that "boards be allowed to renew or terminate teaching contracts every five years, and, at any time during this period, being able to renew these contracts for a term not exceeding five years". Official trustee policy indicates "it is desirable that there be provisions to assure a teacher continuing employment by a school district, but it is essential that these provisions apply only to those teachers who have proven themselves capable of performing their duties satisfactorily, and who continue to perform them at that level".

In 1972, the present provisions for dismissal of teachers were enacted that established different procedures and tribunals to deal with incompetent teachers as opposed to those involved in misconduct. These provisions are original in Canada. Those 1972 amendments, according to the then Minister of Education, were intended to simplify the previous procedures. Previous procedures had been found not only to be "very costly and lengthy", but also "so

cumbersome it was virtually impossible to discharge an inefficient teacher".

Question 2

The present legislative scheme for termination of continuing contracts of incompetent teachers is perceived by administrators as not having met the intended objectives. Complaints persist that the process is complicated, cumbersome and overly legalistic. Section 123 of the School Act makes no reference to incompetence as a ground for contract termination. The topic is approached only indirectly and frequently unclearly through the regulations previously discussed in this study. Time lines for reporting are complicated and often overlap. At the 1986 annual general meeting of the BCSTA, s. 123 was criticized by the trustees' association for the prescription of a "process of teacher evaluation which not only spans an unrealistic length of time, but also compromises the report writer and the students". Moreover, the association recommended and it was carried that "section 123 of the School Act be modified with the intent of developing an evaluation process which recognizes the interests of the student, teacher and report writer". Similarly, the BCTF at its 1986

annual general meeting also recommended "amendments to section 123(1) to specify that a board may terminate a teacher on the grounds that the teaching performance is less than satisfactory" and that "the substance of present regulation 65 be placed in section 123". At the annual general meeting, the trustees' association advocated the following recommendations: consistency in terms used in reporting procedures by principals and district superintendents; that the terms used be: excellent, very good, good, very satisfactory, satisfactory, fair or poor"; that there be a shorter evaluation time for termination for less than satisfactory teaching performance; and, that there be finer distinctions in teacher evaluation, standard criteria, and that boards designate personnel responsible for evaluation. The trustees reinforced the concept that "an appeal against dismissal of a teacher for incompetence must be judged by a panel of educators, primarily on the basis of educational criteria and established educational practices" and not by lawyers who will focus on legal arguments instead of educational issues. In addition, the trustees' association suggested that "the review commission recommend only on retention or cancellation of teaching certificates, not teacher dismissals".

Neither the Act nor the regulations attempt to define competence. Regulation 65, before allowing termination under s. 123 of the Act, simply requires the filing of three less than satisfactory reports with the board. The British Columbia Principals' and Vice Principals' Association has composed a compendium of recommended practice for the writing of effective reports on teachers that focuses on the legalities of formal report writing and on the use of the report as a vehicle to assist the teacher in the improvement of instruction. The three reports must be issued within a period of 12 to 24 months, a time line that could be frustrated by a teacher who takes a medical leave after one or two less than satisfactory reports.

Moreover, the receipt of the three necessary reports within the prescribed time period is not determinative of the issue of competence. According to the Sederberg court case, the issue of whether the learning situation in the class or classes of the teacher is less than satisfactory, is to be determined by a school board at a hearing under s. 123 and later before a review commission under s. 130. The findings of the three administrators in their reports are not determinative, but rather are one example of evidence to be considered by the board or review commission in their decision making on the competence of the teacher.

Since the issue of competence is to be decided by the board, why must administrators conclude that the learning situation is less than satisfactory on three separate occasions over 12 to 24 months before the issue can be considered by the board? Are the three reports and one year minimum time frame thought to be necessary to protect the teacher against capricious administrators and precipitous dismissals? From a practical standpoint, perhaps the first two reports and time delay are helpful in convincing the incompetent teacher to leave the profession without the embarrassment of being fired.

The teacher is entitled by s. 123 of the School Act to a hearing at which, according to the Sederberg case, the board must reach its own conclusion regarding the competence of the teacher. However, the prospect of school trustees as lay persons reaching a conclusion contrary to the findings of their own professional administrators who reported on the teacher is unlikely. Interestingly, reg. 65 provides the possibility of an alternate procedure for a board who has received three less than satisfactory reports on a teacher that would permit the board to avoid a hearing on the merits of the teacher's competence. That regulation says a board "may recommend to the minister the suspension or cancellation of the certificate of that teacher". The

board then could await the determination of the Minister and if the teacher's certificate is cancelled dismiss the teacher on that ground. There is no evidence that this procedure has ever been followed or that the Minister would accept the responsibility to investigate and rule on the competence of a teacher.

British Columbia legislation is unique in Canada in establishing a review commission as distinct from a board of reference to deal exclusively with teacher competence cases. The commission is comprised of persons actively engaged in education in the province. Unlike the board of reference, the chairman is not a lawyer. Presumably, the theory was that the issue of competence ought to be decided by persons knowledgeable in education who would deal with the issue on a professional and not a legalistic basis. However, an examination of the cases placed before the review commissions since 1972 shows that generally they have not been called upon to make difficult rulings on borderline cases of competence. On the other hand, the hearings before the review commissions have become increasingly more formal from a legal point of view, possibly because of the requirements of natural justice. Case code #8 involved 25 days of bitter argument which had little to do with the issue of competence. After being faced throughout the hearing

with numerous evidentiary and procedural issues raised by legal counsel for the two parties, one of the commissioners in case code #8 recommended to the Ministry that review commissions have made available to them their own legal counsel to advise them on matters of law.

Question 3

Considering there are over 25,000 teachers employed in British Columbia annually, there have been relatively few appeals to the review commission. Further study would be required to determine whether this is because there are very few teachers being terminated for receiving three less than satisfactory reports or whether those teachers who have been terminated are reluctant to appeal. Of the 17 appeals that were initiated, three were brought by vice-principals who had been returned to the classroom. Likely these cases should not have been before the review commission since the right of appeal conferred by s. 130 pursuant to s. 123 of the School Act applies only to a teacher whose continuing contract has been terminated. Moreover, the cases of the three vice-principals did not involve the issue of competence, but rather that of probation and seniority.

The remaining 14 appeals dealing directly with teacher competence were resolved as follows: one was abandoned, four were settled and nine were heard by the review commission. Of those nine cases, only three resulted in a reversal of the termination by the board. Moreover, of the three appeals allowed, only case code #15 was decided primarily on the issue of competence. In case code #15, the review commission found that the teacher's problems with her special class resulted from lack of direction from senior administrators and not from her own incompetence. The other two teachers who were successful on their appeals had not disputed the findings of the report writers who found the learning situation in their classrooms to be less than satisfactory. Rather, the teachers argued, and the respective review commissions agreed, that the school board should have permitted the requested medical leave or transfer.

The review commissions have confirmed the termination of continuing contracts of only six teachers. Those teachers averaged more than 16 years of experience and the least experienced among them had taught for seven years and had a Master of Education degree. Accordingly, it is apparent that "competence" in the context of teacher termination does not involve qualifications, initial certification nor experience.

Rather teacher incompetence might be termed "burn out" that usually manifests itself as the inability to manage or control students effectively.

As has been set out in the findings and illustrated by the tables, teachers in elementary school placed more cases before the review commission and won more cases than high school teachers. The more aggressive high school students' response to an incompetent teacher as compared to that of elementary school students likely contributes to the different resolutions at review commission. While it is interesting that all of the teachers who were successful before the review commission were female, it is difficult to draw any firm statistical conclusions from the results of the review commission hearings because of the small number of cases.

Perhaps the small number of terminations placed before the review commission is not surprising when the entire process is considered. The process of the three less than satisfactory reports, the assistance provided by the board, the hearing before the school board and the appeal to the review commission may take well over two years. The process may be more effective as a deterrent than as a means of resolving disputes. Perhaps the length and the cost of the process may encourage teachers to seek other employment and boards

to "buy out" teachers rather than deal with the issue of incompetence.

It is very instructive to note that until 1979, the year of the Sederberg case in which the board was unsuccessful both before the review commission and before the British Columbia Supreme Court, 12 terminations had been placed before review commissions over five years. In the next five years after 1979 and up to the end of 1985, only five appeals were taken to the review commission and of those, three were settled. Accordingly, it appears that rather than analyzing the Sederberg case to determine the reasons for the successful appeal of the teacher, school boards became scared. In the Sederberg case, the process had proven to be costly, time consuming and embarrassing for the Merritt school board. Czuboka (1986, p. 37) has noted "how an award of a [tribunal] tends to be a sort of certificate of incompetence for the losing party".

The question arises concerning the reason for the confidentiality of review commission reports. The reports of these panels of professional educators who sit in judgment of teachers, administrators and school boards contain comments on standards of competence and the termination process generally. Without question, these reports would be very instructive to all persons involved in education. In order to make available the

reasons given by the review commission in confirming or reversing the action of a board to terminate a teacher contract for incompetence, it would not be necessary to identify the parties involved. The importance of making known the decisions and reasons of the review commissions is particularly apparent in consideration of case codes #9 and #10. Those two cases established important precedents. Despite the fact that three less than satisfactory reports had been issued and were not disputed, terminations were reversed largely because boards did not allow the teachers, respectively, medical leave or transfer that had been requested. The results in these cases did not follow necessarily from the wording of the Act and regulations, but rather on what essentially were policy decisions made by the commissioners. These results should be made known to all school boards.

The apparent tendency of school boards after the Sederberg case to settle cases with teachers by paying them to quit is unfortunate. If this practice becomes widespread, it could have very damaging effects on the process of managing teachers who have received one less than satisfactory report. How would you counsel out of the profession a teacher who realizes that if he "hangs on" until he gets three less than satisfactory reports and becomes an embarrassment to the board, he may be

paid out? In addition, the teacher who has received one negative report may be affected less by incentive to improve and more by the idea that teachers who have received three less than satisfactory reports are not necessarily fired and may receive a pay out to leave. An examination of the review commission cases shows that incompetence in the teaching profession tends most often to involve "burn out" of older experienced teachers. It is clear that more teacher seniority does not necessarily equate with better teaching. Critical consideration perhaps should be given to appropriateness in the public education system of the use of seniority as the single criterion for the re-hiring of layed off teachers during the current era of educational cut backs.

The review commission process is perceived by some administrators as being focused more on legal technicalities than on the substantive issue of teacher competence. However, this is not shown to be the case by an examination of the decision of the review commissions. In each case where a hearing was conducted, the decision of the review commission has been based on the merits of the appeal. The review commissions largely have chosen to ignore irregularities such as the failure of the report

writers on several occasions to use the prescribed "less than satisfactory" wording in the conclusion.

A final point for consideration which was identified by Czuboka (1986) is the question of bias inherent in the establishment of review commissions. The review commission, like any arbitration board, consists of two persons appointed by the respective parties and a chairman appointed independently. The allegation has been made that arbitrators appointed by interest groups are nothing more than advocates for the party who chose them. This suggests that the only decision that really matters is the decision of the chairman. An examination of the review commission decisions shows that of the eleven cases heard, nine resulted in unanimous decisions. Of the two cases involving majority decisions, one favoured the teacher with the dissenting commissioner having been appointed by the trustees' association and the other favoured the board with the dissenting commissioner having been appointed by the teachers' federation.

Question 4

The decisions of the review commissions to terminate a teacher for incompetence according to statute have suggested a standard of competence for

teachers in British Columbia. This standard has been determined in this study by collating administrators' comments from the teacher reports placed before the review commission. Seemingly, if the criteria identified in the teacher reports has been confirmed by the review commission as a description of an incompetent teacher, then, correspondingly, a teacher who positively displays the same behavioural criteria in his learning situation must be competent. These criteria may be of some assistance to administrators in the preparation of statutory reports.

Question 5

Interviews with 10 British Columbia district superintendents or assistant superintendents regarding the termination of teacher contracts for incompetence in their districts provided insight into how administrators functionally manage the presence of incompetent teachers in the public education system. While most districts had policy for principals on the writing of teacher evaluation reports, frequently policy was not explicit and failed to outline a standard process of evaluation or a statement of competence criteria to be evaluated. Even though all districts provided in-service for principals regarding

report writing on teachers, generally administrators described the in-service as inadequate. Given these considerations, it was not surprising that chief administrators often expressed a dissatisfaction with the standard of teacher evaluation reports.

In addition to a general lack of training and the time-consuming process, the review commission record shows that a number of previous administrators who have attempted to use the statutory process for the removal of incompetent teachers have failed at review commission and in one instance, in court. Many chief administrators were unaware of the Sederberg court case and of the important implications for administrators resulting from the court's interpretation of subsection 130(3) of the Act. In particular, this subsection made reference to "the matters referred" to the review commission. The court interpretation of "these matters" included not only the review of the three less than satisfactory reports, but also of any other testimony or evidence considered necessary by the commission to decide on the competence of the teacher before them. If British Columbia administrators were informed of the reasons for judgment in this case, perhaps they would no longer resolve the termination of a teacher contract for incompetence by providing a

monetary settlement to the teacher judged by them to be incompetent.

Instead of risking failure in an attempt to terminate a teacher contract for incompetence according to statute, administrators have chosen alternative methods of teacher removal. While some of these methods are highly creative and may result in the removal of incompetent teachers from the classroom, such an administrative approach represents an abdication of the authorized statutory means to legally remove incompetent teachers from the British Columbia education system. The numerous methods described by administrators account for the removal from the system of a statistically unavailable number of teachers, who may be either competent or incompetent.

Chief administrators explained that principals also were reluctant to write reports because of principals' collegial relationship with teachers on their staff and with the BCTF. However, in the few districts where principals had received extensive in-service on report writing on teachers, chief administrators reported an increase in confidence, in use and in success with the use of the present statutory process to remove incompetent teachers from British Columbia schools. Few administrators clearly understood the legal requirements of the process for

termination of teacher contracts for incompetence. Significantly, those administrators who possessed the greatest understanding of the termination process were the most likely to use that process. Perhaps if administrators generally were more informed about the process, they would be less intimidated by it and less likely to refer to it as cumbersome and overly legalistic. Seemingly then, in addition to changes in the statutory process, changes also are needed in district implementation of the statutory process. For example, while all districts provide assistance to teachers who receive less than satisfactory reports, few districts offer teachers a documented program of help set within a specific time frame.

Many chief administrators offered suggestions for improvement of the legislation. The recommendation to limit the time line for termination of a teacher contract for incompetence to 12 months already is available in the prescribed 12 to 24 month time line. If a specified, documented program of assistance were offered to the teacher immediately following the first less than satisfactory report written by a principal, a 12 month time line can be fair to a teacher. Similarly, a second less than satisfactory report written by an authorized central office administrator issued following the prescribed teacher improvement

opportunity should be sufficient to confirm a rating of teacher incompetence. A teacher leave of absence, if warranted, granted during the termination process could be managed effectively without obstructing the statutory time frame simply by counting into the time line only the actual teaching time. In practice, these changes to the process recommended by chief administrators would limit a teacher who has been rated as less than satisfactory to registering two rather than three years of classes. Such a process would be much easier for administrators to explain to frustrated co-workers and to angry parents than the more prolonged procedure of 12 to 24 months.

Conclusions of the Study

Based on the findings of this study, the following conclusions were reached:

1. The fact that teacher dismissal for incompetence is dealt with at a local district level as a matter of contract termination originates in the 1872 statute. The provincial minister of education always has been responsible for the initial certification of a competent teacher. Apart from the appointment of a review commission to hear reviews of school board contract terminations for incompetence, the minister

has not developed any supervisory role concerning the continuing competence of a teacher.

2. The present process for termination of teacher contracts for incompetence has been in effect since 1972 and consists of three stages: first, the receipt of three less than satisfactory reports by administrators; second, a hearing with the school board; and third, the right of appeal by the teacher to a provincially appointed review commission. At the hearing before the board and the review commission, care must be taken to comply with procedural requirements of the legislation and the common law relating to natural justice. Legislation, in particular the regulations, is in need of clarification on several points.

3. Compared to the number of teachers employed in British Columbia, the incidence of the number of appeals to the review commission is very small. In the cases before the review commission, generally incompetence manifest itself as lack of classroom management and discipline. In the majority of cases, the review commission has affirmed termination decisions of school boards except where those boards, through their administration, failed to provide adequate direction and assistance, or refused medical

leaves or transfers. The involvement of the court is not as an obstacle to the board or the review commission in the termination of incompetent teachers, but rather is a safeguard to procedural fairness for the teacher.

4. There were too few cases before the review commission to reach any firm conclusions respecting a standard of competence determined by that tribunal. The review commission was not called upon to reach a conclusion respecting a definition for incompetence since the issue was not raised. However, analysis of the administrators' reports revealed criteria that may be helpful to administrators in preparing statutory reports.

5. Chief administrators generally do not have an adequate appreciation of the process for termination set down in the School Act and School Act Regulation. Many chief administrators regard the process as being cumbersome, time consuming and overly legalistic. Accordingly, they tend to seek alternate administrative solutions to the problem of incompetent teachers in the classrooms. However, those administrators who have a good understanding of the process are not reluctant to use it and report successful results in employing the process to deal with less than satisfactory teachers.

Recommendations

The recommendations of this study both for action and for further research are listed below.

Recommendations for action. Based on the conclusions of this study, it was recommended that:

1. Administrators should be encouraged to gain a better understanding of all aspects of the statutory procedure for the termination of continuing teacher contracts. Although the requirements of the School Act and School Act Regulation are not set down clearly and consisely, they are comprehensible. The best protection for administrators involved in the termination of teacher contracts for incompetence in British Columbia is to become knowledgeable and confident with the statutory process, evaluation procedures and natural justice requirements.
2. In order to assist and to increase the understanding of administrators and school boards involved in the termination process, the reports of the review commission should be made public, even if the names of the parties involved are deleted.
3. Since the less than satisfactory report is fundamental to successful teacher contract termination

for incompetence, professional development for administrators should emphasize careful preparation of teacher reports. Formal district programs for administrators in teacher supervision and evaluation skills should be developed by professional associations and implemented by a combination of district personnel and experts. This program should be on-going to allow for the development over time of the report writing of administrators. Trustees also should receive in-service in this area in order to better understand the termination of teacher contracts for incompetence. The review commission has given support to the use of the clinical supervision model consisting of the pre-observation interview between the administrator and the teacher, the recorded observation of selected teacher behaviours, and the post-observation interview. This type of model should be mandated in all British Columbia school districts.

4. A re-writing of the statute and regulations should be considered, not only to make reference expressly in the statute to contract termination for incompetence, but also to clarify many of the regulations.

5. Consideration should be given at the ministerial level to alternatives to the present process which would relieve lay school board members from the burden

of the decision to terminate teacher contracts for incompetence. The alternatives could include cancellation of teacher certificates by the minister or suspension of membership in the BCTF. Either alternative would result automatically in the termination of employment. Moreover, such an alternative might permit the issue to be dealt with on a more professional level without requiring individual school boards to underwrite the cost of lengthy hearings not only by itself, but also before the review commission. The questions are: Is competence a matter which is best dealt with by the minister of education as a matter of certification; by a professional association in which one's peers would be responsible for standards of conduct and competence; or as is, by a politically elected school board comprised of lay persons?

Recommendations for further research

1. Further study should be conducted to assist in evaluating the effectiveness of the present process by determining the number of teacher contract terminations throughout the province after the receipt of three less than satisfactory reports and of the number of teachers

taking leaves or retiring from the profession after the receipt of one or two less than satisfactory reports.

2. Further study should be done on standards of competence for teachers in British Columbia.

3. Further study should be done of the views of various interest groups such as the BCTF, the BCSTA, the British Columbia Superintendents' Association, the British Columbia Principals' Association and Parents' Associations to obtain their recommendations for legislative amendments.

4. Further study also could be done of how chief administrators in British Columbia manage the presence of incompetent teachers.

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British Columbia Arbitration Hearing

In the matter of the layoff of Roger Callow: West Vancouver Teachers' Association v. The Board of School Trustees of School District No. 45 (West Vancouver), Victoria, B.C., January 28, 1986.

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