UNIVERSITY OF SASKATCHEWAN

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THE LEGAL RIGHTS, PRIVILEGES, AND RESPONSIBILITIES
OF PUPILS
IN THE PUBLICLY-SUPPORTED SCHOOLS OF SASKATCHEWAN

A Thesis
Submitted to the Faculty of Graduate Studies
in Partial Fulfilment of the Requirements
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by
Ivan Leland MacKay

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CHAPTER I

THE PROBLEM AND THE PROCEDURES USED IN THE STUDY

Introduction

The complex nature of modern school administration requires all school personnel to have a fundamental knowledge of school law, so that they may carry out their duties in an adequate manner. Bolmeier, in reference to this aspect of school administration, has stated:

Since the public school is a creature of law, all school administration has legal ramifications. Presumably all school administration is performed within a legal framework. The legality of every act of the school board, the superintendent, the principal, or the teacher, is dependent on its conformity with expressed or implied constitutional and statutory provisions . . . .1

Every day, teachers, administrators and other school personnel must act upon matters that relate to the welfare of their pupils. Many of these actions require decisions which involve legal principles. If these decisions are contested from the legal standpoint, delays in initiating policies occur and litigation may result. The subsequent litigation and the accompanying delay may prove to be expensive; and the proposed program designed to benefit the pupils may suffer irreparable damage.

In discussing the formulation of educational decisions, Reutter has this to say:

There is a legal ingredient in almost every educational decision—whether it involves punishing a pupil, requiring a pupil to take a course, operating a school cafeteria, employing a teacher... or reciting theLord's Prayer in school. In some situations the legal ingredient is the crucial factor; in others it is relatively insignificant. This involvement of the law is similar to that of other facets which should be considered before taking educational action—consideration in such areas as psychology, teaching methods, sociology, and community relations.²

Although it is recognized that a fundamental knowledge of school law is required for effective decision-making, this area of administrative knowledge is often disregarded. Leipold, in reference to this deficiency, states:

There is probably no area of an administrator's work that is of greater importance but of which frequently he has less knowledge than that of school law.³

Reutter, in support of this view concludes:

No other important aspect of public school enterprise has been so much neglected as relationships of education with law. The reasons for this appalling gap probably can be explained but the situation itself cannot be condoned.⁴

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⁴Reutter, op. cit., p. 441.
It is apparent that the frequent omission of the legal ingredient in administrative decisions is caused, in part, by a groundless fear of the term "law." The average individual often envisages "law" as a confusing body of rules couched in obscure terminology liberally sprinkled with Latin phrases. This bewilderment is somewhat increased by provincial statute books which contain a heterogeneous collection of abstractions, making it exceedingly difficult to locate pertinent legislation readily. One must remember, of course, that laws pertaining to the school are embodied in several legislative Acts and amendments which have been enacted by the legislature from session to session. Acts of the legislature are published as they become law, and as a consequence, statutes relating to school law are scattered throughout the statute books.

Administrators in some cases tend to maintain a naive unawareness of the legal aspects of educational decisions, simply because there has been a lack of recent "trouble" of a legal nature in connection with their activities. On the other hand, some individuals possess an exaggerated opinion of their knowledge regarding educational law and imply that specific answers may be given to complex legal questions. Misconceptions such as these are not only unbecoming to

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5Leipold, loc. cit.
individuals in responsible positions, but they are extremely dangerous.\footnote{Reutter, \textit{op. cit.}, p. 441.}

To provide an enlightened citizenry, publicly-supported schools exist in a democratic society. The chief responsibility of every individual associated with public education is to provide the pupil with the most effective educational programme possible under the existing conditions. A sound knowledge of the legal rights and responsibilities of the pupil in the publicly-supported school is basic to the formulation of decisions that ensure maximum benefit for the pupil.

\textbf{General Statement of the Problem}

The term "law," in the broad sense, denotes the body of legal rules that emanate from all sources. Consequently, law is concerned not only with statutory enactments, but also with constitutional provisions and judicial decisions.

The effective school administrator must possess a knowledge of substantive law if he is to make sound decisions. However, a knowledge of the statutory provisions alone will not suffice. The statutes may be silent in certain areas, while they may be vaguely expressed in other areas. In such cases the courts may be called upon for interpretations. The accumulation of judicial interpreta-
tions concerning educational issues serves as a set of legal principles to guide school officials in the effective performance of their duties.

This study has been designed to synthesize legal data for use regarding problems in the areas of legal rights, privileges, and responsibilities of pupils in the publicly-supported schools of the Province of Saskatchewan, as they have been determined by legislation, statutory regulations, ministerial orders, and court decisions.

**Delimitation of the Problem**

It is not the writer's purpose to attempt to cover every conceivable problem which could arise regarding the rights, privileges, and responsibilities of pupils in the publicly-supported schools of Saskatchewan. Even if it were possible to foresee all problems that might conceivably arise concerning the subject, the changing philosophies of parents, teachers, school boards, courts, and society in general, would tend to invalidate many of the conclusions. Each legislative session produces new laws in an attempt to meet prevailing needs and to seek solutions for existing problems. These laws in turn undergo change through legislative amendment and through judicial interpretation.

The specific purposes of the study are:

(1) to determine the legal rights and responsibilities of the pupil in the publicly-supported schools of
Saskatchewan through an examination of the pertinent legislative enactments, statutory regulations, and ministerial orders;

(2) to synthesize the court decisions affecting the legal rights and responsibilities of the Saskatchewan pupil and to express in layman's terms the general principles involved in these decisions;

(3) to develop a set of recommendations that may assist the school administrator in reaching legally-sound decisions regarding the public school pupil of Saskatchewan.

The Procedure of the Study

To determine the statutory rights, privileges, and responsibilities of the pupil in the publicly-supported schools of Saskatchewan, the following statutory authorities have been examined:

1. Great Britain Statutes at Large;
2. Statutes of Canada;
3. The Ordinances of the North-West Territories;
4. The Revised Statutes of Saskatchewan, 1953 and amendments to 1963;
5. Regulations under the Statutes of Saskatchewan, 1944;

The determination of the legal rights, privileges, and responsibilities of the pupil, as interpreted by court
decisions, necessitated a review of all relevant reported court cases originating in Saskatchewan. Cases that have been ruled upon in other provinces that have statutory provisions similar to those presently in effect in Saskatchewan were also considered. Legal decisions rendered in British and American cases are considered only where a comparison or contrast with Canadian cases serve to clarify the understanding of a legal principle formulated in Canada or where such decisions served as precedents in Canadian cases.

To determine the legal principles that have emerged through court decisions, the reports of relevant cases that have originated in Canada have been examined in the various law reports.

Definition of Terms

Legal terms which are used generally throughout the study are defined under this heading for the reader's convenience. These terms are construed in the general way, with no unusual meanings attached to them. Where specialized terms are used they will be defined at the point of usage in the writing.

The sources consulted for the legal definitions that appear below are the following:

3. J.B. Saunders, Ed., Mozley and Whiteley's Law

Case law. This is the aggregate of reported judicial decisions that forms a body of jurisprudence, as distinguished from statutes and other sources of law.

Common law. As used in contradistinction to statute law, it denotes the "unwritten" law, whether legal or equitable in its origin, which does not derive its authority from any express declaration of the will of the legislature. Its authority is dependent upon the recognition given by the courts to principles, customs, and rules of conduct previously existing among the people. This "unwritten" law has the same force and effect as the statute law.

Equity. This denotes a part of general law, as opposed to what is called the common law. The distinction is purely historical, and arose from the fact that in former times the common law courts provided inadequate or no remedy in many cases where one was required. Hence, the custom grew up of applying for redress in such cases to the King, who referred the matter to the Lord High Chancellor. The Chancellor, being an ecclesiastic, and keeper of the king's conscience, did not feel bound to follow the technical rules of common law, but gave such relief as he thought the petitioner entitled to "in equity and good conscience."

This gave rise to a separate body of principles known as the doctrines of equity which were applied in the Court of
Chancery. Today this duality of courts has disappeared and both law and equity are administered in the same courts, but the rules of common law and the doctrines of equity remain somewhat distinct.

Natural law. Natural law is concerned with the rules derived from God, reason, or nature, as distinct from man-made law. It is intended to denote a system of rules and principles for the guidance of human conduct which, independently of enacted law or of the systems peculiar to any one people, might be discovered by the rational intelligence of man, and would be found to grow out of and conform to his nature, meaning by that word his whole mental, moral, and physical being.

Positive law. This is law actually and specifically enacted or adopted by proper authority for the government of an organized society. It may be written or unwritten. The rules of conduct are laid down and enforced by sanctions as distinguished from such entities as the "law of nature," which is merely a series of propositions as to what the law ought to be.

Statute law. This is a law enacted and established by the will of the legislature.

Precedents. A judicial precedent is a judgment or decision of a court of law cited as an authority for deciding a similar state of facts in the same manner, or
possibly on the same principle, or by analogy.

**Injunction.** An injunction is a prerogative writ which was formerly issued by a court of equity, at the suit of a party complainant, directed to a party defendant ordering him to cease doing that which he is threatening or attempting to do, or restraining him in the continuance thereof. Today this writ is obtainable in any common law court.

**Mandamus.** A mandamus is a prerogative order issued from a court and directed to a private or municipal corporation commanding the performance of a particular act therein specified, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived. Mandamus is remedial and is issued to compel action and redress past grievances.

**Organization of the Study**

Several difficulties have been encountered in organizing the study. Certain topics cut across more than one area and this led to the problem of deciding to which chapter the topic should be allocated. For example, liability for injuries sustained in transportation conceivably could be included in the chapter on special services which includes transportation. The writer decided, however, to devote one chapter exclusively to the various aspects of liability arising from negligent acts.

Another problem arose concerning the placement of
case material. The pertinent cases could be considered at the end of the chapters and the legal principles emerging from the cases could be summarized at those points. The writer believed that the continuity would be enhanced by including the reported case material within the various topics as this would serve to keep the statutory material and the case material in proximity. The legal principles arising from the cases are summarized at the conclusion of each of the various chapters.

The organization of the study is as follows:

Chapter 2: A review of the literature.

Chapter 3: A consideration of the legal authority in the public education system of Saskatchewan.

Chapter 4: An examination of the legal foundations of public education in Saskatchewan. This includes a consideration of compulsory attendance laws and related topics.

Chapter 5: A study of the legal implications in regard to the teacher and the pupil.

Chapter 6: An examination of the provisions established to safeguard the health and physical well-being of the pupil.

Chapter 7: A study of the special services provided for the benefit of the pupil, including provisions for the atypical pupil.

Chapter 8: An examination of the school curriculum.
Chapter 9: An examination of teacher and trustee liability with respect to the pupil.

Chapter 10: A set of conclusions regarding the legal knowledge requirements of school personnel and recommendations which, if implemented, would assist educators in determining the law as it relates to the school.
CHAPTER II

REVIEW OF THE LITERATURE

There have been several books and many articles written on general public school law and on specific areas of school law. In recent years there have been several worthy contributions by Canadian writers, but for the most part available books and articles emanate from American sources.

School Law in General

American contributions to the field of general school law includes works by Brickman, who assails lawmakers for the prevalence of hastily-made, ill-conceived laws and for the tendency of lawmakers not only to lay down policy but to specify details, leaving little to the judgment of men who have been trained to administer the schools. ¹

The aspects of school law that should be known by school personnel are stressed by Bolmeier. These aspects include: (1) the nature and legal sources of public school control, (2) the legal principles applying to current school issues, and (3) existing school law codes. ²


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Woods asserts that there are two types of law that govern the operation of schools. One type is the statutes and court decisions and the other is the mores, traditions and customs found in all communities. Of these two types, it is maintained that the mores, traditions and customs are the stronger. The one type is set off against the other and gradually the deliberate will of the people prevails. This leads to stability, because it is the growth of centuries, and to progress, because it is constantly being revised by the people.\(^3\)

Bolmeier and Hopkins assert that all school laws enacted by legislatures have some bearing on school administration, and that the proper application of a legal principle for the welfare of the school and the pupil is more important than the mere understanding of the legal principle.\(^4\)

The dual function of law as an instrument of social stability and social adaptation is dealt with by Edwards.

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He maintains that common law is by no means static, but that it is characterized by a much higher degree of stability than is statutory law. 5

Cases that involve segregation, tort liability, and released-time issues are cited by Garber to show that the United States Supreme Court is not necessarily bound by precedent and that law founded by judicial pronouncements is not changeless. 6

Hamilton and Mort consider all aspects of school law and cite many cases in each area. They endeavor to show that the conceptual design (purposes to be achieved) in education is at any one time internally consistent but the structural pattern, which is the current form of government, is always in flux and lagging behind. 7

Kalven deals with the great dependence of education on law. He asserts that the vast enterprise of education is dependent upon a legal rule—the rule making a minimum of education compulsory for every child. This basic rule,


which executes society's commitment to equality of opportunity among the young, has led to the resolution of many great public issues in courts of law. The result has been to produce within the law, in the form of judicial opinions, a collection of essays on issues of public policy.\(^8\)

The lack of knowledge of school law by school personnel is deplored by Leipold, who enumerates the following four elements that are required for a sound knowledge of school law: (a) knowledge of the general principles of law; (b) knowledge of the school legal code; (c) understanding of court cases; and (d) knowledge of opinions of school officials.\(^9\)

Remmlein deals with teacher personnel and pupil personnel in relation to each other and to governing bodies. Consideration is also given to federal aid to education in relation to the conflicting Hamiltonian and Madisonian views


concerning implied powers of Congress as contained in the "General Welfare Clause" of the United States Constitution.\textsuperscript{10}

The four possible legal situations which may prevail in terms of a specific item of concern are identified by Reutter. These situations include: (a) the "thing" must be done; (b) the "thing" cannot be done; (c) the "thing" is specifically permitted at the option of someone or somebody; and (d) the law is silent upon the matter. The latter situation is most common.\textsuperscript{11}

Roach maintains that liberal interpretation of school statutes is necessary for the following reasons: (a) a strict interpretation of the vague, confusing, conflicting, and constantly changing statutes would hamper the public schools system; (b) laws for the conduct and government of schools should be construed so as to produce the beneficial purposes intended by them; and (c) administration of school matters rests in the hands of well-meaning laymen, not learned in law. Consequently, substantial compliance with the intent of each act, when and if ascertainable, rather


than technical compliance should be sufficient.\textsuperscript{12}

**Legal Aspects of Teacher-Pupil Relationships**

The daily direct teacher-pupil contact leads to numerous situations which have legal ramifications. Cohler\textsuperscript{13} and Galfo\textsuperscript{14} emphasize the importance of teacher-made decisions regarding the pupil being based on the soundest educational procedure for the situation at hand. In order to determine the soundness of an educational procedure one must know its legal status. Both writers provide recommendations for legally-sound decisions regarding educational tours, special dismissals, special assignments, pupil traffic control, pupil supervision, and related topics.

Leipold considers decisions which have helped to establish some of the common law principles in effect today in the United States. He concludes that these decisions will undoubtedly help establish patterns to be followed in

\footnotesize{


\textsuperscript{14}Armand Galfo, "Keep Your Staff Out of Court," \textit{Overview}, 2:54-5, April, 1961.}
the future.  

The value of in-service legal training in helping teachers to avoid exposing themselves to court action is considered by Remmlein. Compulsory attendance laws and their exceptions, corporal punishment, pupil suspension and exclusion, and pupil injury are discussed from a legal standpoint.  

The statutory rights and responsibilities of the public-school child of Illinois have been incorporated with the pertinent case law principles by McClure.  

**Legal Aspects of Pupil Transportation**  

The legal aspects of pupil transportation have received greater attention in recent years, owing to the increased formation of larger units of school administration. School officials and others connected with pupil transportation are advised to be thoroughly familiar with the statutory provisions as they apply in their respective areas. Several judicial aspects of pupil transportation

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including authority to provide transport, distance limitations, transport of the physically handicapped, transportation insurance, and negligence arising out of pupil transportation have been considered by Bolmeier, Galfo, Garber, and Punke.

The Tort of Negligence

As enrolments in the publicly-supported schools increase and as curricular and extra-curricular programmes become more diversified there is an accompanying increase in the number of lawsuits in which school personnel and officials face charges.

Liability arising out of improper treatment of pupil injury, liability for defamation, pupil insurance, the changing concept of tort immunity, and the trend toward enacting "save-harmless" statutes have been dealt with by

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Legal Aspects of School Board Operation

The efficient administration of publicly-supported schools requires that all school personnel have a knowledge of school law. Several books and articles concerning the legal implications involved in school board decisions have appeared.

Hamilton and Reutter cover the entire field of school


board operation from the legal standpoint. Included in the aspects covered are the school board's legal authority in relation to the pupil, the teacher, and to other employees, as well as the board's legal authority in regard to buildings, finance and transportation.\textsuperscript{27}

Garber contends that the worthiness of any objective does not justify an action by a public body, such as a school board, unless the power to carry out the action is provided for by statute or implied therein. Hence, it is imperative that school boards employ competent legal advisers and follow the advice provided.\textsuperscript{28}

Roach declares that local school boards are granted ministerial and discretionary powers by statutory provision. The major portion of the board's authority is discretionary in that subjective judgments must be exercised. Restrictions by the courts have come to be limited almost exclusively to instances where the board's action was adjudged to be (a) unreasonable, (b) in violation of existing law, and


\textsuperscript{28} Lee O. Garber, "School Board's Authority Limited to Powers Granted by Statute," \textit{Nation's Schools}, 63:102, 104, April, 1959.

\textsuperscript{28} "Why Schools Should Find a Competent Attorney--and Follow His Advice," \textit{Nation's Schools}, 63:64-6, August, 1961.
(c) a clear abuse of discretionary power. As a general rule, the courts do not interfere with a board's exercise of discretionary authority, even though the board's judgment, as adopted, may appear unwise.²⁹

Legal Aspects of Corporal Punishment

The necessity of local authorities to formulate rules and regulations for governing public schools is not questioned, but the reasonableness of a rule and the actual enforcement of a rule is often questioned.

Punke³⁰ and Roach³¹ conclude that courts usually uphold teachers in their attempts to secure appropriate student behavior. Cases are cited by both writers, however,


in which the courts felt that the behavior of the pupil was not so serious as to require him to receive corporal punishment. They emphasize that excessive or malicious punishment amounts to assault and battery and is thus, a criminal rather than a civil offence.

The Legality of Religious Teachings

Garber has dealt with the recent United States Supreme Court decision barring the reading of the Bible and the recitation of the Lord's Prayer in the public schools. The Court stated, however, that the decision would not affect the study of the Bible or the study of religion provided it was presented objectively as part of the secular curriculum.32

"Child Benefit" Rulings

Allen and Marshall have dealt with the "child benefit" principle which holds that certain kinds of public aid to children attending sectarian schools in the United States are permissible. Cases in this category that have reached the state appellate courts since 1930 disclosed an acceptance of this principle to 1947 and a reversal of this trend

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from 1947 onward.33

The Legal Status of Married Pupils

Consideration of the status of married students in attendance at public schools has been given by Matthews34 and Roach.35 Both writers conclude that marriage per se is not sufficient grounds to bar a student from attending a public school in the United States. Married students may be temporarily excluded in states that grant local school boards the statutory right to suspend pupils when the progress or efficiency of the school makes it necessary.

Pledges of Allegiance

Pleasants deals with two cases involving children who, for religious reasons, refused to salute the American flag. In the earlier case (1940) the United States Supreme Court ruled for the state. In the later case (1942) the Court ruled against the state.

The issue in the first case was concerned with the defendants being deprived of their liberty without due process as guaranteed under the Fourteenth Amendment. The


issue was somewhat different in the second case as it hinged around the First Amendment which forbids Congress passing any law respecting the establishment of a religion or prohibiting its free exercise.  

School Law in Canada

Sources of information on Canadian school law are few in number, but in recent years there have been several worthy contributions. Some of the works have been concerned with broad legal areas on a national scale, some have dealt with broad legal areas on a provincial basis, while others have dealt with one specific aspect of school law.

Bargen is concerned primarily with case law as it applies to the Canadian public school pupil. Representative cases from the various provinces are cited. Compulsory attendance, educational rights, admission requirements, religious instruction, language use, patriotic exercises, pupil control, corporal punishment and negligence are included in the study.

Enns deals with the legal status of the Canadian public school board. Relevant cases are considered and the

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general legal principles involved are drawn from them in such areas as: (1) internal regulations, by-laws, meetings, powers and duties of the board as a corporation; (2) board-
municipal and board-pupil relations; (3) finance, buildings and contracts; and (4) liability in contract and personal liability.  

Keith has written on the legal status of the school board in New Brunswick. Statutory law and case law are considered in this work. Areas covered include the following: (1) the board as a quasi-municipal corporation; (2) finance; (3) buildings and sites; (4) contracts; (5) board-pupil relations; and (6) board-teacher relations.

Lamb has considered the legal liability of school boards and teachers for accidents. The general basis of liability, school board liability and teacher liability are covered. Numerous cases are cited and various sections of provincial statutes are quoted throughout.

An older work pertaining to aspects of Saskatchewan

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school law was written by Ball and Reid. This work was intended for use by trustees and teachers to assist them in solving practical, oft-occurring problems. A feature of this book is a long series of questions and answers at the conclusion of each chapter.\(^{41}\)

Toombs, in his work on the control and support of public education in Saskatchewan, has dealt quite extensively with the religious and language issues which have influenced the administration of publicly-supported schools.\(^{42}\)

The structure and design of education in Canada is compared with its American counterpart by Byrne. Constitutional authority of State and Province, relations with federal authority, relationship to local authorities, federal decentralization, and the structures of school administration are considered in the comparison.\(^{43}\)

The regulations of the Saskatchewan Department of Education concerning school bus operation with comments on

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general safety precautionary measures are dealt with by Logie.\textsuperscript{44}

The recommendations of the Alberta School Bus Operation's Committee which looked into all aspects of pupil transport after the Lamont accident are discussed by Nuttall.\textsuperscript{45}


CHAPTER III

LEGAL AUTHORITY IN THE SASKATCHEWAN EDUCATIONAL SYSTEM

The Fathers of Confederation chose a federal system of government for the new Canadian nation. This system was selected to effect a compromise between the desires of the various provinces to share their common interests and at the same time to maintain their identity and a large measure of their independence. This dual form of government was designed to reconcile unity with diversity.\(^1\)

In this federal system the broad powers of government are distributed between the federal government in Ottawa and the governments of the various provinces. In such a federation each of the governments, federal and provincial, is supreme within its own sphere, neither being subordinate to the other. Consequently, in Canada the Dominion Parliament has authority over matters of national importance, while the provincial legislatures have control over affairs more local in nature.\(^2\)

In introducing the British North America Act in the House of Lords, Lord Carnarvon, the Colonial Secretary,


expressed the federal aspect in the following words:

The object in view is to give to the central government those high functions and almost sovereign powers by which general principles and uniformity of legislation might be secured in those questions that are of common import to all the Provinces, and at the same time retain for each Province so ample a measure of municipal liberty and self-government as will allow them to exercise with advantage to the community.3

The distribution of powers and authority between the central government on one hand, and the provincial governments on the other is the most important aspect of a federal system. This distribution was written into the Constitution in an attempt to settle all later conflict regarding governmental authority.4

The Constitution of Canada is not, as some people may think, one comprehensive document. It is true that the British North America Act, 1867, and its amendments are of fundamental constitutional importance, but these alone are not the constitution. These are merely the written portion of the constitution. The unwritten portion of our constitution includes principles of common law; British and Canadian Acts of Parliament and orders-in-council; judicial interpretations of the written constitution and of other laws; and


4Corry and Hodgetts, op. cit., p. 553.
various conventions that have emerged through custom or usage.\(^5\)

In Canada education is a provincial function based on law. In the case of Saskatchewan, this law is contained in the written and unwritten portions of the Constitution of Canada; in certain statutes enacted by the Legislative Assembly of the Province of Saskatchewan, and in the regulations under the provincial statutes.

Although the provincial government has been given authority over education by statute, the local and federal governments are also involved. The provincial authorities, by instituting a decentralized system of administration, have granted much control over educational matters to the local school boards. The federal authority has maintained the prerogative concerning the assertion of denominational school rights.

The federal system of government, with its several local governing units each with separate powers apart from those of the central government, results inevitably in a conflict of powers between the various levels of jurisdiction. This constant clash of powers leads to a continuous demand for the services of the courts to render decisions on

jurisdictional questions. The courts, acting as impartial arbiters, may interpret legislation or rule upon its constitutionality.

Federal Authority

Supreme authority over education, with the one reservation concerning denominational school rights, was granted to the provinces under Section 93 of the British North America Act, 1867. This very important section referring to education reads as follows:

93. 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:

2. All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:

3. Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority

Ibid., p. 143.
of the Queen's Subjects in relation to Education:

4. In case any such provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section.  

The constitutional statute enacted by the Parliament of Canada to create the Province of Saskatchewan protected the rights of the citizens to sectarian education by including in Section 17 of the Saskatchewan Act, 1905, provisions similar to Section 93 of the British North America Act. This section reads as follows:

17. Section 93 of the British North America Act, 1867 shall apply to the said province with the substitution for paragraph (1) of the said section 93 of the following paragraph:

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the North-West Territories passed in the year 1901 or with respect to religious

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7Great Britain Statutes at Large, 30 & 31 Victoria, c. 3, s. 93, 1867.
instruction in any public or separate school as provided for in the said Ordinances.

(2) In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29 or any Act passed in amendment thereof or in substitution therefor, there shall be no discrimination against schools of any class described in the said chapter 29.

(3) Where the expression "by law" is employed in paragraph (3) of the said section 93, it shall be held to mean the law as set out in the said chapters 29 and 30; and where the expression "the Union" is employed in the said paragraph (3), it shall be held to mean the date at which this Act comes into force.\(^8\)

The sections of chapters 29 and 30 of the Ordinances of the North-West Territories (1901), that are pertinent to this study, read as follows:

137. No religious instruction, except as herein-after provided, shall be permitted in the schools of any district from the opening of such school until one-half hour previous to its closing in the afternoon, after which time any such instruction permitted or desired by the board may be given.

It shall however, be permissible for the board of any district to direct that the school be opened by the recitation of the Lord's Prayer.\(^9\)

138. Any child shall have the privilege of leaving

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\(^8\) Statutes of Canada, 4 & 5 Edward VII, c. 42, s. 17, 1905.

\(^9\) Ordinances of the North-West Territories, Edward VII, c. 29, s. 137, 1901.
the school-room at the time at which religious instruction is commenced, as provided for in the next preceding section, or of remaining without taking part in any religious instruction that may be given, if the parents or guardian so desire.10

139. No teacher, school trustee, or inspector shall in any way attempt to deprive such child of any advantage that it might derive from the ordinary education given in such school, and any such action on the part of any school trustee, inspector, or teacher shall be held to be a disqualification for and voidance of the office held by him.11

8. In cases where separate school districts have been established whenever land is held by two or more persons as joint tenants or tenants in common the holders of such property being Protestants and Roman Catholics they shall be assessed in proportion to their interest in the land in the district to which they respectively are ratepayers.12

The Saskatchewan Act, 1905, by which Saskatchewan became a province, is a constitutional statute of the Parliament of Canada. A constitutional statute such as this cannot be amended by the Canadian Parliament which enacted it. It may be amended only by the Legislature of Saskatchewan. This power of constitutional amendment is granted exclusively to the province under Section 92 (1) of the British North America Act which reads as follows:

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the classes of subjects next hereinafter enumerated,

10 Ibid., c. 29, s. 138.
11 Ibid., c. 29, s. 139.
12 Ibid., c. 30, s. 8.
that is to say,—

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor. ¹³

This would suggest that the Saskatchewan Legislature could, if it so desired, legally enact legislation of a discriminatory nature. Although the Legislature does have the power to enact constitutional amendments, the Federal Government retains the authority, under Section 56 and extended under Section 90 of the British North America Act, to disallow any provincial legislation which it deems to be detrimental to the general interests of Canada, or which it considers to be contrary to the provisions of the British North America Act. The Sections of the Act that provide for federal disallowance of provincial legislation read as follows:

56. Where the Governor General assents to a Bill in the Queen's Name, he shall at the first convenient Opportunity send an authentic Copy of the Act to one of Her Majesty's Principal Secretaries of State, and if the Queen in Council within Two Years after Receipt thereof by the Secretary of State thinks fit to disallow the Act, such Disallowance (with a Certificate of the Secretary of State of the Day on which the Act was received by him) being signified by the Governor General, by Speech or Message to each of the Houses of the Parliament or by Proclamation, shall annul the Act from and after the Day

¹³Great Britain Statutes at Large, 30 & 31 Victoria, c. 3, s. 92, 1867.
of such Signification.\textsuperscript{14}

90. The following Provisions of this Act respecting the Parliament of Canada, namely,--the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved,--shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant-Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province of Canada.\textsuperscript{15}

This general and unqualified power of the federal cabinet to disallow any provincial act within one year of its receipt in Ottawa was originally intended to exercise a careful control over the enactments of provincial legislatures. For several years after Confederation this power of disallowance was frequently used by the Dominion Government to veto provincial legislation, but by the turn of the century it was rarely exercised. From 1867 to 1963 the Dominion has disallowed 112 provincial acts. Of these, sixty-six were disallowed in the period 1867-1896, thirty in the period 1897-1920, and sixteen in the period 1921-1963. There have been no disallowances in the past twenty years.\textsuperscript{16}

\textsuperscript{14}Ibid., c. 3, s. 56.
\textsuperscript{15}Ibid., c. 3, s. 90.
In recent times it has been usually left to the courts to decide whether provincial legislation is *ultra vires*. However, the power of federal disallowance still exists and it is not likely that a provincial legislature could enact discriminatory legislation without interference from the federal government through its power of disallowance.

The Dominion possesses another potential control over the province through the office of the Lieutenant-Governor. The Lieutenant-Governor, a Dominion officer, under the authority of the **British North America Act**, may "reserve" provincial bills for the consideration and approval of the Dominion Government. The reservation clause of the **British North America Act** reads as follows:

55. Where a Bill passed by the Houses of the Parliament is presented to the Governor General for the Queen's Assent, he shall declare, according to his Discretion, but subject to the Provisions of this Act and to Her Majesty's Instructions, either that he assents thereto in the Queen's Name, or that he withholds the Queen's Assent, or that he reserves the Bill for the Signification of the Queen's Pleasure.17

Section 55, which refers to the Governor General, is extended by Section 90 to include the Lieutenant-Governor in reference to provincial legislation.18

Any bill reserved does not become law if the Governor

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17 *Great Britain Statutes at Large*, 30 & 31 Victoria, c. 3, s. 55, 1867.

18 *Supra*, p. 38.
General in Council withholds its assent. Of some seventy bills that have been reserved, fourteen eventually were approved and became law. The most recent case of a bill being reserved was in 1961 when the Lieutenant-Governor of Saskatchewan exercised this power.¹⁹

**Provincial Authority**

There are no constitutional restrictions placed upon the exercise of sovereign power over education by the provincial legislature, except the restrictions protecting denominational rights. The legislature is itself a constituent assembly, which enjoys sovereign power over education within the constitutional framework that grants to it its legal existence as a governing authority.

By virtue of the exclusive grant of power bestowed upon the provinces under section 93 of the *British North America Act*, the Saskatchewan Legislature has determined the educational structure of the public schools within the province. The system of administration is for the most part decentralized, although in some respects it is highly centralized. Much of the control over educational matters has been delegated by statutory enactments to the local board of school trustees. The administrative authority in such areas as teacher training, teacher certification,

curricula and textbook authorization, however, is vested in the Department of Education, the central authority.

Under the authority conferred upon it, the provincial government has enacted a series of statutes setting forth the powers and duties of educational authorities of the province to provide direction in the operation of schools. Included among these statutes is The School Act under which school districts come into existence, provisions are made for the election of trustees, the powers and duties of trustees are laid down, the rights and powers of ratepayers are defined, the rights and duties of teachers and pupils are set forth, and general provisions are made for the administrative and academic machinery for the public education of the children of the province. The Larger School Units Act, The Secondary Education Act, The School Attendance Act, The School Grants Act, The Vocational Education Act, The School Assessment Act and several other acts are also designed to set forth the various powers and duties of educational authorities.

This legal framework is supplemented by regulations, under several of the Statutes. These regulations are provided for by law and are given effect by Orders in Council. They are designed to cover details of administration which cannot be readily laid down in legislation. This allows for some flexibility in administrative procedure in that the
regulations may be readily adjusted to meet changing conditions. The regulations are subject to review by the Legislature which might be said to guarantee that the final authority for them will rest with the electorate of the province.

The provision and control of education is a provincial responsibility. In an effort to carry out effectively this responsibility for providing education at public expense for the pupils of the province, certain powers and duties have been delegated to local authorities, while others have been retained by the central authority. Notwithstanding the fact that certain powers have been delegated to local governing bodies, the ultimate responsibility for education remains a provincial function.

Local Authority

As previously noted, the province enjoys, within its constitutional framework, sovereign power over education. The British North America Act, under Section 92, awards exclusive powers over "municipal institutions" and matters of "a merely local or private nature" to the provincial legislature. Consequently, local governing bodies, including school boards, derive their legal function from provincial authority.\(^{20}\) It is apparent them, that local educational

\(^{20}\) Dawson, Democratic Government in Canada, pp. 116-118.
authorities are in reality administrative agents for effecting provincial control of education because the ultimate decisions affecting the control of schools lie within the prerogatives of the provincial legislature. The legislature may exercise its constitutional power to reorganize the structure of school government, to increase or decrease local responsibility, or to eliminate it completely, creating a system administered directly by the central authority. Although tradition and custom combine to protect the integrity of local school government, its existence is dependent upon the legislative branch of the provincial government. 21

Ultimate provincial control, however, does not of necessity involve direct provincial control in any specific area. The province may delegate its authority, in whole or in part, to local authorities created by it for purposes of such administration. In this respect, local school boards have been provided for and their powers and duties have been defined in the statutes. This provision is justified by the common belief by members of our democratic society, that some measure of local control is required for efficient school operation.

School boards, as agents of the province, acting within statutory limitations, are empowered to formulate policies which have the force of law and constitute part of the legal framework within which public schools operate. The powers assigned by statute to the local school boards are either ministerial or discretionary in nature. Ministerial-type powers are those which neither permit nor require the exercise of subjective judgment by the board. Discretionary-type authority is involved when considered judgment of a board is involved in determining the manner of degree in which one of its powers or responsibilities is to be exercised.\(^{22}\) The dual aspects of the school board in that it is legally responsible to the province while it is practically responsible to the residents of the school district, occasionally causes misunderstandings between board members and district residents when the board exercises its discretionary powers.

The exercise of discretionary powers by the board is restricted only by statutory limitations and courts do not interfere with the board's exercise of this authority, even though the board's judgment as adopted, may appear to be unwise. This position, generally taken by the courts, was

stated quite clearly in an Ontario case in 1912. The school board decided to establish and maintain a continuation school and requested the council to raise a sum of money for that purpose. The council felt that a majority of the rate-payers were opposed to the establishment of such a school and refused to raise the desired sum. The board applied to the Court for a mandamus to compel the council to raise the amount requested. In his judgment granting the writ of mandamus, Middleton, J., said:

This is an unfortunate contest between a municipal council and a school board, in which the council, quite forgetting the limitation of its sphere, seeks to reverse the action of the school board and to protect the rate-payers from the action of that board. . . .

Nothing can be more improper than this attitude on the part of the township council. In our complicated system of municipal government, each subordinate body is supreme within its own limits, and municipal government cannot be carried on if one of these subordinate bodies, not content with its own supremacy within the ambit of its own jurisdiction, and, sitting as a self-constituted Court of review, to render nugatory the action of other representative bodies with which it, in its wisdom, does not agree. 23

In general, restrictions by the courts are limited to instances when the board's action (1) is not within the powers granted to it by statute; (2) is unreasonable though the action may be taken in good faith; and (3) is arbitrary.

and in bad faith. The courts do not legislate or invade the sphere of the government in matters of policy. If they were to do so they would be interfering with the ordinary functions of government.

The Role of the Courts

One of the strongest elements in our democratic system is the Rule of Law. It is designed as a means to secure individual freedom under law. In order to do this the law must mark out an area of individual freedom of action and an area of clearly defined prohibitions of individual action. It must not establish privilege; instead it must provide an equal freedom, by not denying to some what it concedes to others. In addition to this the law must rule; it must be effected through observance and enforcement. To make the Rule of Law effective there must be a resolute and impartial body devoted to the administration of justice. The administration of justice is entrusted to the courts whose impartiality is achieved by the independence of the judiciary. Judges are free of most of the restraints and checks which are imposed on other public officials. Hence, they are able to perform their functions without fear of intimidation or control by executive officials.

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24 Corry and Hodgetts, op. cit., pp. 401-2.
The complexity of modern government, with its greater emphasis placed on social rather than individual good, necessitates greater government intervention in many areas. This governmental intervention disturbs many individuals because much wider discretionary powers must be granted to executive and administrative officials with the subsequent narrowing of the Rule of Law. Despite this fact the Rule of Law remains as a basic principle of the Canadian constitution and as such is a ready defence against the abuse of power. The following comment on the Rule of Law in Great Britain applies equally in Canada and should serve as a heartening reminder to fearful citizens:

For a long time now, Parliament has been granting to officials special powers to take action not justified under the ordinary law, and it has been limiting the right of the citizen to have the actions of officials scrutinized by the judicial power. Yet there has been no general removal of officials from judicial surveillance, and it remains true in most cases that anyone who asserts that he has been wronged by the action of a government official can bring that official before the courts of law to answer for his conduct. The official may justify himself by pointing to an act of Parliament which gives him a special privilege to do what he has done. But he cannot turn aside the complaint merely by asserting an exalted official status and an inscrutable executive expediency in what he has done. This state can throw away the conscript's life but it cannot conscript him in the first instance on the plea of high policy or public expedience except as supported by law sanctioned by Parliament. The Rule of Law, although qualified today by the grant of special powers to officials, remains an indispensable instrument for ensuring
that government remains servant. 25

The primary judicial function is the settlement of disputes brought before the courts. These disputes may involve individuals, organizations, or governments. In the performance of his function the judge not only imposes a punishment or delivers a judgment, he also interprets and gives fuller meaning and clarity to the laws. 26 The courts may be asked to deliver judgments (1) when a legal wrong has been committed; (2) before the actual commission of a wrong when the court is convinced that a legal wrong is about to be committed; 27 and (3) when the meaning or the constitutionality of a statute is in doubt.

The courts as arbiters of jurisdictional disputes. As previously stated, the federal system of government adopted by Canada, with its consequent distribution of powers among various levels of government, results in numerous jurisdictional disputes. It has become the practice to rely on the courts to act as the impartial arbiters of questions regarding legal authority. 28

25 Ibid., p. 96.


27 An example of this is the granting of an injunction by a court forbidding a party defendant from doing an act which he is threatening to do.

28 Supra, p. 33.
The distribution of federal and provincial powers is not simple and conclusive in many respects. In some instances there seems to be incompatibility between grants of power to the Dominion and to the province. Several subsections of sections 91 and 92 overlap. For example, the Dominion is granted power to raise money by any mode or system of taxation while the provinces may raise money by direct taxation only. In other instances Dominion or provincial legislation which appears to be within the legal powers of the enacting body may have the actual effect of trespassing on the territory of the other. A provincial government cannot apply a direct tax on the paid up capital of a chartered bank doing business within the province as this would be an interference with banking operations which is a federal matter. The courts will not hesitate to declare ultra vires a law which, in their opinion only appears to be, but is not in fact, within the jurisdiction of the enacting body. At other times a particular subject may not be fully under the jurisdiction of either the Dominion or the province; instead certain aspects of the same subject may be under one while other aspects are under the other body. An illustration of this is a provincial statute prohibiting the sale of skim milk to a cheese or butter factory without its deficiency being declared which was upheld by the courts as being essentially a regulation
of private business. On the other hand a Dominion statute forbidding the sale of all skim milk to similar factories was upheld by the courts on the ground that it was an attempt to prevent the commission of fraud.29

Should an interested party challenge the validity of a law passed by any of the three types of governing bodies, the court will decide upon the question of jurisdiction. If the action is within the powers of the enacting authority it will be declared *intra vires*; if it is considered to be outside the scope of the enacting body it will declare the act *ultra vires* and hence, not the law.

The judicial review of legislative powers is often attacked on the grounds that the courts are allowed to alter the constitution by their interpretive rulings. This view may be supported by the changes that have been effected through the years regarding the allocation of "residual powers" under the British North America Act. It is readily conceded that the decisions rendered by the Judicial Committee of the Privy Council beginning in 1883 with the decision in *Hodge v. The Queen* have had the effect of granting far greater powers to the provinces than had ever been intended by the framers of the British North America Act. In this case liquor licensing and sale by provincial

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authorities was upheld on the grounds that this essentially involved police and municipal regulation of a local character. 30

The alteration of constitutional powers may be controlled to a large extent by care in drafting legislation. If vague clauses and provisions are avoided there is less likelihood of a dispute arising whereby constitutional powers could be shifted.

Courts may modify, they cannot replace. They can revise earlier interpretations, as new arguments, new points of view are presented; they can shift the dividing line in marginal cases; but there are barriers they cannot pass, definite assignments of power they cannot reallocate. They can give a broadening construction of existing powers, but they cannot assign to one authority powers explicitly granted to another, or modify the provisions of the B.N.A. Acts regarding the organization of the executive and legislative branches of the Dominion. 31

When requested by the Governor General in Council or by the Lieutenant-Governor in Council (in the case of some provinces), to do so, Canadian courts will give an opinion on the constitutionality of Dominion or provincial legislation. This provides for a constitutional opinion without the delay which would likely occur by awaiting the ruling on

30 Hodge v. The Queen, (1883) 9 A.C. 117.

an actual dispute. These judicial opinions constitute authoritative advice to the executive and do not form precedents that bind the courts in later litigation. The readily apparent advantage of judicial opinion is economic. Constitutional issues are in this way settled before the machinery of administrative enforcement begins. This procedure not only saves money but it saves time as well.

The courts as interpreters of legislation. The meanings of some statutes are quite obvious and require little interpretation, but many contain sections which are somewhat ambiguous or whose effects are doubtful. The courts, when performing their normal function of statutory interpretation, have to decide whether or not the wording of a section is ambiguous. If the wording is not ambiguous there is no problem. If it is considered ambiguous, "it is then for the court to decide which of many, often conflicting, rules of interpretation to apply."32

The interpretation of the meaning of statutory provisions relied upon by any party is a function of the courts in the course of legal proceedings. Rules of interpretation have been developed to assist the courts themselves and to eliminate the risk of arbitrary interpretation.

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Kiralfy states that in general statutes are construed according to the following rules:

1. The text of a statute must be examined objectively. It stands by itself. Meanings involved are not taken from other sources.

2. A court will attempt to interpret a statute according to the intent of the legislature. The intentions of the legislature must be ascertained from the words of the statute. The statute in this case must be read as a whole, for the language of one section may affect the interpretation of another.

3. Words which have no particular legal definitions are usually interpreted according to their literal meanings, unless this leads to absurdity. This is based on the principle that it is not the function of any judge to fill in what he conceives to be gaps in legislative acts.

4. Under the "ejusdem generis" rule, a series of particular words followed by a general term will limit the general term to the category particularized by the preceding specific words. Remmlein cites an illustration of the rule that is found in many school laws regarding the causes for dismissal of teachers: e.g. "immorality, incompetency, dishonesty, or 'other just cause.'" The general term "other just cause" would be interpreted as referring to causes in nature similar to immorality, incompetency, and dishonesty.
This would refer to reasons derogatory to the teacher's personal reputation or professional capability.\textsuperscript{33}

5. The presumption of the courts is against fundamental changes of the common law by mere implication. This is necessary to prevent unexpected and undesired changes of principle. Any legislation abrogating the common law is strictly construed by the courts.

6. The short title has little relevance to the meaning of an act, however the long title may be relevant. The short title tends toward brevity rather than precision, but the long title is open to discussion in the legislature and may shed some light on the intent of the legislation.

7. The preamble may be looked at if there is any ambiguity in the text of the statute, but not otherwise.

8. When the meaning of a statutory provision is ambiguous the court may have regard to the defects of the older law and consider the remedial intent of the newer statute.\textsuperscript{34}

When it is clear that justice would not be served by adherence to a narrow legal interpretation, the courts interpret the legislation liberally. Consequently, courts have generally tended to construe school law liberally, pro-


\textsuperscript{34}Kiralfy, \textit{op. cit.}, pp. 123-34.
vided the rights of citizens have not been violated. For example, the election of a trustee has been upheld when there were several irregularities in the conduct of the election but no denial of the rights of electors was in evidence. The opinion of courts generally is that many trustees have little business training and hence do not appreciate the value of technical or formal statutory requirements. On the other hand, statutes dealing with taxation or property rights are usually strictly interpreted. That some statutes are interpreted strictly while others are interpreted liberally was pointed out by the Judicial Committee of the Privy Council in the following statement by Lord Sankey in reference to the interpretation of Sections 23 and 24 of the B.N.A. Act:

Their Lordships do not conceive it to be the duty of this Board—it is certainly not their desire—to cut down the provisions of the Act by a narrow and technical construction, but rather to give it a large and liberal interpretation so that the Dominion to a great extent, but within certain fixed limits, may be mistress in her own house, as the provinces to a great extent, but within certain fixed limits, are mistresses in theirs. The Privy Council, indeed, has laid down that courts of law must treat the provisions of the British North America Act by the same methods of construction and exposition which they apply to other statutes. But there are statutes and statutes; and the strict construction deemed proper in the case, for example, of a penal or taxing statute or one passed to regulate the affairs of an English parish, would be often subversive of Parliament's real intent if applied to an Act passed to ensure the peace, order,

and good government of a British colony.\textsuperscript{36}

A statute often may be interpreted in more than one way. It is possible for the courts to exert an influence on the achievement of educational purposes through their authority to interpret legislation. The deliverance of persistently narrow statutory interpretations could result in restricting the effect of enlightened educational legislation.

The courts as originators of legal principles that serve as precedents. Law must change when new needs can no longer be denied, but its prime function in any given period is to minister to order and stability. In this regard Edwards has the following to say:

Theoretically and ideally, the law represents a commitment to the value premises of the society in which it operates, and consequently it has a dual function. On the one hand, it is the guardian of the intrinsic values that have stood the test of human experience. Here it is a preservative and conservative influence; it is concerned with stability, with historic continuity in the ordered pattern of human behavior. But, on the other hand, the law is no less concerned with adaptation and change—with the application of old concepts and principles when a new social context requires them.\textsuperscript{37}


A judicial interpretation of a school law is the origin of a legal principle. Until it is overruled, it serves as a precedent for subsequent court decisions. The more cases that are decided in accordance with the precedent, the more firmly the legal principle becomes established. The court decisions regarding educational issues that accumulate through time serve as a set of legal principles to guide school officials and other personnel in the performance of their duties.\textsuperscript{38}

Judicial decisions cannot be relied upon under all circumstances. Rulings delivered by all courts are considered with respect, but the binding force of a decision depends on the hierarchy of courts. The decision of a court is binding only on courts of inferior jurisdiction. The decision of a lower court may be given consideration by a higher court but it is not bound to follow it. In Canada, a ruling by the Supreme Court of Canada not only binds all provincial courts, but it binds itself on most occasions. Many court decisions concern statute law, and as statutes vary from province to province, a judgment rendered in one province may not apply to another province that has different statutory provisions. Certain social and political changes

that have evolved through the years may serve to modify the application of a previously established legal principle. A prime example of this nature is the United States Supreme Court decision of 1954 reversing its decision of 1896 on racial segregation in the American public schools. In the 1896 decision the Court upheld the "separate but equal" doctrine. In 1954 the Court, in overthrowing this doctrine, stated that separate educational facilities "are inherently unequal."\textsuperscript{39}

The role of the courts in regard to observance of precedent is summed up very well by an Iowa court as follows:

\begin{quote}
It is true that the law should not be, and is not, static; it should grow and develop with economic, political and cultural conditions which surround it. This, however, does not mean that it should not generally be definite and settled. The rule of \textit{stare decisis} has its basis in something stronger than the thought that the courts should follow hide bound precedent without regard to justice or equity. It derives from the consideration that when the courts have fairly and fully considered a proposition and have decided it, only the most pressing reasons should require, or in fact even permit, an opposite holding. Lawyers and their clients have a right to know what the law is, and to order their affairs accordingly.\textsuperscript{40}
\end{quote}


\textsuperscript{40}Swan Lake Consolidated School District v. Consolidated School District of Dolliver, 58 N.W. (2d) 349 (Iowa).
The people who draw up statutes should be careful to conform to constitutional provisions and to avoid ambiguous terminology. If this procedure is carefully followed the courts in their interpretations are less likely to interfere with the desired educational purposes upon which the legislation is based.
CHAPTER IV

LEGAL FOUNDATIONS OF PUBLIC SCHOOL EDUCATION

IN SASKATCHEWAN

The Purpose of Public Education

Two conflicting viewpoints are often expressed in regard to the purpose of public education. Some hold the view that public education is designed primarily for the benefit of the individual, while others contend that its primary function is to promote the interests of the State. It is indeed true that the child, as an individual, derives indispensable benefit from education. However, a study of the history of education on this continent reveals that public education, from the legal standpoint, is basically concerned, not with the benefit of the child, but with the improvement and preservation of the State.

Several years ago Cubberly expressed this view as follows:

... the provision of a liberal system of free education for the children of the State is one of the most important duties of the State, and such education contributes very markedly to the moral uplift of the people, to a higher civic virtue, and to increased economic returns to the State. We of today conceive of free public education as a birthright of the child on the one hand, and as an exercise of the State's inherent right to self-preservation and improvement on the other.¹

Callahan, writing more recently has reiterated the same view in the following words:

The public school is a state institution created by the state for its own preservation. . . .

Although it is common to think of the school as an institution primarily designed to promote the well-being of individuals, in legal theory the school exists because the continuation of the democratic state depends upon it. So far as the state is concerned education is not as much a right to which the pupil is entitled as it is a duty imposed upon him.  

Similar opinions have been set forth by some Canadian writers, as evidenced by the following statement of Ball and Reid:

Accepting the dictum that education is a state responsibility, and realizing that progress depends to a great extent upon a literate and intelligent population, the Legislative Assembly, in 1917, enacted the School Attendance Act. . . .

The noted Canadian historian, Arthur Lower, expressed his views along the same lines in these words:

Among the thousands of things that education may be, whether in Canada or elsewhere, there is one that it most assuredly always is, and that is, the initiation of the young into the customs of the tribe. The "tribe" may be literal tribe, race, nation, religion or what not; initiation and instruction in the customs has always been and always will be the primary stuff of education. What are

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the customs of the tribe? To put them down at any length for any tribe, however small, would require a book, but synoptically they are those designed to preserve and extend the chief matters of tribal concern—belief, behavior and self-preservation. . . .

The opinion that the State has a paramount interest in the education of its citizens is held, not only by educators and historians, but is shared by the courts. Evidence of this is noted in a Manitoba case in which Justice Dysart said:

The [Public Schools] Act sets up a common school system, designed to afford to all children educational facilities that are virtually free; it goes further and insists that children not only have the privilege of attending school, but the obligation to do so. In other words, that school children should not only have the right to attend, but the duty to attend school at all reasonable times. The underlying principle is that education is necessary, not only for the good of children, but is good for the present community and future society.

These words are echoed by Garber who states:

While courts sometimes speak of a child's "right" to attend school, an analysis of their decisions leads to the conclusion that school attendance is not so much a right as a privilege or a duty imposed upon the child for the public good.

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It cannot be denied that educated citizens are potentially more effective and efficient in the society in which they function than are non-educated citizens. Schools, however, exist as a lawful function of the State not only to benefit the individual but, more important, to improve society in its various facets of self-government.

The Legal Position of Separate Schools in Saskatchewan

It is not the writer's intent to deal with the many bitter and protracted controversies that have raged over the years in Saskatchewan concerning separate school issues. Separate schools, either Roman Catholic or Protestant, are provided in Saskatchewan by law. Previously it was stated that the rights and privileges accorded to denominational schools, under Section 93 of The British North America Act, 1867, were incorporated into The Saskatchewan Act, 1905. In turn, the Legislature of Saskatchewan has designated by statute the requisite powers to establish such schools, the voter's qualifications required for separate school district erection, and the rights and liabilities of such districts after erection.

In this connection the statutes of Saskatchewan are worded as follows:

39. The minority of ratepayers in any district,

7Supra, p. 34.
whether Protestant or Roman Catholic, may establish a separate school therein; and in such case the ratepayers establishing the school shall be liable only to assessments of such rates as they impose upon themselves in respect thereof.\footnote{R.S.S. 1953, c. 169, s. 39.}

40. The petition for the erection of a separate school district shall be signed by three resident ratepayers of the religious faith indicated in the name of the proposed district, and shall be in the form prescribed by the minister.\footnote{Ibid., c. 169, s. 40.}

41. The persons qualified to vote for or against the erection of a separate school district shall be the ratepayers in the district of the same religious faith, Protestant or Roman Catholic, as the petitioners.\footnote{Ibid., c. 169, s. 41.}

44. After the establishment of a separate school district under the provisions of this Act, the district and the board thereof shall possess and exercise the rights, powers, and privileges and be subject to the same liabilities and method of government as herein provided in respect of public school districts.\footnote{Ibid., c. 169, s. 44.}

The following provisions are apparent from the statutes:

1. The establishment of a separate school district is dependent upon religious affiliation alone, and only two groups are considered—Roman Catholic and Protestant.
2. A public school district must be organized before a separate district may come into being.

3. The people voting for or against the erection of a separate district must adhere to the faith of the group seeking the separate district.

4. Once a separate school district has been established its complete administration is governed by the same laws that apply to public school districts.

Legally, separate schools in Saskatchewan are public schools of a special type. There are statutory provisions for their establishment, but once they are established the laws that pertain to public schools apply equally to them. It is evident then, that the rights, privileges, and responsibilities of pupils in Saskatchewan are identical for the pupils of all publicly-supported schools.

Denominational rights defined. In the past there have been differing opinions regarding the question of what constituted a denominational right. Section 93 (1) of The British North America Act provides that provincial legislation shall not "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." This section is incorporated into The Saskatchewan Act, 1905, with the substitution of the word "separate" for the word "denominational." It has been contended by some that
denominational rights could be construed to mean rights other than those based on religion. The class of persons entitled to this privilege of separate schools could be based upon linguistic or racial differences according to this view. A very important case which settled this issue arose in Ontario.12

In 1913 the Ontario Department of Education issued a regulation restricting the use of the French language in public and separate schools in which French had been a language of instruction and communication. The Ottawa Separate School Board was challenged for continuing to allow the use of French in its schools, contrary to the regulation. In its defence, the Separate School Board maintained that the regulation was ultra vires the Department of Education and the Provincial Legislature, since the use of the French language was a denominational right guaranteed by Section 93 (1) of The British North America Act. The Court reviewed the history of separate school legislation from 1841 onward and concluded that prior to Confederation the right to establish separate schools had been based upon religious differences in all but one instance. The Separate Schools Act of 1861 provided for the establishment of separate

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schools for coloured persons as well as for Protestants and Roman Catholics. In its judgment the Court held that the class of persons for whom the protection of Section 93 (1) is claimed must be a class determined by religious belief and not by race or language. It further concluded that the regulation did not prejudicially affect any right or privilege secured by law at the Union to Roman Catholics in the province and that it was consequently valid and binding upon the board. Chief Justice Meredith of the Supreme Court of Ontario, in his judgment, declared:

Save only in the case of schools for coloured people, there is not found in the legislation prior to Confederation any recognition of the right to Separate Schools based upon linguistic or racial differences, or upon anything but religious differences.\(^{13}\)

Justice Garrow of the same Court stated:

As far as I can see neither the one class nor the other [French speaking and English speaking] has or ever had any "right or privilege" concerning the use in such schools of any language other than English. In other words, the "right or privilege" protected by the law is not one concerning language, but to have what the general community has not, namely, religious instruction imparted in such schools.\(^{14}\)

The case was appealed to the Judicial Committee of the Privy Council. Lord Buckmaster, the Lord Chancellor, in his judgment upholding the findings of the Supreme Court

\(^{13}\)(1915) 24 D.L.R. at p. 486.

\(^{14}\)Ibid., p. 491.
of Ontario, stated:

. . . the class of persons to whom the right or privilege is reserved must, in their Lordships' opinion, be a class of persons determined according to religious belief, and not according to race or language. In relation to denominational teaching, Roman Catholics together form within the meaning of the section a class of persons, and that class cannot be subdivided into other classes by considerations of the language of the people by whom that faith is held.15

The Judicial Committee of the Privy Council, by this decision, ruled that denominational rights are established by religion alone. The right to attend a separate school, Protestant or Roman Catholic, is dependent upon the religion embraced by the individual and not upon the language he speaks nor the race of people to which he belongs.

Faith of parent determines denominational rights. It sometimes occurs that the religion of the parent differs from that of his children. If in such case a separate school exists in the district some doubt may arise concerning the school to which the children are legally entitled to attend. Although there have been no cases reported in Saskatchewan on this particular issue, a Quebec case sheds some light on the subject.16

In this case the plaintiff was a Protestant, but his

wife was a Roman Catholic and their three children were being raised as Roman Catholics. In the district there was a Roman Catholic school under the control of a board of school commissioners and a dissentient Protestant school controlled by a board of school trustees. The defendant Protestant board of school trustees had refused to admit the plaintiff's children to the school on the grounds that the children were Roman Catholic and for this reason their father could not be considered a dissident. His name was removed from the dissentient roll and he was instructed to submit his taxes to the board of school commissioners. The plaintiff applied to the Court for an order for writ of mandamus to compel the defendant board to admit his children to the school. The Court of King's Bench granted the plaintiff a writ of mandamus and ordered the defendant board to receive the children in its school. The Supreme Court of Canada affirmed the decision of the Court of King's Bench on appeal and in so doing Duff, C.J.C., stated:

The trustees of a dissentient school cannot deny the right of a dissentient ratepayer to have his children educated . . . at the dissentient school for the support of which he is taxed, notwithstanding the fact that the religious faith of the children is different from that professed by the parents.17

The Court stated that the only way by which the

17Ibid., p. 599.
respondent could bring himself under the jurisdiction of the board of commissioners would be by making a false declaration professing the religion of the majority. The respondent had given a notice in writing to the chairman of the board of school commissioners that he had withdrawn from the control of the commissioners. This was all that the statutes required to come under the control of the school trustees. The statutes made no mention of the religious faith of the children and in recognition of this fact Duff, C.J.C., further stated:

The dissentients themselves must be of a common religious faith, but the statute does not appear to contemplate an investigation by the Board of Trustees into the religious faith of the children of any dissentient whom he wishes to attend the school he is supporting. 18

Allocation to school determined by faith of parent.
The courts have ruled that the determining factor with respect to denominational rights is the religious beliefs of the parent. It has been further ruled by the courts that the parent does not have the right to choose the school, public or separate, to which he will pay his taxes and consequently to which he will send his children. This issue has been resolved by two important cases which originated in Saskatchewan. The Bartz case dealt with Roman

18 Ibid., p. 601.
Catholics while the Neida case dealt with Protestants.

In the city of Regina there is a public school district and a Roman Catholic separate school district. Bartz was a Roman Catholic, who in 1915, was entered on the assessment roll as a separate school supporter. In 1916 he was assessed as a public school supporter, upon his own written request. An appeal against this entry was taken to the Court of Revision and this assessment was confirmed. The decision of the Court of Revision was in turn taken to the Local Government Board on appeal. It was contended on behalf of the respondent that only the three resident ratepayers who signed the petition for the erection of the separate district, or at most, the ratepayers who voted in favour of the establishment of the separate school district were liable to the taxes imposed to support such district; and that with all other ratepayers of the "religious faith" of the minority it was optional whether they supported the public or separate school. It was further contended that the Dominion Parliament was not vested with the power to impose the restrictions in Section 17 of The Saskatchewan


Act to separate schools.\textsuperscript{21} The Local Government Board, in allowing the appeal and directing that Bartz's name be entered as a separate school supporter, stated:

As there is no legal provision allowing an individual ratepayer as such to secede from the public school district, neither can the Board find any provision in any act or law allowing an individual ratepayer to secede from the separate school district. The Board has come to the conclusion that the test to be applied by the assessor in making up the assessment roll as to the supporters of public and separate schools is that of "religious faith." All ratepayers of the religious faith of the minority, Protestant or Roman Catholic, establishing the separate school district, shall be assessed as separate school supporters, and all other ratepayers shall be assessed as public school supporters.\textsuperscript{22}

The Supreme Court of Saskatchewan on appeal upheld the ruling of the Local Government Board and in so doing Newlands, J., in his judgment, stated:

Can it, then, be argued that such a district is established only by those voting in favour of it? There being no individual right to form such a district, how can it be said that the individuals voting for the formation of the district are the ones who established it? The minority voting are bound by those in the majority, if they decide not to form such a district, and are they not equally bound where the majority vote is in favour of forming the district? Otherwise what is the object of taking a vote? Surely it is to decide whether the religious minority as a class will establish a separate school district, and surely when that vote is favourable, that the whole class is bound, as it would be bound if the vote was unfavourable.\textsuperscript{23}

\textsuperscript{21}Supra, p. 34.
\textsuperscript{22}(1916) 10 W.W.R. 494 at p. 504.
\textsuperscript{23}(1917) 32 D.L.R. 741 at p. 749.
Lamont, J., in the same vein, said:

I am of the opinion that in a district in which a separate school has been established by a minority, either Protestant or Roman Catholic, the ratepayers of the religious faith of that minority are under obligation to be rated as supporters of the separate school. The test to be applied to determine whether any ratepayer is a public or separate school supporter is: Is he of the religious faith of the minority? Whether he is or is not is a question of fact which, in case of dispute, may be established as any other fact.24

The decision of the Supreme Court of Saskatchewan was appealed directly to the Judicial Committee of the Privy Council, bypassing the Supreme Court of Canada. The Judicial Committee affirmed the decision of the Supreme Court of Saskatchewan. The complete agreement of this body with the rulings of the Local Government Board and the Supreme Court of Saskatchewan is shown by the words of Lord Dunedin:

The Local Government Board delivered a most careful and reasoned opinion, and the result at which they arrived was confirmed by equally careful and elaborate opinions delivered by the learned judges of the Supreme Court. These various opinions express with so much precision and accuracy the views which are entertained by their Lordships that they can really add nothing to what has already been said.25

On the second issue which was not taken on to the Judicial Committee of the Privy Council, the Supreme Court declared that Section 17 of The Saskatchewan Act was intra

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24Ibid., at p. 753.
25(1918) A.C. 911 at p. 912.
vires the Dominion Parliament. There had been no law, ordinance, or regulation in regard to education in the area that comprises Saskatchewan prior to 1870. Consequently, Section 93 of *The British North America Act* does not apply to Saskatchewan, but instead *The Saskatchewan Act* governs the establishment and operations of separate schools.²⁶

The decision of the Court in the Neida case was similar to the decision in the Bartz Case. Neida was a Protestant who desired to be assessed for separate school purposes. The Local Government Board ruled that he must be assessed as a public school supporter. On appeal to the Supreme Court of Saskatchewan the ruling of the Local Government Board was upheld. In his judgment Haultain, C.J. stated:

> The admission that Neida is not a Roman Catholic, in my opinion, makes it perfectly clear that he cannot escape taxation as a public school supporter. He is not a member of the minority of ratepayers . . . and he is consequently not entitled to the immunity from taxation for general school purposes which is granted by section 39 of the School Act to members of that minority.²⁷

Lamont, J., agreed with the judgment of the Chief Justice in the following words:

> Under the School Act, the right to establish a separate school is given to the ratepayers who are

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²⁶(1917) 32 D.L.R. at p. 746.

of the religious faith of the minority, whether Protestant or Roman Catholic. But for this privilege, all ratepayers would be under obligation to support the public school. Only those to whom the right of separation is given can escape the general obligation to support the public school.\textsuperscript{28}

It has been established that one of the criteria that must be met by a pupil so that he may legally attend a separate school in Saskatchewan is that his parent must be a member of the religious minority group that has organized the separate school district.

\textbf{Legal definition of "Roman Catholic" and "Protestant."} The faith of the parent is the determining factor in establishing the pupil's right to attend either a public or a separate school. The only classes of persons recognized in this respect are Protestants and Roman Catholics. Roman Catholics form a distinct group in that they recognize the Pope as an authority common to all adherents. A Saskatchewan case makes this point quite clear.\textsuperscript{29}

This case concerned an appeal to the Local Government Board from a decision of the Court of Revision of the town of Melville regarding the assessment of William Roschko as a public school supporter. The appellant desired Roschko to be assessed as a separate school supporter on the grounds

\textsuperscript{28}\textit{Ibid.}, p. 1088.

\textsuperscript{29}\textit{Pander v. Town of Melville Ruthenian Greek Catholic Church, [1922] 3 W.W.R. 53.}
that Roschko was a member and trustee of the Ruthenian Greek Catholic Church. The Local Government Board concluded that the Ruthenian Greek Catholic Church is in communion with Rome, as its bishops are appointed by the Pope. Consequently, the Board allowed the appeal and directed that Roschko be assessed as a separate school supporter.

Defining the term "Protestant" is more difficult than defining "Roman Catholic" as there is no single authority to which all Protestant groups look for leadership. A legal definition of the term "Protestant" has been given, however, by a Quebec Court.\textsuperscript{30}

Perron, the plaintiff, had been a Roman Catholic and his children had attended the Roman Catholic school. Later, Perron became an adherent to the doctrine of Jehovah Witnesses and made a formal declaration of renunciation of the Roman Catholic faith to the Bishop of the diocese. He removed his children from the Roman Catholic school and attempted to have them admitted to the Protestant school but admittance was refused.

The plaintiff sought a writ of \textit{mandamus} in Superior Court to compel the Protestant school to accept his children. In refusing to grant the writ of \textit{mandamus} the Court agreed

with the contentions of the respondent board that Perron was a member of a religious sect known under the name of Jehovah's Witnesses, whose religious beliefs are distinct from and exclusive of Catholicism, Protestantism, and Judaism. The Court also agreed that this group is opposed to all religions and, thus, could not be regarded as a Protestant religion.

The decision of the Superior Court was appealed to the Court of Queen's Bench where it was reversed and a writ of mandamus was granted compelling the respondent Protestant board to admit the children to their school. The Court, in its decision, noted that the only religious denominations referred to in The British North America Act, 1867, are Roman Catholic and Protestant.

The Court referred to the Hirsch case in which the Protestant denomination was declared to be a "class of persons" within the meaning of The British North America Act. In this case Viscount Cave, L.C. had stated:

The Protestant Community, although divided for some purposes into different denominations, is itself a denomination and capable of being regarded as a "class of persons" within the meaning of sec. 93 of the Act, of 1867.


Therefore, the Court maintained that if a person abjured Roman Catholicism but remained a follower of Christ he would be considered a Protestant. In delivering the judgment, Bissonette, J., stated:

It would be a grave error . . . to create a division of religions among Catholics and non-Catholics. One can be a Christian without being a Roman Catholic, just as one can be neither Christian nor Catholic; it is so with the adepts of Judaism, Islamism, Buddhism. In the same way again . . . it is not necessarily, in order to be a Protestant, that there be uniformity of belief among the numerous religious sects forming Protestantism. In concluding, to be considered a Protestant it is sufficient to be a Christian and to repudiate the authority of the Pope.33

In applying the reasoning stated above to the case, the Justice said:

Let us sum up by saying that the appellant was a Catholic, that he had renounced his faith, that he remained a Christian and that, consequently, he is a Protestant and that he had the right to have his children admitted to the Protestant dissident school of his town.34

The two Court rulings have established definitions for the terms "Roman Catholic" and "Protestant" for school purposes. All Christians who accept the authority of the Pope in religious affairs are Roman Catholic and Christians who repudiate Papal authority are Protestants.

34Ibid., p. 420.
Compulsory Attendance Laws

The enforcement of compulsory school attendance laws in Saskatchewan does not pose any great problem for school authorities at this time. Parents have generally accepted school attendance in a responsible way and so much do they realize that great benefits can be derived from schooling, that truancy is not much of a problem despite the numbers of children attending school. This happy situation has not always prevailed. In the early years of this province's history, parents found it exceedingly difficult to get their children to school, even in the winter when they were least needed at home. The long distances required to be travelled over poor roads, to get to the schools, combined with the practice of many parents to employ their children as helpers about the farmstead, tended to keep attendance quite irregular and spasmodic. Phillips cites an instance in which an inspector visited a Saskatchewan school in 1911 to find that the teacher had been the only one in attendance for five days.35

Even if there is little difficulty in enforcing school attendance laws there are differing views regarding the basic reasons for compulsory school attendance, just as

there are differing views regarding the purpose of public education. One view holds that education is a natural right of the child. According to this view education is designed for the personal benefit of the child as an individual, and compulsory attendance laws assure that these benefits are extended to all children even in opposition, if need be, to parental will.

The other view holds that pupils have a duty or responsibility to attend school because democratic government necessitates an enlightened citizenry. This view is taken by Woltz who states:

The compulsory attendance laws are relatively simple in their terms and express a simple, if important, social concept. They are the tangible expression of the accepted belief that the state has a paramount interest in the education of its citizens, to which interest the claims of parents and their right to control of their children must yield. As to matters of detail there has been, and probably there will be, dispute; as to the central philosophy of such legislation there is no longer question.36

Callahan supports the same view in these words:

The power to establish schools and compel attendance is regarded by the court as a part of the power of the state to govern and is justified on the same grounds that the state's power to levy taxes or to raise armies is justified—that is because the welfare of the state depends on it.37


37Callahan *op. cit.*, p. 239.
Whatever view one holds, compulsory school attendance laws emerged to meet changing economic and social conditions and they have undoubtedly served to improve school attendance to a very marked degree.

Compulsory attendance legislation has been in effect in what is now Saskatchewan since Territorial days. This legislation was enacted into The Territorial Ordinances and later into The School Act after the province was formed. The School Attendance Act, as we now know it, was first enacted by the Saskatchewan Legislature in 1917.\textsuperscript{38} In general, the Act in its present form is strikingly similar to the original legislation passed almost a half century ago. The sections of The School Attendance Act, pertinent to this study, read as follows:

3. (1) Except as herein otherwise provided, every parent, guardian or other person, having charge of a child over seven and under fifteen years of age shall send such child to the school of the district in which he resides or to such other school as may be determined under paragraph 8 of section 51 of the Larger Units Act for the whole period during which the school is in operation each year.\textsuperscript{39}

(2) A parent, guardian or other person who fails to observe the foregoing provisions is

\textsuperscript{38}s. s. 1917, c. 19.

\textsuperscript{39}Legislation has since been enacted raising the school-leaving age in Saskatchewan to sixteen years. S.s. 1964, c. 21, s. 4.
guilty of an offence and subject to the penalties hereinafter provided.

(3) The provisions of this section apply to a person who has received into his house as a resident another person's child of the specified age, but the duty and responsibility of the child's parent in the premises shall not thereby be affected.\textsuperscript{40}

In section 3 (1) above, reference is made to paragraph 8 of section 51 of The Larger School Units Act. This paragraph dealing with the duties and powers of Unit Boards states:

51. It shall be the duty of every Unit Board, and it shall have power:

(8) to determine what school any of the children of the unit shall attend.\textsuperscript{41}

Children who are not actually residents of a district may in certain cases be deemed to be residents of the district for purposes of The School Attendance Act. Legislation covering this reads as follows:

5. Where a child is admitted to the school of a district in accordance with the provisions of section 232 of the School Act, the child shall be deemed to reside within such district for the purposes of this Act.\textsuperscript{42}

Section 232 of The School Act, in turn, reads:

232. (1) A child, whose parent or legal guardian is

\textsuperscript{40}\texttt{R.S.S. 1953, c. 171, s. 3; 1955 c. 55, s. 3.}

\textsuperscript{41}\texttt{R.S.S. 1953, c. 170, s. 51.}

\textsuperscript{42}\texttt{R.S.S. 1953, c. 169, s. 232.}
a ratepayer but not a resident of a rural district, shall be admitted to the school of such district, subject to a notice in writing being given to the board by the parent or legal guardian on or before the thirty-first day of December in any year.43

From the above it is clear that the child of a non-resident ratepayer when once admitted to the school of a district in which his parent does not reside is deemed to be a resident of the district for the purposes of compulsory school attendance.

**Exemptions from Compulsory Attendance**

Although it may be stated that school attendance is compulsory for all children between the ages of seven and fifteen there are several exceptions to the rule.44 In other words, compulsory attendance does not apply to all children. The School Attendance Act is not intended to place undue hardship upon anyone. In compliance with this ideal, children may be exempt from compulsory school attendance for various reasons.

**Home or other instruction.** In Saskatchewan a child is not required to attend the publicly-supported schools provided he is receiving efficient instruction at home or elsewhere.45 The quality and scope of the instruction

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43 R.S.S. 1953, c. 169, s. 232.
44 Supra, footnote 39, p. 81.
45 R.S.S. 1953, c. 171, s. 4(a).
received by the child must be approved by the superintendent of schools, to insure that the prescribed requirements are met. The quality and depth of instruction received by a pupil in an approved non-public school would not likely be questioned by most educators. Such is not the case however, with home instruction. It is felt by some that home instruction never can be deemed equivalent to that offered at a school. The thinking behind this contention is that education is not merely concerned with the acquisition of facts. Home instruction denies the pupil the opportunity of acquiring those worthy habits, attitudes, appreciations and skills that ensue from communication with other individuals within the group. 46 Consequently, home instruction would not likely be approved by a school superintendent except under very extenuating circumstances.

Sickness or other unavoidable cause. A child who suffers from a physical or mental defect is not compelled to attend school provided that the teacher is kept advised. 47 In such cases the local attendance officer may require a certificate from a physician confirming the severity of the incapacity.

47 R.S.E. 1953, c. 171, s. 4(b).
Maintenance of self or others. In Saskatchewan it is illegal to employ any child under the age of fifteen years during school hours while the school of the district in which the child resides is in session unless the child has a valid excuse under The School Attendance Act.\textsuperscript{48} However, if, in the opinion of the magistrate, district board of trustees, or unit board it is necessary for a child to absent himself from school to maintain himself, or some other person dependent upon him, no penalty shall be imposed by the authorities.\textsuperscript{49}

Distance from school. A pupil is excused from school attendance if he is under twelve years of age and there is no school which the child has a right to attend within two and one-half miles, by the nearest passable road, from the nearest point of land upon which the child resides or if he is over twelve years of age and there is no school within three and one-half miles from the nearest point of land upon which he resides.\textsuperscript{50} If transportation is provided for the pupils these exceptions do not then apply. With the great increase that has taken place in the transportation of school children in this province there has been an accom-

\textsuperscript{48}Ibid., c. 171, s. 7.
\textsuperscript{49}Ibid., c. 171, s. 4(c).
\textsuperscript{50}Ibid., c. 171, s. 4(d).
panying decrease in the number of children that are exempt from compulsory attendance for reasons of distance from school.

**Insufficient accommodation.** If there is not sufficient accommodation in the school which the child has a right to attend he may be exempt from attendance providing a written statement is issued by the superintendent verifying the lack of sufficient accommodation.\(^51\) Apparently this provision should be considered as a temporary measure as it runs counter to Section 114 (7) of *The School Act* which states:

114. It shall be the duty of the board of every district and it shall have power:

(7) to provide adequate school accommodation for the district.\(^52\)

It would appear that where there was insufficient accommodation within the school and a parent demanded such accommodation the school board would be required to make such provision or some suitable alternative arrangements for the education of the child. On the other hand, the parent could not be penalized for failing to send his child to school if there was insufficient accommodation provided such lack of accommodation was verified by a written statement of

\(^{51}\) R.S.S. 1953, c. 171, s. 4(e).

\(^{52}\) R.S.S. 1953, c. 169, s. 114 (7).
the superintendent.

**Grade attainment.** Provision is made in The *School Attendance Act* for a pupil who has successfully passed the grade eight examinations to be exempt from further school attendance. A pupil may also be excused attendance if, in the opinion of the superintendent, he should be exempt from further attendance in the elementary school grades.⁵³

In the past, a great number of pupils ceased to attend school upon completion of grade eight. With the growing realization of the benefits to be derived from education fewer and fewer pupils have been terminating their education at the completion of their elementary schooling. It appears likely that in the future a greater percentage of students will remain in school to the completion of their high school education.⁵⁴

**Religious holidays.** A parent cannot be prosecuted under The *School Attendance Act* for the absence of his child from school on a religious holiday of his church. The section of the Act pertaining to this reads:

25. No penalty shall be imposed in respect of the absence of a child from school on a day

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⁵³*R.S.S. 1953, c. 171, s. 4(f).*

⁵⁴It should be noted that although the age limit for compulsory school attendance has been raised to sixteen years, the school-leaving grade level attainment has remained at grade eight as before.
regarded as a holy day by the church or religious denomination to which such child belongs.\textsuperscript{55}

For the vast majority of children between the ages of seven and fifteen years attendance at school is compulsory. However, a relatively small number of children may be exempted from compulsory attendance if the circumstances warrant it. A child whose age falls within the eligible range may be excused from compulsory school attendance only if he falls within one of the categories stipulated in the statutes.

**Compulsory Education Laws Challenged**

There have been no reported cases from Saskatchewan in which the compulsory school attendance laws have been challenged in the courts. Cases have been reported in other provinces in which the validity of such laws has been questioned. The three reported cases attacked provincial legislation on the grounds that:

1. Laws pertaining to education enacted by a provincial legislature were superseded by federal laws in the same area.

2. Compulsory attendance laws do not require attendance at a public school.

3. Compulsory attendance laws infringed religious

\textsuperscript{55}R.S.S. 1953, c. 171, s. 25.
freedom.
These cases are pertinent to Saskatchewan in that our legis-
lation regarding attendance is similar to the legislation in
effect in the provinces concerned.

Federal legislation as opposed to provincial legis-
lation in educational matters. In a Manitoba case, the
supremacy of provincial legislation over federal legislation
in all educational matters excepting those guarded by Sec-
tion 93 of The British North America Act, 1867, was upheld.\textsuperscript{56}

Hildebrand was a Mennonite who had come to Manitoba
around 1874 with his parents. His parents were members of a
community of Mennonites who had entered Canada under pro-
visions of a Dominion Order-in-Council passed August 13,
1873 which read in part as follows:

10. The Mennonites will have the fullest privilege
of exercising their religious principles, and
educating their children in schools, as pro-
vided by law, without any kind of molestation
or restriction whatsoever.\textsuperscript{57}

The accused had been charged and convicted for having
unlawfully neglected to cause his child, who was over seven
and under fourteen years, to attend some public school as
provided by The School Attendance Act of that Province. The

\textsuperscript{56}\textit{R.v. Hildebrand, [1912]} 3 W.W.R. 286, 32 M.R. 149,
31 C.C.C. 419.

\textsuperscript{57}\textit{Ibid.}, p. 289.
conviction was carried to the Manitoba Court of Appeal. The
questions for consideration by the Court were:

(1) Had the Government of the Province of Manitoba
the power to pass The School Attendance Act?

(2) If it had the power to pass said Act is it
binding upon the accused?

(3) Had the Government of the Province of Manitoba
power to legislate as to schools, school attendance or
education insofar as the accused or any Mennonite coming
from that part of Russia referred to in the Order-in-Council?
The Court in its findings held that (1) the Government of
the Province of Manitoba had the power to pass The School
Attendance Act, (2) the Act was binding upon the accused,
and (3) the Government of the Province of Manitoba had power
to legislate as to schools, school attendance or education
insofar as the Mennonites were concerned.

In disposing of the contention that the Federal
Order-in-Council took precedence over the Provincial legis-
lation, the Court stated:

This Province came into being May 12, 1870, by
virtue of the Manitoba Act, ch. 3, 33 Victoria,
confirmed by Imperial Act ch. 28, 34 & 35 Vict. By
sec. 22 of that Act it is provided that "In and for
the Province, the said Legislature may exclusively
make Laws in relation to Education." Nothing can be
plainer. The Dominion Parliament itself could and
can pass no legislation affecting education in this
Province, save in the circumstances indicated in
subsections 2 & 3 of section 22, which have abso-
lutely no bearing here. And if that cannot be done
by a Statute of Canada how is it possible that it could be accomplished by an Order of the Governor-General in Council?\textsuperscript{58}

In other words the Court declared that legislation pertaining to education is \textit{intra vires} the provincial legislature and \textit{ultra vires} the federal parliament.

\textbf{Compulsory attendance laws in relation to private schools.} In the Ulmer case, heard by an Alberta court in 1923, the validity of Section 17 of \textit{The Alberta Act}, and the validity of \textit{The School Attendance Act} were challenged.\textsuperscript{59} The Ulmer child resided in a public school district but attended a parochial school operated by a German Lutheran group in the same district. The defendant, Ulmer, was charged and convicted for a violation of \textit{The School Attendance Act}. There were several grounds for exemption from attendance set forth in Section 5 of the Act and the accused claimed protection under the first of these exemptions which stated that a parent or guardian or other person shall not be liable to any penalty imposed by the Act in respect of a child if--

(a) In the opinion of a school inspector, as certified in writing, bearing date within one year prior to the date of any complaint laid under this Act, the child is under efficient instruc-

\textsuperscript{58}\textit{Ibid.}, p. 289.

\textsuperscript{59}(1923) 1 \textit{W.W.R.} 1, 19 Alta. L.R. 12, 1 D.L.R. 304.
tion at home or elsewhere. 60

A certificate under clause (a) of Section 5 of the Act quoted had been refused by the school inspector and he had refused to announce any reasons for his withholding the certificate except that the work done in the school was unsatisfactory. The defendant contended that:

(1) The Parliament of Canada, in exercising the authority to establish new provinces given it by the B.N.A. Act, 1871, had no power to modify, as it did, Section 93 of the fundamental Act of 1867.

(2) The School Attendance Act violated the protective provisions of Ordinances 29 and 30 of 1901, so preserved by Section 17 of The Alberta Act.

(3) The inspector of schools did not have the authority to deny a certificate of approval to the private school.

In reference to the first contention, that the Parliament of Canada had no power in establishing new provinces to modify Section 93 of the B.N.A. Act, 1867, the Court ruled that the Parliament of Canada had such power. The view of the Court was that the limiting or protective provisions of Section 93 of the B.N.A. Act, 1867, were not intended to be general in their application to all provinces which might come into Confederation at a future date, but

60(1923) 1 W.W.R. 1, at p. 4.
were intended to apply only to those which were being united in 1867. On this question, Stuart, J.A., had this to say:

... it also seems to me to be impossible except by resort to mere vague analogy to apply the protective provisions of sec. 93 to new provinces erected under the authority of the B.N.A. Act, 1871.61

In regard to the second argument that The School Attendance Act violated the protective provisions preserved by Section 17 of The Alberta Act the Court declared that it did not. The only rights or privileges protected by Section 17 of The Alberta Act were those with respect to separate schools. That right or privilege belonged to the minority of the district, whether Roman Catholic or Protestant, to establish by law a separate school, to levy rates and assessments upon themselves, and to be subject to ordinary governmental control and inspection. On this question the Court stated:

A legally established system was in contemplation by which the minority were relieved from taxation to support a public school and empowered legally to levy rates upon themselves to support a separate school. The class of persons to whom the defendant belongs have never been doing this and do not want to do it. The result is that the School Attendance Act violates no right or privilege in regard to separate schools ever enjoyed by the class to which the defendant belongs within the meaning of sec. 17 of the Alberta Act and is therefore entirely valid and binding upon them, and upon him.62

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61 Ibid., p. 17.
62 Ibid., p. 20.
On the third contention that the inspector of schools did not have the authority to deny a certificate of approval to the private school Stuart, J.A., declared:

In the form in which the matter came before the magistrate it is impossible to discern how he could have decided otherwise than he did. The existence in fact of the certificate was necessary in the circumstances to give the accused the protection of sec. 5, subsec. 1. The certificate did not in fact exist and had not in fact ever existed because it had never been given. The magistrate could not, in my opinion, go behind these facts and enquire into the action of the school inspector in refusing the certificate.63

The Ulmer case is of special importance to Saskatchewan because Ordinances 29 and 30, of 1901, likewise applied to the area which now constitutes Saskatchewan. Section 17 of The Alberta Act is identical to Section 17 of The Saskatchewan Act and the wording of The School Attendance Act for Saskatchewan is quite similar to that of Alberta, in that it states as follows:

4. A parent, guardian or other person shall not be liable to any penalty imposed by this Act in respect of a child:

(a) if the child is under efficient instruction, approved by the superintendent, at home or elsewhere.64

Compulsory attendance laws v. religious freedom.

Compulsory school attendance laws were challenged in a

63 Ibid., p. 23.

64 R.S.S., 1953, c. 171, s. 4(a).
British Columbia case directly on the grounds that such laws were *ultra vires* the provincial legislature in that by enacting compulsory attendance legislation the province was entrenching upon the fundamental right of religious freedom guaranteed by Section 93 of the B.N.A. Act, 1867.65

Perrepolkin was a member of a Doukhobour sect whose child had been placed in the custody of the Superintendent of Child Welfare because the father had refused to send the child to the public school of the district.

Section 7 (m) of *The Protection of Children Act* of British Columbia authorizes the Superintendent of Child Welfare to detain and bring before a juvenile judge who is empowered to make an order for the custody of a child "who is habitually truant from school and is liable to grow up without proper education." This section, it was claimed by the appellant, infringed upon the religious freedom of the Doukhobours which the province could not touch and hence was *ultra vires* the provincial legislature.

Section 157 (1) of *The Public School Act* which requires all children between the specified ages to attend the public school of the district unless excused by specified reasons was likewise contended to infringe the religious

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freedom of the sect.

It was contended that the appellant objected to attendance at state or government schools with their present curriculum on grounds of religion and conscience. He claimed that the objection centred around the fact that public schools interpret history as to glorify, justify, and tolerate intentional taking of human or animal life or teach or suggest the usefulness of human institutions which have been or could be put to such a purpose. The Doukhobours believe that public schools expose their children to materialistic influences and ideals. It was further contended that education on secular matters being separated from education on spiritual matters as is the case with public education was incompatible with the Doukhobours' ideals.

In ruling against the appellant Sidney Smith, J.A., stated:

The B.N.A. Act, sec. 93, expressly gives exclusive jurisdiction over education to the provinces with a few enumerated exceptions, none of which applies here. Even assuming that the provinces cannot legislate on religion sec. 93, I think, makes it clear that the mere fact that bona fide legislation on education may indirectly affect religion in some aspects does not affect its validity. Any other view would make the enumerated exceptions nonsensical. I for my part, cannot feel that in this case there is any religious element involved in the true legal sense. It seems to me that religion in one thing, a code of ethics, another, a code of manners, another. To seek the exact dividing line between them is perhaps perilous but I absolutely reject the contention that any group of tenets that some sect decides to proclaim form part of its religion thereby necessarily
takes on a religious colour.

This clearly to my mind involves the claim that a religious sect may make rules for the conduct of any part of human activities and that these rules thereby become for all the world a part of that sect's religion. This cannot be so.66

Sheppard, J.A., in agreeing with Justice Smith, added:

Subsec. (1) of sec. 93 does not apply: The appellants do not contend that they had within that subsection "any right or privilege with respect to denominational schools . . . by law in the province at Union" and the other subsections of sec. 93 will not apply here. Therefore in the circumstances of this case the general powers of the province to legislate on education under sec. 93 must be taken to be unqualified. By reason that the appellants have not established any special right limiting the powers of the province, therefore the statutory provisions in question must be taken to be within the legislative powers of the province . . . and being valid such provisions are effective to exclude a right of the appellants to withhold their children from school.67

In the Perepolkin case it was definitely established by the Court that compulsory attendance laws, although they may indirectly affect religion, are within the jurisdiction of the Province. Such laws do not interfere with religious freedom. The powers of the province to enact legislation on education under Section 93 of the B.N.A. Act is absolute.

Strict adherence to correct procedure required for conviction under compulsory attendance laws. An Alberta

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67Ibid., p. 604.
case on record concerns a parent who for no justifiable reason kept his child out of school, but whose conviction on appeal was quashed. The prosecution failed in its information to show that an offence had been committed or that correct procedure had been followed prior to his prosecution. 68

The appellant had been charged and convicted by a Police Magistrate for unlawfully neglecting or failing to cause his child to attend school, contrary to Section 9 (1) of The School Attendance Act of Alberta. This section reads as follows:

Any parent, guardian or other person having the charge or control of any child who has attained the age of seven years and has not attained the full age of fifteen years, who within five days after having been notified as provided in the preceding section neglects or refuses to cause such child to attend school and continue in regular attendance thereat, unless such child is excused from attendance as provided by this Act shall be subject to a penalty. . . . 69

The appellant applied to the District Court to have the conviction set aside on the grounds that the information did not allege an offence. The Court found that in the complaint no regard had been paid to the provisions of the section other than that he refused to cause his child to

69 80 C.C.C. 131 at p. 133.
attend school. In other words the prosecution in its information did not show that (1) the child was at least seven years of age, (2) the child was under fifteen, (3) the person being charged was the parent, guardian or person having control of the child, or that (4) the person having control of the child had been notified.

In setting the conviction aside MacDonald, D.C.J., had this to say:

I do not think it is an offence under the Act to neglect to cause a child to attend school except under the conditions laid down in the Act and, as this was the only charge before the Magistrate and in my opinion does not charge an offence under this or any other Act, I think I must hold that the proceedings were a nullity and that the conviction should therefore be set aside.70

The School Attendance Act of Saskatchewan differs somewhat with The School Attendance Act of Alberta. Under Saskatchewan law when a child appears to the court to be within the age limits of seven to fifteen he is deemed to be within such limits. The onus is on the defendant in such cases to prove that the child does not fall within the limits, if such is the case. This section reads as follows:

24. Where a person is charged with an offence under this Act with respect to a child who is alleged to be over the age of seven and under the age of fifteen years, and the child appears to the court to be within such limits of age, the child shall be deemed to be within such limits

70 Ibid., p. 133.
unless the contrary is proved. 71

The warning notice that is sent to one of the parents or to the guardian of any child not complying with the provisions of The School Attendance Act in Saskatchewan must be in writing, on a prescribed form (form B). This notice states that within five teaching days (or two teaching days in the case of town schools) from the receipt of the notice the child must attend school and continue in regular attendance or the person receiving the notice is liable to prosecution.

The notice may be delivered in person or served by registered mail. The section dealing with the serving of form B reads:

19. (3) The notice provided for in this section may be delivered in person, or may be served by registered letter, postpaid, delivered at any post office, and addressed to that party warned at the post office situated nearest to his place of residence, and the production of the registration receipt from the post office where such letter was registered shall be prima facie evidence of its receipt by the party to whom it was addressed within four days after the posting and registration. 72

Although there is some difference between Saskatchewan compulsory attendance laws and legislation that was in effect

71 R.S.S. 1953, c. 171, s. 24; 1957, c. 55, s. 12.
72 R.S.S. 1953, c. 171, s. 19(3).
in Alberta in 1943, the Alberta case clearly shows that under our legal system the correct procedures must be followed in laying an information. But more important, this case reiterates one of our most cherished legal principles—the principle that until proven guilty a person is innocent in the eyes of the court.

Compulsory attendance laws have been in force in some form in the area that now constitutes Saskatchewan since 1888.\textsuperscript{73} Although these laws were enacted they were difficult to enforce. It was not until the general public realized the great benefits that their children could derive from an education that the laws were accepted and became effective. Consequently, school attendance is by law compulsory, but for the vast majority school attendance is in fact voluntary. Thayer has commented on this point in reference to the American people but his words apply equally to the situation as it has evolved in this Province.

Not until a goodly proportion of our people came to realize the importance of school attendance was it possible for the state to enforce compliance with laws which made mandatory the attendance at school of all children within a given age range. But once compulsion reflected public sentiment, the enforcement of compulsory attendance laws was not difficult.\textsuperscript{74}

\textsuperscript{73}\textit{Revised Ordinances of the North-West Territories, 1888, c. 59, s. 183.}

\textsuperscript{74}\textit{V.T. Thayer, The Role of the School in American Society,} New York: Dodd, Mead and Co., 1960, p. 497.
The Right to Attend School and Receive an Education

The School Attendance Act makes it mandatory that children within certain age limits attend school. The Act provides for penalties that may be imposed upon any person who has charge of a child and fails to carry out these obligations. Thus, the responsibility falls upon the person having charge of any child whose age falls within the requisite limits to make certain that the child attends school as required by law. Although the child is compelled to attend school he, at the same time, has a legal right to attend school. Consequently, the educational authorities are charged with the responsibility of making adequate provisions for the child to exercise this legal right. Under Saskatchewan law, the child's right to education and the responsibilities of the authorities to provide the means for the child to attain an education are laid down by statute.

Legislation designed to ensure the child's right to an education reads as follows:

229. (2) Except as herein provided, every resident person between the ages of six and twenty-one years shall have the right to attend the school and receive instruction appropriate to his or her grade, provided that the board may require satisfactory proof of age before admission.\(^75\)

The statutes provide for a penalty to be imposed upon

\(^75\) R.S.S. 1953, c. 169, s. 229(2).
anyone obstructing an eligible person from taking advantage of this right to attend school. The section pertaining to this aspect reads:

229. (6) Any trustee, teacher or other person who interferes or attempts to interfere with the right of a pupil to attend school in violation of the provisions of this Act is guilty of an offence and liable on summary conviction to a fine not exceeding $50.76.

The right of an individual to attend school would be seriously impaired, if not rendered meaningless, if the proper authorities were not obligated to provide the necessary accommodation and the appropriate instruction. The performance of these duties is entrusted to the board of trustees. Under the duties and powers of trustees, the legislation pertaining to these responsibilities states:

114. It shall be the duty of the board of every district and it shall have power:

7. to provide adequate school accommodation for the district;

9. subject to the provisions of this Act and the regulations of the department, to provide instruction appropriate to their grades for all pupils who have the right to attend school.77

In Saskatchewan, and elsewhere in Canada, persons who meet the eligibility requirements have a right, under

76 Ibid., c. 169, s. 229(6).
77 Ibid., c. 169, s. 114 (7), (9).
statute, to attend school and receive an education. However, there have been instances in which school boards have attempted to deprive certain individuals of their statutory rights. The courts have consistently upheld the principle that the statutory rights of the individual cannot be denied. The following cases that are considered are concerned with the pupil's statutory right to an education. In some of the cases more than one general area was involved. For convenience, however, they are grouped under the following headings: (1) The right to accommodation, (2) Equal opportunity for all pupils, (3) Statutory provisions guaranteed to all pupils, (4) The right to receive an education.

The right to accommodation. The Tremblay case, a Quebec case of 1887, committed the board to provide sufficient accommodation for all children of school age.78 The board of school commissioners appealed to the area superintendent who ordered that a large district be divided and a school located in each. At first the commissioners appeared to accept this decision. Later, a petition was circulated by residents and the commissioners reversed their stand and refused to execute the recommendation. The reason given by the commissioners for failure to comply with the recommenda-

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tion was that the majority were against it and for that reason, compliance was impossible.

The Court, in its decision, ruled that the superintendent's decision was final. The justifiability of the order was not within the jurisdiction of the Court.

We have not here to enquire whether the division should take place or not. The superintendent has pronounced on that, and his decision is final says the statute. . . .

His decrees must be respected and obeyed as those of a court of justice should be, and the refusal or negligence to do so is nothing else but an act of rebellion to law and authority. 79

In this case the court emphatically declared that, (1) school officials cannot defend their actions by pleading that it is impossible to comply with an Act of the Legislature, and (2) school officials cannot evade the statutory duty to provide the children of the area with the educational facilities to which they are legally entitled.

In Ex parte Gallagher, a New Brunswick case of 1892, the Court ruled that lack of sufficient funds was not a defence for failing to provide sufficient accommodation for all the students of the district. 80 The board contended that it had failed to requisition a sufficient amount to provide facilities for all. In granting the writ of mandamus

79 Ibid., p. 561.
80 Ex parte Gallagher (1892) 31, N.B.R., 472.
to compel the board to provide accommodation, the Court pointed out that even if a board has failed to assess sufficiently it is not relieved from the responsibility of providing accommodation.

A more recent case occurred in Alberta in which action was taken against a board for its failure to provide accommodation for certain children residing within the district. 81

In this case the school in the plaintiff's district was closed. An agreement was reached by which the children would attend school in the city of Medicine Hat. The board agreed to pay the plaintiff $600 for or in lieu of conveyance. The plaintiff could not rent a house in Medicine Hat so he built one and his wife and children lived in it while he remained on his ranch. At the end of the term the mother and children returned to the ranch. For that year the board paid the plaintiff the stipulated sum.

The following year the mother and children moved into the city again, but no payments were received. The board contended that the plaintiff wasn't entitled to further payment as he was now a ratepayer in Medicine Hat and for this reason the board no longer had any responsibility in the

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The Court, in granting the writ of mandamus and the damages claimed by the parents, stated that the board was duty bound by statute to provide adequate accommodation. In the words of Sissons, D.C.J.:

I think that the duty, "to provide adequate school accommodation for the purposes of the district" is absolute. Even if these sections were not in the Act this primary duty would have to be implied. Children have a right to be educated, and school districts and school divisions have no other reason for existence.\textsuperscript{82}

The Court went on to state that it could not accept the contention that the defendant board was no longer responsible because the plaintiff was a registered property owner in the City of Medicine Hat. The Court felt that the plaintiff was a property owner in the said city solely because the defendant board had failed to provide adequate school accommodation in the plaintiff's district.

The defendant board further contended that the duty was imposed by the Act, but no mode of enforcing its performance was prescribed by statute. On this point Judge Sissons stated:

The present case is one where the Act creates an obligation, but no mode of enforcing its performance is ordained, and the common law may find a mode suited to the particular nature of the case.\textsuperscript{83}

\textsuperscript{82}Ibid., p. 372.

\textsuperscript{83}Ibid., p. 374.
The following points are stressed in this decision:

(1) The duty to provide adequate school accommodation which is imposed on school boards is an absolute one.

(2) Where the statutes provide no mode of enforcing the performance of a duty the common law may be resorted to for the appropriate remedy. The statutory duty of a board to provide the children of the district with an education must be carried out.

**Equal opportunity for all pupils.** School boards are required to provide adequate accommodation for all eligible children in the district. The board cannot discriminate against any of the district children. A Saskatchewan court delivered a decision on this issue in the *Ridings* case.\(^{34}\)

This was an action by a parent for: (1) A *mandamus* to compel the trustees of the defendant school district to provide means of education for the children and for their conveyance to school, (2) Special damages for services rendered in conveying the children to school.

Evidence before the Court showed that the plaintiff originally resided with her husband in Moosehead School District. Later she separated from her husband and went to keep house for a resident of the Elmhurst District. The

\[^{34}\] *Ridings v. Elmhurst School District No. 2, [1927]*
2 W.W.R. 159, 21 Sask. L.R., 3 D.L.R. 173; reversing [1926]
3 W.W.R. 729.
Elmhurst school was eventually closed and the children of that district were transported to the school in Moosehead District. The trustees of Elmhurst District contended that since the plaintiff's husband owned and paid taxes on land in Moosehead District the plaintiff's children really belonged to that district. For this reason the defendant district claimed that it was under no obligation either to provide for their education or to convey them to school.\textsuperscript{85} The plaintiff's action was dismissed by the District Court.

The Saskatchewan Court of Appeal reversed the decision of the District Court. In so doing the Court of Appeal indicated that:

\ldots where the trustees of a school district make arrangements for the education of the children of that district in another district and make arrangements for their conveyance to school, they are bound to include all children in their district and are liable for the cost of conveyance to school children for whom they have made no arrangements.\textsuperscript{86}

Lamont, J.A., in his decision, stated:

\ldots the plaintiff's children—as they were of school age and residing in Elmhurst School District—belonged to that district and were entitled to the same rights and to the same treatment as any other children of school age in the district. The defendants were therefore under obligation to make provision for the education of the plaintiff's children.\textsuperscript{87}

\textsuperscript{85} W.W.R. 729 at p. 729.

\textsuperscript{86} D.L.R. 173 at p. 173.

\textsuperscript{87} Ibid., p. 176.
It was further stated by MacKay, J.A.:

It was the defendant's actions that put her in this position and they owed to her, as well as to her children, the duty of providing for the conveyance of her children to and from the school. This the defendants neglected to do and the plaintiff having done what the defendants should have done, is entitled to bring this action to recover from the defendants by way of damages the costs she incurred in so doing and for a mandamus that the defendants provide for such conveyance.88

The pertinent legal principles arising from this case are as follows:

(1) The trustees have a duty to provide the means whereby all children of school age may exercise their right to take advantage of the educational facilities provided.

(2) The trustees are obliged not to discriminate against any students resident in the district. There must be equal opportunity for all children of school age.

In the Perreault case, again in Saskatchewan, a school unit board ignored its statutory duty to provide transportation for the plaintiff's children to school.89 The plaintiff lived on a farm that was so located as to make it impossible for his children to get to the school of the district during most of the year. Since the defendant board

88Ibid., p. 179.
refused to arrange conveyance for his children, the plaintiff made arrangements for them to attend a residential school in another district. In turn, the plaintiff sought to recover from the unit board the cost of boarding his children at the residential school.

At the time of the action, The Larger School Units Act read as follows:

51. It shall be the duty of every Unit Board, and it shall have the power:

9. to make, where necessary, provision for the attendance of pupils at schools outside the district in which their parents or lawful guardians reside, and for the payment to a parent or lawful guardian of a reasonable sum on account or in lieu of the cost of a pupil's conveyance. 90

The Trial Court, in finding for the plaintiff, felt that the defendant board had not fulfilled its obligation to provide educational facilities for the plaintiff's children. The Court ordered the defendant board to pay the plaintiff a reasonable sum in lieu of the costs of conveying the children to the school of the district.

The defendant board appealed the decision and the Court of Appeal affirmed the decision of the Court of Queen's Bench. In so doing the Court of Appeal:

Held, that there was no sound reason for reversing the findings of the trial judge that there had been

90 R.S.S. 1953, c. 170, s. 51(9).
a breach by the defendant school unit board of its obligation to provide educational facilities for the children living in an area which had been in a school district which was incorporated in the larger unit.\textsuperscript{91}

Emerging from the \textit{Perreault} case is the principle that a school board cannot evade its obligations to transport children when such obligations are mandatory by statute. Transportation or payment in lieu of transportation was necessary in order to fulfill the board's statutory obligations to provide educational facilities for the children of the area.

\textbf{The right to receive an education.} The governing principle of \textit{The School Act} of Saskatchewan is that children between certain ages have the right to attend school and receive instruction. This was established by a Saskatchewan Court in the \textit{Wilkinson} case.\textsuperscript{92}

At the time of the action \textit{The School Act} provided for the trustees of town districts to determine at what time pupils could be admitted to school in grade one.\textsuperscript{93} This provision was not extended to the boards of village and rural districts.\textsuperscript{94} Tuxford School District was a rural

\begin{itemize}
\item \textsuperscript{91}(1957) 21 W.W.R. 17 at p. 17.
\item \textsuperscript{92}\textit{Wilkinson v. Thomas and Tuxford School District}, \textsuperscript{1928} 2 W.W.R. 700.
\item \textsuperscript{93}\textit{R.S.S.} 1920, c. 110, s. 27.
\item \textsuperscript{94}This section was changed at a later date so that
district; however, the board of trustees passed a resolution to the effect that beginners could enter school only after the summer holidays. 95

The Wilkinson child attained her fifth birthday and her father made application to the board for her admission to school prior to the summer holidays. Upon the refusal of the board to admit the child to the school, the plaintiff applied to the Court for a writ of mandamus to compel the defendant board to receive his child as a pupil.

The Court held that the section of The School Act allowing the board of trustees to set the time pupils in grade one could be admitted to school pertained only to town districts. Consequently, this section did not apply to the defendant board which was the board of a rural district.

The Court, in granting the application for a writ of mandamus to compel the defendants to receive the Wilkinson child, was quite emphatic in stressing that the right to receive instruction in school is the legal right of the child which cannot be removed by the board.

The Court's decision, delivered by Taylor, J., stressed the fact that trustees or parents do not have the

boards of any school organized under The School Act were given power to determine at what times the pupils are to be admitted to grade one.

power to withhold from the child a right that is guaranteed by statute:

It [The School Act] clearly lays down the principle that children between these ages imperatively have the right to attend school and receive an education. In other enactments provision is made for the prosecution and punishment of parents or guardians who do not send children, of whom they have custody, to school and permit them to receive the benefit of the right conferred on the child. The right is the right of the child itself to receive proper instruction, and it is not a matter left to the discretion of the parent or the school board.96

In warning trustees of the risk they take when they disregard statutory provisions the Judge declared:

I think it should be very clearly laid down that in matters of law, matters so vital as the right of a child to receive education in the school and such matters as that, school trustees should not undertake to proceed without consulting their solicitor and counsel, and if they wish to do so, they must take the risk of having to pay costs if they are wrong. The applicant was clearly right. He was doing that which it was incumbent upon him to do in the interests of his child and to avoid the danger of prosecution of himself for failure to send the child to school.97

From this case the following legal principles are apparent:

(1) A child within the prescribed ages has the right to receive an education beginning at the time referred to in the statutes.

96 Ibid., at p. 701.

97 Ibid., p. 702.
(2) School trustees are committed by statute to provide accommodation and instruction for all children legally entitled to attend the school of the district.

The ultimate responsibility for provision of accommodation and free schooling lies with the province. This is one of the principles arising out of the McLeod case heard in British Columbia.\textsuperscript{98} This is an important case in that the decision was based on several precedents established in cases previously discussed. Furthermore, this case stressed the legal obligation required of school boards when they are unable to perform their statutory duties. The facts of the case are as follows:

The Board of School Trustees of School District No. 20 was responsible for the education of all the children in three areas, consolidated into one unit for school purposes. The three areas included the City of Salmon Arm, the Municipal District of Salmon Arm, and the unorganized rural area in the surrounding neighborhood. Representatives of the three areas formed the governing body of the school board corporation. Moneys for the expenditures incurred were derived from three sources: (1) taxes collected by the two municipalities, (2) provincial "basic" grants, and (3) the

\textsuperscript{98}McLeod v. Board of School Trustees of School District No. 20 (Salmon Arm), [1952] 2 D.L.R. 562, 4 W.W.R. 385.
provincial government paid the total amount for the unorganized area.\footnote{1952 4 W.W.R. 385, at p. 385.}

The Public School Act provided for a board of arbitration to act should a conflict regarding the annual estimated school expenditure exist between the two municipal councils and the school board. The award of the arbitration board was to be final in such disputes.

Disagreement arose and arbitration took place on May 12, and the school estimates were reduced by some $80,000 from the original estimate of $328,000. The school board did not abide by the decision of the arbitration board. Instead, the school board was determined to close the schools on September 30, unless the two municipalities made further contributions. The City of Salmon Arm agreed to make a contribution of $11,000 provided that it was applied only to city children, but the Municipal District of Salmon Arm refused to provide any additional moneys.

On October 1, the school board closed the schools in the Municipal District depriving some 510 out of a total of 1528 children in the three areas from schooling. The school board had ignored the findings of the arbitration board and it had deprived approximately one-third of the children of
the school district of schooling.\textsuperscript{100}

The Trial Court, in refusing to grant a writ of mandamus to compel the school board to open the closed school, recognized the board's contention that lack of funds made it impossible to comply with such an order. The Court of Appeal, in granting the writ of mandamus reversed the decision of the lower Court.

The Appeal Court pointed out that the answer by the school board on October 11, to the writ of mandamus did not aver that it could not, after May 12, have reduced its expenditure to the figure set by the arbitration board and thus provided all the children with their statutory right to schooling.\textsuperscript{101}

O'Halloran, J.A., in delivering his decision, said:

Once it is clear the major responsibility for the education of the children rests upon the province, as the school board ought not to have failed to realize, then if an impasse occurred there was a duty upon the school board to act in the interests of the children in a manner that would enable the province to assume its major responsibility. If the trustees felt they were unable to reduce the school expenditures to the figure set by the arbitration board and still give the children the schooling required by the Public Schools Act, then, in fairness to the children, one would have thought the trustees would have resigned, in which event the province undoubtedly would have accepted its statutory responsibility by appointing an official

\textsuperscript{100}Ibid., p. 386.

\textsuperscript{101}Ibid., p. 387.
trustee to conduct the affairs of the school district. In my opinion people in public office ought to resign if they find no way left to carry out their statutory duties.\textsuperscript{102}

Chief Justice Sloan had the following to say in this regard:

It seems to me that, because of the failure of the board to give a complete explanation of the manner in which the funds allocated by the arbitration award were exhausted before the end of the school year, it would be creating a dangerous precedent, under these circumstances to relieve the school board from the absolute and imperative duty imposed upon it by statute to provide accommodation for the children within its jurisdiction. To hold otherwise might very well encourage public and governmental authorities to disregard prudent limitations upon their expenditures and then permit them to rely upon their own improvidence as an excuse for non-fulfillment of their statutory duties.\textsuperscript{103}

The following legal principles were pointed out by the Court in its decision:

(1) The reason for The Public Schools Act, and to which it gives paramount consideration, is to ensure the education of all children in the province. The Court referred to \textit{Ex parte Miller}, a New Brunswick case which was concerned with "residence" requirements.\textsuperscript{104} In that case, Van Wart, J., stated:

The Common Schools Act was passed to provide schools for all children within certain ages, at the public expense by means of taxation. The law was placed on

\begin{itemize}
\item \textsuperscript{102} \textit{Ibid.}, p. 380.
\item \textsuperscript{103} \textit{Ibid.}, p. 386.
\item \textsuperscript{104} \textit{Ex parte Miller} (1897) 34 N.B.R., 318.
\end{itemize}
the statute book in the interest of children.\textsuperscript{105}

(2) No discrimination against any particular children is permissible. The precedent cited for this was the \textit{Ridings} case.\textsuperscript{106}

(3) \textit{Mandamus} is the appropriate remedy where there is no other way to enforce obedience of the law when in justice and good government there ought to be a remedy. The Court here based its reasoning on the \textit{Henchel} case.\textsuperscript{107}

(4) Exhaustion of funds cannot be an answer where the lack of money has been occasioned by a persistent course of conduct in defiance of a statute. Reference was made by the Court to \textit{Ex parte Gallagher} for this principle.\textsuperscript{108}

(5) The school board cannot be heard to say that an Act of the Legislature is impossible to comply with. The \textit{Tremblay} case served as a precedent for this principle.\textsuperscript{109}

Of the several principles which were cited in the \textit{McLeod} case, two emerge that have not been mentioned in previous cases. These two principles are:

(1) If a board of trustees is unable to carry out the duties and obligations conferred on it by statute the only recourse open to it is to resign.

\textsuperscript{105}(1897) 34 N.B.R. 318 at p. 320.
\textsuperscript{106}Supra, p. 108. \textsuperscript{107}Supra, p. 106.
\textsuperscript{108}Supra, p. 105. \textsuperscript{109}Supra, p. 104.
(2) The ultimate responsibility for education rests with the province. The province has delegated to the local districts this authority to provide education for the resident children. The authority may be delegated but the ultimate responsibility for providing the education cannot be delegated. If the district board cannot carry out its duties the responsibility falls back on the province to provide for education.

**Assignment to schools.** The child has the legal right to attend the school of the district in which he resides providing he meets the requirements laid down by statute. This does not mean, however, that the child may select the school he desires to attend when there is more than one school in the district.

The board of trustees is empowered to determine the territorial boundaries of the schools to be opened and maintained. On this matter **The School Act** reads:

114. It shall be the duty of the board of every district and it shall have the power:

37. to determine the number, grade, territorial boundaries and description of schools to be opened and maintained. 110

Similarly, **The Larger School Units Act** states:

51. It shall be the duty of every unit board, and it shall have power:

110 R.S.B.C. 1953, c. 169, s. 114(37).
8. to determine what school any of the children of the unit shall attend.111

This discretionary power of the board is set down in statute today, but in the past such was not the case and it was left to the courts to rule on cases that emerged in this area.

The earliest reported case regarding the assignment of pupils to schools was the Dunn case which originated in Ontario.112 In this case two schools were situated in the town. One of the schools was designated for coloured children and the other was designated for white children. The child of the plaintiff, a coloured person, had attended the school for coloured children. At the beginning of a school term the plaintiff took his child to the school for white children. The headmaster refused to receive the child and instructed the plaintiff to make application to the board of trustees for permission to have her admitted. This the plaintiff did, but the trustees refused to grant the request. The plaintiff applied to the Court for an order for a writ of mandamus to compel the defendant board to duly register and receive her as a pupil in the school. The plaintiff sought to convince the Court that the real reason

111R.S.O. 1953, c. 170, s. 51(6).
112Dunn v. The Board of Education of the Town of Windsor, (1883) 6 O.R. 125.
his child was denied entry to the school was that she was a coloured child. The trustees denied this accusation and defended their action on the grounds that there was insufficient accommodation for the child at the said school.

The Court, in refusing to grant the application for a mandamus, noted that by the regulations, the inspector alone had the power of transfer of pupils from one school to another. Consequently, the application for admission did not comply with the regulations. The Judge inquired into the accommodations of the school and believed that the trustees had acted in good faith. For that reason, Ferguson, J. stated, "I think the want of accommodation at the Public Central School is a valid answer to the plaintiff's application."113

Some thirty years later the Patrick case in Saskatchewan reaffirmed this decision.114 Originally there had been only one school in the town of Yorkton. Eventually this school could not accommodate the population and another school was erected. The board of trustees passed a resolution in which a dividing line was designated. The plaintiff lived on the west side of the line but wanted his children

113(1883) 6 O.R. 125, at p. 126.
to attend the school on the east side of the line. His reasons for desiring this were that: (1) the school on the east side of the line was closer to his residence, and (2) his children had attended that school in the past.

The plaintiff applied for a writ of *mandamus* to compel the trustees to admit his children to the school nearer his residence. In refusing the application the opinion of the Court was expressed in these words by Lamont, J.:

The legislature having imposed upon the trustees the duty of providing the accommodation furnished by the second school, and having vested in them the management of the schools in their district must, in my opinion, be held to have impliedly given them the power to make all regulations necessary or advisable, not only for the management of the school room, but for determining the portion of the district that could be most suitably served by each of the schools or the children who shall attend each, and so long as the trustees act bona fide and to the best of their judgment for the purpose of securing the better conduct or more efficient management of the schools under their charge, their discretion in these respects must cannot [sig] be interfered with. If the parents of the children in a district had the right to determine what particular school their children would attend, and they all desired to have them attend one particular school, which could accommodate only one-half of the children, how would the selection of the half be made?\(^{115}\)

In Saskatchewan, school boards maintain the discretionary power to assign pupils to the particular school in the district that they must attend. These powers are granted by statute at the present time but boards had this

\(^{115}(1914)\) 6 *W.W.R.* 1107 at p. 1109.
same power by virtue of court decisions prior to it being incorporated into the statutes.

**Eligibility Regulations**

The School Attendance Act makes it the duty of parents or guardians to see that their children who qualify by age are educated and it provides penalties for noncompliance.\(^{116}\) The School Act specifically states that eligible persons have the right to attend school.\(^{117}\) On one hand, children have a statutory right to attend school, and on the other they are legally obliged to do so. However, this does not mean that all children who may desire to attend can do so. Some children are denied attendance privileges and others are granted such privileges only upon payment of a fee. In order to enjoy free schooling a child must meet age and residence requirements.

**Age requirements.** Every resident person between the ages of six and twenty-one years maintains the right to attend school and receive instruction appropriate to his grade.\(^{118}\) In rural and village districts children five years of age may be admitted to school by resolution of the board.\(^{119}\)

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\(^{116}\) R.S.S. 1953, c. 171, s. 3(1), (2), (3).

\(^{117}\) R.S.S. 1953, c. 169, s. 229(2).

\(^{118}\) Supra, p. 102.

\(^{119}\) R.S.S. 1953, c. 169, s. 229(3).
When a rural or village board exercises its discretionary power to allow children five years of age to attend school all such children in the district would be entitled to attend. There could be no discrimination in this respect. Although a child aged six (or aged five in rural and village districts where the board has granted approval by resolution) retains the legal right to attend the school of the district he is not obligated to attend such school provided he has not attained the age of seven. The lower age limit stipulated by The School Attendance Act for compulsory school attendance is seven years. Consequently, the child's statutory right to an education begins at age six but he is not required to fulfill his statutory duty of taking advantage of the educational facilities provided for his benefit until he has attained the age of seven.

Admission times. A child may attain the age required to exercise his statutory right to enter school in grade one, but be thwarted from so doing at that time. The Legislature, realizing the chaos that would result if each child was allowed to begin school on his sixth birthday, has granted the board of trustees the power to determine at what times of the year pupils may be admitted to grade one. On this subject The School Act states:

\[\text{R.S.E. 1953, c. 171, s. 3(1).}\]
114. It shall be the duty of the board of every district and it shall have power:

38. to determine at what times pupils may be admitted to Grade 1.\textsuperscript{121}

A similar provision is contained in \textit{The Larger School Units Act}:

51. It shall be the duty of every unit board, and it shall have power:

7. to determine, subject to the provisions of \textit{The School Act} and \textit{The School Attendance Act} and with the approval of the superintendent, at what times pupils may be admitted to Grade 1 in any or each school district in the unit.\textsuperscript{122}

This provision has not always been in our statutes in its present form. In the second decade of the present century the discretionary power to determine the time a pupil could enter in grade one was granted to the boards of town districts only. The only reported case, the \textit{Wilkinson} case,\textsuperscript{123} in which the age of school admission was the main issue, arose in this Province at that time. In this case the Wilkinson child had attained the required legal age to exercise her right to attend school as provided by statute. The Court had no recourse but to grant the plaintiff a writ of \textit{mandamus} in order to grant the child her rights as laid

\begin{footnotes}
\textsuperscript{121} \textit{R.S.S.} 1953, c. 169, s. 114(38).
\textsuperscript{122} \textit{R.S.S.} 1953, c. 170, s. 51(7).
\textsuperscript{123} \textit{Supra}, p. 112.
\end{footnotes}
down by statute. It is quite likely that this action served as the motivating force which brought about the statutory amendment that now empowers the board of any district to designate the times at which pupils may be admitted to grade one.

The discretionary power by which school boards may decide the time pupils may enter grade one can lead to some hardship in the case of a family that moves from one district to another. Some boards allow all children who reach school age prior to the first of January to begin school at its opening in the preceding September. Other boards require all beginners to have attained their legal school entrance age prior to the opening of school in September. A child whose birthday falls in December would be allowed to begin school if the board regulations were such as stated in the former case. However, if after attending school in that district for some time his parents moved to a district with regulations such as stated in the latter case he would be excluded from attending that school. Should the parents later in the year move to a district with regulations similar to those of the district in which they originally resided the child would once again be legally entitled to attend school, but by this time the child may have missed so much school that it would serve little purpose to have him enrol again during that year.
This power to determine the times when pupils may enter grade one serves an economic purpose. It allows the board to regulate to some extent the size of the beginning class. Without this provision, the facilities and the instructional staff could be unduly overburdened in certain localities during specific years. If the board sought to remedy the overcrowding by providing more accommodation facilities for one year these facilities may be unused in whole or in part in ensuing years.

Residence requirements. The pupil's right to attend the school of a district depends upon his residence. All resident persons who qualify by age are entitled to attend school.\textsuperscript{124} The term "resident" however, is not defined in the statutes. Instead, the courts have been called on to interpret this term on several occasions. Unfortunately, the definitions have not been the same in all cases. The writer will not give a detailed account of the facts in all reported cases in which a definition of "resident" was sought. The more important cases will be presented in somewhat more detail. The earliest leading case on record is \textit{Ex parte Miller}, a New Brunswick case of 1847.\textsuperscript{125} This was an application for a writ of \textit{mandamus} to compel the trustees

\textsuperscript{124}Supra, p. 102.

\textsuperscript{125}\textit{Ex parte Miller} (1897) 34 N.B.R. 318.
of District Number 8 to allow the applicant's children to attend said school. The applicant owned and worked a farm in District Number 10, but moved his family to District Number 8, and took up residence there, although he occasionally spent time at the farm. The trustees of District Number 8 refused to allow the applicant's children to attend school although the applicant had notified them of his change in residence. In granting the writ Van Wart, J., had this to say:

Are the children of the applicant resident in the district? I think they are. The Common Schools Act was passed to provide schools for all children within certain ages, at the public expense by means of taxation. The law was placed on the statute book in the interest of children. The residence necessary to give the right to attend school is the residence of the child. True, that for many and perhaps most purposes the residence of the father determines that of the child (a minor). A man can have but one domicile, but may have more than one place of residence and may change it from time to time at his will.126

The principles arising from this case are:

(1) The residence necessary to give the right to attend school is the residence of the child.

(2) A person may have several "residences" but only one domicile.

In a Manitoba case the Court was required to rule on the question of whether a child was "non-resident" if the

126(1897) 34 N.B.R. 318 at p. 320.
father maintained a permanent residence in the district but was not liable to pay school tax equal to the average school tax.\textsuperscript{127} The Court had little difficulty in deciding that the child was a resident, as the statutes clearly stated that a pupil would not be classified as a non-resident if his parents, or one of them, or whose legal guardian had a permanent or principle place of residence within the district.

A British Columbia court decided that payment of rates in themselves did not entitle a ratepayer to attend school in a district. Attendance at a public school depends on residence.\textsuperscript{128}

The latest reported case concerning the residence of a child, like the first reported case, originated in New Brunswick, and the decision in the first case bound the second.\textsuperscript{129} In this case a boy was residing with his uncle in Sunny Brae and attending school in Moncton which is in the same county. The uncle maintained a business and paid taxes in Moncton. The uncle was subsequently notified that the boy would be excluded unless fees were paid. The board


\textsuperscript{128}\text{Patterson et al. v. Victoria Trustees,} (1917) 1 W.W.R. 526, 24 B.C.R. 365.

\textsuperscript{129}\text{Ex parte Murray Lambert,} (1930) 1 M.P.R. 12.
maintained that the boy was not a resident of Moncton because his father lived elsewhere. The Court held, that the residence necessary to give the right to attend school is the residence of the child and the board was required to admit him to the school. Grimmer, J., in his decision, stated:

... it does appear to me ... that the residence necessary to give the right to attend school is the residence of the child ... However, what opinions I might form is not of very much importance as the matter is covered and decided in my opinion by the finding of our own court in the case of Ex parte Miller (1897) 34 N.B.R. 318.130

Three reported cases that concern the interpretation of the term "residence" are not concerned with pupils but they give weight to the decisions discussed. An Ontario case of 1899, concerned a defendant who was a life tenant on a farm in Albion township.131 He later rented this farm to his son and went to live with his wife on property owned by her in Caledon township. Later his son gave up possession of the first farm and the defendant took possession of it. The defendant stayed on this farm, occasionally visiting his wife in the other township. He was elected to the office of trustee in Albion township. His election was challenged on the grounds that he had been, when elected and had continued

130 Ibid., p. 20.

to be after election, a resident outside the school section he represented. The Court held, that the defendant's place of residence was where his wife and family lived, and he was therefore not a resident within the township to which he had been elected.\footnote{Ibid., p. 448.}

A Territorial case of 1902, concerned a plaintiff who owned real property in a district on which he paid rates, and had a house with furniture in it locked up on the property.\footnote{Curren et al. v. McBachen et al., (1902) 5 Terr. L.R. 333.} He rented a house out of the district for the use of his wife and family, while he was away prospecting in the mountains. The case concerned the erection of a school district in excess of five miles in length which required the consent of all resident ratepayers in writing. The Court had to decide whether the plaintiff was a resident ratepayer. McGuire, C.J., in delivering the Court's decision dismissing the action, had this comment:

Under the circumstances was Mr. Curren a resident ratepayer? I think not. The evidence at best establishes that his domicile may have been there notwithstanding the temporary residence of himself and family in British Columbia . . . . When Curren went to British Columbia he says it was on business and not with intent to stay—therefore the place he went to did not become his domicile, but as it was his intent to leave it as soon as his purpose was
accomplished, it was his "residence."\textsuperscript{134}

In a Manitoba case of 1909, the complainant and defendant were both school trustees.\textsuperscript{135} The complainant was of the opinion that the defendant was not qualified to be a trustee. The defendant worked and slept on his farm in the school district, while his wife and children lived in a nearby city. On weekends the defendant usually went to where his family lived.

The lawyer for the complainant referred to The Election Act which defined "residence," in the case of a married man, as a place where a man's wife and family live. The case was dismissed with the Court stating:

The word "residence" is ambiguous. It has been given judicial interpretations during the last century according to the intent of the particular document or legislation wherein it was found. . . . I am of the opinion that it is not only possible, but of sufficiently common practice to be well recognized in law, for a person to have more than one bona fide residence, and that legitimately he may do acts or serve in public positions in either place of residence, whenever legislation may have enacted that such may be lawfully done. It would be an error to take the special definition of a word which may be in another statute, for the purposes of that statute, wherein a statutory offence was created, and apply that special interpretation to any or all statutes wherein such words occur, and in which they have not been specially defined.\textsuperscript{136}

\textsuperscript{134}Ibid., p. 336.
\textsuperscript{136}Ibid., p. 654.
It will be noted that in the Ontario case regarding the eligibility of the trustee, the Court defined the defendant's place of residence to be where his wife and family lived; whereas in the Manitoba case, cited above, this definition was rejected by the Court. The principles that emerge from the several cases concerned with the meaning of the term "residence" may be stated thus:

(1) An individual may have more than one residence, but he can have only one domicile.

(2) The residence necessary to give the right to attend school is the residence of the child.

(3) The payment of an "average" school tax is not a requisite for residence purposes.

(4) Attendance at a public school depends on residence, not on the payment of rates in themselves.

Under certain circumstances a child may possess the right to attend a school located in a district in which he does not reside. For example, the board of a school district, organized under The School Act, upon receipt of application, must admit to school the child of a person who resides in an area not organized into a school district.137 Also, the child of a non-resident ratepayer is entitled to be admitted to the school of a rural district, provided that

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137R.S.O. 1953, c. 169, s. 231(1).
notice in writing is given to the board by the stipulated date. In both of the situations mentioned above the board may require that the application for admission be accompanied by the superintendent's verification that there is accommodation for the child in the school.

Fee payment. All pupils who reside within a school district have the statutory right to attend the school of the district. However, this does not mean that all pupils who possess this right are entitled to free schooling. The legislation under which the vast majority of pupils qualify for school attendance without payment of fees reads:

230. (1) The board of a district or of a school unit shall not charge fees for the attendance at school of a child whose parent or lawful guardian is a resident, other than as a lodger or boarder, of the district.

It is apparent from the section quoted above, that the children of persons who merely lodge or board within a district or unit are liable for school fees. Similarly, children staying with friends or relatives are liable for payment of fees.

A child residing in a foster home qualifies as a child of a district resident and is not subject to fee payment in order to attend the school. The legislation states:

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138 R.S.B.C. 1953, c. 169, s. 232(1).
139 R.S.B.C. 1953, c. 169, s. 230(1).
230. (2) A child who is residing in a district in a foster home as defined in The Child Welfare Act shall, for the purposes of this Act, to be deemed to be a child of a bona fide resident of the district.\textsuperscript{140}

A "foster home" is defined by The Child Welfare Act as "a home in which a child has been placed by the director or a children's aid society or by an institution."\textsuperscript{141} Also in The Child Welfare Act the term "institution" is defined as:

\dots a building or part of a building other than a private dwelling or a correctional institution or shelter, set apart for the care and custody of children and includes an infants' home, a boarding school and a maternity home, and the management of any such institution.\textsuperscript{142}

Consequently, any child placed in a home by the Director of Child Welfare, by a children's aid society, or by the management of an infants' home, boarding school or maternity home is considered to be the child of a bona fide resident and fees are not required for such a child to attend the district school.

A child who resides in an unorganized area may attend a school in any district if the provisions of Section 231 (1) of The School Act, have been complied with.\textsuperscript{143} Fees are not

\textsuperscript{140} \textit{Ibid.}, c. 169, s. 230(2).
\textsuperscript{141} \textit{R.S.S.} 1953, c. 239, s. 2(9).
\textsuperscript{142} \textit{R.S.S.} 1953, c. 239, s. 2(11).
\textsuperscript{143} \textit{Supra}, p. 134.
required on behalf of such a child if the property of the child's parent or guardian is assessed and the taxes therefore paid to the school district in which is located the school that the child attends. This is provided for in Section 236 of The School Act which reads:

236 (1) A person not residing within a district may apply to the board of any district to have his property, if not already included in any other district, assessed in such district to secure the advantages of education for his children and, on the report of the superintendent that the accommodation of the school room is sufficient for the admission of the children of such person, the board shall receive his application and cause the said property to be placed on the assessment roll of the district. . . .

When the number of children residing within a district becomes insufficient to require the school to be kept open, the board must make provision for the education of the children in some other district. In such cases any fees required are paid on behalf of the pupils by the board of the district in which the school is closed.

The actual amount of fees required to be paid are laid down in the regulations under The School Act and The Secondary Education Act. The same regulations apply to

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144 R.S.S. 1953, c. 169, s. 236.
146 "Regulations under The School Act, S. 8," Saskatchewan Gazette, July 8, 1960.
both Acts. The fee payable with respect to the attendance of a non-resident child at the school in a district or unit must not exceed the amount set down by the regulations. In calculating the maximum fee chargeable the cost of operating the school or schools of the district or unit attended by the child for the fiscal year immediately preceding is determined. From this amount is subtracted the amounts paid to the board under The School Grants Act, exclusive of capital building grants and grants for non-resident students enrolled in Grades XI and XII. This difference is divided by the enrolment in the school or schools in the district or unit as on the thirty-first day of December of such year. A percentage of this amount becomes the fee payable on behalf of each pupil depending on what type of school the student attends.\textsuperscript{147} The maximum amount that may be charged is set by regulation.

It is apparent that, in general, a pupil's right to attend school in Saskatchewan depends upon one factor—that being the residence of the pupil. On the other hand, a pupil's right to attend school without payment of fees depends on another factor—the residence of the pupil's parent or guardian.

\textsuperscript{147}"Regulations under The School Act, S. 10," Saskatchewan Gazette, July 8, 1960."
Exclusion from Attendance

An individual's right to attend school and receive an education is not absolute. Individuals who qualify by age and residence may be excluded from attending the school of the district permanently or for a limited period of time if they are unable to meet certain requirements pertaining to health and mentality.

Mentally deficient. A pupil may be excluded from attendance if his mentality is such that he is unable to benefit from schooling, or if his presence in class has a detrimental effect on the other pupils. The School Act provides for the exclusion of the mentally retarded as follows:

114. It shall be the duty of the board of every district and it shall have power:

42 a. if deemed advisable, to exclude from attendance at a school any pupil who in the judgment of the superintendent is so mentally deficient as to be incapable of responding to class instruction by a skilful teacher, or whose presence is detrimental to the education and welfare of other pupils in attendance at the school, subject to appeal by the parent or legal guardian of such pupil to the Minister of Public Health, whose decision shall be final.\footnote{R.S.S. 1953, c. 169, s. 114(42a).}

It will be noted that the board is charged with the duty to exclude pupils if deemed advisable who in the judgment of the superintendent are so mentally deficient that
they should be excluded. The parent may appeal, but not to the courts. The appeal must be to the Minister of Public Health whose decision is final.

Non-compliance with vaccination requirements. The protection of the community from communicable diseases lies in an effective practice of immunization. This fact is recognized by educational authorities and in an effort to combat the spread of such diseases legislation aimed at their prevention and control has been enacted. Section 71 of The Public Health Act states:

71. Boards of health, unit boards, school trustees and all educational authorities may with the approval of the medical health officer require that admittance to any school under their control be refused an attending pupil who fails to furnish the teacher, when called upon to do so with a certificate of vaccination.\textsuperscript{149}

The School Act stipulates that:

114. It shall be the duty of the board of every district and it shall have power:

50. . . . to comply generally with the provisions of The Public Health Act with respect to contagious and infectious diseases.\textsuperscript{150}

It is interesting to note that The Public Health Act provides for the exclusion of a pupil from school if he is required to produce a certificate of vaccination and is

\textsuperscript{149} R.S.S. 1953, c. 230, s. 71.

\textsuperscript{150} R.S.S. 1953, c. 169, s. 114(50).
unable to do so. The School Act states that the board of every district must comply with the provisions of The Public Health Act. On the other hand, The School Attendance Act stipulates that children shall attend school. There is no exception made for unvaccinated children. These laws that appear to be at variance have never been tested in a Saskatchewan court.

**Contraction of or exposure to communicable disease.**
The teacher in any school is charged with the duty of excluding from attendance any child suspected of having or having been in contact with a communicable disease. In this regard The School Act and The Secondary Education Act stipulate:

> It shall be the duty of the teacher:

> with the approval of the board, to exclude from school any child suspected of suffering or of being convalescent from or of being in contact with a communicable disease; to give notification of the exclusion and the reasons therefore to the Medical health officer for the municipality or to the Minister of Public Health if there is no medical health officer; and to admit such child to the school upon production of a written certificate from a medical health officer.\(^\text{151}\)

Regulations under The Public Health Act likewise provide for a child to present a written certificate from a medical practitioner before being permitted to attend a school after

\(^{151}\text{R.S.S. 1953, c. 169, s. 225(17) and R.S.S. 1953, c. 168, s. 71(17).} \)
suffering from or convalescing from a communicable disease.\textsuperscript{152}

The general rule is that all resident pupils have the right to attend the school of the district. This right, however, may be revoked permanently or temporarily if the pupil fails to meet certain requirements regarding his mental or physical health.

Summary and Conclusions

The following conclusions can be drawn from the cases involving the legal foundations of public school education:

1. Denominational rights are based on religious affiliation alone.

2. The faith of the parent determines the school, public or separate, to which his children are legally entitled to attend.

3. A parent does not have the right to choose which school, public or separate, that he will support. This is determined solely by the faith of the parent.

4. Legally, for school purposes, a Roman Catholic may be defined as a Christian who accepts Papal authority.

5. A Protestant may be defined as a Christian who repudiates Papal authority.

\textsuperscript{152} "Regulations under The Public Health Act, S. 5(f)," \textit{Saskatchewan Gazette}, August 6, 1954.
6. In regard to education, provincial authority is supreme in all matters that do not violate Section 93 of the B.N.A. Act with respect to denominational rights.

7. Compulsory education laws do not violate the protective provisions of Section 93 of the B.N.A. Act.

8. The protective provisions of Section 93 of the B.N.A. Act apply only to Protestants and Roman Catholics. They do not apply to the various sects independently.

9. In the establishment of new provinces Section 93 of the B.N.A. Act may be modified.

10. Compulsory education laws do not infringe religious freedom even though such laws may indirectly affect religion.

11. The provincial legislature has the authority to pass compulsory education laws that are binding on all eligible individuals in the province.

12. Private schools that enrol pupils within the compulsory education age range must conform to the provincial regulations concerning curriculum.

13. The courts will not interfere with the discretionary powers granted to educational authorities. They will inquire only into the right of the official to make the decision he did, not into the wisdom of the decision.

14. There must be strict adherence to procedures in laying charges under compulsory education laws. Under our
legal system a person is innocent until proven guilty.

15. It is not a defence for school officials to plead that compliance with an Act of the Legislature is impossible.

16. The statutory duty of school officials to provide educational facilities is absolute and cannot be evaded.

17. Lack of sufficient funds is not a defence for failing to provide accommodation for all resident pupils.

18. Where the statutes provide no mode of enforcing the performance of a duty the common law may be resorted to for the appropriate remedy.

19. Trustees are obligated to provide the means whereby all eligible children in the district may take advantage of the existing educational facilities.

20. There must be equal opportunity for all resident students. Discrimination is not condoned.

21. The ultimate responsibility for providing education lies with the province.

22. A board of trustees has no recourse but to resign when it cannot meet its statutory obligations.

23. The parent's right to have his child educated does not include the parent's right to determine the school the child will attend when there is more than one school in the district.

24. Statutory rights or privileges granted to the
child cannot be removed by a board of trustees.

25. A person may have more than one "residence."

26. The residence necessary to provide the child with the right to attend a particular school is the residence of the child.

27. The special definition of a word in one statute cannot be used for the same word used in another statute in which the word has not been specially defined.

28. The payment of a school tax is not a requisite in determining one's residence.

On reviewing Saskatchewan court cases pertaining to the pupil's right to attend school and receive an education and on separate school issues it may be noted that only one case (Perreault v. Kinistino School Unit), has been reported in over thirty years. One may wonder why there has not been an increase in the number of court actions in recent years commensurate with the increase in school enrolment. Several factors may have contributed to this apparent decline in school litigation. Separate school issues, for the most part, appear to have been resolved during the first two decades of the present century resulting in a decrease in the number of actions in that area. New statutes have been enacted to cover points previously not covered by legislation. Where the statutes were silent in the past the courts were required to decide on controversial issues.
Existing statutes were often amended to remove ambiguities, which, when challenged required court interpretations. The enactment of new and the amendment of existing statutes have been influenced not only by decisions delivered in Saskatchewan, but also by those delivered in other provinces that had statutory provisions similar to those of this Province. In addition to these factors, the enlightened view of the vast majority of parents regarding compulsory education and their realization that essential benefits can result from such education have no doubt served to restrain individuals from seeking the services of the courts before exhausting all other methods of solving problems arising from educational issues.
CHAPTER V

LEGAL BASES FOR PUPIL CONTROL

In order to accomplish the ends for which schools exist orderly procedures must be followed. Thus, it is expected that pupils will obey reasonable rules and regulations or suffer subsequent punishment for their actions. Educational authorities recognize the need for rules and regulations. Sumption, in commenting on the obligations placed upon the state to provide and assure education for all its citizens, states:

In order to discharge this obligation, it is patently necessary for such an agency, as the school, which is the formal institution set up for accomplishing this purpose, to have control over pupils. If it were not so, the school would be decidedly ineffective. One can easily imagine the confusion and anarchy of a school without control over pupil conduct. While there has been much legal action arising out of questions relative to the extent to which the school shall control pupil conduct, there is general agreement that this control is both necessary and desirable if the goal, so vital in a democracy, of an enlightened citizenry is to be achieved.1

The right and duty of both boards and teachers in Saskatchewan to make and enforce rules for the effective operation of the school is granted by The School Act in the following sections:

114. It shall be the duty of the board of every district and it shall have power:

34. to see that the school is conducted according to the provisions of this Act and the regulations of the department;

36. to make regulations for the management of the school subject to the provisions of the Act and to communicate them in writing to the teacher. 2

225. It shall be the duty of the teacher:

2. to maintain proper order and discipline and to conduct and manage the school in accordance with the regulations of the department. 3

227. The principal shall prescribe, with the concurrence of the board, the duties of the assistants and shall be responsible for the organization and general discipline of the school. 4

Sections 28 (q) and 71 of The Secondary Education Act are worded identically the same as Sections 114 (36) and 225 (2) of The School Act quoted above. Consequently, the teachers and boards of both elementary and high schools are vested with these rights and duties.

The school is empowered to formulate rules and regulations and the pupils are required to conform to these established rules and regulations. Regulations under The

2 R.S.S. 1953, c. 169, s. 114 (34), (36).
3 Ibid., c. 169, s. 225(2).
4 Ibid., c. 169, s. 227.
School Act provide that:

12. (1) Every pupil registered shall be required to attend school regularly and punctually, and in case of absence or lateness to give to the teacher either orally or in writing a reasonable excuse therefor . . . to be clean and tidy in person and clothes; to be diligent in studies, kind and courteous to classmates, and obedient and respectful to the teacher. He shall conform to the rules of the school and submit to such discipline as would be exercised by a kind, firm and judicious parent.

(2) All pupils shall be responsible to the teacher for their conduct on the school premises, and also for their behavior on the way to and from school unless accompanied by one of their parents or guardians or some person appointed by them, and the teacher shall be responsible for the conduct of the pupils while under his control.5

The need for school regulation and discipline is so important that the courts, in general, uphold teachers in their attempts to require pupil conformity to reasonable rules.

What Are Reasonable Rules and Regulations?

The authority of boards and teachers to formulate rules and regulations for the effective operation of schools is not questioned. What may be questioned, however, is the reasonableness of a rule.

It is extremely difficult, if not impossible, to

5"Regulations under The School Act, S. 12(1), (2)," Saskatchewan Gazette, February 7, 1944.
state specifically what is reasonable and what is unreasonable in regard to rules and regulations. Leipold, speaking of unreasonable rules states: "A rule is not reasonable which will deprive a child of school privileges except as a punishment for a breach of discipline or an offence against good morals."⁶ No one is likely to disagree with the above statement, but in the vast majority of cases in which there is a breach of school discipline the seriousness of the misdeed is not such as to warrant the loss of school privileges. Rules may be unreasonable and have only minor penalties for their infraction.

In ascertaining whether a rule is reasonable or unreasonable one must consider various factors that may differ from one situation to another. What might be reasonable in certain circumstances could conceivably be adjudged as unreasonable in other circumstances. Reasonable rules concerning the enforcement of discipline in a primary school may be considered unreasonable for a high school.

When individuals believe that rules and regulations formulated by school boards or teachers are unreasonable they may appeal to the courts for redress. The courts may be called upon to decide on one or more of the three

following basic questions regarding rules and regulations:

(1) Is the rule itself reasonable?
(2) Is the method used to enforce the rule reasonable?
(3) Has there been negligence by school authorities in the manner in which the rule was enforced?

These questions might be raised particularly in connection with rules relating to the disciplining of pupils for misbehavior. In practice, a rule and its enforcement are both considered to be reasonable unless it is challenged and the court declares it to be otherwise.

Authority of Teacher over Pupil

Saskatchewan teachers are granted power under Section 225 (2) of The School Act and Section 28 (q) of The Secondary Education Act to maintain order and discipline. Teachers by virtue of their positions serve in loco parentis; that is, the teacher is conditionally privileged to take disciplinary steps under certain circumstances and for certain purposes. The following explanation of the position of the teacher with regard to disciplinary control of pupils appears in Corpus Juris:

As a general rule a school teacher, to a limited extent at least, stands in loco parentis to pupils under his charge, and may exercise such powers of control, restraint, and correction over them as may be reasonably necessary to enable him properly to perform his duties as teacher and accomplish the purposes of education, subject to such limitations
and prohibitions as may be defined by legislative enactment ... If nothing unreasonable is demanded, he has the right to direct how and when each pupil shall attend to his appropriate duties, and the manner in which a pupil shall demean himself.7

Courts have consistently given support to the view that teachers standing in loco parentis are authorized to discipline pupils. Lord Hewart, C.J., in R. v. Newport (Salop) Justices, stated it as follows:

... Any parent who sends a child to school is presumed to give the teacher authority to make reasonable regulations and to administer to the child reasonable corporeal punishment for breach of those regulations.8

Thus, it is seen that the common law upholds the teacher's right to institute such measures as are necessary to provide for order and discipline in the school. In other words, the common law upholds the teacher in doing what he is by statute legally required to do.

Pupil Conduct off School Premises and out of School Hours

It is on the school grounds during school hours that the maximum degree of pupil control is practiced by the school. This does not mean that the school has no control over pupils out of school hours and off school premises.


8[929] 2 K.B. 416 at p. 428.
Regulation 12 (2), under The School Act, makes provision for this control. The courts have tended to extend this control beyond the pupil's journey to and from school so as to include the power to discipline a pupil for out-of-school behavior that is detrimental to the discipline, reputation, or well-being of the school. Consequently, the courts hesitate to find a school regulation unreasonable if it is instituted and enforced to improve the educational atmosphere or to protect the reputation of the school. American courts have approved the administration of punishment by the school for out-of-school conduct involving:

1. The insulting of a teacher by a pupil.
2. The publication by pupils of derogatory material about the school or teacher.
3. The abuse of other school children while they were on their way to and from school.
4. The misrepresentation of a ball team as a school team.
5. Immoral conduct.10

The leading case that has established the rule upholding school authorities to control pupil conduct off

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9 Supra, p. 149.

school premises and out of school hours is Cleary v. Booth, an English case. Justice Lawrence, in delivering judgment in the case, said:

The question in this case is not an easy one; there is no other authority, and it is a case of first impression. ... The case cited to us shows that the schoolmaster is in the position of a parent. What is to become of the boy between his school and his home? Is not he under the authority of his parent? Or of the schoolmaster? It cannot be doubted he is; and, in my opinion, among the powers delegated by the parent to the schoolmaster, such a power exercised by the appellant in this case would be freely delegated. ... It is difficult to express in words the extent of the schoolmaster's authority in respect to the punishment of his pupils; but in my opinion his authority extends not only to acts done in the school, but also to cases where a complaint of acts done out of school, at any rate while going to and from school, is made to the schoolmaster.12

In the same case Justice Collins expressed his decision as follows:

It is clear law that a father has a right to inflict reasonable personal chastisement on his son. It is equally the law, and it is in accordance with very ancient practice, that he may delegate this right to the schoolmaster. Such a right has always commended itself to the common sense of mankind. It is clear that the relation of master and pupil carries with it the right of reasonable corporal chastisement. As a matter of common sense, how far is this power delegated by the parent to the schoolmaster? Is it limited to the time during which the boy is within the four walls of the school, or does it extend in any sense beyond that limit? In my opinion

12Ibid., p. 57.
the purpose with which the parental authority is
dele gated to the schoolmaster who is entrusted with
the bringing up and discipline of the child, must
to some extent include an authority over the child
while he is outside the four walls. It may be a
question of fact in each case whether the conduct of
the master in inflicting corporal punishment is
right. Very grave consequences would result if it
were held that the parent's authority was exclusive
up to the door of the school, and that then, and
only then, the master's authority commenced; it
would be a most anomalous result to hold that in
such a case as the present the boy who had been
assaulted had no remedy by complaint to his master,
who could punish his assailant by a thrashing, but
must go before a magistrate to enforce a remedy
between them as citizens. . . . In such a case as
the present, it is obvious that the desired impres-
sion is best brought about by a summary and imme-
diate punishment. In my opinion parents do
contemplate such an exercise of authority by the
schoolmaster. I should be sorry if I felt myself
driven to come to the opposite conclusion, and glad
to be able to say that the principle shews that the
authority delegated to the schoolmaster is not
limited to the four walls of the school. It is
always a question of fact whether the act done was
outside the delegated authority; but in the present
case, I am satisfied, on the facts, that it was
absolutely within it. 13

Although there have been no reported Canadian cases
in which charges have been laid against a teacher for
punishing a pupil for his behavior outside of school hours
and off the school premises, precedents on this aspect of
school law have been established by British and American
courts. Canadian courts have drawn extensively on British
and American decisions concerning other aspects of pupil

13Ibid., p. 57.
control and it is most likely that they would do so in cases pertaining to pupil behavior outside of school and after hours. In any case the basic questions that must be answered before the courts are the same in all actions regarding the control and punishment of pupils, namely:

1. Was there an infraction of a rule for which punishment was justifiable?
2. Was the rule that was broken reasonable?
3. Had the teacher the legal right to inflict the punishment in question? This involves the authority granted to the teacher by statutes as well as his authority in loco parentis.
4. Assuming that the teacher has the legal right to inflict the punishment, was the punishment reasonable?

Courts are most likely to be called upon for decisions on the third and fourth questions. The third question is a question of law and is resolved by applying the statutory authority granted to the teacher or by his authority in loco parentis. The fourth question is one of fact that varies with each case. The reasonableness of the punishment meted out by the teacher is usually the main concern of the courts in cases concerning pupil control and discipline.

Suspension and Expulsion

Suspension and expulsion represent a last resort in the control of pupils, and school authorities hesitate to
use these forms of punishment except in extreme cases. Suspension is the term generally applied to a temporary barring of the pupil from school, while expulsion usually refers to the exclusion of the pupil from school for a longer period. In Saskatchewan a teacher suspending a pupil must report the suspension immediately to the board and it is the board that decides whether the suspension should be terminated or extended. The right of school officials to suspend or expel a pupil is provided for in Saskatchewan by statute. These provisions are contained both in The School Act and The Secondary Education Act. The pertinent section in The School Act giving teachers the right to suspend pupils reads:

225. It shall be the duty of the teacher:

12. to suspend from school any pupil for violent opposition to authority or other gross misconduct, and to forthwith report in writing the facts of such suspension to the board which shall take such action with regard thereto as it deems necessary.\(^14\)

Teachers in schools organized under The Secondary Education Act are granted powers with regard to suspension of pupils identical to those granted to teachers in schools organized under The School Act.\(^15\)

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\(^{14}\) R.S.S. 1953, c. 169, s. 225(12).

\(^{15}\) R.S.S. 1953, c. 168, s. 71(12).
The boards of trustees are granted the power to expel pupils in addition to the power to suspend. The section of The School Act granting this power states:

114. It shall be the duty of the board of every district and it shall have power:

42. to suspend from school for a period not exceeding four weeks any pupil who, upon investigation by the board, is found to be guilty of truancy, irregular attendance not covered by The School Attendance Act, open opposition to authority, habitual neglect of duty, the use of profane or improper language or other conduct injurious to the moral tone or well being of the school; or to suspend for more than four weeks or to expel any pupil upon confirmation of a resolution of the board to that effect by the superintendent.16

The boards of schools organized under The Secondary Education Act are empowered and required to "suspend or expel from school any pupil who upon investigation by the board is found to be guilty of habitual neglect of duty or other conduct injurious to the welfare of the school."17

The right to suspend or expel is established by statute and is not questioned. The reason for suspending or expelling, however, has been questioned on occasion. In Canada only five cases on this issue have been reported, with only one of these occurring within the last quarter century.

16R.S.S. 1953, c. 169, s. 114(42).
17R.S.S. 1953, c. 168, s. 28(j); 1961, c. 28, s. 4.
Disobedience. An Ontario case of 1886, concerned a thirteen year old boy who was dismissed by his teacher for disobedience, speaking impudently when questioned about it, and refusing to be punished for his misconduct.\textsuperscript{18} The trustees were informed and at a meeting held on January 6, they passed a resolution that the boy could return to school provided he express regret for his misconduct. After receiving a letter from a solicitor on behalf of the father the trustees held a meeting on February 10, and passed a resolution that the boy could return after a one day suspension. On the following day, February 11, the trustees held another meeting reinstating their original resolution of January 6. The father was notified and was present at the meeting of February 10, but he was not notified of nor present at the meetings of January 6 and February 11. The boy returned to school on the authority of the resolution of February 10 and made no apology. He remained at school for several days but he was given no instruction. In an action against the teacher and trustees the Division Court dismissed the case against the teacher but held the trustees liable.

An appeal was launched by the board of trustees in

\textsuperscript{18}Re Minister of Education and McIntyre v. The Public School Trustees of Section Eight in the Township of Blanchard, et al., (1886) 11 O.R. 439.
the Court of Common Pleas. By a majority decision the appeal was allowed and the trustees were held not liable.

Shipley, J., in his judgment, stated:

The only evidence as to the boy's conduct is that of the defendant . . . and that shows that the plaintiff was refractory. The matter was brought before the trustees, and they very properly decided that the boy should apologize to the teacher. This did not constitute an expulsion, but merely a suspension.19

Galt, J., supported the majority decision in these words:

In my opinion the conduct of the trustees was quite correct. It would be impossible to carry on a public school, particularly when it's under the control of a mistress, if a boy was entitled, as a matter of right, to receive instruction notwithstanding misconduct towards his teacher, without making an apology when the trustees find that he has misconducted himself.20

Cameron, J., in his decision, commented upon the irregularity in the proceedings of the board, saying:

I also am of the opinion this appeal must be allowed. The action of the trustees in modifying their judgment in the absence of and without notice to the parties interested was an irregular proceeding; but it is quite manifest from the evidence before the Court they were actuated only by a desire to do their duty properly, and the slip made was one that men in their position unaware of the requirements of the law, might readily make. The condition requiring the boy to apologise to the teacher was a reasonable one, and if it had been determined upon at the meeting of the 10th of February, I think no objection could be urged against it.21

19(1886) 11 O.R. 439 at p. 442.
20Ibid., p. 442.
21Ibid., p. 442.
The Court felt that the board could not be held liable unless it acted with malice and even if it was liable the correct procedure for redress would be by mandamus. On this matter Justice Cameron further stated:

I have very grave doubt as to the school trustees being liable to an action for an error such as committed in this case without its being alleged and shewn that the act was malicious, unless followed by some act that would amount to an assault or trespass.

The proper way to obtain redress if the action of trustees is illegal in denying the right of attendance at school, it seems to me is by mandamus and not by action.22

The decision points out the following principles:

(1) The readmittance of a pupil to school may be conditional.

(2) A board's resolution requiring a student to fulfill a certain condition prior to his readmittance to school after a suspension does not constitute an expulsion.

(3) Suspensions will be upheld by the courts unless malice on the part of the suspending party is proven.

(4) The proper method of obtaining redress from illegal acts of trustees in denying the right to attendance is by mandamus.

Wilful damage to school property. Another Ontario case heard in 1889 concerned a pupil who damaged the top of

22Ibid., p. 443.
his desk by cutting it. The schoolmaster ordered the boy to replace the top with his own hands, and suspended him until he did so. The suspension was effective on February 20, 1888, and a notice of motion was served by the father for a writ of mandamus to compel the trustees to readmit his son on May 7, 1889. During the interval the boy had attended another public school and his father had appealed to three of the trustees, to the Public School Board, and to the annual school meeting, but to no avail. The Court of Queen's Bench refused to grant the writ of mandamus. In his judgment, Rose, J., emphasized the fact that courts do not interfere with a discretionary decision of an official even if the official's decision seemed unwise. On this he said:

I ought not to interfere unless I come to the conclusion that no discretion rested on the master or trustees, and no official judgment was required or permitted. If it was a matter of discretion, although in my judgment the act was unwise, I should not substitute my discretion for that of the officer to whom the decision has been left by law.  

In discussing the disharmony that would result in the school if the pupil was readmitted the same Justice continued:

The feeling created apparently is such that it would not be at all pleasant for the teacher and the lad

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23 Re McCallum and Board of the Public School Trustees of Section 5, Township of Brant, (1889) 17 O.R. 451.
24 (1889) 17 O.R. 451 at p. 452.
to be in the same school, and I would have to con-
sider whether it would be a wise exercise of discre-
tion to require the lad to be readmitted when the
probable result would be to break down the authority
of the teacher, and it may be, put an end to his
occupancy of his office. . . . I am told that in Re
Yuill, an unreported case, the Chief Justice of the
Queen's Bench Division, on the 27th of April, 1888,
held that an application for mandamus will not lie
to correct a supposed error of teacher or trustee in
a matter of discipline, and that such an application
was practically an appeal from the decision of the
teacher and trustees. 25

In this case the Court upheld the principle of non-
interference with the use of discretion by an official so
long as the official has the legal right to make the
decision.

Truancy. In Saskatchewan the board of trustees of a
school has the statutory power to suspend a pupil who is
guilty of truancy. 26 An Alberta court has ruled that
truancy amounts to wilful opposition to authority and that a
teacher has not only the right but the duty to suspend a
pupil guilty of such action. 27 In this case two boys had
been delinquent in their attendance staying away from school
on several occasions for a half day or a day. The boys
admitted that they remained away from school because they

25 Ibid., p. 453.
26 Supra, p. 158.
found certain work uninteresting and they did not like the teacher's manner of teaching. After due consideration by the teacher and headmaster, the headmaster suspended the boys and reported it to the board. Action was brought against the teacher and headmaster for wrongful dismissal. The School Act of that Province under Section 212 (n) provided that it be the duty of every teacher "to suspend from school any pupil guilty of wilful opposition to authority and forthwith to report in writing the facts of each suspension to the board. ..." The School Act of that Province under Section 137 (u) of the same Act the board was vested with the duty and power—

to suspend or expel from the school any pupil who upon investigation by the board is found to be guilty of truancy, open opposition to authority...

The Trial Judge held that the boys were guilty of truancy and the board was given the power of suspension or expulsion for this type of misbehavior, not the teacher. Consequently, he found against the teacher and headmaster.

The Appellate Division of the Supreme Court ruled that the boys were guilty of "wilful opposition to authority" and it was thus the teacher's duty and right to suspend them. The Court, in allowing the appeal, stated:

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28 Alta. L.R. 171.
29 Ibid., p. 174.
Whether these boys were guilty of truancy is not the important fact but whether they were guilty of "wilful opposition to authority" and it is clear that they were.30

At present in Saskatchewan Section 225 (12) of The School Act uses the words "violent opposition to authority" rather than "open opposition to authority" as in The School Act of Alberta. Otherwise the wording is the same in the Acts of the two Provinces. Similarly Section 114 (42) of The School Act of Saskatchewan citing the duties and powers of trustees is worded similarly to Section 137 (a) of The School Act of Alberta quoted above.

The principle arising out of this case is that truancy is a form of wilful opposition to authority. If a teacher has power to suspend a pupil for wilful opposition to authority, the teacher then has the power to suspend for truancy.

Mentally retarded. A case heard in Quebec in 1949, concerned two children of the same family who were suspended from school because they were mental defectives and because they were insubordinate.31 Upon the suspension of the children their parents applied to the Superior Court for a writ of mandamus which was granted, compelling the commis-
sioners to readmit the children. The commissioners appealed to the Court of King's Bench where the appeal was granted. The plaintiff then appealed to the Supreme Court of Canada. The Supreme Court of Canada, in dismissing the appeal, held that a mandamus to force pupils who had been evicted "pour cause d'incapacite de suivre les cours" will not be allowed when it is established that the backward mentality and insubordination of these pupils were prejudicial to the good order, discipline and advancement of the rest of the class.\textsuperscript{32}

In Saskatchewan, the statutes grant the board of trustees the power to exclude from attendance at a school any pupil who in the judgment of the superintendent is so mentally deficient as to be incapable of responding to instruction or whose presence is harmful to the education and welfare of the other pupils.\textsuperscript{33} Consequently, in Saskatchewan the board could suspend such pupil and the appeal lies not to the courts but to the Minister of Health, whose decision is final.\textsuperscript{34}

\textbf{Teacher justified in refusing to suspend a pupil.} In a Saskatchewan case heard in 1925, a teacher refused to

\begin{itemize}
\item \textsuperscript{32} 1950 S.C.R. 479 at p. 479.
\item \textsuperscript{33} R.S.S. 1953, c. 169, s. 114(42a).
\item \textsuperscript{34} \textit{Loc. cit.}
\end{itemize}
suspend a pupil when ordered to do so by the board of trustees.\(^{35}\) The teacher took charge of the school in January and taught until May 12, when the board closed the school. The board, on that day, had held an investigation at the school concerning one of the school children and had requested the teacher to suspend the child from school. The teacher refused to suspend the child because he had no complaint against her and furthermore he feared that the girl's father might take action against him if he ordered the suspension. For these reasons the teacher informed the trustees that they could order the suspension themselves if they so desired, as they had authority to do so under Section 110 (31) of The School Act. One of the questions that the Court was faced with in the case was: Must a teacher obey an order from the board to suspend a pupil when the teacher has no reason for so doing? The Court ruled that the teacher was justified in refusing to suspend the child. MacKay, J.A., expressed the view of the Court in these words:

Under subsec. 23 of sec. 110 of The School Act, the defendant \[\text{board}\] had power to suspend or dismiss the plaintiff \[\text{teacher}\] for gross misconduct, neglect of duty, or refusal or neglect to obey any lawful order of the defendant, but there is no evidence that he was guilty of any of these matters.

The only order, if it was an order, of the defendant that the plaintiff refused to obey, was to suspend one of the school children, and plaintiff says that, as he had nothing against the child and feared that the father might take some action against him, if he put out the child, he refused to put her out and told the trustees to do it themselves. In my opinion he was justified in doing so; he could not suspend the child under subsec. 12 of sec. 198 of the Act, as he had no complaint against the child, and if the defendant knew of some valid reason why the child should be suspended or expelled from the school, it was the duty of the defendant itself to suspend or expel the child, under subsec. 31 of sec. 110 of the Act.36

From the above case it is clear that a board cannot force a teacher to suspend a pupil if the teacher knows of no reason why the pupil should be suspended and has received no complaint against the pupil.

Corporal Punishment

It is recognized that teachers may make such rules as are necessary for the good conduct and order of the school. The teacher standing in loco parentis has the right to administer corporal punishment for corrective purposes if the pupil's behavior has warranted such extreme measures. The responsibility of judging as to when corporal punishment is necessary also falls upon the teacher. It might be said then, that in some respects the teacher makes the rules, pronounces judgment upon those who fail to abide by the rules, and inflicts such punishment for non-compliance with

them as he deems appropriate. An individual having such wide discretionary powers bestowed upon him must strive to act in a prudent manner when required to exercise such powers. This is especially true when the severity of the misdeed warrants the application of corporal punishment.

There are differing views concerning what should constitute liability on the part of teachers for their acts in administering corporal punishment. One view holds that the punishment should be proportional to the offense and that the teacher should be held criminally liable for excessive and immoderate punishment regardless of his motives and all questions of malice. This view emphasizes the judgment of the "reasonable man" relative to what would be appropriate under the circumstances. The other view is that the teacher acts in a quasi-judicial capacity and should not be liable for an error of judgment in the matter of punishment, even though it is extremely excessive, if it is not of such a nature as to cause or threaten lasting injury and is not activated by malice. This view would excuse a teacher from liability for his actions so long as he was acting in good faith.37

The views not only differ regarding the criteria to

determine teacher liability for administering corporal punishment, they differ as to what actually constitutes corporal punishment. Some people claim that any physical contact comes under the corporal punishment category. Those who embrace this view admonish teachers to "keep hands off pupils in play or in anger." Other people maintain that teachers have the right to use such coercion as may be necessary and that taking a pupil by the arm or using necessary force to remove an offender from a classroom does not come under the corporal punishment category. 38

Canadian Courts have tended to feel that the punishment should be proportional to the offense and that the teacher should be held liable for excessive or unreasonable punishment regardless of questions of malice. Such a view is explained by the fact that Section 43 of the Canadian Criminal Code, which authorizes the use of force by teachers for correctional purposes, states that such force is to be reasonable under the circumstances. 39 There is no mention of malice in the Code. Canadian courts have tended to support teachers who have been required to use coercion to remove an offender from his desk or from the classroom in


39 Canadian Criminal Code, s. 43.
order to administer punishment. The courts have not supported the "hands off" idea advocated in some quarters.

Statutory provisions concerning corporal punishment. In Canada, the provinces are supreme in educational matters. This supremacy, however, does not extend to include provisions for the administration of corporal punishment in the schools. Instead, the use of reasonable force by a teacher to maintain an acceptable standard of conduct on the part of pupils is sanctioned by the Dominion Government. Section 43 of the Canadian Criminal Code is worded as follows:

It is lawful for every parent or person in place of a parent, schoolmaster or master, to use force by way of correction towards any child, pupil or apprentice under his care, providing such force is reasonable under the circumstances.\(^{40}\)

It is quite evident then that restrictions on the use of force by a teacher to maintain discipline cannot be applied by the provincial legislature nor by local school boards, as this would transgress federal authority. Consequently, no provisions are found in the statutes of Saskatchewan that make mention of corporal punishment. In cases reaching Canadian courts the right of the teacher to administer punishment is usually unquestioned, but what is questioned is the "reasonableness" of the punishment

\(^{40}\)Ibid., s. 40.
administered by the teacher.

General authority of teachers to administer corporal punishment. Canadian courts, in determining the "reasonableness" or "unreasonableness" of force used by a teacher in carrying out disciplinary measures, have been guided by precedent not only from British but also from American decisions.

The Canadian Criminal Code provides the teacher with the legal right to impose corporal punishment. This legal right was established in British law as shown in the following dicta laid down by Blackstone, the distinguished English legal authority:

The parent may lawfully correct his child, being under age, in a reasonable manner, for this is for the benefit of his education. . . . He may also delegate part of his parental authority during his life, to the tutor or school master of his child; who is then in loco parentis, and has as such a portion of the power of the parent committed to his charge, viz., that of restraint and correction, as may be necessary to answer the purposes for which he is employed.41

Another authority points out that the use of force by a teacher does not constitute assault and battery except when such force is used in excess.

Force used upon the person is not unlawful, and does not amount to assault and battery, in the exercise

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of the right of moderate restraint or correction
given by law to the parent over the child, or to one
standing in loco parentis, as the guardian over the
ward, the master over the apprentice, or the teacher
over his scholar. In all such cases the law presumes,
from the relation of the parties, an entire absence
of any criminal or unlawful intent to injure, and
only the use of unnecessary force will render him
liable.\(^\text{42}\)

The same view is expressed in Salmond on Torts, 10th edition:

When a father sends his child to school he delegates
to the schoolmaster all of his authority, as far as
is necessary for the welfare of the child, and a
schoolmaster is therefore entitled to administer
reasonable chastisement to the child.\(^\text{43}\)

An authority writing more recently states:

Head and assistant teachers . . . have the right to
use reasonable force to correct the children under
their tutelage. . . . The force used must be reason-
able in the circumstances—presumably the offence,
the age and physique of the child, his past behav-
ior, the punishment, the injury inflicted are all
material. . . . Probably, not only must the teacher
have used force which is objectively, reasonable,
but he also himself must have thought it reasonably
necessary in the circumstances.\(^\text{44}\)

The leading English decision on this question was
delivered by Walton, J., in the case, Mansell v. Griffin,
in these words:

\(\text{\textsuperscript{42}}\)American and English Encyclopedic Law, 962 and 963,
quoted in R. v. Robinson, (1899) 7 C.C.C. 52 at p. 53.

\(\text{\textsuperscript{43}}\)Salmond's Law of Torts—A Treatise on the English
Law of Liability for Civil Injuries, 10th edition, edited by

\(\text{\textsuperscript{44}}\)Harry Street, The Law of Tort, London: Butter-
worths, 1963, p. 86.
It must be taken that the parents gave to the authorities of the school the ordinary authority which is presumed from the fact of a parent sending a child to a school. The defendant was the responsible mistress of the class in which the plaintiff was; she was responsible for the teaching and discipline of that class. It seems to me that the authority to administer moderate and reasonable corporal punishment, which any parent who sends a child to school is presumed to give to the authorities of the school, extends to a mistress occupying the position which the defendant occupied in this school at the time when the punishment in question was inflicted. There may be domestic regulations at the school of which the parent may know nothing which may be changed at any time, without any permission asked or any notice to the parent, which regulate when, where and by whom corporal punishment is to be inflicted. It does not seem to me that such regulations of which the parent knows nothing qualify or limit the ordinary authority as to the administering of corporal punishment which a parent must be supposed to give the school authorities when he sends the child to school. 45

In the English case, Cleary v. Booth, the authority of the teacher to inflict corporal punishment for acts committed outside the school premises was established. The head-note of the case reads:

The authority delegated by the parent of a pupil to a schoolmaster to inflict reasonable personal chastisement upon him is not limited to offences committed by the pupil upon the premises of the school, but may extend to acts done while on the way to school. 46

The Canadian Criminal Code authorizes not only the

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use of reasonable force by a teacher in order to maintain discipline in the school but it also states that persons administering punishment are liable if the force used is excessive. Section 26 of the present Code reads:

Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.\textsuperscript{47}

Canadian courts have been guided by many English and American decisions in reaching their conclusions on the "reasonableness" of punishment inflicted by teachers. On the form that punishment may take, one authority states: "There is no particular rule as to the nature of the punishment which may be inflicted, provided it is moderate, and reasonable, and not out of proportion to the offence."\textsuperscript{48}

An American decision emphasizes that when a teacher chastises a pupil the chastisement should be considered as being reasonable unless the opposite be proven. The teacher should not be required to establish his innocence; instead the complaining party must prove the teacher's guilt. The words of the Court on this were:

When the alleged assault is by a parent on his child, or teacher on his pupil, or the like, in chastisement, it is probably the better doctrine

\textsuperscript{47}Canadian Criminal Code, s. 26.

\textsuperscript{48}English Encyclopedia of Law, 2, 394, quoted in R. v. Robinson, (1899) 7 C.C.C. 52 at p. 56.
that if the relationship appears, the chastisement will be presumed to be reasonable, and for sufficient cause until the contrary is shown.\textsuperscript{49}

Another American case specifies punishment causing permanent injury to the pupil and punishment inflicted by the teacher for the gratification of his own evil passions as being the only reasons for which the law will hold teachers responsible.\textsuperscript{50}

An English Court, in \textit{R. v. Hopley}, decided that the administration of punishment for the gratification of passions is unreasonable. This Court did not accept the view that the two reasons as given in \textit{State v. Pendergrass} were the only ones for which the law would hold teachers liable. Cochrane, C.J., speaking for the Court, said:

If the punishment be administered for the gratification of passion, or of rage, or if it be immoderate and excessive in its nature or degree, or if it be protracted beyond the child's power of endurance, or with an instrument unfitted for the purpose and calculated to produce danger to life or limb,—in all such cases the punishment is excessive and the violence is unlawful.\textsuperscript{51}

Sufficiency of cause for punishment, suitability of the instrument used in administering the punishment, and the

\textsuperscript{49}Anderson v. State, 3 Head (Tenn.), 455 and 457, quoted in \textit{R. v. Robinson}, \textit{ibid.}, p. 53.


manner and extent of the correction were emphasized by an American Court.

A teacher, in the exercise of the power of corporal punishment, must not make such power a pretext for cruelty and oppression; but the cause must be sufficient, the instrument suitable, and the manner and extent of the correction, the part of the person to which it is applied, and the temper in which it is inflicted, should be distinguished with the kindness, prudence, and propriety which becomes the station. 52

Some of the factors that should be considered by a court in determining if punishment has been excessive are enumerated by an American Court in the case, Dowlin v. State.

Whether a chastisement is moderate, or excessive, must necessarily depend upon the age, sex, condition, and disposition of the scholar, with all the attending and surrounding circumstances to be judged by the jury, under the direction of the Court as to the law of the case. 53

A teacher should be held liable for excessive punishment to a child even if the teacher's motives were good. An American Court expressed it this way:

If the punishment is clearly excessive, then the master should be held liable for such excess, though he acted from good motives in inflicting the punishment, and, in his own judgment, considered it necessary and not excessive; but, if there is any reasonable doubt whether the punishment was excessive,


the master should have benefit of the doubt. $54$

The reliance of Canadian courts on American decisions has on occasion resulted in our courts applying a test that has not been warranted by the provisions of the Canadian Criminal Code. *State v. Pendergrass* has led to some confusion. In this case the discretionary powers of teachers in the application of pupil chastisement and the distinction between moderate and excessive punishment was commented upon by the Court as follows:

It is not easy to state with precision the powers which the law grants to school masters with respect to the correction of their pupils. It is analogous to that which belongs to parents, and the authority of the teacher is regarded as a delegation of parental authority. . . . The teacher, as substitute of the parent, is charged in part with the performance of his duties, and in the exercise of these delegated duties is invested with his power. The law has not undertaken to prescribe stated punishments for particular offences, but has contented itself with the general grant of the power of moderate correction, and has confined the graduation of punishment within the limits of this grant to the discretion of the teacher. The line which separates moderate correction from immoderate punishment can only be ascertained by reference to general principles. The welfare of the child is the main purpose for which pain is permitted to be inflicted. Any punishment, therefore, which may endanger life, limbs, or health, or shall disfigure the child, or cause any other permanent injury, may be pronounced in itself immoderate, as not only being unnecessary for, but inconsistent with the purpose for which correction is authorized. But any correction, however severe, which produces temporary pain and no permanent ill,

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cannot be so pronounced, since it may have been necessary for the reformation of the child, and does not injuriously affect its future welfare.\textsuperscript{55}

It was pointed out by the Supreme Court of Nova Scotia in \textit{R. v. Gaul},\textsuperscript{56} early in the century that some courts in applying the test applied in \textit{State v. Pendergrass} held that in order to get a conviction for administering excessive punishment it was necessary to prove that the accused was actuated by malice or that his acts resulted in permanent injury to the child. Such a view was not in accord with the provisions of the Canadian Criminal Code, which merely states that it is lawful for a teacher to use reasonable force. There is no mention of malice or permanent injury in the Code. Certainly, punishment administered in a malicious manner would be considered unreasonable as would punishment that caused permanent injury. However, punishment that has not been administered maliciously and punishment that has not resulted in permanent injury may be considered unreasonable by the courts in certain instances.

The decisions on the reasonableness and excessive administration of corporal punishment delivered by British and American courts have established the following principles:

\textsuperscript{55}\textit{Supra}, p. 176.

\textsuperscript{56}(1904) 36 N.S.R. 504, 8 C.C.C. 178.
(1) The teacher has the authority to administer moderate corporal punishment.

(2) The conditions under which corporal punishment is to be administered is left to the discretion of the teacher.

(3) The use of force by a teacher does not constitute assault and battery except when such force is used in excess under the circumstances.

(4) The courts consider corporal punishment administered by a teacher to be reasonable until the contrary is shown.

(5) Teachers are authorized to make regulations that pupils are to obey.

(6) Ignorance on the part of parents of the existence of a school regulation does not limit or qualify the teacher's authority to administer corporal punishment.

(7) A teacher may punish a child for his actions off school premises.

(8) Excessive punishment cannot be excused on the grounds that the motives of the individual administering such punishment were good.

In cases on this aspect of school law the courts are required to decide whether the defendant is guilty or not guilty of assault. In other words, the question that the court must answer in each case is: Was the punishment that was administered excessive under the circumstances or was it
not? The reported Canadian cases fall into one of the two categories. If the defendant was found to be guilty, the punishment administered by him was excessive under the circumstances. If the defendant was found to be innocent of assault, the punishment administered by him was considered to be reasonable, therefore not excessive, under the circumstances.

Moderate punishment. Courts, in deciding whether punishment inflicted by teachers was excessive or not, have been guided by several factors including the circumstances leading up to the punishment, the pupil's age, sex, and physical condition, as well as the permanence of bruises and skin discolouration. The early case, R. v. Robinson,\textsuperscript{57} an appeal from a conviction in the Magistrate's Court, involved a boy of fourteen who was punished by a principal for breaking steps attached to the school and for his denial of committing the misdeed. The punishment consisted of a strapping to the hands. The prosecution contended that the defendant did not have the legal right to impose corporal punishment and that the punishment was excessive. The Court had little difficulty in deciding that the principal had the legal right to administer punishment basing the decision

\textsuperscript{57}(1899) 7 C.C.C. 52
on the precedents and authorities previously mentioned.\textsuperscript{58}

On the question of whether the punishment was excessive, Chipman, C.J., speaking for the Court, said:

The punishment, in my opinion, was not excessive. It is true that the pupil suffered some pain and inconvenience from the whipping he received on his hands, with the leather strap used for the purpose; but it caused no permanent injury, and all traces thereof soon disappeared. . . . the teacher who acts firmly, but kindly and mercifully, and inflicts punishment in moderation will, in most instances, and should in all, escape an investigation of his conduct in the courts.\textsuperscript{59}

The conviction imposed by the magistrate was quashed. In this case it is interesting to note that the Court stressed the fact that the punishment caused no permanent injury. The absence of permanent injury, of course, lends weight to the contention that the punishment inflicted was reasonable, but the absence of permanent injury does not in itself mean that the punishment was reasonable under the circumstances, as stipulated by the Canadian Criminal Code.

In the case, R. v. Zinck,\textsuperscript{60} the defendant teacher was convicted by a Justice of the Peace for assaulting, beating, and ill-using a boy of fourteen. The boy had misbehaved at school for some time. He refused to do his lessons and was

\textsuperscript{58}\textit{Supra}, pp. 172-81.

\textsuperscript{59}(1899) 7 C.C.C. 58.

\textsuperscript{60}(1910) 18 C.C.C. 456.
given an ultimatum to have them completed by 5:30 p.m. or take a whipping. He failed to complete them by the specified time and the teacher attempted to whip him. She whipped him over the shoulders when he refused to extend his hands. The boy then laughed at the teacher so she took a ruler and used it on him while he squirmed in his desk. He was then sent home. The next day the boy left school after lunch without permission or excuse. On his return to school the next day the teacher again attempted to punish him and he again refused to hold out his hands. Thereupon, the teacher whipped him over the shoulders until he obeyed and did hold out his hand. The teacher then tripped the boy to the floor and tried to get at his hands, but she could only hit the backs of them outside his overall bib. The Court, in deciding that the punishment in this case was reasonable and that there was no excess used in punishing the boy, allowed the appeal. Forbes, C.J., in delivering judgment, said:

Was the force used by Miss Zinck, as teacher, reasonable? I certainly think it was very reasonable and would be so under less trying circumstances. 61

A leading Saskatchewan case involving corporal punishment was heard in 1927. 62 This was an appeal from a

61 I bid., p. 458.

conviction of a schoolmaster by a Police Magistrate for committing an assault on a pupil. In this case, a girl of ten contravened the rules of the school and was punished by the principal. The girl would not hold out her hand for punishment so the principal "administered punishment . . . on that part of her anatomy which seems to have been specially designed by nature for the receipt of corporal punishment." The effect of the punishment was such as to cause her flesh to become black and blue and the doctor who examined her noted "raised portions of the skin." These "wales" or "bruises" would disappear in a few days according to the doctor's evidence. Once again in this case there were the two questions, one of law, and one of fact, to be answered by the Court. Using the same precedents referred to earlier, the question of law was easily decided by the Court and the principal's right to inflict corporal punishment was established. On the question of fact, the Court based its findings on the doctrine laid down in the case, State v. Pendergrass, as explained by R. v. Gaul and found "that the punishment was under the circumstances, as dis-

64Supra, pp. 172-81.
65Infra, pp. 191-93.
closed in the evidence . . . not excessive." The appeal was allowed and the conviction was quashed.

In the case *R. v. Corkum*, a boy of ten was punished by the teacher and the teacher was convicted by a Police Magistrate. The teacher had been ordered by the school inspector to maintain better discipline in a country school that had an average attendance of approximately sixty-five pupils. The boy continually caused trouble and had been repeatedly warned to cease his unruly behavior. There was no improvement in the conduct of the boy and he was strapped on both hands. After the strapping, marks or discoloration of the skin appeared on his hands. The County Court allowed the appeal and quashed the conviction. Roberts, Co. C.J., in his decision, commented:

The law is well settled, and it is for me to apply it as I understand it, to these facts. And I think under the circumstances here it is hardly necessary to emphasize the authorities. I find that the punishment was not excessive and that the force used was reasonable under the circumstances. The fundamental legal principle I think is that the authority of a school teacher to chastise a pupil is to be regarded as a delegation of parental authority, and any punishment inflicted is presumed to be reasonable and for sufficient cause until the contrary is shown.

68 (1937) 67 C.C.C. 114 at p. 115.
In a case heard in the Supreme Court of Nova Scotia some ten years ago, the teacher and board were absolved from blame for injuries sustained by a pupil as a result of the pupil's resistance to punishment.\textsuperscript{69} It was contended that the teacher used unreasonable and excessive force in disciplining a pupil, in that the pupil was pulled from her desk and dragged down the aisle by the shoulder. In the course of the struggle to remove the pupil from the room for the strapping the pupil was pushed into a desk, fell to the floor, and struck her head on a chair attached to a desk. It was claimed that the child suffered bruises to her left arm, chest, and back. These injuries, the plaintiff claimed, were accompanied by internal injuries to her left side and the formation of a rectal polypus which had to be removed surgically.

The Court noted that the child's mother had consulted eight doctors, however, no doctor had been called to prove that the internal bleeding or polypus could have been caused by any injury inflicted by the defendant. The Court felt that it was contrary to good faith to urge a claim for hospital, surgical and doctor's fees when the condition clearly arose from causes other than the strapping. The Court also noted that the pupil went skating after school on

\textsuperscript{69}Murdock v. Richards et al., [1954] 1 D.L.R. 766.
the day of the strapping, did the best of all pupils in vigorous physical exercises on the succeeding day, and was throwing snowballs within a few days.

In dismissing the case, Doull, J., had the following to say:

On the evidence I must find that there was no serious or permanent injury to the plaintiff. I suppose that punishment may be excessive and unreasonable even if no serious or permanent injury results. . . . It will be noted that in the statement of claim it is stated that the unreasonable force was by pulling the plaintiff from her seat and pushing her against a desk and dragging her along by the shoulder and causing her to fall on the floor striking her head against a desk. In so far as some of this occurred, it was the accidental result of the plaintiff's resistance and not the act of the defendant and there were no serious results in any case. 70

It will be noted that this case, Murdock v. Richards et al., is the only one of the above mentioned cases that is not an appeal against a conviction by a lower court.

Excessive punishment. Teachers, on occasion, have exceeded their powers by administering punishment that was considered by the courts to be excessive or unreasonable under the circumstances.

In an early Nova Scotia case, Andrews v. Hopkins, 71 action was brought against a teacher claiming damages

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70 (1954) 1 D.L.R. 766 at p. 771.

resulting from alleged excessive chastisement, negligently administered by the defendant. A girl of eleven was strapped on each hand five times. When she went home her arms were bruised from her hand almost to her elbow and her left breast was bruised from breast to shoulder. After a week of home treatment the girl's arms were improved but her breast appeared to be worse. She was taken to a doctor, who called two consultants. Their evidence showed an acute mastitis. This condition responded after about five months of treatment but a chronic condition still persisted at the time of the trial. According to the evidence of the physicians, the strap used, if it struck the breast of the child, could cause the condition that was present. The teacher testified that she was unaware of striking the girl on any part of the body except the palms of the hands.

Paton, J., the Trial Judge, in finding for the plaintiffs, stated:

I have not any doubt the marks on the child's arms and breast were caused by the teacher's strap and I am disposed to believe the teacher that she did not intentionally strike the child on the arms or breast, but I do think, by the exercise of reasonable care, such as taking hold of the child's wrist, the blows could have been confined to the palm of the hand as they should be. I think there was negligence on the part of the teacher for which she must be held responsible.\(^{72}\)

\(^{72}\)(1932) 5 M.P.R. 7 at p. 9.
The Appeal Court affirmed the decision of the Trial Court. This case demonstrates that a teacher must be careful in administering punishment or risk being liable for negligence, even if the punishment in itself is reasonable.

In a Quebec case, the manner of inflicting the punishment and the parts of the body to which it was applied warranted a conviction of assault against a schoolmaster.\textsuperscript{73} This was an appeal from a conviction of a schoolmaster for hitting on the edge of his desk, the knuckles of two children. The bruises, however, did not call for medical treatment. The Court of King's Bench, Appeal Side, affirmed the conviction of the lower Court and in doing so McDougall, J., speaking for the Court, commented:

That a schoolmaster and parents have a right to use force in order to discipline their pupils and children is undeniable. What would under the law generally be an assault is permitted in the case of school children provided that the offence committed by the child merits punishment and that the punishment inflicted is reasonable and appropriate to the offence. That the punishment naturally may cause pain hardly needs to be stated; otherwise its whole purpose would be lost. If in the course of the punishment the pupil should suffer bruises and contusions it does not necessarily follow that the punishment is unreasonable. However, if the teacher is careless in the manner of punishment he may by that fact alone be held responsible.\textsuperscript{74}

The Court went on to comment upon some forms of

\textsuperscript{73}Campeau v. The King, (1951) 103 C.C.C. 355.
\textsuperscript{74}Ibid., p. 360.
unjustifiable punishment:

There will be no disagreement that if a teacher strikes a pupil on the head by way of discipline his act is completely unjustified; the reason of course being that there is a danger of doing permanent harm by striking a delicate part of the boy such as the head. For the same reason to hit a child on the spine with a hard object such as a ruler, would ... be unjustified no matter what his offence. Also to a lesser degree, to discipline a 9-year old child and one of 6 years by banging their knuckles on the corner of a desk is dangerous and may be unjustified. The covering over the bones on the back of the hands is very thin and the risk of permanent injury is correspondingly great.\textsuperscript{75}

The Court also commented on the changing attitude toward corporal punishment and the heavy responsibility that falls on the teacher administering it.

Such force as was exercised upon such young children --it would be so even for older ones--was surely excessive, in the matter of the injuries themselves, the part of the body on which the bruises were made and the manner of inflicting the chastisement. A teacher has a heavy responsibility and in imposing corporal punishment he must be extremely careful ... the attitude toward corporal punishment has undergone a change and a teacher who so far forgets himself as to strike a child in any part of the body where permanent damage may be caused must take the consequences.\textsuperscript{76}

From this case it appears that corporal punishment may be considered to exceed what is reasonable if any body part is struck where permanent damage may result.

The writer had difficulty in deciding upon the

\textsuperscript{75}Ibid., p. 361.
\textsuperscript{76}Ibid., p. 361.
placement of an early Nova Scotia case. In this case, R. v. Gaul, the Supreme Court of Nova Scotia remitted the case back to the Stipendiary Magistrate who originally had found a school principal not guilty of using excessive force in punishing a pupil. The decision of the Stipendiary Magistrate, after re-examining the case was not reported, but the statements made by the Supreme Court suggests that excessive punishment may have been administered by the principal. On this basis, the writer decided to include the case in this section on excessive punishment.

The defendant, a teacher, was charged before a Stipendiary Magistrate for assaulting, beating, and ill-using a pupil. The defendant was acquitted on the grounds that there was no evidence of malice on the part of the defendant or of permanent injury to the child.

A male pupil, of nine years, played truant for several days. His mother brought him to school and asked the principal to do something for the child. The principal talked to the boy about his truancy and about his mother's concern for him. He then punished the boy by strapping him. The boy was given a strap on each hand, upon which he doubled his hands and covered them with his head. The boy would neither move his head nor hold out his hand. There-

77(1904) 36 N.S.R. 504, 8 C.C.C. 178.
upon, the principal took him over his knee and strapped him on his buttocks, thighs, back and legs. He then asked the boy to hold out his hand. The boy refused, and he was once again taken over the principal's knee and strapped. The defendant then stood the boy up and asked him to hold out his hand. When the boy again refused, the defendant slapped him on the cheek with his open hand and the boy fell down. The defendant raised the boy and again ordered him to hold out his hand. Once again the boy refused and the defendant slapped him on the other cheek with his open hand, knocking him down again. After the boy got up or was stood up, he held out his hand and received five or six strokes on each hand.

The boy was strapped so as to bring blood and leave bruises about his body and cause him to limp. Later the boy turned white and suffered sickness of the stomach. Upon his return home, his mother took him to a doctor. He had marks of the beating across his back, buttocks, thighs and legs. Blood was oozing through the skin in several places. His face was marked on one side and his hands were swollen. The beating caused the boy to be sick and miserable, suffering from headache and nausea. The doctor found evidence of shock when he examined the boy. The boy was still lame when he appeared in court three days later.

The Stipendiary Magistrate relying on the American
decision in State v. Pendergrass,\textsuperscript{78} was of the opinion that it was necessary for the prosecution to prove that the principal was activated by malice, or that his acts had resulted in permanent injury, neither of which was proved.

On appeal, the Court pointed out that the Canadian Criminal Code authorized the use of force, \textit{provided that such force is reasonable under the circumstances}. Justice Townshend, in delivering the opinion of the Court, stated:

Now, it seems to me that the Stipendiary has refrained from deciding the only question properly before him, that is to say, whether the punishment was reasonable under the circumstances, or, in other words, whether there was excess. He has applied a test taken from an American decision as to the defendant's responsibility, for which, so far as I can understand, there is no warrant in our Code. The Stipendiary, here, is the tribunal, under the statute, to determine this question, which he has not done. To say that, because the defendant was not actuated by malice, and his act did not result in permanent injury to the child, no offence was committed, is, in my opinion, an incorrect interpretation of the section of the Code under which the prosecution was begun.\textsuperscript{79}

The case was remitted to the Stipendiary Magistrate to try to determine whether, under the circumstances, the punishment inflicted on the pupil was reasonable. A note under the account of the case states that the facts seem to warrant a charge of assault occasioning bodily harm, with a liability of three years imprisonment.

\textsuperscript{78} Supra, p. 178.

\textsuperscript{79}(1904) 8 C.C.C. 178 at p. 182.
Penalties for administering excessive punishment.
The administration of excessive corporal punishment is a
criminal offense. Section 26 of the Canadian Criminal Code
states:

Every one who is authorized by law to use force is
criminaly responsible for any excess thereof
according to the nature and quality of the act that
constitutes the excess.\textsuperscript{80}

A person who administers excess punishment may be charged
with assault. The Canadian Criminal Code stipulates the
punishment that may be imposed upon any person guilty of
such an act as follows:

231. (1) Every one who commits a common assault is
guilty of

(a) an indictable offence and is liable to
imprisonment for two years or

(b) an offence punishable on summary con-

A teacher who uses excessive force in administering
corporal punishment may, if he is negligent in administering
the punishment, be faced with a civil action in addition to
the criminal proceedings. The plaintiff may seek to recover
damages for the negligent actions of the teacher. Conse-
sequently, teachers should make certain that any punishment
meted out is not only appropriate for the offense committed

\textsuperscript{80}Canadian Criminal Code, s. 26.
\textsuperscript{81}Ibid., s. 231.
but is applied in a careful manner.

Who may administer punishment? The Canadian Criminal Code stipulates that every school teacher is justified in using force as a method of correcting the improper behavior of a pupil under his care. The School Act defines a teacher as any person holding a legal certificate of qualification. It appears from this that a child's teacher, the school principal, vice-principal or the persons in various supervisory positions in the school system would be legally authorized to administer punishment. It would be illegal, however, for a teacher to call upon a school board member, another pupil or a member of the maintenance staff to administer punishment on his behalf.

Board responsibility for disciplinary action of teachers. Plaintiffs who have thought that the punishment administered to a pupil was excessive have laid charges against the individual teacher inflicting the punishment in the majority of reported Canadian cases. In one case, Murdock v. Richards et al.,\(^8\) the school board was charged jointly with the teacher. Although the Court dismissed the action against the defendants in this case it did state that if the teacher was liable, the Board of School Commissioners

\(^8\)Supra, p. 186.
would likewise be liable. The Canadian Criminal Code authorizes the teacher to use force for the maintenance of discipline, but through the master-servant relationship, the board, as well as the teacher, is liable for any excess in the teacher's disciplinary measures.

Summary and Conclusions

From the Canadian cases reported it appears that pupil chastisement is unreasonable when:

1. The punishment is maliciously administered.
2. The punishment is administered to satisfy passion or rage.
3. There is no causal connection between the behavior and the punishment.
4. The reason for the chastisement is insufficient.
5. It is unsuitable to the age, sex, and condition of the pupil.
6. It is prolonged beyond the pupil's power of endurance.
7. The instrument employed for punishment is unsuitable.
8. The punishment results in permanent injury.
9. There is a risk of serious damage to the body part to which the punishment is applied.

10. An inappropriate body part is inadvertently struck while administering punishment to an appropriate body part.

The philosophy of society in general, and of educators in particular has undergone a great change during the last half century in regard to the administration of corporal punishment in schools. Teachers have become increasingly better qualified in their understanding of children and there appears to be less need for the harsh disciplinary measures that were so common in the schools of the past. The size of classes has been reduced; the pupils' needs are better understood; the principles of mental hygiene are better known and applied; and the curriculum has undergone improvement—all of these have played a part in reducing the amount of corporal punishment that is administered in the schools of today.
CHAPTER VI
PROVISIONS TO ENSURE HEALTH AND SAFETY
IN THE PUBLIC SCHOOLS

Pupils, upon leaving the shelter of their homes to attend school, have the right to a safe and healthful school environment. Surroundings that are attractive, sanitary, and safe indirectly influence the pupils' value concepts and stimulate the formation of living habits that are a benefit to the individual and are accepted by society. Such positive values help maturing pupils to acquire and retain mental and physical health. This attainment and retention by the pupils of mental and physical health are goals of the modern school. Preventive measures are of greater importance than curative measures, especially in regard to accident and disease. Consequently, any concrete measures adopted by the school, in its attempts to provide a safe and healthful environment for the pupils, benefit both the individual and society. Provincial school authorities have attempted through statute and regulation to ensure that pupils are provided with the safe, healthful environment to which they have a right.

Building Standards

The duty of acquiring an appropriate building site, erecting suitable buildings, and maintaining such facilities in a safe, sanitary condition falls upon the board of trustees. This duty is set out in The School Act which states:
114. It shall be the duty of the board of every district and it shall have power:

8. to purchase or rent, school sites or premises, and to build, repair, furnish and keep in order the school house, furniture, fences and all other school property; to keep the water supply, closets and premises generally in a proper sanitary condition; and to make due provision for properly lighting, heating, ventilating and cleaning the school rooms under its control. . . .

Provision for the acquisition of grounds, the building of schools and the maintenance of buildings are also included in The Secondary Education Act, the pertinent Section of which reads as follows:

28. It shall be the duty of every board and it shall have power:

(c) to purchase, rent or otherwise acquire grounds, buildings and other property necessary for the uses of the school;

(d) to build, add to, repair, alter or otherwise improve the school house or other buildings required for high school purposes, and to see that the grounds and premises are duly protected and kept in a proper sanitary condition.

As legislation does not go into detail, regulations are issued under The School Act to ensure that school buildings to be erected or acquired will meet with the minimum standards considered adequate for the promotion of the

1 R.S.S. 1953, c. 169, s. 114(8).

2 R.S.S. 1953, c. 168, s. 28(c), (d).
pupils' well-being while he is the responsibility of school authorities. Consultative services are also provided by the Department of Education to assist school boards in the planning of buildings that will adequately serve the needs of the district.

The Government of Saskatchewan provides grants for building purposes and in order to qualify for such grants certain requirements must be met. Plans for new buildings must be forwarded to the Department of Education, the Medical Health Officer of the Health Region (or city) in which the school is to be built, and to the Office of the Fire Commissioner. The approval of the Department of Education for the erection of a school building will not be granted unless the plan meets with the requirements of the Fire Commissioner and the Department of Public Health. No departure from approved plans may be made without the consent of the Department of Education. The plans submitted for approval require drawings and descriptions of the site plan, floor plans, type of lighting fixtures, notations of the air-conditioning or ventilation system, heating details, electrical installations, and the acoustics of the building. The approval of plans by the Department of Education

constitute only an acceptance of the general design and arrangement of the required service areas. The construction of the building itself must meet the standards set out in national, provincial and municipal codes or bylaws.\(^4\)

**Recommended Specifications**

**Classrooms.** The dimensions of classrooms are to be such as to allow a minimum of twenty square feet of floor space per pupil, where the pupils are mainly under thirteen years of age, and twenty-two square feet of floor space per pupil, where the pupils are mainly over the age of thirteen. The ceiling height must not be less than ten feet, except in kindergarten rooms where the height may be eight feet provided that adequate mechanical ventilation is installed.\(^5\)

Each pupil must be provided with not less than 170 cubic feet of air space.\(^6\)

**Windows.** Windows are to be located so as to admit light mainly from the left side of the students when seated. The window area should not be less than one sixth nor greater than one quarter of the floor area where artificial lighting is not provided or where it is provided only to supplement

\(^4\)Ibid., p. 3.

\(^5\)Ibid., p. 30.

\(^6\)"Regulations under The School Act, S. 2(1)," *Saskatchewan Gazette*, February 7, 1944.
natural lighting.\textsuperscript{7}

\textbf{Lighting}. The lighting design of classrooms must be such as to produce a minimum intensity of illumination on the pupils' desks and on chalkboards of fifty foot-candles.\textsuperscript{8}

\textbf{Heating}. The heating system of schools must be of sufficient capacity to heat the building to a temperature of 70 degrees Fahrenheit under all conditions. The installation and operation of heating systems and the construction of and connections to chimneys must meet the regulations made under \textbf{The Fire Prevention Act}.\textsuperscript{9}

\textbf{Ventilation}. Where mechanical ventilation is not in use provision must be made for classroom ventilation by means of windows or special ventilating louvres which can be opened in such a manner that direct drafts on seated students are avoided. Where mechanical ventilation is installed it must be of such capacity as to provide ten cubic feet of air per minute per occupant.\textsuperscript{10}

\textbf{Safe Premises}

The erection of suitable school buildings is the


\textsuperscript{8}\textit{Ibid.}, p. 44.

\textsuperscript{9}\textit{Ibid.}, p. 22.

\textsuperscript{10}\textit{Ibid.}, p. 45.
primary concern of the school board. The maintenance of the buildings, equipment and grounds in a safe condition is likewise a duty of the board; however, the teacher is also charged with certain duties in this respect. The School Act requires the board of trustees to repair and keep in order the school house, furniture, fences and all other school property.\textsuperscript{11} Duties similar to those given above are charged to the boards of schools organized under The Secondary Education Act.\textsuperscript{12}

The duties of teachers in regard to the maintenance of safe premises are stated in The School Act as follows:

225. It shall be the duty of the teacher:

(9) to exercise vigilance over the school property, the buildings, fences, furniture and apparatus so that they may not receive unnecessary injury, and to give prompt notice in writing to the board of any such injury;

(10) to report to the board any necessary repairs to the school buildings or furniture and any required supply of fuel, drinking water, furniture or equipment.\textsuperscript{13}

Subsections 8 and 9 of Section 71 of The Secondary Education Act are worded identically the same as Section 225, subsections 9 and 10 of The School Act, as quoted above.\textsuperscript{14}

\textsuperscript{11}\textit{Supra}, p. 199. \textsuperscript{12}\textit{Supra}, p. 199.
\textsuperscript{13}\textit{R.S.S.} 1953, c. 169, s. 225(9), (10).
\textsuperscript{14}\textit{R.S.S.} 1953, c. 168, s. 71(8), (9).
Precautions must be taken to protect pupils from injury caused by dangerous materials that may be brought by pupils from their homes. In this regard pupils are prohibited under The School Act from bringing firearms or explosives to school. A parent or guardian who allows a child under his care to do so is guilty of an offense and is liable to a fine on summary conviction.\textsuperscript{15}

School boards throughout Canada have been involved in considerable litigation in which it has been charged that the boards have failed to maintain safe equipment and premises. The plaintiffs have usually sought payment for damages incurred through the alleged negligent acts of the boards. Court cases falling within this category are included in chapter nine which is concerned with negligence.

Protection Against Fire Hazards

Public school pupils have the right to attend schools so constructed and equipped that the risk of injury or death by fire is reduced to the absolute minimum. Provincial authorities, aware of the dangers that prevail in this respect, have enacted legislation and issued regulations designed to eliminate, as far as possible, conditions which could prove to be a menace to the lives or well-being of pupils. Legislation pertaining to fire prevention and fire

\textsuperscript{15}R.S.S. 1953, c. 169, s. 251.
safety in all public buildings which includes schools is embodied in The Fire Prevention Act. The pertinent section of this Act, relating to the powers of the Fire Commissioner to order the remedy of dangerous conditions that may prevail in public buildings, reads as follows:

13. Where in any church, school, hotel . . . or in any building used as a place of public resort or amusement, there exists, in the opinion of the Fire Commissioner or the Deputy Fire Commissioner, a danger to the safety of the public by reason of the lack of adequate fire exits or fire escapes or the presence of flammable material, or by reason of the building being through any other cause especially liable to fire, the Fire Commissioner or the Deputy Fire Commissioner may serve upon the owner an order in writing requiring him to remedy the dangerous condition in the manner and within the period of time specified in the order, and may in writing order the owner, his agent or the occupant to close the building to the public until such time as the first mentioned order directed to the owner has been complied with to the satisfaction of the Fire Commissioner.

The following sections of the same Act stipulate the provisions that must be made for adequate means of egress from all public buildings and the penalties that may be imposed for non-compliance with the Act.

19. Every owner of a church, school, skating rink or other building used as a place of public resort or amusement shall provide and keep in good repair and condition, in addition to the principal entrance, one or more means of egress

16S.S. 1954, c. 85.
17Ibid., s. 13.
from the building, acceptable to an inspector or a local assistant.\textsuperscript{18}

20. (1) The outside doors and the main inside doors of every building used as a church, school . . . or place of public resort or amusement shall be so hung as to open freely outwards and, during the time when the building is being publicly used, shall not be bolted, barred or locked in any manner other than with standard panic hardware; and the gates or outer fences if not so hung shall be kept open by proper fastenings during the time when such building is being publicly used.

(2) Congregations and societies possessing corporate powers and trustees, incumbents, . . . and other persons holding churches, schools or buildings used for churches or schools, as trustees for such congregations or societies or for the school districts, shall be severally liable for violation of subsection (1).

(3) A person violating subsection (1) is guilty of an offence and liable on summary conviction to a fine of not less than $50 nor more than $200 and a further fine of $25 for every day after conviction upon which the offence continues, and in default of payment to imprisonment for a period not exceeding three months.\textsuperscript{19}

Further precautions designed to protect pupils in schools from fire hazards are incorporated in regulations under \textit{The School Act}. These regulations stipulate that school buildings must be provided with fire escapes satisfactory to the Fire Commissioner.\textsuperscript{20} Such fire escapes are

\textsuperscript{18}\textit{Ibid.}, s. 19. \textsuperscript{19}\textit{Ibid.}, s. 20(1), (2), (3).

\textsuperscript{20}"Regulations under \textit{The School Act}, S. 2(7) (b)," \textit{Saskatchewan Gazette}, May 26, 1947.
to be so located as to provide for easy accessibility and are not to open off the same hall as the inside stairway unless such stairway is enclosed with fire-resistant material and equipped with self-closing fire doors.\textsuperscript{21} For every two classrooms above the ground floor, at least one fire escape must be provided. This escape must be placed so as to be accessible without crossing the inside stairway, unless the stairway is enclosed with fire-resistant material.\textsuperscript{22} All doors leading to fire escapes and the main doors of the school must open freely in the direction of egress and be equipped with panic bolts. The principal and the janitor are charged with the duty of carrying out frequent inspections of the doors leading to fire escapes.\textsuperscript{23}

Two types of fire escapes, the approved spiral chute type and the iron stairs type from the highest storey to the ground level, are permitted on existing buildings.\textsuperscript{24} The fire escapes in all new school buildings must be of the enclosed interior stairwall type with a door opening directly to the exterior of the building at grade level. This is the only type of fire escape that meets the national code on planning for new public buildings.\textsuperscript{25}

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\textsuperscript{21}Ibid., s. 2(7) (c). \textsuperscript{22}Ibid., s. 2(7) (c). \textsuperscript{23}Ibid., s. 2(7) (d). \textsuperscript{24}Ibid., s. 2(7) (e). \textsuperscript{25}Department of Education, \textit{A Guide to School Plant Planning with Regulations}, mimeographed, p. 14.
An electrically operated fire alarm system of such character and so installed as to be readily heard in every room above all other sounds must be provided in all schools with three or more rooms. At least one sending station must be located on each floor including the basement. This alarm system must be tested at least once a week and a record of such tests must be kept.26

In an effort to reduce the likelihood of fires starting within schools, the storage of gasoline or other highly flammable materials and the accumulation of rubbish anywhere in the school is forbidden.27

Regardless of the precautionary measures taken fires do, on occasion, break out in schools. When school personnel are faced with a fire in the school building their main concern should be, first to see that the pupils evacuate the building in a prompt but orderly fashion and then, if possible, to extinguish the blaze and thereby reduce the property damage. In order to facilitate the prompt evacuation of pupils, the regulations make it mandatory that the principal or teacher of every school instruct the pupils in the elementary principles of fire drill, hold a fire drill

26"Regulations under The School Act, S. 2(7) (h)," Saskatchewan Gazette, May 26, 1947.

27Ibid., s. 2(7) (i).
in which all pupils take part at least twice a month, and to keep a record of all such drills.\textsuperscript{28} The regulations also stipulate that every school be supplied with fire extinguishers approved by the Underwriters' Laboratories. There must be at least one such extinguisher fully charged and ready for use, located in an accessible place in the hall or corridor of each floor, with additional extinguishers located in each furnace-room, laboratory and workshop.\textsuperscript{29} The availability of such extinguishers increase the likelihood of school personnel successfully eradicating small fires and hence, reducing school property damage.

\textbf{Sanitation}

Healthful and sanitary conditions must prevail in schools at all times. In this connection \textit{The Public Health Act} grants to each medical health officer and sanitary officer the right to inspect any building, place, matter or thing, within his jurisdiction affecting the public health of the province.\textsuperscript{30} Teachers are required to report any adverse conditions to the board. On this matter \textit{The School

\textsuperscript{28}\textit{Regulations under The School Act, S. 9(8)},\textit{ Saskatchewan Gazette}, February 7, 1944; and \textit{Regulations under The School Act, S. 2(7) (i)},\textit{ Saskatchewan Gazette}, May 26, 1947.

\textsuperscript{29}\textit{Ibid.}, s. 2(7) (i).

\textsuperscript{30}\textit{R.S.S. 1953}, c. 230, s. 23.
Act states:

225. It shall be the duty of the teacher:

8. to give strict attention to the proper heating, ventilation and cleanliness of the school house and to the condition of the outhouses, and to report to the board any defect with respect thereto.\(^{31}\)

The importance of providing wholesome drinking water for the pupils is recognized by the authorities. The School Act places this duty upon the board:

114. It shall be the duty of the board of every district and it shall have power:

17. to provide wholesome drinking water for the use of the children during school hours.\(^{32}\)

Where municipal services are not available a sample of the water supplied must be examined and approved for use by the Department of Public Health.\(^{33}\) Individual paper drinking cups must be supplied for the use of students if sanitary drinking fountains are not provided.\(^{34}\) The use of common drinking cups is forbidden under The Public Health Act, which reads as follows:

52. No person owning or controlling a public place

\(^{31}\)R.S.S. 1953, c. 169, s. 225(8).

\(^{32}\)R.S.S. 1953, c. 169, s. 114(17).

\(^{33}\)"Regulations under The School Act, S. 6(2)," Saskatchewan Gazette, February, 1944.

\(^{34}\)R.S.S. 1953, c. 230, s. 53.
shall provide drinking cups for common use or allow drinking cups for common use to be in or upon the premises.\textsuperscript{35}

Likewise the use of common towels is forbidden in any public place. Where towels are furnished, separate ones must be provided for each person.\textsuperscript{36} In the above-mentioned Act, "public place" is defined as "a railway, railway station, railway car, school, municipal building . . . or tent, building or structure of any kind to which the public have access."\textsuperscript{37}

The importance of approved methods of sewage disposal in relation to the health of the pupils is recognized by the authorities. The Department of Education recommends sewage disposal in conjunction with water under pressure where possible. Where such is not possible, septic tanks or other systems acceptable to the Department of Public Health are recommended. The Department of Education stipulates by regulation the approved type of toilet or washroom construction and the proper methods of keeping toilets in a sanitary condition.\textsuperscript{38}

\textsuperscript{35}\textit{Ibid.}, s. 52.
\textsuperscript{36}\textit{Ibid.}, s. 55.
\textsuperscript{37}\textit{Ibid.}, s. 2.
\textsuperscript{38}"Regulations under The School Act, S. 3(2)," \textit{Saskatchewan Gazette}, February 7, 19\textsuperscript{44}.\textsuperscript{44}
Vaccination and Quarantine

Pupils attending public schools have the right to expect that sufficient precautions will be taken to ensure that the likelihood of their exposure to and subsequent infection with communicable disease will be reduced to a minimum. In order that these precautionary measures will be carried out The School Act, The Secondary Education Act, The Public Health Act, and the regulations under The Public Health Act, charge not only school and health officials, but pupils as well, with certain responsibilities concerning the prevention and control of such diseases. School boards are required to admit any person acting under the authority of The Public Health Act to the school in order that he may carry out his duties.\(^{39}\) School boards are duty bound to report any pupils that are known to have or suspected of having a communicable disease. In this respect The School Act and The Secondary Education Act place the following duty on the board:

to give notification to the municipal board of health or the Minister of Public Health, as the case may be, of knowledge or suspicion that a pupil has a communicable disease and to comply generally with the provisions of The Public Health Act with respect to contagious and infectious diseases.\(^{40}\)

\(^{39}\)R.S.S. 1953, c. 169, s. 114(51).

\(^{40}\)R.S.S. 1953, c. 169, s. 114(50); R.S.S. 1953, c. 168, s. 28(s).
Teachers, likewise are required to notify the medical health officer when any pupil is suffering from or suspected to be suffering from a communicable disease. The Regulations Governing the Control, Notification, Prevention and Treatment of all Communicable Diseases state:

Every school teacher and every head of an educational institution who knows or has reason to suspect that he has a pupil with a communicable disease, or who knows or has reason to suspect that there exists in the home of a pupil, any communicable disease, shall give notification of such knowledge or suspicion to the medical health officer.41

The same regulations state:

Teachers shall require that children be clean and shall exclude from school all unclean children: those suffering from pediculosis, scabies, ringworm, or impetigo contagiosa; or suspected of suffering from other communicable diseases.42

Teachers with board approval are ordered, under the authority of The School Act and The Secondary Education Act, to exclude pupils suffering or being convalescent from communicable diseases. The two Acts are worded identically in this respect, and specify that it shall be the duty of the teacher:

with approval of the board, to exclude from school any child suspected of suffering or being convalescent from or of being in contact with a communicable disease; to give notification of the exclusion and

41"Regulations under The Public Health Act, S. 2(e)," Saskatchewan Gazette, August 6, 1954.
42Ibid., s. 5(e).
the reasons therefor to the medical health officer . . . and to admit such child to the school upon production of a written certificate from a medical health officer.\textsuperscript{43}

Provisions are embodied in \textit{The Public Health Act} whereby the prevention or control of communicable diseases may be effected through the closing of schools. This section reads as follows:

70. When the regional board or the municipal board of health, upon the advice of the medical health officer, or the minister considers it necessary to order the closing of one or more schools, for the purpose of prevention or checking the spread of a communicable disease, the unit board, school trustees, or persons in charge of any such school shall not admit any pupil into it until permission to reopen the school has been received from the minister or from the regional board or the municipal board of health upon the advice of the medical health officer, as the case may require.\textsuperscript{44}

Before returning to school a pupil who is suffering or convalescent from a communicable disease may be required to produce a written certificate issued by a medical practitioner indicating that the pupil no longer is a source of infection to the public. Teachers are empowered to continue to exclude from school any pupil who cannot produce such a certificate.\textsuperscript{45}

\begin{flushright}
\textsuperscript{43}R.S.S. 1953, c. 169, s. 225(17); R.S.S. 1953, c. 168, s. 71(17).  \\
\textsuperscript{44}R.S.S. 1953, c. 230, s. 70.  \\
\textsuperscript{45}"Regulations under \textit{The Public Health Act}, S. 5(f)," \textit{Saskatchewan Gazette}, August 6, 1954.
\end{flushright}
The enforcement of health regulations has been met with little opposition, as the citizens of the province are in general accord with the authorities in their endeavors to suppress communicable disease. There are people, however, who willingly abide by the laws regarding quarantine but conscientiously object to receiving vaccine. There have been no court cases on this issue in Saskatchewan, but two cases have been reported in other parts of Canada. The Clowes case was heard, by arrangement, in the Supreme Court of Alberta, Appellate Division in 1915.46 It appears that this case was considered to of fundamental importance and an arrangement was made to take the case to the Appellate Division of the Supreme Court without the usual proceedings in a court of the first instance.

In this case the plaintiff applied for a writ of mandamus to force the Edmonton School Board to admit his seven year old son to a public school in the city. The defence maintained that the child had not been vaccinated as was required by Section 68 of the regulations issued under The Public Health Act of Alberta by the Provincial Board of Health and approved by the Lieutenant-Governor in Council. Section 68 of the said regulations read, "on and

after the first day of November, 1912, no pupil shall be admitted to any school unless and until he produces evidence of successful vaccination." The Court granted the mandamus and declared the regulation concerning vaccination ultra vires the Board of Health. Chief Justice Harvey, in his judgment, stated:

After the most careful consideration, and with the utmost desire to uphold the regulation in question, I have been unable to satisfy myself that it is not in excess of the jurisdiction of the board of health. The real difficulty that presents itself to me regarding this regulation, however, is that I find no way of reconciling it with the provisions of The Truancy Act. That Act provides that every child of school age, with certain exceptions shall attend school—the regulation in terms provides that the child shall not attend school, unless on certain conditions—conditions not imposed by The Truancy Act. The Provincial Board of Health is not given power to repeal or otherwise render ineffective any statutory provision, and I am unable to see that if this regulation is enforced it may not have this effect. 47

Stuart, J., in agreement with the findings of the Chief Justice, said:

A superior legislative authority (the provincial legislature), enacts a statute commanding a person to do a certain act, 'A' (attend school), unless (b), (c), (d), (e), (f), (g), or (h) occur. A subordinate legislative authority (the Board of Health), with only delegated powers, enacts that certain administrative authority (a school board of principal of a school), shall not permit that person to do act 'A' unless he previously has done the act 'X' (submit to vaccination). There is here, quite obviously, a conflict of legislation, and if, as one

would think, the subordinate delegated authority must yield before the superior authority—cadit quaestio.\textsuperscript{48}

In the \textit{Clowes} case, the child was allowed to attend school without being vaccinated. This does not mean however, that laws requiring school pupils to be vaccinated, cannot be enacted. In the Alberta case an inferior legislative body by regulation attempted to bar pupils from school unless they were vaccinated while the superior legislative body required all children between certain ages to attend school. Had the superior legislative body passed legislation requiring all public school pupils to be vaccinated such legislation would undoubtedly be upheld by the court.

The \textit{Yarwood} case occurred in Ontario in 1922.\textsuperscript{49} This was an action by a number of persons for damages for the exclusion of their children from the public schools of Smith's Falls. There had been an epidemic of smallpox in the area at the time of the exclusion, and the plaintiffs conscientiously objected to having their children vaccinated. It is apparent from the report that the provisions of the statutes had not been complied with, although no mention is made of which provisions the authorities failed to heed.

\textsuperscript{48}\textit{Ibid.}, p. 454.

\textsuperscript{49}\textit{Yarwood v. Smith's Falls Board of Education}, (1922) 23 O.W.N. 38.
The Appellate Division of the Supreme Court of Ontario found for the plaintiffs and awarded nominal damages. Lennox, J., speaking for the Court, stated:

In a case such as this, children who have not been vaccinated may be lawfully excluded from the schools if the provisions of the statutes in that behalf are complied with. Exclusion involves, however, the infringement and denial of a prima facie right, and the statutory proceedings justifying it must be carefully pursued. Here the statutes had not been complied with and the plaintiffs are entitled to at least nominal damages.\textsuperscript{50}

This case emphasizes the fact that unvaccinated children may be lawfully excluded from school where statutes have been enacted to that effect. The case also emphasizes the fact that statutes which interfere with the rights of an individual are strictly interpreted by the courts.

In Saskatchewan, legislation regarding compulsory vaccination in cases of a threatened epidemic is in effect. Not only are school pupils subject to such legislation but so are members of the general public. The Public Health Act contains the following provisions regarding epidemics:

\begin{quote}
64. (1) In case of a threatened epidemic of small-pox the Minister may, subject to the approval of the Lieutenant-Governor in Council, define an area within which quarantine shall be observed and compulsory vaccination enforced, and shall issue such special orders or regulations as he deems
\end{quote}

\footnote{\textsuperscript{50}(1922) 23 O.W.N. 38 at p. 38.}
necessary for the suppression and control of the outbreak. 51

67. The Minister may order vaccination and revaccination against smallpox to be compulsory within the limits of any specified locality, and may make all necessary regulations respecting the same. 52

A medical health officer may require pupils in any school to present proof of vaccination when an outbreak of smallpox has occurred or is threatening to occur. Pupils refusing to comply with such requirements may be excluded from school for a period of time and school officials in such areas who refuse to exclude such pupils are liable to a penalty. These provisions are embodied in the regulations authorized under The Public Health Act which read as follows:

5. (c) (1) The medical health officer whose area of jurisdiction is invaded or threatened by smallpox may require every pupil attending a school, college, convent, university or other educational institution within such area to present to the authorities of the institution which he attends, a certificate or other evidence of immunity from smallpox.

(2) A pupil who refuses or neglects to produce such certificate or evidence on demand, shall be excluded from the institution for a period of sixteen days. 53

51 R.S.S. 1953, c. 230, s. 64(1).
52 Ibid., c. 230, s. 67.
53 "Regulations under The Public Health Act, S. 5(c) (1), (2)," Saskatchewan Gazette, August 6, 1954.
(d) Every person or corporation who, having control over a school, college, convent, university or other educational institution, refuses or neglects to exclude a pupil who has failed to furnish a certificate of vaccination or to produce evidence of immunity from smallpox when required so to do under the authority of these regulations, shall be liable on summary conviction to a fine not exceeding $10 for each day during which such improper attendance is allowed. 54

Under Saskatchewan law, school pupils may be required to submit to vaccination even when no outbreak of smallpox has occurred or threatens to occur. Not only may pupils be refused admittance to the schools but attending pupils may be excluded. The regulations under The Public Health Act state:

5. (b) The minister, school trustees and all educational authorities may require that no pupil shall be admitted to any school under their control unless such pupil presents to the teacher a certificate of efficient vaccination against smallpox. 55

While the regulation quoted above refers to the admittance of pupils, The Public Health Act itself refers to attending pupils as follows:

71. Boards of health, unit boards, school trustees and all educational authorities may with the approval of the medical health officer require that admittance to any school under their control be refused an attending pupil who fails to furnish the teacher, when called upon to do so with a certificate of vaccination. 56

54 Ibid., s. 5(d). 55 Ibid., s. 5(b). 56 R.S.S. 1953, c. 230, s. 71.
Health Services

The importance of maintaining the physical well-being of the young so that they may take the fullest advantage of the school program provided for them is recognized by school authorities. Consequently, legislation is in effect which grants school boards, at their discretion, power to employ medical and dental personnel to carry out preventive and curative health measures among the pre-school and school population. The legislation authorizing provisions for medical and dental inspection contained in The School Act reads:

119. A board of trustees or any group of boards, on such terms as are mutually agreed upon, may provide for the medical and dental inspection of pupils and, upon request of the parent or lawful guardian, of resident children under school age, and, subject to the regulations of the department, employ a school nurse and such special instructers and supervisors as may be deemed advisable.57

The authorities, cognizant of the fact that the choice of a physician to carry out treatment is more or less of a personal matter, require that treatment be given only upon the expressed consent of the parent. The School Act states in this respect:

120. A board of trustees may provide medical and dental treatment for children whether under school age or attending school, but no treatment shall be given to any child unless the written consent of the parent or lawful

57R.S.S. 1953, c. 169, s. 119.
guardian has been obtained.\textsuperscript{58}

The \textit{Larger School Units Act} similarly grants unit boards the discretionary power to employ medical and dental personnel, but no mention is made of requiring written authority from the parent or guardian before treatment is instituted. The pertinent section of this Act reads:

53. A unit board may at its discretion:

(1) make such expenditures as it deems necessary to safeguard the health of the pupils, including the employment of physicians, dentists and nurses for the examination and treatment of pupils.\textsuperscript{59}

The above-mentioned section in \textit{The Larger School Units Act} does not specify that a pupil's parent must give his permission before the pupil receives treatment. However, under \textit{The School Act} such permission would be required. \textit{The Larger School Units Act} states that the provisions of \textit{The School Act} apply to all schools within a Unit except in such cases as these provisions are inconsistent with provisions of \textit{The Larger School Units Act}, and there does not appear to be any inconsistency between the two Acts in this respect.\textsuperscript{60}

Both Acts grant the respective boards authority to provide services, but \textit{The School Act} includes provisions to protect

\begin{itemize}
\item \textsuperscript{58}R.S.O. 1953, c. 169, s. 120.
\item \textsuperscript{59}R.S.O. 1953, c. 170, s. 53(1).
\item \textsuperscript{60}R.S.O. 1953, c. 170, s. 95.
\end{itemize}
the interests of the individual.

**Physical Examination**

Presentation of evidence of good health as a prerequisite of school attendance appears to be a reasonable requirement of school boards. A school has only one purpose in mind when it requires a physical examination of a pupil—the best welfare of the child or children with whom he associates. Evidence to the effect that the public is generally in accord with this view is shown by the absence of any court cases on the issue. Although there is no legislation compelling beginning pupils to adhere to a physical examination prior to enrolment, *The School Act* and *The Larger School Units Act* grant boards the discretionary power to provide for the medical inspection of pupils.\(^6\) Consequently, even if a parent refused to allow his child to be examined prior to his admittance to a school the child could be legally required to undergo a physical examination immediately upon enrolment.

**First Aid Treatment**

When an emergency arises at school, such as an accident or sudden illness suffered by a pupil, the pupil has a right to expect the teacher to be duty bound to render first aid to the best of his or her ability. A teacher may

\(^6\)R.S.E. 1953, c. 169, s. 119; c. 170, s. 53(1).
not be responsible for the accidents that happen to his pupils but he is responsible for the reasonable consequences of his acts or for his failure to act in an ordinary prudent manner. On this subject Remmlein, an American authority, has the following to say:

Teachers owe their pupils the duty of first-aid care in cases of emergency, provided, of course, a nurse or physician is not immediately available. If a person with medical training is available, the teacher, untrained in more than the rudiments of first-aid treatment, should not attempt to act; but if no person with medical training is available and the pupil needs immediate attention which cannot wait for the arrival of a doctor or nurse, the teacher would be derelict in his duty if he did not render first-aid. Yet, the treatment the teacher gives the pupil under these circumstances must be such as to improve his condition, or the teacher might be held liable for causing him greater injury than he originally sustained.\[62\]

It is apparent that the degree of treatment that should be administered by a teacher to a pupil must be decided by the facts and circumstances of each case. For this reason, the subject of first aid cannot be covered by any hard and fast rule. Teachers should be aware of the possible dangers that may arise through overzealous action in such situations. A teacher who acts in good faith, in an attempt to be of service to his pupil, must perform within the bounds of his competence and authority or be prepared to answer for his actions.

School Patrols

There is nothing in the legislation pertaining to the schools of Saskatchewan regarding the use and operation of safety patrols to protect pupils from the hazards of traffic. Only one case has been reported in Canada regarding school patrols. In this case a child ran out from a school patrol and was injured when struck by a truck. The driver of the truck was charged with negligence but no charges were laid against the pupil, patrol leader, the school principal, or the school board. In the absence of any case material on which to base one's opinion it would be mere conjecture to attempt to state the position of school boards, school patrol leaders, or school patrol members with regard to liability for accidents sustained during safety patrol activities.

Safety Education

The nature of our society with its ever-increasing complexity has obligated educators to place additional emphasis on safety education in both the elementary and the high school. A unit included in the Health and Physical Education course for grades one and two is entitled "Learning to Live Safely Throughout the Day." Within this unit

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are topics entitled, "Travelling to School" and "Safety at School." These topics are concerned with such questions as the proper way of walking on the road, safety in crossing the street, the appropriate places to play on the school-ground and similar subjects. In each grade throughout the pupils' elementary school education there is included a unit with the same general title as that noted above, namely, "Learning to Live Safely Throughout the Day." In grades three and four the unit contains topics for study entitled, "Travelling to School," "Safety at School," and "First Aid." The program for grades five and six includes topics entitled, "Safety at School," "Safety on Streets and Highways," and "First Aid." In grades seven and eight topics entitled, "School and Playground Safety," "Recreation and Vacation Safety," "Traffic Safety," and "First Aid" are studied. A unit is included in the high school program for grade ten entitled, "First Aid."

It will be noted that the topics studied throughout the various elementary and high school grades appear to be

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65 Ibid., p. 42. 66 Ibid., p. 49. 67 Ibid., p. 52.

almost identical in many instances. Although such topics are concerned with similar questions there is a difference in the content and level of difficulty in the successive grades. For example, the topic entitled "First Aid" in grades three and four is concerned with very elementary procedures, such as the calling of an older person in case of accident. The grade ten topic with the same title includes, among other things, learning not only to recognize such conditions as shock, arterial haemorrhage, and venous haemorrhage, but to carry out approved procedures on victims suffering from such conditions.

School authorities have attempted to provide for a well-rounded health and safety program extending throughout a child's elementary school years and extending into the high school years. Such a program, if carried out effectively in the high schools, should aid the pupils to achieve and maintain the safe, healthful school environment to which they are legally entitled.

**Summary**

In recognition of the fact that pupils attending publicly-supported schools are entitled to pursue their various school activities in safe, healthful surroundings, statutes have been enacted and regulations have been issued in an attempt to ensure that such conditions will exist. Legislation requires school boards to select proper building
sites, to erect appropriate buildings, and to maintain such sites and buildings in a safe, sanitary condition. Regulations are in effect requiring school boards to erect buildings which conform to standards set out by federal, provincial, and municipal building codes, as well as to specifications laid down by the Department of Education, the Department of Public Health, and the Fire Commissioner.

Teachers are duty bound by legislation to inspect frequently the buildings, the grounds, and the equipment and to report any needed repairs to the board. The board, in turn, is required to keep the buildings and equipment in safe repair and the grounds in good condition.

Special precautions are required to reduce to the minimum the possibilities of fire damage. Effective provisions must be made for the orderly egress of pupils should fire persist. To meet the threats to life and property posed by fire, legislation and regulations exist regarding: (1) the type, placement, and number of fire escapes, (2) the institution and practice of regular fire drills, and (3) the providing of approved types of fire extinguishers, in all buildings.

The importance of preventive measures in reducing the incidence of communicable disease is recognized by the school authorities. In order to reduce the spread of disease teachers and boards are required to inform health
authorities of any pupil having or suspected of having a communicable disease. The Public Health Act and regulations under that Act require that students suffering from communicable disease be excluded from school attendance for various periods of time depending upon the disease. Provisions also exist for the compulsory vaccination of all persons, if required, within any specified area, in the face of an epidemic or a threatened epidemic. School pupils upon entrance or while attending school may be required by law to be vaccinated or show proof of having been vaccinated even if there is no imminent danger of an epidemic.

The elementary and high school courses of studies include health and safety education. Carrying out an effective health and safety program in the schools should, it is hoped, contribute greatly to the achievement of a safe and healthy school environment. Pupils can benefit from this, not only during their school days, but throughout their whole lives.
CHAPTER VII
PROVISIONS FOR SPECIAL SERVICES

It was earlier stated that the changing philosophies of society are perceivable in the operation of our schools. Perhaps no other area of educational endeavour better exemplifies this change in thought than does the area of special services. Our changing society has demanded better educational opportunities for increased school populations and the schools have demonstrated the ability to change in an attempt to meet the needs of contemporary society.

In an attempt to provide a curriculum better suited to the individual interests and needs of its pupils and at the same time to provide instruction of a higher quality, extensive centralization has emerged. The closing of many inefficient and ineffective small schools has necessitated a great increase in transportation facilities. This increased conveyance of pupils has, in turn, obliged school authorities to change legislation to meet existing needs.

The increased realization that education can greatly assist the mentally and physically handicapped to realize a much more satisfying and productive life has prompted educational authorities to institute and extend services for these pupils. These extended educational services are authorized by legislation, and this legislation, in turn, has added to the legal structure of our educational system.
Many administrative problems have arisen with the introduction of the various special services into the school program. A knowledge of the legal provisions relating to special services should aid the educational administrator in sound decision-making when problems related to these services present themselves.

Transportation

Legislation incorporated in The School Act and The Larger School Units Act authorizes school boards to provide transportation. With this responsibility goes the obligation of providing safe and comfortable operation of vehicles used for conveyance purposes. School boards, upon the inauguration of conveyance programs, are required to abide by the provisions of the statutes, and by the regulations and notices issued under The School Act and The Vehicles Act.

Authority for pupil transportation. School boards are granted the discretionary authority to provide conveyance for pupils within the school district by virtue of Section 241 of The School Act, which reads as follows:

241. (1) A board may make due provision, subject to the regulations of the department, for the proper conveyance of any of the school children resident within the district to and from school, and it may provide for the cost of the conveyance in the same manner as is provided for the other expenditures of the district.¹

¹R.S.S. 1953, c. 169, s. 241(1).
Pupils may be conveyed from one district to another district if certain requirements have been met. The legislation pertinent to this reads as follows:

240. (1) Upon a petition hereinafter provided for being transmitted to the minister, he may empower the board of any rural district to enter into an agreement with any board or boards for the education of the children of its district upon terms mutually agreed upon and approved by him, and the first mentioned board may make provision for carrying out the terms of the agreement and for the conveyance of the children to and from school out of the funds of the district.\(^2\)

If permission has been granted by the minister for the formation of a district of not less than 36 square miles or more than 50 square miles for the purpose of having resident children conveyed to a central school, provisions must be made to transport all such resident children. Legislation to this effect reads:

(4) If a district is formed under the provision of subsection (4) of section 12, the board of trustees shall provide for the expense of conveyance to and from school once a day each way of the children of school age of resident ratepayers.\(^3\)

Provisions are made in The Larger School Units Act for unit boards to provide payment for or in lieu of the cost of transportation in cases where pupils attend schools

\(^2\)R.S.E. 1953, c. 169, s. 240(1).
\(^3\)Ibid., s. 240(4).
outside their district.

51. It shall be the duty of every unit board, and it shall have power:

9. notwithstanding anything contained in this or any other Act or in the common law, to make, only where the board deems it necessary to do so, provision for the attendance of pupils at schools outside the district in which their parents or lawful guardians reside, and for the payment to a parent or lawful guardian of such sum as the board may determine on account or in lieu of the cost of the pupil's conveyance.\(^4\)

**Distance provisions concerning transportation.** The courts have been called upon on at least two occasions to settle disputes arising out of misunderstandings regarding the distance from school that pupils must reside in order to enjoy the privilege of transportation to and from school. The matter of distance for conveyance is referred to in The **School Act** as follows:

242. (1) Subject to subsection (2), the board of every school district having an area of thirty-six square miles or more shall provide for the expense of the conveyance to and from school once a day each way of all pupils, being the children of resident ratepayers whose residence is distant therefrom more than one and one-half miles as measured by the nearest road allowance.

(2) Subsection (1) does not apply where the school district has been included in a school unit pursuant to section 60 and section 62 or 65 of The Larger School Units Act, if the agreement mentioned in the said

\(^4\)R.S.S. 1953, c. 170, s. 51(9).
section 60 makes provision for the conveyance of pupils which in the opinion of the parties thereto is adequate. 5

It is apparent from the statutory provisions that any resident pupil being further than one and one-half miles distant from school is legally entitled to conveyance or payment in lieu of conveyance to and from school in all districts of at least thirty-six square miles in area. Such questions as the following are not answered by the legislation however:

(1) If a school board in a district under thirty-six square miles in area exercises the discretionary power granted to it under Section 242(1) of The School Act, does it have to provide for the conveyance of every child?

(2) Does the distance of one and one-half miles referred to in Section 242(1) of The School Act include the distance from the residence to the road and from the school gate to the school house?

(3) If a unit board fails to make provisions for the conveyance of pupils who live in inaccessible areas, may the parents of such children send them to boarding schools and claim reimbursement from the unit board?

The courts have been called upon to answer such questions as these and the decisions rendered are a part of our law.

5R.S.S. 1953, c. 169, s. 242(1), (2)
School transportation litigation. Several court cases have occurred in Canada regarding the failure of boards to provide transportation or payment in lieu of transportation. The two Saskatchewan cases, Ridings v. Elmhurst and Perreault v. Kinistino School Unit, were considered previously in Chapter IV as they were also concerned with the failure on the part of school boards to provide equal opportunity for all students. In the Ridings case, the Saskatchewan Court of Appeal declared that where the trustees of a school district make arrangements for the education of the children of a district in another district and make arrangements for their transportation to school, they are bound to include all children in their district, and are liable for the cost of transporting to school children for whom they have made no arrangements.

In the Perreault case, also originating in Saskatchewan, the Court found that there had been a breach by the defendant school board of Section 51 (9) of The Larger School Units Act, in that it had failed to provide educational facilities for the children living in an area which had been in a school district which was incorporated

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6 Supra, p. 108.
7 (1926) 3 D.L.R. p. 173.
8 Supra, p. 110.
in the larger unit.⁹

In the Brunet case,¹⁰ heard in Quebec in 1962, the father of a girl attending a school some two miles distant from her home sought to force the school board to provide transportation for his child. Since The Education Act of Quebec grants the school board the sole discretion to decide whether transportation should be provided the Court refused to grant the application for a writ of mandamus.¹¹

In the Kowalski case,¹² heard in Manitoba, the applicant sought a writ of mandamus to compel the board of trustees to provide transportation for his children from his gate. Originally the applicant's children had been served by a route which passed in front of his farm residence. This route was changed for what appeared to be sound reasons and the children were required to walk some 90 rods up the highway to meet the school bus in order to be transported to school. The Public Schools Act in force in that Province at the time required the trustees of such a school district

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¹¹Ibid., p. 86.

"to provide suitable arrangements for the conveyance to and from school once a day of all pupils who would have farther than one mile to walk to reach school."\(^{13}\)

In refusing to grant the application, Dysart, J., stated:

This transportation provision should, in my opinion, be construed not strictly nor literally--absurdities would follow such construction, and absurdities in legislation should be avoided--but broadly and liberally. The spirit of the Act, rather than the letter, should be noted and observed.\(^{14}\)

The Court felt that the school trustees were not bound to provide transportation beyond what was reasonably adequate. The case was carried to the Court of Appeal where the appeal was dismissed without any written reasons.\(^{15}\)

In another Manitoba case, the Court was faced with deciding upon the method of ascertaining the distance of "one mile" for school conveyance purposes.\(^{16}\) In this action Wells sought an order for a writ of mandamus requiring the defendant school board to make and carry out suitable arrangements for transporting his children to and from school. A by-law was in effect in the district requiring

\(^{13}\) 2 W.W.R. 634 at p. 634.

\(^{14}\) 3 D.L.R. 500 at p. 504.

\(^{15}\) 4 D.L.R. 368 at p. 368.

\(^{16}\) R. ex rel. Wells v. Green, (1913) 23 W.L.R. 264, 10 D.L.R. 111.
the board of trustees to make suitable arrangements for conveying all resident children who would have to walk further than one mile in order to reach school.

The defendants claimed that the applicant's house was two feet short of one mile from the school and that they therefore were not required to transport the pupils. The distance referred to as being two feet short of one mile was measured from the school to the van route opposite the Wells home.

In the course of the proceedings it was learned that the children had been transported to and from school until April 22, 1912, and after that date they were refused conveyance by the van driver. Evidence disclosed that one of the trustees had been an unsuccessful candidate in an election for the office of municipal reeve and that Wells, the applicant, had supported the successful candidate.

The Court refused to concede that the applicant's house was two feet short of one mile from the schoolhouse. Instead, it maintained that the distances from the house to the road and from the school gate to the school building should be included in the measurement which would easily make the distance in excess of one mile. Macdonald, J., in his judgment, condemned the actions of the board of trustees in the following words:

It is plain from the evidence before me that the
children of John Wells, the relator here, have been refused the enjoyment of the arrangements made, and in a manner that clearly indicates ill-will towards Wells, and anything but a desire to carry out the true spirit of the Act.

These defendants contend that Wells is two feet short of one mile from the school and because of this shortage of two feet they refuse to concede to his children the privileges extended by the Act. I cannot conceive men of reason actuated by any motive other than resentment and bad humour stooping to such smallness.17

The Court, in granting the application for a writ of mandamus, assessed the costs of the action to the defendants personally as their actions had been carried out in bad faith.

**Principles arising out of transportation cases.** From the cases considered the following legal principles emerge:

(1) When a board arranges to transport the pupils of one district to a school in another district all pupils must be transported or payment to the parents in lieu of transportation must be made. The courts will not tolerate discrimination.

(2) If pupils are unable to attend the school of their district due to adverse road conditions the parent may arrange to have such pupils board in another district and claim for the costs of their board and lodging.

(3) Where a board exercises its discretionary powers

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17(1913) 23 W.L.R. 264 at p. 265.
in regard to transportation, the courts are not likely to interfere with board decisions if such decisions are not discriminatory in nature.

(4) In providing transportation for pupils, such transportation need not be provided beyond what is reasonably adequate. Pupils may be required to walk a reasonable distance to and from the bus.

(5) The distance from the place of residence to the road allowance and from the school gate to the school are included in determining the distance a pupil lives from school for transportation purposes.\(^{18}\)

(6) School board members may be assessed personally for damages and costs of actions when they act in bad faith.

**Driver qualification.** The safe conduct of great numbers of pupils to and from school each day is dependant to a large extent upon the employment of well qualified, self-disciplined drivers. It is only reasonable to expect such drivers to abide by rules and regulations laid down for the express purpose of carrying out a large enterprise with maximum safety. Regulations for the conveyance of pupils issued under *The School Act* to supplement regulations issued

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\(^{18}\)This principle was formulated by a Manitoba court and its applicability to Saskatchewan is in doubt as there have been no decisions rendered in this regard in Saskatchewann.
under The Vehicles Act make reference to the character of school bus drivers as follows:

14. (1) The driver of a motor vehicle used to convey pupils shall be a person of good character. If required to do so by the board he shall furnish a bond of the Saskatchewan Government Insurance Office for the efficient performance of his duties.19

Notices under The Vehicles Act further specify the following requirements which must be met by school bus drivers:

100. (2) No person shall drive, and no school board shall cause or allow a person to drive a school bus, unless he has passed a driver's examination as prescribed in the regulations; provided that where a driver of a school bus has passed a driver's examination as prescribed in the regulations he shall, within a period not exceeding 3 years from the time he passed such examination, submit himself to and pass another prescribed driver's examination.

(3) No person shall drive, and no school board shall cause or allow a person to drive a school bus, unless he files with the school board annually a certificate by a duly qualified medical practitioner that in his opinion, such person is not suffering from any physical or mental disability or disease which would be likely to cause the driving by him of a school bus to be a source of danger to passengers or the public.20

19"Regulations under The School Act, S. 14(1)," Saskatchewan Gazette, March 17, 1961.

20"Notices under The Vehicles Act, S. 100(2), (3)," Saskatchewan Gazette, March 17, 1961.
Responsibilities and restrictions placed upon school bus drivers. The employment of physically fit, well-qualified drivers does not, in itself, ensure the safe operation of school vehicles. Certain driving procedures must be followed if the risk of accident is to be reduced to a minimum. In an effort to reduce this risk, the authorities have invested drivers with certain responsibilities and imposed several restrictions upon drivers and their driving procedures. The following responsibilities are placed upon school bus drivers:

102. Every driver of a school bus shall:

(a) be responsible for maintaining discipline among passengers in the vehicle;

(b) exercise due caution in loading and discharging passengers in and out of the vehicle, and shall do so only at places and times when it appears reasonably safe to do so;

(c) ensure that each passenger discharged has reached a place of safety before moving the vehicle.21

104. (1) The driver of a vehicle used for the transportation of school children and having exposed thereon a sign containing the words "School Bus" shall, before proceeding over a level railway crossing, whether or not a train can be seen or heard approaching the crossing, bring the vehicle to a dead stop and shall not proceed until it is safe to do so.

21Ibid., s. 102(a), (b), (c).
(2) Subsection (1) does not apply if a signal man is stationed, or an automatic signal or other safety device is erected, at the level railway crossing and the signal man, automatic signal or other safety device indicates that traffic may proceed.\textsuperscript{22}

The regulations quoted above, concerning procedures to be followed by school bus drivers on approaching level railway crossings is taken from The Vehicles Act, of which, subsections (5) and (6) of Section 140, read identically to subsections (1) and (2) of Section 104 of the notices under The Vehicles Act.\textsuperscript{23}

105. Every driver of a school bus shall, before crossing or entering a provincial highway, bring the vehicle to a dead stop at a point not less than ten or more than fifty feet from the surface part of such highway and shall not proceed to cross or enter such highway until it is safe to do so.\textsuperscript{24}

14. (2) The driver of a motor vehicle conveying pupils shall start in good time to cover the route and arrive at school, without undue haste, before its opening, and shall have everything in readiness to start from school on his return trip promptly when the school is closed for the day.\textsuperscript{25}

The following restrictions are imposed upon school

\textsuperscript{22}Ibid., s. 104(1), (2).

\textsuperscript{23}S.S. 1957, c. 93, s. 140(5), (6); 1960, c. 29, s. 13.

\textsuperscript{24}"Notices under The Vehicles Act, S. 105," Saskatchewan Gazette, February 24, 1961.

\textsuperscript{25}"Regulations under The School Act, S. 14(2)," Saskatchewan Gazette, March 17, 1961.
bus drivers and their driving:

100. (4) No person shall carry and no school board or driver shall permit any person to load or carry on a school bus any animal, firearm, explosive, flammable material, or any commodity that might endanger the safety and lives of passengers in the vehicle.\(^{26}\)

103. No driver of a school bus shall:

(a) while driving the bus, or within eight hours prior to driving the bus, consume any intoxicating liquor;

(b) while operating the vehicle, smoke or use tobacco in any form;

(c) permit any passenger in the vehicle to smoke or use tobacco in any form;

(d) while passengers are in the bus drive the bus into a garage, service station or other place for the purpose of securing fuel or repairs;

(e) leave the vehicle for any purpose until he has stopped the motor, removed the ignition key, and set the brakes;

(f) back the vehicle on school grounds or at any loading or unloading stop, except upon signal from a responsible person located on the ground in such a position as to be able to determine whether the vehicle can be backed with safety.\(^{27}\)

109. No person under the age of eighteen years shall drive, and no school board shall cause or allow such person to drive a school bus.\(^{28}\)

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\(^{26}\)"Notices under The Vehicles Act, S. 100(4)," Saskatchewan Gazette, May 5, 1961.

\(^{27}\)Ibid., s. 103(a), (b), (c), (d), (e), (f).

\(^{28}\)Ibid., s. 109.
Measures designed to promote the comfort and safety of pupil riders are incorporated in the statutes and regulations which provide for the inclusion of certain basic equipment in and on school conveyance vehicles and for approved methods of stowage of such equipment. In this regard the following provisions are in force:

110. Every school bus shall display at the front and rear of the bus a sign containing the words "School Bus" in block letters not less than six inches high on a yellow background.29

114. (17a) A vehicle used for the transportation of school children that has exposed thereon a sign containing the words "School Bus" in letters not less than six inches in height may, in addition to any other equipment required by this Act, be equipped with:

(a) signal lamps mounted as high and as widely spaced latterly [sic] as practicable, capable of displaying to the front two alternately-flashing red lights situated at the same level, and visible under normal atmospheric conditions at a distance of 500 feet; and

(b) a visible or audible signal inside the vehicle capable of clearly indicating to the driver that the lamps mentioned in clause (a) are operating.30

106. Every school bus shall be kept in a clean and

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29Ibid., s. 110.

30R.S.S. 1957, c. 93, s. 114(17a).
sanitary condition.\textsuperscript{31}

107. A school bus shall be so designed that the driver can communicate with the passengers in the bus.\textsuperscript{32}

108. A school bus shall be equipped with a first aid kit, of a type and size approved by the Department of Public Health, which kit shall be replenished from time to time as required.\textsuperscript{33}

101. A school bus shall be equipped with:

(a) a fire extinguisher of a type approved by the Underwriters' Laboratories, which shall be located in the forward end of the vehicle in a place easily accessible to the driver and near the entrance door.

(b) flares, lanterns and reflectors of the type and number required by subsection (12) of section 114 of the Act to be carried by a public service vehicle, and such flares, lanterns and reflectors shall be used in the manner provided by subsection (13) of section 114 of the Act as if the vehicle were a public service vehicle;

(c) seats designed to provide comfort and safety for passengers and that are securely attached to the floor or body of the vehicle;

(d) such heaters and means of ventilation as to safely ensure the comfort of passengers.\textsuperscript{34}

100. (1) No school board shall operate or permit the operation of a school bus owned by it or operated under contract with it unless:

\begin{footnotes}
\item[32] Ibid., s. 107.
\item[33] Ibid., s. 108.
\item[34] Ibid., s. 101(a), (b), (c), (d).
\end{footnotes}
(a) the vehicle is equipped in the manner required by section 101;

(b) all tools, equipment, and tires carried in the interior of the vehicle are securely attached to the body or floor of the vehicle, and so located as not to interfere with seating, aisles, emergency or ordinary entrances and exits.35

Pupil conduct aboard school buses. Safe school conveyance practices require that pupils adhere to certain rules and regulations. It is quite apparent that a bus driver is not likely to carry out his driving duties to the best of his abilities if he is forced to drive with some thirty to fifty boisterous, scuffling pupils aboard the bus. Consequently, school boards are authorized to make reasonable rules pertaining to the conduct of pupils being transported to and from school. Bus drivers, in turn, must be vested with authority to demand the type of conduct on behalf of the pupils which will conform to desirable standards.

The school principal is responsible for the general discipline of the school and this extends to disciplinary measures in regard to transportation. School bus drivers are required to report to the principal any misconduct or opposition to authority on the part of any pupil that they are transporting. The principal is required to investigate

35Ibid., s. 100(a), (b).
the case, and to deal with it as he deems advisable.36

**Inspection of vehicles and equipment.** Vehicles and equipment are subject to inspection at periodic intervals to determine their road worthiness and mechanical safety. The **Vehicles Act** specifies that, "The owner of a vehicle registered under this Act shall submit the vehicle together with its equipment to such periodic examinations and tests as are required by the regulations."37 Under the same Act, the notices authorize, "a person acting on behalf of a school board may at any time in the discharge of his duties or at the request of a school board inspect any school bus and make a report on the school bus to the board."38

**Precautions required of the public regarding school conveyance safety.** The safe conduct of pupils to and from school cannot be accomplished without assistance from a co-operative public. The authorities, realizing that children are often prone to action without precaution, have instituted legislation requiring the public to take special precautionary measures during school bus loading or unloading operations. The **Vehicles Act** stipulates the following

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36"Regulations under The School Act, S. 14(3)," *Saskatchewan Gazette*, March 17, 1961.

37S. S. 1957, c. 93, s. 205.

38"Notices under The Vehicles Act, S. 100(5)," *Saskatchewan Gazette*, May 5, 1961.
in this regard:

135. Every person driving a vehicle upon a public highway about to meet or overtake a vehicle used for the transportation of school children that:

(a) has exposed thereon a sign, clearly visible to the person driving the vehicle about to meet or overtake it, containing the words "School Bus" in letters not less than six inches in height; and

(b) is stationary on the highway for the purpose of taking on or discharging any school child or children; and

(c) has exposed thereon a signalling device exhibiting the word "stop" or is displaying alternately flashing red lights by means of lamps with which the vehicle is equipped in accordance with section (17a) of section 114; shall stop his vehicle at a distance of at least fifteen feet from the front or rear of such vehicle, as the case may require, and shall not proceed until the signalling device is retracted or, in the case of an electrical signalling device, no longer exhibits the word "stop" or until the flashing red lights are no longer displayed and then may proceed only with caution.39

Authorized purposes for bus use. Regulations have been issued under the authority of The Vehicles Act stipulating the purposes for which school buses may be used. Such regulations serve to clarify school boards' position regarding the limits of their authority in the granting of permission to use buses for purposes other than that of transporting pupils to and from school. Until these

39S.S. 1957, c. 93, s. 135; 1961, c. 61, s. 26.
regulations became effective, there was some doubt in the minds of many board members concerning this matter.

A school bus that is registered with a board may be used, at the discretion of the board, to transport pupils of the school district or unit to and from school picnics, school sports' activities, educational trips, or other educational functions.\textsuperscript{40} School boards may authorize the use of buses for other purposes, but these do not directly concern the school pupil.

It should be noted that, in addition to the statutes, regulations and orders considered here, school vehicles and their drivers are also subject to the various statutes, regulations, and orders that apply generally to all drivers and vehicles registered under \textit{The Vehicles Act}. Further, one must be aware of the fact that school boards, under their authority to make reasonable rules and regulations for the conduct of the school program, may supplement these by further local regulations. Consequently, the actual policy regarding the equipment and operation of school buses will vary from district to district.

\textbf{Provisions for Atypical Pupils}

Society has come to realize that children, who

\textsuperscript{40} "Notices under \textit{The Vehicles Act, S. 99(a)}," \textit{Saskatchewan Gazette}, May 5, 1961.
deviate sufficiently from the so-called "normal child" to be regarded as atypical, can profit greatly from education especially designed to meet their needs. The benefits that may accrue from the effective training of such children are two-fold. The child in later years may sense a degree of satisfaction through his personal achievement and his worthwhile contributions to the community, while the community may, in turn, benefit from such contributions. Legislation providing for special educational facilities for atypical pupils is in effect in Saskatchewan.

**Blind and deaf pupils**. It is mandatory that blind and deaf children between specified ages attend schools that are operated especially for such pupils. Refusal by the parent of a blind or deaf child to enrol such child in the appropriate school constitutes an offense. Legislation providing for the education of these handicapped pupils has been enacted under The School Act and The Education of Blind and Deaf Persons Act.

Section 212 of The School Act which is worded identically to Section 3 of The Education of Blind and Deaf Persons Act reads:

(1) Every blind child and every deaf child between the ages of seven and sixteen years, inclusive, certified by a physician as mentally and physically fit to profit by the education provided in a school for the blind or a school for the deaf, shall attend such school for such periods as the minister may in each case determine.
(2) A parent or guardian who refuses to allow any such child under his care to attend a school as required by subsection (1), is guilty of an offence and liable on summary conviction to a fine not exceeding $25.41.

In Saskatchewan there is a school for deaf students located in Saskatoon. There is not, however, a school for blind students located within the province. Provisions are made for the attendance of blind students from Saskatchewan to attend schools located elsewhere. The following provisions allow for such procedures:

(2) (1) Until adequate provision has been made for the education, care and maintenance within Saskatchewan of blind and deaf children, the Minister of Education may make an agreement with the Government of any Province, or with any society, association or corporation owning or controlling institutions therein for the purpose, for such Government, society, association or corporation to receive, educate, care for and maintain such children or any class of such children in any of its asylums, schools or other institutions.42

Exceptional pupils. Permissive legislation in Saskatchewan empowers school boards to institute special classes for children who are unable to take proper advantage of normal courses of study. In this respect The School Act reads as follows:

\[^{41}\text{R.S.S. 1953, c. 169, s. 212(1), (2); c. 177, s. 3(1), (2).}\]

\[^{42}\text{R.S.S. 1953, c. 244, s. 2(1); 1955, c. 61, s. 1.}\]
118. A board may establish special classes of instruction for children who are from any physical or mental cause unable to take proper advantage of the regular public school courses of study or may provide financial assistance to any person or organization conducting such special classes.\textsuperscript{43}

To encourage school boards to make provisions for the education of these exceptional pupils a special grant of two dollars per day for each such room is provided from provincial funds.\textsuperscript{44}

**Kindergarten**

The establishment of kindergarten classes is not mandatory. There is permissive legislation granting town districts the privilege of establishing classes for teaching children between the ages of four and six years. Where kindergartens are established the board may charge a fee not exceeding one dollar per month for each pupil.\textsuperscript{45} The lack of adequate space hinders the establishment of such facilities in many areas. Consequently, the maintenance of kindergarten classes varies from place to place throughout the province.

**Provisions for Free Text Books**

Provincial authorities may and do provide certain

\textsuperscript{43}R.S.S. 1953, c. 169, s. 118.

\textsuperscript{44}R.S. 1960, c. 62, s. 9.

\textsuperscript{45}R.S.S. 1953, c. 169, s. 207.
text books for the use of pupils without charge. The Free Text Book Act provides that:

6. Out of any legislative appropriation made for the purpose, the minister may expend the moneys required to purchase a supply of any free text book for distribution to all the school districts of the province free of cost to the pupils and boards of trustees. 46

At the present time free authorized text books are supplied at provincial expense for all subjects in the elementary grades except Science and Social Studies. 47

There are certain workbooks suggested for use in the various subjects in these grades that must be purchased either by the pupil or by the school board.

The text books and other supplies that are not provided free of charge by the Department of Education may be furnished, at no cost to the pupil, by the board of trustees. The School Act grants the board this discretionary power under Section 116, which reads:

116. A board may purchase text books and supplies for the use of the pupils in the school of the district in accordance with the provisions of The Free Text Book Act. 48

The Free Text Book Act referred to above states that:

46 R.S.S. 1953, c. 174, s. 6.
48 R.S.S. 1953, c. 169, s. 116.
3. The board of a school district may, by resolution adopted at a regularly called meeting thereof, authorize its treasurer to purchase for the use of pupils in its schools such text books and supplies as it deems advisable; and any and all such purchases thus made shall be paid for out of the general revenues of the school district.\(^{49}\)

The Larger School Units Act provides for unit boards to furnish at their discretion, text books, exercise books, pens, pencils and other supplies either free of charge or at a fee set by the board.\(^{50}\) The policy in this connection will vary from school unit to school unit.

**High School Textbook Rental**

At present, text books required by pupils for use in the high school grades are not supplied free of charge by the Department of Education. A high school text book rental plan, however, has been instituted. Beginning with the academic year 1961-62, school district or unit boards were permitted by regulation to participate in the book rental plan for grade nine.\(^{51}\) Under this plan, boards were permitted to supply all authorized texts for all grade nine subjects. The pupils could be charged a rental fee not to exceed $5.00 per academic year for all the texts required

\(^{49}\)R.S.S. 1953, c. 174, s. 3.

\(^{50}\)R.S.S. 1953, c. 170, s. 53(5).

for eight subjects. To encourage boards to institute such a plan, the Department pledged to pay to each board participating in the plan the sum of $4.00 per grade nine pupil enrolled in the rental plan. The plan was later extended to include grade ten text books for the academic year 1962-63.\textsuperscript{52} The plan was conceived to cover the rental of text books in all four high school grades four years from its inauguration.

**Hot Lunch Programs**

A nutritious diet is essential for the optimum physical development of children. A hot noon dish, to supplement the cold lunch brought from home, contributes to the promotion of a sound school health program. Many pupils who leave home at an early hour to go to school require energy-giving foods at noon if they are to remain alert and active during the remainder of the school day.

School boards are authorized under The School Act to provide both equipment and supplies for a noon lunch program, but it is not mandatory that they do so.\textsuperscript{53} School unit boards are granted the permissive power to provide pupils with noon hour luncheon at a price fixed by the board or free of charge if they so desire.\textsuperscript{54}


\textsuperscript{53}R.S.S. 1953, c. 169, s. 114(44).

\textsuperscript{54}R.S.S. 1953, c. 170, s. 53(5).
Summary

Several special services, designed to provide better educational opportunities for young people, are provided in this province. The institution of these services has been accompanied by an increase in administrative problems connected with the provision of such services. Many regulations have been issued in an attempt to effect the safe and efficient provision of these services.

To provide for safe conveyance of pupils, regulations have been issued setting out the qualifications, in regard to both character and ability of school bus drivers. Rules to be obeyed by bus drivers in the operation of their buses and by the general public when they encounter such buses have been issued. Other regulations governing the inspection, equipment, structure and use of buses are in effect.

It is mandatory that all deaf and blind pupils who are mentally capable of benefiting from education to attend schools especially designed for their use. School boards are given the discretionary power to operate classrooms for exceptional children and special grants are paid by the province to districts operating such classrooms.

Students are provided with the majority of the text books required in elementary school. The boards of districts organized under The School Act may, if they so desire, purchase out of district funds other texts and supplies for
the use of the pupils. Larger school unit boards, at their discretion, may purchase text books and supplies for free use by the pupils or they may set a fee for their purchase by pupils. Regulations provide for school boards to participate in a plan whereby the pupils may pay a rental fee for the use of high school text books.
CHAPTER VIII
LEGAL BASES OF THE CURRICULUM

In an earlier chapter, the writer discussed the purpose of public education. It was his contention that, although the individual derives indispensable benefit from public education, such education is, from a legal standpoint, primarily concerned with the improvement and preservation of the State.¹

The elaborate machinery, both legal and administrative, designed to regulate public education exists for the express purposes of enabling young people to receive instruction and to participate in activities sanctioned by the State. The Saskatchewan Elementary School Curriculum asserts that education is in part designed to benefit the individual and "hence the curriculum is to be thought of in terms of activities and experiences through which knowledge may be gained and skills developed."² It goes further to emphasize that education is also concerned with moulding the individual to conform to standards set by society.

       Education, however, is pre-eminently a social process--a process which begins at the cradle. . . . Education seeks to socialize the individual. The "good life," the life that is adjusted wholesomely

¹Supra, p. 60.

and satisfyingly, is the life that will meet the demands of the social organization. Were there no social organization there would be few or no demands. . . . Hence, as a second generalization, "the curriculum is to be thought of in terms of activities and experiences" that lead out into the life of the home, the community, the church, and the school, assisting the learner to make satisfying adjustments daily thereto. These activities must be selected.³

The aims of public education which the State desires to accomplish can be and are effected by the authority that the State exerts over the curriculum. Reutter, commenting upon the effect of law on curricular content and on the methods adopted to achieve the aims of public education, states:

Since schools exist to convey to youngsters certain knowledge, skills, and attitudes deemed necessary to help them develop as individuals and become contributing members of society, the learning experiences afforded children under the aegis of the school are a paramount concern of government.⁴

The term, "curriculum," as used in this study, includes all activities which occur in the school either of the formal or informal types. The writer does not intend to attempt to deal with the entire curriculum for Saskatchewan schools, but only with the legal rights, privileges, and responsibilities of pupils as they relate to the curriculum.

³Ibid., p. 7.

Determination of Subjects Offered

The academic subjects offered in the elementary and high schools of Saskatchewan are set down in courses of study authorized by regulation. The School Act provides for this as follows:

3. The minister, with the approval of the Lieutenant Governor in Council, shall have power:

4. to issue courses of study determining the subjects of instruction for each grade and whether compulsory or optional in all schools established under this Act.⁵

Similar provisions are included in The Secondary Education Act which reads:

6. The course of studies for high schools shall be fixed by regulations of the department, and shall include instruction in English, history, mathematics, ancient and modern languages, the natural sciences, commercial work, agriculture, household science, manual, art, and such other subjects as may be determined upon.⁶

Although the minister may, by regulation, issue courses of study, the Educational Council must be given the opportunity to discuss, and report on such proposed courses prior to their being adopted. This Educational Council consists of at least five members, two members of which must be Roman Catholics. This Council is appointed by the

⁵R.S.S. 1953, c. 169, s. 3(4).
⁶R.S.S. 1953, c. 168, s. 6.
Lieutenant Governor in Council. In this regard The School Act states that:

10. All general regulations respecting the inspection of schools, the examination, training, licensing and grading of teachers, courses of study, teachers' institutes and text and reference books shall, before being adopted or amended, be referred to the council for its discussion and report.

The Secondary Education Act stipulates that all regulations, except those dealing with the renting of text books and those dealing with the payment of fees, be referred to the council for its discussion and report before they are amended or adopted. The Educational Council is not empowered to initiate regulations or to block their issuance. Instead, this advisory body, which represents the interests of the people, serves to keep the educational program in alignment with the needs of the pupil and the desires of the public.

The Department of Education prescribes the subjects to be studied in both the elementary and the high schools. In the elementary program, the majority of subjects offered are compulsory for all pupils. The high school program, on the other hand, allows more freedom on the part of the pupil.

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7R.S.S. 1953, c. 169, s. 8.
8R.S.S. 1953, c. 169, s. 10.
9R.S.S. 1953, c. 168, s. 4; 1961, c. 28, s. 2.
to select subjects for study.

Use of Authorized Text Books

The quality and type of text books used in a school system may determine the difference between an adequate and an inadequate curriculum. Provincial authorities, being well aware of this, are empowered to specify the text books to be used in all schools. On this matter The School Act reads:

3. The minister, with the approval of the Lieutenant Governor in Council, shall have power:

2. to authorize text and reference books for the use of the pupils and teachers in all schools hereinbefore mentioned, as well as such maps, globes, charts and other apparatus or equipment as may be required for giving proper instruction in such schools;

3. to prepare a list of books suitable for school libraries and to make regulation for the management of such libraries.¹⁰

School boards are required, by The School Act, to provide reference texts from the authorized list and to make certain that only authorized texts are used.

¹¹ It shall be the duty of the board of every district and it shall have power:

24. to select and provide from the list authorized by the minister all such reference books for the use of pupils and teachers and all such globes, maps, charts and other apparatus as are required for the proper instruction of pupils;

¹⁰R.S.S. 1953, c. 169, s. 3(2), (3).
26. to require that no text books or apparatus be used in the school under its control other than those authorized by the Department.11

The regulations under The School Act stipulate that all text books, used by pupils must be authorized by the department and that pupils must not be asked to purchase unauthorized texts. Books which have been given permissive authorization may be used, but no pupil is required to purchase such books.12 Reference books and supplementary reading books are to be selected from the authorized list. Should a board wish to place books in the school library that are not on the authorized list it may do so providing it receives the approval of the department.13

The use of unauthorized text or reference books in schools, constitutes an offense; however, prosecution cannot be instituted against the offender except by order of the minister. The School Act provides that:

253. Any teacher, trustee or other person who uses or causes to be used an unauthorized text or reference book, either in the place of or to supplement an authorized text or reference book upon the same subject, is guilty of an offence and liable on summary conviction to a fine not exceeding $10.

11Ibid., s. 114(24), (26).
12"Regulations under The School Act, S. 17(1)," Saskatchewan Gazette, February 7, 1944.
13Ibid., s. 17(2).
Provided that no prosecution shall be instituted under this section except by order of the minister.\textsuperscript{14}

It is quite apparent that the Department of Education maintains a tight control over the text books used in the schools of Saskatchewan. Although the department may grant approval for the use of unauthorized books in the school, it retains the power to disallow the use of any book if it is believed that the content of the book is at variance with the aims of the educational program of the province.

**Language to be Used in the Schools**

Ancient and modern languages may be studied in Saskatchewan high schools. The language of instruction in all publicly supported schools, however, is English. Under certain circumstances, French may be taught as a language in the elementary school. No other foreign languages are allowed to be taught during school hours in the elementary schools. The **School Act** stipulates that:

\textbf{203.} (1) English shall be the sole language of instruction in all schools, and no language other than English shall be taught during school hours.

(2) When the board of any district passes a resolution to that effect, the French language may be taught as a subject for a period not exceeding one hour in each day as a part of the school curriculum, and such teaching shall consist of French

\textsuperscript{14}\textit{R.S.S.} 1953, c. 169, s. 253.
reading, French grammar and French composition.\textsuperscript{15}

Pupils who do not desire to study French under the provisions of subsection (2), above, are to be profitably employed in other school work while such instruction is being given.\textsuperscript{16}

There has been only one recorded court case in Saskatchewan concerning the use of a language other than English in school. In this case, \textit{Boutin v. Mackie},\textsuperscript{17} the school trustees were charged with knowingly permitting the French language to be used as the general language of instruction, contrary to Section 178 of \textit{The School Act}. The Magistrate found the defendant board to be guilty of the offense. The board of trustees appealed the decision to the District Court. The Court was quite convinced that the trustees were allowing Section 178 of \textit{The School Act} to be consistently and deliberately broken. The charge, however, was laid under Section 216 (2) which provided that, any person required by \textit{The School Act} or by the regulations under the Act, to furnish information or statement in writing to the department or to perform any act or duty, who refused or neglected to furnish such information or make such return or

\begin{flushright}
\textsuperscript{15}\textit{Ibid.}, s. 203(1), (2).
\textsuperscript{16}\textit{Ibid.}, s. 203(3).
\textsuperscript{17}[1922] 2 W.W.R. 1197.
\end{flushright}
statement or perform such act or duty would be guilty of an offense and liable to a fine.\(^{18}\) The appellants contended that the words "to perform any act or duty" which occurred in the section were restricted in their meaning by the words which preceded them and therefore must be interpreted by the rule of *ejusdem generis*. According to the principle a series of particular words followed by a general term will limit the general term to the category particularized by the specific words. The appellants contended that by this principle, the words "to perform any act or duty" which occurred in the section were restricted in their meaning by the words "to furnish information." Doak, D.C.J., in allowing the appeal, stated:

While I think that the words which precede them, that is 'to furnish information' and 'to make a return or statement in writing' may be said to exhaust their respective genera, so that the words 'to perform any act or duty' must perforce relate to something entirely different to the duties first enumerated, it appears to me that the words in question must necessarily be read with the context and so reading them they must be interpreted by the maxim *noscuntur [sic] a sociis*, that is to say, cognate to the other expressions of the paragraph. Interpreting them thus the words would be limited in their application by any act or duty in relation to the department of which the Act or regulations positively enjoined the performance and could not be extended to every omission of trustees, to carry out in their entirety the various provisions of sec. 110.\(^{19}\)


In this case the Court was of the opinion that the trustees were allowing Section 178 of The School Act to be broken, but the charge against the trustees was laid under the wrong section and therefore it failed. The Court noted that such a situation could be remedied by (1) presenting a petition signed by five ratepayers to a Judge to procure removal of trustees guilty of neglect of duty or by (2) the Minister of Education exercising his power to order an enquiry and to oust the elected trustees if conditions warranted it.

Religious Instruction

Religious instruction is permissible in the publicly-supported schools of Saskatchewan, but there are certain restrictions regarding the amount of time that may be devoted to such teaching.

The time of religious instruction. Religious instruction may be provided only upon approval of the board of trustees and such instruction must be given only during the last half hour of the school day. The School Act stipulates that:

204. (1) No religious instruction except as herein-after provided shall be permitted in the school of any district from the opening of the school until one-half hour previous to its closing in the afternoon, after which time any such instruction permitted or desired by the board may be given.20

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20R.S.S. 1953, c. 169, s. 204(1).
Schools may be opened by reading or reciting, without comment or explanation, of the Lord's Prayer or a passage selected from approved Bible readings. 21

**Exemption from participation in religious instruction.**
The educational authorities are not desirous of forcing religious teachings on pupils if their parents do not want them to participate in such instruction. Consequently, those who do not want to receive religious instruction when it is provided are not required to do so. The School Act provides that:

Any child shall have the privilege of leaving the school room when religious instruction is commenced as provided for in section 204, or of remaining without taking part in any religious instruction that is given, if the parents or guardians so desire. 22

The Secondary Education Act contains similar provisions for the benefit of pupils attending schools organized under that Act. 23

**Approved Bible readings.** Where boards have directed that schools be opened with readings of passages from the Bible, the selection of such passages is not left to the discretion of the teacher. Instead, the Department of

21 **R.S.S.** 1953, c. 169, s. 204(2); c. 168, s. 73; 1963, c. 60, s. 73(2).
22 **R.S.S.** 1953, c. 169, s. 205.
23 **R.S.S.** 1953, c. 168, s. 73; 1963, c. 60, s. 73(3).
Education authorizes a list of approved Bible readings intended "to provide the child in the course of his school career with a well-balanced series of glimpses into biblical literature."\(^{24}\) From this approved list, the teacher may select those passages that he considers most suitable from day to day.

**The wearing of religious garb.** The Saskatchewan statutes strictly forbid the wearing of religious garb or the display of religious symbols in public schools during school hours. Penalties may be imposed on districts, trustees or teachers that do not conform to the statutory provisions. *The School Act* reads as follows:

\(^{254}\) (1) No emblem of any religious faith, denomination, order, sect, society or association shall be displayed in or on any public school premises during school hours, nor shall any person teach or be permitted to teach in any public school while wearing the garb of any religious faith, denomination, order, sect, society or association.

(2) Any teacher violating the provisions of subsection (1) is guilty of an offence and his certificate may be suspended or cancelled by the minister, and he is also liable on summary conviction to a fine not exceeding $50.

(3) Any trustee violating the provisions of subsection (1), or permitting a violation thereof, is guilty of an offence and liable on summary conviction to a fine of not less than $25 nor more than $100; and, if con-

\(^{24}\) Department of Education, *Bible Readings for Schools*, Regina: King's Printer, 1944, p. 3.
victed, shall be disqualified from holding the office of trustee for such period as the minister may by order determine.

(4) The minister shall, if satisfied that the board of trustees of any public school district has permitted a violation of subsection (1), order that the district shall not receive any grant out of the money appropriated by the Legislature, in respect of the period of violation, in which case no such grant shall be made.25

It will be noted that the restrictions referred to above apply to public schools. No mention is made of separate schools and it is usually conceded that the wearing of religious garb and the display of religious emblems is quite permissible in such schools. The provincial statutes, however, are somewhat ambiguous regarding this matter.

Section 44 of The School Act states:

44. After the establishment of a separate school district under the provisions of this Act, the district and the board thereof shall possess and exercise the rights, powers and privileges and be subject to the same liabilities and method of government as herein provided in respect of public school districts.26

If, as stipulated by Section 44 above, separate school districts and boards possess and exercise the same rights, powers, and privileges and are subject to the same liabilities and method of government as are public school districts,

25 R.S.S. 1953, c. 169, s. 254(1), (2), (3), (4).
26 Ibid., s. 44.
it would appear then that Section 254 which sets out an aspect of the method of government of public schools should also apply to separate schools. There is no proviso stating that Section 254 does not apply to separate schools. Instead, it specifically signifies that it applies to public schools. Section 414, in turn, states that what applies to public schools likewise applies to separate schools. Even if it is highly unlikely that anyone would complain about the wearing of religious garb or the display of religious emblems in separate schools, such ambiguities should not be allowed to persist in the statute books, when a short proviso would eliminate all doubt regarding the matter.

Patriotic Exercises

The regulations under The School Act stipulate that "in every school appropriate patriotic exercises shall be held as outlined in the Elementary School Curriculum."\(^{27}\)

The present Elementary School Curriculum does not mention very much about patriotic exercises. In fact the only instance in which such mention is made is in a Social Studies unit entitled "Special Days" for grades one and two. Under this heading, the following patriotic holidays are listed: Canada Day, Remembrance Day, the Queen's Birthday, and

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\(^{27}\)"Regulations under The School Act, S. 10," Saskatchewan Gazette, February 7, 1944."
Empire and Citizenship Day.\textsuperscript{28} It appears that the regulation mentioned above refers to a curriculum in use in 1944. Since that time the curriculum has changed but the regulation remains as it was before.

The regulations state that "information about the flag and flag etiquette will be found in the course in citizenship."\textsuperscript{29} Citizenship is now a part of the Social Studies course and there does not appear to be any reference to "flag etiquette" in the present Social Studies course of study.

There has not been a reported case in Saskatchewan concerning a pupil's refusal to salute the flag or to sing the National Anthem, but two such cases have occurred elsewhere in Canada. The \textit{Ruman} case\textsuperscript{30} was heard in Alberta in 1943. In this case two children of a member of Jehovah's Witnesses were dismissed from school for not saluting the flag. Later on in the year they returned to school and again were dismissed for the same reason. The board had prior to the first dismissal passed a resolution:

\begin{quotation}
\textsuperscript{28}Department of Education, \textit{Elementary School Curricu-

\textsuperscript{29}"Regulations under The School Act, S. 5(5),"
\textbf{Saskatchewan Gazette}, February 7, 1944.

\textsuperscript{30}Ruman v. Board of Trustees of Lethbridge School

That this board requires all pupils in our schools to salute the flag, sing our National Anthems and participate in all school patriotic exercises when required to do so by the principal, and any pupil refusing to do this be summarily expelled from the school.31

The Court was required to decide whether or not the defendant board had power under The School Act to enact the "form" of patriotic exercises of saluting the flag. The board's resolution required all pupils to stand at attention and salute the flag. Section 155 (2) of The School Act of Alberta suggested one manner of carrying out the exercise whereby all pupils stood at attention while one person performed the salute.32 This section contained the word "may" which was construed by the Court as being permissive not imperative. The Court, in finding for the defendant board, stated:

Nowhere in the Act is there an imperative direction to a board to require that patriotic exercises be performed. Whether or not such performance is done in any public school is discretionary, but, if the board decides to require such performance it has power to direct the time, place and manner of performance.33

In this case, the statutes granted the board power to institute patriotic exercises and to expel any pupil who refused

32 Ibid., p. 344.
33 Ibid., p. 345.
to conform to the manner such exercises would take.

The Donald case,\textsuperscript{34} heard in Ontario, concerned two boys whose parents were members of the organization of Jehovah's Witnesses. The boys were expelled from schools controlled by the defendant board for refusing to sing the National Anthem and to salute the flag. The father of the boys sought a writ of mandamus from the Court to compel the board to receive his children in its schools. The Trial Court dismissed the action and the plaintiffs appealed. The plaintiffs contended that singing of the National Anthem and saluting the flag infringed upon their religious rights. The Public School Act and the High School Act of Ontario provided for the exemption of school children from any obligation to take part in religious exercises objected to by their parents.\textsuperscript{35}

The appellants were of the belief that saluting the flag and joining in the singing of the National Anthem were contrary to and forbidden by the Scriptures. In granting the appeal Gillanders, J.A., speaking for the Court, had the following to say:

If I were permitted to be guided by my personal

\footnote{\textsuperscript{34} Donald v. Hamilton Board of Education, \textsuperscript{[1945]} 3 D.L.R. 424, O.R. 518, O.W.N. 526; reversing \textsuperscript{[1944]} 4 D.L.R. 227, O.R. 475, O.W.N. 559.}

\footnote{\textsuperscript{35} \textsuperscript{[1945]} 3 D.L.R. 424 at p. 424.}
views, I would find it difficult to understand how any well disposed person could offer objections to joining in such a salute on religious or other grounds. To me, a command to join in a flag salute or the singing of the National Anthem would be a command not to join in any enforced religious exercise but, viewed in proper perspective, to join in an act of respect for a contrary principle, that is, to pay respect to a nation and country which stands for religious freedom, and the principle that people may worship as they please or not at all. 36

The Court went on to explain that it would be misleading to proceed on any personal views on what exercises might be considered as having devotional or religious significance.

That certain acts, exercises and symbols at certain times, or to certain people, connote a significance or meaning which, at other times or to other people, is completely absent is a fact so obvious from history, and from observation, that it needs no elaboration. . . . The statute, while it absolves pupils from joining in exercises of devotion or religion to which they, or their parents, object, does not further define or specify what such exercises are to include or exclude. Had it done so, other considerations would apply. For the Court to take to itself the right to say that the exercises here in question had no religious or devotional significance might well be for the Court to deny that very religious freedom which the statute is intended to provide. 37

Although the Ruman and the Donald cases were very similar in detail the decision differed in each of the cases. The Ruman case was conducted merely on the grounds that the school board did not have the power to designate the form of the patriotic exercises. It was not contended

36 Ibid., p. 428.
37 Ibid., p. 430.
that the patriotic exercises infringed upon the religious freedom of the plaintiffs. Had such a contention been made it is possible that the Court might have found for the plaintiffs.

In Saskatchewan, the statutes do not mention patriotic exercises. The regulations under The School Act, however, provide for appropriate patriotic exercises as outlined in an Elementary School Curriculum that is no longer in use. Where patriotic exercises are held it is likely that a parent who, for religious reasons, requested that his child not participate in such exercises would have his wish granted. If such a request was not granted by the board it is likely that the courts would uphold the parent in an action to force the trustees to comply with his request.

Summary

The provincial authorities regulate the curriculum in Saskatchewan. In regard to what must be taught and what must not be taught the power of the provincial legislature is supreme; however, the Educational Council acts in an advisory capacity with regard to curricular content and textbook authorization.

English is the sole instructional language in the schools of Saskatchewan. French may be taught as a subject in the elementary schools provided the school board has passed a resolution to that effect. Ancient and modern
language study, of course, forms part of the high school curriculum.

Religious instruction is permissible in public schools upon the approval of the board of trustees. Religious instruction, when permitted, must be presented during the last half hour of the day. A parent may request that his child not take part in religious instruction and such a request must be granted. The only Bible readings permitted in the public schools are those contained in an approved list by the Department of Education. Religious garb may not be worn, nor religious emblems be displayed in public school classrooms during school hours.

Court cases in Alberta and Ontario have examined the right of school boards to require patriotic exercises to be conducted in schools. Under certain circumstances, patriotic exercises may infringe the religious rights of certain sects and pupil adherents, in such cases, are not required to take part in the activities.

In Saskatchewan regulations provide for patriotic exercises to be carried out in accordance with the recommended procedures expressed in the curriculum. The regulations in this case refer to a school curriculum that is no longer in effect.
CHAPTER IX

LIABILITY ARISING FROM NEGLIGENCE

It is not the intent of the writer to deal with the entire law of torts for an attempt to cover such a broad and complex field would be far beyond the scope of this study. It is necessary, however, to consider briefly the history of tort law and the special terminology pertaining to the tort of negligence in order to understand the principles applied in the various cases to be discussed.

The word "tort" comes from the Latin "tortum" meaning wrested, wrung, or crooked, and found its way into the English language as a synonym for "wrong." From the fourteenth to the mid-nineteenth century no one could seek redress for wrongs in the common law courts of England without the King's writ and the writs available were very specialized in nature. A just case could be lost if the plaintiff chose an incorrect form of action or writ.¹ The solution to this inadequacy in the law began with the Uniformity of Process Act, 1832, by which only one type of writ was required; however, everything that would have been stated in the old writs had to be included in this writ. Further reform came with the Common Law Procedure Act, 1852, whereby

it was no longer necessary to mention any form or cause of action in any writ of summons. The final blow to the use of different forms of action came with the passing of the Judicature Acts, 1873-75, which empowered all courts to apply the principles of law and equity, and provided that every pleading was to contain only a statement in summary form of the material facts on which the plaintiff relied.  

The first important writ that remedied injuries was the writ of trespass. At a later date the writ of trespass on the case came into use. The writ of trespass which became common around 1250 lay for all forcible and direct injuries to person, land, or chattels. Later, indirect or consequential injuries, as differentiated from forcible injuries, became remediable by writs of trespass upon the case. "Forcible," in this sense, means any act of physical interference with the person or property of others. The mere touching of a person with one's finger may constitute force. With the growing complexity of life resulting from the Industrial Revolution, the courts were called upon with increasing frequency by persons seeking redress from indirect or consequential injuries. Consequently, the effects

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2 Loc. cit.

of the Industrial Revolution contributed greatly to the growth of the law of torts, and this growth has continued to the present and will without doubt continue in the future.

**Tort Law Defined**

Several difficulties arise in attempting to define tort law. As one authority states, "... it is perhaps impossible to give an exact definition of 'a tort' or 'the law of tort' or 'tortious liability' and, as a corollary, it is certainly impossible to give a definition which will satisfy every theorist who has taken any interest in the subject."\(^4\) The law of torts arose chiefly from common law rather than statute law.\(^5\) In other words, it is based largely upon court decisions and thus, it changes and it expands. The whole field of liability may be divided according to its purposes into criminal, tortious, contractual, and quasi-contractual.\(^6\) Criminal liability is concerned with exacting a penalty in order to protect society as a whole. Tort liability is concerned with compensating the injured party by compelling the wrongdoer to pay for the

\(^4\)Ibid., p. 1.

\(^5\)With the passing of the Factory Acts and similar legislation in the 19th century, the law of torts became subject to an increasing amount of statute law.

damages he has caused. The law of contract is concerned
with protecting an individual interest by requiring promises
to be carried out. Quasi-contractual liability is concerned
with the restitution of unintended benefits.\(^7\)

There have been many definitions of tortious liability
offered by writers on the subject, but the one probably most
often quoted is that suggested by Winfield. His definition
reads: "Tortious liability arises from the breach of a duty
primarily fixed by the law: this duty is towards persons
generally and its breach is redressible by an action for
unliquidated damages."\(^8\)

There are three key words in Winfield's definition
which require explanation. The duty is primarily fixed by
the law. In other words, the duty is fixed by the law
(statute or common) from the outset. It is not concerned
with any agreements which individuals make themselves. The
duty that has been breached is towards persons generally.
In other words the duty not to commit a tort is not limited
to any specifically named person or persons. The breach of
the duty is redressible by an action for unliquidated dam-
ages. The plaintiff cannot sue for a predetermined sum of
money as this would be a claim for liquidated damages.

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\(^7\)Ibid., pp. 1-3.
\(^8\)Jolowicz and Lewis, op. cit., p. 5.
Instead, the suit must be for such an amount as the court is at liberty to award at its discretion.  

Basic Conditions of Liability in Tort

Liability in tort may arise in different ways. The editors of Winfield on Tort state the general conditions of liability in tort as follows:

1. Torts may be committed by a positive act, or by an omission where there is a legal duty to act.

2. In some torts liability is based on the fault of the defendant; of these some require intention, e.g., deceit; in others, negligence suffices. Others called torts of strict liability, in varying degree are independent of fault.

3. Whereas most torts require damage resulting to the plaintiff which is not too remote a consequence of the defendant's conduct, a few, such as trespass in its various forms and libel, do not require proof of actual damage.

In this study, the writer is concerned only with the tort of negligence for the study involves cases concerning the negligent acts of school personnel which have resulted in legal actions.

Negligence Defined

The views of legal authorities differ as to the meaning of "negligence" as it applies to the law of torts. The editor of Charlesworth on Negligence ascribes the

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9 Ibid., p. 9.
10 Ibid., p. 17.
following three meanings to the term: "(1) a state of mind in which it is opposed to intention, (2) careless conduct, and (3) the breach of a duty to take care imposed by common or statute law."\textsuperscript{11}

Some earlier writers, notably Salmond, were inclined to the view that negligence had not developed into a specific tort. They regarded it merely as a state of mind providing the essential condition of liability for recognized torts.\textsuperscript{12} While some would have accepted only the first definition given above, Heuston, editor of the 13th edition, of \textit{Salmond on Torts}, accepts the third definition above, and states that there is abundant authority to show that judges recognize the existence of an action of negligence.\textsuperscript{13} This is, of course, another example of the development of and the constant change in the law of torts.

As a state of mind, negligence is opposed to intention in that it is not purposeful and done with the desire or object of producing a particular result. The effect produced is the result of carelessness or indifference in committing the act. In \textit{Salmond on Torts}, it is pointed out

\begin{enumerate}
\item Heuston, \textit{op. cit.}, p. 405.
\item \textit{Loc. cit.}
\end{enumerate}
that the frequent use of the term "negligence" to denote careless conduct, without reference to any duty to take care, has introduced some confusion into the subject and has tended to obscure the true meaning of the term. When there is a duty to take care, the standard of care required is usually that of the reasonable man, and consequently the failure to take reasonable care and "negligence" are often used synonymously regardless of whether or not there is any duty involved. Legal action lies for conduct which would involve serious risk of causing damage. Negligence, then, is a "tort, which is a breach of a duty to take care imposed by common or statute law, resulting in damage to the complainant." Negligence may arise from doing something which a prudent and reasonable man, guided by the considerations which regulate human affairs, would not do, or conversely by failing to do something which a prudent and reasonable man would do under similar circumstances. The burden of proof in an action for negligence generally rests upon the plaintiff. On this point Fleming comments as follows:

It is well to remember that, in order to establish a cause of action in negligence, it is necessary to persuade the court that the defendant owed the

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\(^{14}\) Percy, op. cit., p. 2.

\(^{15}\) Ibid., p. 9.
plaintiff a duty of care, that the defendant broke that duty by careless acts or omissions, and that such failure to exercise due care was a legally sufficient 'cause' of the harm. The legal burden of proof on the issues of fact involved in this inquiry rests on the plaintiff, because it is he who is seeking the assistance of the judicial process to vindicate his claim to legal protection.¹⁶

There is, however, a type of case in which the plaintiff has merely to prove the happening of an accident and nothing more. In such a case the principle of res ipsa loquitur applies. Res ipsa loquitur means "the thing or matter speaks for itself" and under this principle the defendant must give a reasonable explanation to show how the accident may have occurred without negligence on his part in order to have the court dismiss the charges against him.

The Essentials of Actionable Negligence

The mere occurrence of an accident does not imply that there was negligence on the part of someone else. The elements of the cause of action for negligence are summarized by Fleming as follows:

1. A duty, recognized by law, requiring conformity to a certain standard of conduct for the protection of others against unreasonable risks. This is commonly known as the "duty" issue.

2. Failure to conform to the required standard of care or, briefly, breach of that duty. This element usually passes under the name of "negligence."

¹⁶Fleming, op. cit., p. 294.
3. Material injury resulting to the interest of the plaintiff. Since the modern action for negligence was fathered by the old form of action on the case, damage is the gist of liability. Merely exposing someone to danger is not an actionable wrong, if the hazard is averted in time.

4. A reasonably proximate connection between the defendant's conduct and the resulting injury, usually referred to as the question of "remoteness of damage" or "proximate cause."

5. The absence of any conduct by the injured party disabling him from bringing an action for the loss he has suffered. This involves a consideration of two specific defences, contributory negligence and voluntary assumption of risk.\(^{17}\)

The elements of the cause of action for negligence are of primary importance in determining negligence. Consequently, it is important that educational personnel have an understanding of the legal meanings of the terms used.

**Special Terminology Pertaining to Negligence**

**Legal duty.** A legal duty is an obligation recognized by law to conform to a particular standard of conduct, for the protection of others against unreasonable risks.

**Duty of care.** At common law an occupier is liable for physical injuries caused by the dangerous conditions of land, structures, and movable property. The duty of the occupier toward a visitor has been determined in the past by the purpose of the visit, with the distinction between the

\(^{17}\text{Ibid.}, \ p. \ 116\)
different classes of visitors drawn according to the degree of "benefit" derived by the occupier from their presence. According to this method of classification the highest degree of care is owed to one who enters the premises under a contract. The second highest degree of care is owed to an invitee, followed by that owed to a licensee. The lowest degree of care is that owed to a trespasser.

In recent years there have been criticisms of the distinctions drawn between the various classes of entrant and the various duties owed by the occupier. The Law Reform Committee of England in its report of 1954 recommended, among other things, that the distinctions between invitees and licensees should be abolished and that the occupier should owe a duty to every person coming upon the premises. In *Slater v. Clay Cross Co. Ltd.*, Lord Denning expressed the same view in the following words:

> The Law Reform Committee has recently recommended that the distinction between invitee and licensee should be abolished; but this result has already been virtually attained by the decisions of the courts. The classic distinction was that the inviter was liable for unusual dangers of which he knew or ought to know, whereas the licensor was only liable for concealed dangers of which he actually knew. This distinction has now been reduced to the vanishing point. ... a licensor, as well as an invitor, is liable for unusual dangers of which he knows or ought to have known. ... The duty of the occupier is nowadays simply to take reasonable care

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to see that the premises are reasonably safe for people lawfully coming on to them; and it makes no difference whether they are invitees or licensees.19

Duty under contract. When payment is made for admission to a premises a contractual relationship is established between the payer and the person receiving payment. Although payment is usual, it is possible for a person to have contractual rights without financial payment. The terms of the contract may be expressed, but more often they are implied. The duty owed to a person entering a premises under a contract amounts to a warranty by the occupier that the structure is as safe as reasonable care and skill on the part of anyone could make it.20 A person admitted to a theatre would be an example of one entering a premises under a contract.

Duty of invitees. There is a common or joint interest between an invitor and an invitee. A common example of an invitee is a person who enters a store with the view to do business with the proprietor, whether he buys anything or not.21 A guest invited to one's house for a social visit is not an invitee because the host's interest is regarded as social rather than pecuniary. It is possible, however, for

20Jolowicz and Lewis, op. cit., p. 277.
21Loc. cit.
other visitors to be classified as invitees. A doctor on call does and a salesman may fall in this category. An invitee is entitled to reasonable care to prevent damage from unusual danger of which the invitor knows or should know.

Duty to licensees. A licensee is one who is lawfully on the premises but does not come within the description of an invitee because he does not enter on business which concerns the occupier. In the past, the duty of care owed by an occupier to a licensee was such that the occupier was required to warn the licensee of any concealed danger or trap of which the occupier knew. The chief difference between the duty owed to an invitee and that owed to a licensee may be recognized by the fact that an invitee could recover for damage caused by an unusual danger of which the invitor ought to have known, while the licensee could recover only if the licensor actually knew of the concealed danger. In considering the duty owed to an invitee and to a licensee, one must keep in mind the changing view in this regard as expressed by the Law Reform Committee of England and by Lord Denning's ruling in Slater v. Clay Cross Co. Ltd. 23

Duty to trespassers. An occupier may not intentionally

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22 Percy, op. cit., p. 438.
inflict injury on a trespasser. A trespasser must take the land or structure as he finds it, but the occupier must not, without giving warning, suddenly change the condition of his land or structure so as to create a danger which causes injury to a trespasser who enters unaware of the danger.  

**Standard of conduct.** The general standard of conduct required by law in an action of negligence is ordinarily measured by what the reasonable man of ordinary prudence would do in the circumstances.  

**The reasonable man.** The reasonable man of ordinary prudence represents the concept of proper behavior expected by society. The conduct of this purely hypothetical figure is used by the court to assess the quality of the defendant's conduct in order to determine whether or not the conduct of the defendant has been negligent. 

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circumstances. In Canadian cases involving an allegation of negligence on the part of school teachers the courts, in determining the reasonableness of the teachers' actions, have relied to a great extent on the leading English case, Williams v. Eady.²⁷ In this case Lord Esher stated:

The schoolmaster was bound to take such care of his boys as a careful father would take care of his boys, and there could not be a better definition of the duty of a schoolmaster. Then he was bound to take notice of the ordinary nature of young boys, their tendency to do mischievous acts and their propensity to meddle with anything that came in their way.²⁸

In litigation concerning negligence on the part of teachers, Lord Esher's statement is often referred to as the "careful father" concept or the "careful parent test." It is well to remember that the careful father is not the "perfect" father; he is the reasonable father.

Remoteness of damage. A plaintiff will lose his action, even if he proves every other element in tortious liability, if the harm he has suffered is too remote a consequence of the defendant's conduct. There is no hard bound rule which fixes the line where recovery should cease. Two differing views have prevailed as to the test of the remoteness of damage. According to one view consequences

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²⁷ Williams v. Eady, (1894) 10 T.L.R. 41.
²⁸ Ibid., p. 42.
are too remote if a reasonable man would not have foreseen them. The other view holds that if a reasonable man would have foreseen any damage to the plaintiff as likely to result from his act, then he is liable for all direct consequences of it suffered by the plaintiff, whether a reasonable man would have foreseen them or not.  

From the court decisions that have emerged it appears that "the outward boundary of liability lies somewhere in the middle ground between the restricted scope of the original risk and the extreme lengths to which 'direct causation' could theoretically be carried."  

**Contributory negligence.** Conduct on the part of the plaintiff which falls below the standard to which he is required to conform for his own protection, and which is legally a contributory cause, in conjunction with the negligence of the defendant, in bringing about the plaintiff's harm may be classed as contributory negligence.  

At common law the plaintiff could not recover if his own negligence was the decisive cause of the accident or so closely implicated with the negligence of the defendant as to make it impossible to determine whose negligence was the decisive

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cause. Where injuries had been caused partly by the fault of the defendant and partly by the fault of the plaintiff, the plaintiff's contributory negligence, when proven, removed all liability from the defendant. Under present law, where it is established that one party is predominately to blame for an accident, but the conduct of the other party has deviated from the standard required of him for his own protection, the court must define the degree to which each party has contributed to the accident and assess damages proportionally. In this regard, The Contributory Negligence Act reads as follows:

2. Where by the fault of two or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss shall be in proportion to the degree in which each person was at fault.

In the past, courts generally held that a child of "tender years" could not be guilty of contributory negligence. This view has changed somewhat in more recent years as shown in the following statement by the editors of Winfield on Torts:

There is no age below which, as a matter of law, it can be said that a child cannot be guilty of contributory negligence, but the age of the child is a circumstance which must be considered in deciding whether it has been guilty of contributory negligence.

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33 R.S.S. 1953, c. 83, s. 2.
34 Jolowicz and Lewis, op. cit., p. 239.
Voluntary assumption of risk. There are occasions on which harm may be inflicted on a person for which he has no remedy in tort because he agreed to the risk of such harm.\textsuperscript{35} The effect of this agreement is expressed in the maxim, "Volenti non fit injuria" and simple examples are injuries received in athletic contests or during surgical operations. It must be remembered, however, that knowledge of the risk does not necessarily imply assent to it. In a leading English case the Court held that a plaintiff could recover damages against an automobile driver with whom the plaintiff rode knowing at the time that the driver was under the influence of alcohol.\textsuperscript{36} The plaintiff did not assume the risk of the driver operating his vehicle in a negligent manner.

Res ipsa loquitur. Although this maxim was mentioned previously, it requires further clarification. In several instances in which this maxim applies the plaintiff proves the happening of the accident and nothing more. When a \textit{prima facie} case of negligence against the defendant has been established under this maxim, the defendant can rebut the case by providing that he was not negligent even though

\textsuperscript{35}Ibid., p. 22.

\textsuperscript{36}Dann v. Hamilton, [1939] 1 K.B. 509.
he cannot prove how the accident happened.\textsuperscript{37} The editor of Charlesworth on Negligence states that the maxim comes into operation under the following conditions:

(1) on proof of the happening of an unexplained occurrence;

(2) when the occurrence is one which would not have happened in the ordinary cause of things without negligence on the part of somebody other than the plaintiff; and

(3) the circumstances point to the negligence in question being that of the defendant rather than that of any other person.\textsuperscript{38}

It should be noted that the doctrine of \textit{res ipsa loquitur} does not apply when the cause of the accident is known.

\textbf{Vicarious liability.} Vicarious liability exists when the law holds one person responsible for the misconduct of another, although he is himself free from personal blame-worthiness or fault.\textsuperscript{39} In litigation concerning the negligence of school personnel or officials, the school board and the principal or teacher are often charged jointly because the employer-employee relationship exists. For this reason, it is necessary to consider the employer-employee relationship with regard to fault for negligent acts, in order to better understand the principles applied in court

\textsuperscript{37}Percy, \textit{op. cit.}, p. 49.

\textsuperscript{38}Ibid., p. 43.

\textsuperscript{39}Fleming, \textit{op. cit.}, p. 36.
decisions where such a relationship exists.

Servants. A servant is a person who is bound to obey any lawful orders given by the master as to the manner in which his work shall be executed. The master directs the servant as to what work shall be done and how it shall be done. If a servant commits a negligent act in the course of his employment the master is probably liable.\textsuperscript{40}

Agents. An agent is a person who is authorized to act on behalf of another, but he is not necessarily bound by a contract, as is a servant. The master is liable for the negligent acts of his agent while acting in the course of his authority.\textsuperscript{41} The master tells this agent what to do but he does not give him specific directions on how to do it.

Independent contractors. An independent contractor is a person who carries on an independent employment in the course of which he contracts to do certain work. He may be subject to some direction by the employer by the terms of his contract, but apart from the contract he is his own master as to the manner in which he will execute his work.\textsuperscript{42} The employer is not liable for the negligent acts of an independent contractor or such contractor's servants in the

\textsuperscript{40}\textsuperscript{Percy, op. cit., p. 55.}
\textsuperscript{41}\textsuperscript{Ibid., p. 75.}
\textsuperscript{42}\textsuperscript{Ibid., p. 55.}
execution of the contract except in certain cases. An employer cannot free himself from responsibility in carrying out some duty which common or statute law requires the employer to perform. He may engage an independent contractor to perform the duty but he remains liable for any negligence on the part of the independent contractor in the performance of the duty.

One should remember that the courts, in determining whether or not a person should be classified as a servant, an agent, or an independent contractor, generally take into consideration the amount of control exerted by the employer over the employee. For this reason, the distinction between the categories of employees cannot be precisely defined.

### Liability of School Authorities for Their Negligent Acts

In Saskatchewan, as elsewhere in Canada, school boards may be held liable for their acts of negligence. A school board is a corporate body and when sued is sued as such in most instances. Board members, however may be held individually liable for damages if it is proven that they acted in bad faith or with malice. School boards are given some protection by statutory provisions requiring actions to be instituted within a specified time limit. In reference to this, *The School Act* reads as follows:

263. No action shall be brought against a school district for the recovery of damages after the expiration of six months from the date upon
which damages were sustained, unless, upon application to a judge of the Court of Queen's Bench made not later than one year from such date and after seven days' notice to the school district, the judge allows the claim to be made.43

Saskatchewan teachers are freed from liability for injuries suffered by pupils participating in activities that are approved by the board, the principal or the teacher.

225a. Where the board, the principal or the teacher approves or sponsors activities during the school hours or at other times the teacher responsible for the conduct of the pupils shall not be liable for damage caused by pupils to property or for personal injury suffered by pupils during such activities.44

It is interesting to note that the section, quoted above, makes no mention of the "reasonableness" of the activities approved or sponsored by the teacher, the principal, or the board. It appears to relieve teachers from all liability for damages caused to property by pupils or for pupil injuries sustained in such activities, irrespective of their "reasonableness."

Court Cases Involving Negligent Acts of SchoolAuthorities

The writer will not attempt to cover in detail all of the Canadian cases involving negligence. Instead, the cases will be summarized and the more recent ones will be

43 R.S.S. 1953, c. 169, s. 263.

44 R.S. 1960, c. 60, s. 225a; 1961, c. 29, s. 225a.
presented in a more detailed form. The cases considered will be classified according to the time and the place of occurrence with the unsuccessful actions preceding the successful actions.

Unsuccessful actions for injuries sustained on school grounds during school hours. Courts are not likely to find school boards liable for injuries sustained by a pupil when the object causing the injury is not inherently dangerous and if the consequences are not reasonably foreseeable. In a recent Ontario case, a ten-year-old pupil found a piece of spring wire in the school yard and while playing with it the wire "flew" into his eye causing blindness in that eye. The Trial Court awarded damages to the infant plaintiff, but the Appeal Court reversed the decision.\textsuperscript{45} Schroeder, J.A., delivered the judgment for the Appeal Court in these words:

Upon consideration, I am unable to avoid the conclusion that the piece of wire in question was not a dangerous thing in itself. It was only potentially dangerous in the same way as a knitting needle, a nail, a pen with a sharp nib . . . or many objects in daily domestic use could be characterized as dangerous. The unfortunate occurrence which resulted in the loss of this unhappy boy's eye was the purest misadventure, one occurrence of such rarity, and so extraordinary and exceptional, that it could not reasonably have been foreseen by anybody.\textsuperscript{46}


\textsuperscript{46}(1960) 23 D.L.R. 711 at p. 720.
The Appeal Court felt that the child was an invitee and the duty of care required by the board was such to prevent damage from unusual dangers of which it knew or ought to have known. To hold the board liable in such circumstances would, in the mind of the Court, be to impose an inordinately excessive burden of care upon them.

A fairly recent Manitoba case was concerned with a thirteen-year-old boy who was injured as a result of tripping over a stake placed in position by a contractor carrying out a building extension.\(^47\) The boy was playing baseball at the time of the accident. The Trial Court dismissed the action instituted by the plaintiffs, holding that the boy had been warned of the construction work by the principal and knew that the stake was there. The boy had disregarded instructions not to return to the school grounds until the end of the noon recess. He was not an invitee on the part of the school grounds required for construction, and neither was he a licensee thereon. The Court ruled that the plaintiff's own negligence was the sole cause of the accident and no amount of supervision would have prevented it. The plaintiffs carried the case to the Appeal Court where it was dismissed. In so doing, Schultz, J.A., speak-

ing for the Court said:

I agree with the emphasis the learned trial judge placed on the necessity of developing a sense of self-responsibility on the part of children. As he points out, the realization of this fact by the courts has led to a changing attitude and a more practical approach to the question of supervision by school authorities. While it must be recognized that there is a duty on teachers to supervise certain school activities, a duty that of necessity bears some relation to the age of the pupils, the special circumstances of each case and, in particular, the type of activity engaged in, nevertheless it must also be recognized that one of the most important aims of education is to develop a sense of responsibility on the part of pupils, personal responsibility for their individual actions, and a realization of the personal consequences of such actions. 48

It is interesting to note that in this case it is pointed out that modern day courts have shown a change in attitude from that held by the courts of the past with regard to supervision. The intelligence and maturity of the child, as well as the type of activity, determine to a large extent the amount of supervision required on the part of the teaching personnel.

A very unusual case occurred recently in Ontario in which damages were sought against a school board for two identical accidents that happened within five minutes of each other. As a result of the accidents two students each lost the sight of one eye. The infant plaintiffs, two

twelve-year-old boys, were playing a game of tag during the noon hour. In the course of the game each boy chased a separate fellow-student into a large bush area owned by the defendant board. The bush area contained hawthorne trees with sharp thorny branches and in the course of the chase a branch which had been brushed by the shoulder of a boy being pursued sprang back and hit one of the plaintiffs in the left eye. Within five minutes, the second infant plaintiff sustained an injury to his left eye from an accident that occurred in the same manner. As a result of the accidents, each of the boys suffered a total loss of vision in the affected eye.\textsuperscript{49}

The Trial Court found the defendant board liable for the plaintiffs' injuries on grounds of failing to maintain the school premises in a safe condition and for failing to provide adequate supervision. The Appeal Court, in reversing the decision of the Trial Court, maintained that the standard of care to be exercised by an elementary school board towards its pupils, with respect to the condition of its premises, is the duty owing by an invitor to an invitee, that is, the exercise of reasonable care to prevent damage

from unusual dangers of which it knows or ought to know. The Court pointed out that whether or not a danger is unusual depends on whether it is unusual from the point of view of the particular invitee concerned. The Court took into consideration the age and experience of the defendants and concluded that the thorny branches did not constitute an unreasonable danger to the two boys as it must have been perfectly obvious to the plaintiffs that if they ran heedlessly through such a thicket they might sustain some injury. 50 The Court went on to assert that even if the defendant board owed the higher duty to the plaintiffs which would be required towards persons entering premises under a contract it was not a breach of such duty to fail to remove or fence off the thicket in question when the injuries were the purest misadventure and of such an extraordinary character that they could not be reasonably foreseen by anyone. 51

The Court also concluded that the defendant board was not guilty of failing to provide adequate supervision. On this matter the Court maintained that:

It is not the duty of teachers to keep pupils under supervision every moment of their time at school, but merely to take such care as a careful parent would take in the circumstances and guard against dangers that could reasonably be foreseeable. In

50 (1962) 32 D.L.R. 337 at p. 337.
51 Ibid., p. 338.
the instant case a reasonable parent would not have considered it his duty to have ordered these boys to desist from playing their game of tag at the time and place in question.\textsuperscript{52}

In a Nova Scotia case, the plaintiff sought damages from a school board for personal injuries sustained by being struck in the eye by an acorn thrown by a fellow pupil during a recess period. As a result of the accident the plaintiff lost the sight of his eye.\textsuperscript{53} The Court, in dismissing the action, found that there was adequate supervision of the school grounds and that the supervising teachers were not negligent in failing to see and stop the acorn-throwing incident. Only a handful of the 500 pupils were throwing acorns and no special commotion was caused by the group during the short interval that acorns were being thrown.

Another Nova Scotia case involved a boy of nine years who lost the sight of his right eye as a result of having been struck by a stone during a stone fight in which he was not engaged.\textsuperscript{54} At the time of the incident, the teacher charged with supervising the playground was engaged in settling a dispute between two pupils elsewhere on the premises.

\textsuperscript{52}\textit{Ibid.}, p. 338.


\textsuperscript{54}\textit{Adams v. Board of School Commissioners for the City of Halifax}, (1951) 27 M.P.R. 232, 2 D.L.R. 816.
The Trial Court awarded damages for the defendant's negligence in failing to supply sufficient supervision in the school yard. The Appeal Court, in granting a new trial, contended that the Trial Judge, in dealing with the school regulations prescribing the duties of principals, did not make it clear to the jury whether or not these regulations defined a duty which as a matter of law the defendant owed the plaintiff. Parker, J., speaking for the Court, stated:

... I am of the opinion that the learned trial judge did not make clear to the jury whether the degree of care which the appellant should take with a view of avoiding the injury which the respondent suffered was that which "a careful parent" would take or that which is prescribed by the regulations of the appellant.\footnote{55}

A Saskatchewan case concerned a seventeen-year-old pupil who was injured by the escape of electricity from a reading lamp.\footnote{56} Someone had hung a reading lamp, that had been provided for use at a table, on an iron bed. The plaintiff had been reclining on the upper deck of the bed and as he was getting down he put his foot on the radiator, grasped the side of the iron bed with his right hand and reached up with his left hand to grasp a water-pipe. Immediately upon taking hold of the water-pipe an electric

\footnote{55}(1951) 27 M.P.R. 232 at p. 254.

shock passed through him and he was severely burned. The plaintiff was awarded damages by the Trial Court and the decision was appealed.

The Appeal Court ruled that the principle of *res ipsa loquitur* did not apply in the case because the lamp in question was not under the sole control of the defendant board.\textsuperscript{57} The lamps were provided for use by the students and it was apparent that the lamp in question had been hung on the bed by one of the students, who could not be considered to be a servant or agent of the defendant board.

A higher duty was not owed by the defendant to the plaintiff than is ordinarily owed by the owner of premises to his invitee. The age of the pupil was such that the duty of the defendant towards him, in respect to the safety of the premises, was not increased by the duty of supervision owing by school authorities to their younger pupils, since this duty diminishes as the pupil grows older.\textsuperscript{58} The Court decided that the duty of reasonable care did not require the board to arrange for a daily inspection of the reading lamps for possible defects. The accident occurred as the result of a combination of chance happenings which no reasonable care could have prevented and for this reason the appeal was

\textsuperscript{57} See \textit{1 W.W.R. 120} at p. 123.

\textsuperscript{58} \textit{Ibid.}, p. 120.
allowed.

In another Saskatchewan case, a nine-year-old girl who suffered a broken arm in a fall from a horizontal ladder to the cement floor of the basement sought damages against the board for the injuries that she sustained.\(^5^9\) The Trial Court granted damages to the plaintiff and the defendant board appealed the decision. The respondents contended that the board had provided no mats or other contrivance and took no care whatsoever to protect children in the event of their falling from the ladder. The Appeal Court felt that the evidence was not sufficiently certain to warrant the conclusion that the absence of mats or pads caused the infant plaintiff's injury. It appeared to the Court that on the evidence presented the injury would have occurred even had mats been there.\(^6^0\) The appeal was allowed and the judgment of the lower Court was set aside.

The necessity of instituting action within a specified time limit in certain cases is borne out by a case originating in New Brunswick. A pupil tripped over some lumber that had been left in the school yard after the completion of a building and suffered an injury. The action


\(^{60}\) 1937 2 W.W.R. 170 at p. 176.
against the trustees alleging negligence was dismissed because The Schools Act of that Province prohibits action against school trustees unless the action is commenced within three months after the act is committed and upon one month's previous notice in writing. In this instance, the injury was sustained on November 28, 1948, and the writ of action was dated February 7, 1955. The plaintiffs appealed to the Appellate Division of the Supreme Court of New Brunswick where the decision of the lower Court was affirmed. 61

A causal connection must exist between the defendant's action (or lack of action) and the injury sustained by the plaintiff before a court will hold that the defendant has acted negligently. A case heard in Ontario involved an attempt by the parents of a pupil to recover damages for injuries sustained by the pupil becoming a cripple. The plaintiffs maintained that conditions of the school premises were such that the child was forced to walk through water to get to the toilet and in so doing her feet became wet. This, the plaintiffs contended, caused the child to suffer a chill and from this she eventually became a cripple. The Court, in dismissing the action, felt that there were too many opposing possibilities—some of them more likely to

have been a cause of her illness than the slight wetting of her feet at school.\footnote{Wiggins v. Colchester South Public School Board, (1922) 23 O.W.N. 157.}

It was established by an Ontario Court that a board of trustees is not responsible for the loss or theft of clothing belonging to a pupil, providing the board has provided proper cloak-rooms.\footnote{Stevenson v. Toronto Board of Education, (1919) 49 D.L.R. 673, 46 O.L.R. 146, 32 C.C.C. 19.} The Court felt that boards of trustees are not insurers of pupils' clothing and that where a coat is taken from a school cloak-room by some person unknown, it does not prove a lack of reasonable care on the part of the board.

From a consideration of the above cases it appears that school officials will not be held liable for injuries suffered by pupils from objects that are not inherently dangerous and where such injury is not reasonably foreseeable. It is apparent also that the amount of supervision required of the school officials is dependent upon the age and experience of the pupils. Teachers are not expected to watch every pupil every minute of the recreational period.

Successful actions for injuries sustained on school grounds during school hours. Teachers and school boards are required to exercise reasonable care in protecting the well
being of the pupils. When accidents occur as a result of teachers being negligent in the performance of their duties, equipment being unsafe for pupil use, or supervision of pupil activities being inadequate, both teachers and school boards are subject to actions for damages incurred by the injured pupils.

In a recent Ontario case an infant plaintiff suffered injury when he was lifted off his feet by another pupil and carried to a rink where he was dropped on the ice.\(^{64}\) Four teachers were supervising the playground at the time of the injury but none of them witnessed the incident. One of the teachers was called over to look at the injured pupil. The pupil refused help and another teacher ordered him into line and into class, although he was limping and complaining. The initial injury was later found to have been a hip bone displacement which was aggravated when the boy was required to walk.

The plaintiffs in the negligence action contended, among other things, that there was inadequate supervision of the playground. The Trial Court, treating the liability for the initial injury separately from liability for aggravation, found that the initial injury was the result of the failure

of the defendants to provide adequate supervision and that the negligent act of the teacher in requiring the pupil to get into line and walk to his classroom aggravated the initial injury.

The Court of Appeal affirmed the decision of the Trial Court and it was carried on to the Supreme Court of Canada. The Supreme Court allowed the appeal in part by dismissing the claim for the initial injury.\textsuperscript{65} It was felt by this Court that there was sufficient supervision as there were no unusual circumstances that day which made it reasonably foreseeable that a greater number of teachers would be required than usual for supervisory purposes. As to the aggravation of the injury, the Supreme Court felt that there was evidence to support the contention that the two teachers acted in a negligent manner and the board was required to bear the responsibility for the actions of its employees.

Another Ontario case involving an allegation of negligence on the part of a teacher was carried on to the Supreme Court of Canada.\textsuperscript{66} The teacher told a twelve-year-old pupil to light a gasoline stove in order to heat some


soup for lunch. The boy stated that he did not know how to light the stove, but the teacher told him to go ahead and light it. As a result the pupil was severely burned. The Trial Court found the teacher to have been negligent and because she was acting in the course of employment, liability for negligence was also attributed to the trustees. On appeal, the defendants contended that they were protected by the Public Authorities Protection Act because the action was not initiated within the prescribed period. The Appeal Court found the evidence to show that the preparation of the hot soup was, in this case, for the teacher only and hence, the teacher was not acting within the protection of the Public Authorities Protection Act.\textsuperscript{67} The teacher was found negligent and the board, in turn, was liable as it authorized the serving of hot lunches at school.

School grounds and school equipment must not be in such condition that they constitute a hazard to the safety of the pupils. In Ontario, an eleven-year-old boy was injured when he fell from a swing in the school-yard.\textsuperscript{68} The evidence showed that three boys were swinging with two others standing on the crossbars and the swing tipped over.


\textsuperscript{68}Lamarck et al. v. Board of Trustees of the Roman Catholic Separate Schools for the Village of L'Orignal, [1956] 33 O.W.N. 686.
In the resulting action the Court found the board negligent, in that the swing was situated on sloping ground and had tipped over several times previously.\textsuperscript{69} As there was a teacher present when the accident occurred it was not found that supervision was wanting.

An Alberta school board was found liable for damages when a six-year-old pupil was injured by falling off a "teeter-totter" which was in disrepair.\textsuperscript{70} The Court emphasized that when a school board provides a piece of apparatus for pupils to play with, they are bound to provide something reasonably fit for the purpose and are liable for injuries suffered by a pupil when the injuries are caused by the unsafe condition of the equipment supplied.

An Ontario school board was held liable for damages as a result of injuries sustained by a fourteen-year-old boy who, while playing at recess, fell or was pushed on loose rocks and other rubble lying upon the school ground and suffered a leg fracture.\textsuperscript{71} The Court felt that there was a direct causal connection between the injury suffered and the negligence of the board. MacKay, J., in stressing

\textsuperscript{69} 1956 33 O.W.N. 686 at p. 689.


the fact that the board had failed to perform the statutory
duty imposed upon it to provide safe facilities, stated:

It is clear from the evidence that there was an
accumulation of refuse, stones, brick-bats, etc., on
the playgrounds. Section 89 clearly imposes a duty
on the Board to refrain from piling rubbish or
debris in the school-yard. I cannot see how this
differs from the breach of any other statute. The
School Board has no more right to flout the Public
Schools Act or any other Act than an individual
would have to disregard a provision of the Highway
Traffic Act.\(^{72}\)

In an Alberta case, the Court felt that there is a
foreseeable danger of injury from the use of swings by
pupils and in the absence of supervision liability must be
imposed upon the board.\(^{73}\) The Court felt that the standard
of care of a board to its pupils is of a higher degree than
that to an invitee. Evidence showed that a six-year-old
female pupil was injured during recess when she fell off a
swing on which she was sitting and which was being "pumped"
quite high by another pupil. There appeared to be no super-
vision of the pupils in their use of swings at that or any
other time. The Court, in finding for the plaintiffs,
ruled:

\[\ldots\] the facts of the present case indicate that
there was no method or systematic plan of super-
vision, and what supervision there was does not

\(^{72}\) [1941] 4 D.L.R. 268 at p. 272.

\(^{73}\) Brost and Brost v. Tilley School District et al.,
indicate that the authorities or master (superintendent) felt under any duty to exercise the care of a prudent parent in supervising the pupils in their use of the swings.

The views expressed here are not entertained because a swing is inherently dangerous or an improper kind of equipment for school grounds but it is potentially dangerous, as is an automobile, and the higher one swings, the greater the danger becomes, just as the greater the speed of an automobile the more the danger. And this danger is a foreseeable one. Because of this, instructions, at least to young pupils, on how to get on and off, and how to swing, should be given.\textsuperscript{74}

It may be noted that in the case cited above, the Court felt that the duty of care of the board to its pupils is of a higher degree than that to an invitee. The thinking behind this, of course, is that pupils within the compulsory age range are compelled to attend school. More recent court decisions have tended to set the duty of care of a board of trustees to its pupils to be that owed to an invitee.\textsuperscript{75}

This is further evidence of the changing attitude of the courts in the area of negligence.

\textbf{Injury sustained on school grounds out of school hours.}

Six cases have been reported in Canada in which school pupils have been injured on school property out of school hours. The six actions were unsuccessful. In a recent Ontario case, an eight-year-old boy was injured when struck

\textsuperscript{74} [1955] 3 D.L.R. 159 at p. 169.

\textsuperscript{75} \textit{Supra}, p. 301 and p. 303.
on the foot by a building block that had been dislodged from a pile by a boy atop the pile of blocks.\textsuperscript{76} The injured boy had gone to the school to play shortly after six o'clock. The pupils had been warned to stay away from the building blocks that were being used to renovate part of the school building. The watchman for the construction company had chased children away from the blocks on previous occasions. The Appeal Court, in allowing the appeal and quashing the action, held that the defendants, as occupiers of the land, were only liable to the infant plaintiff as a licensee if they caused anything to be on the premises which would be in the nature of a concealed danger or trap. The carefully piled building blocks were not a trap and the presence of an unidentified boy on the pile of blocks did not convert the pile of blocks into a trap in any sense of that term.

A case occurred in Manitoba in which an eleven-year-old boy was injured when struck on the head by the lower section of an iron fire escape which was counter-balanced in a position parallel to and ten feet above the ground.\textsuperscript{77} Strict instructions were given to the pupils from time to


\textsuperscript{77}Storms and Storms v. Winnipeg School District No. 1 (1963) 44 W.W.R. 44.
time to keep away from fire escapes while playing. No attempt was made to stop children from using the school grounds during the summer holidays period, and the Court concluded that the plaintiff had the tacit permission of the board to use the grounds. However, any implied licence as to the use of the school grounds did not include the use of the school buildings or any part thereof and especially the fire escapes. For that reason, the Court held that the plaintiff was a bare licensee in so far as the school grounds were concerned, but a trespasser as to the fire escape, and the action was dismissed.

A case occurred in Saskatchewan in which a twelve-year-old boy jumped off the woodshed into a snow bank and in so doing injured himself. The injury was sustained by the pupil prior to the opening of school in the morning. The Court felt that the boy's action was no more dangerous than the risks boys of that age constantly take and that the injury was a result of the pupil's own wilful misconduct. Neither the teacher nor the trustees were obliged to supervise the pupils' activities prior to their reporting for school in the morning. Taylor, J., in dismissing the action, said:

In the case of mere non-feasance by a board of trustees constituted under The School Act, no claim for reparation will lie except at the instance of a person who can show that the statute under which the trustees act imposed upon them a duty towards himself which they negligently failed to perform. And I think it will be noted that in any case in which a board has been held liable in this Province it has been for misfeasance. The School Act didn't expressly or by implication impose any duty on trustees or the teacher, if she could be held to be their servant, to suggest any obligation to supervise pupils at play, which could possibly suggest a duty to supervise the conduct of . . . boys in the school yard before school.79

In another Saskatchewan case, an eight-year-old boy was injured after school hours as he stood watching other children high jumping. His brother struck the bamboo cross-bar as he jumped and the broken end of the cross-bar penetrated the pupil's eye destroying his sight.80 The Trial Court awarded damages to the plaintiff on the grounds that the defendant board was negligent in allowing the use of a stick which was dangerous. The Appeal Court reversed the findings of the Trial Court contending that the bamboo cross-bar was not a trap as it was not dangerous to anyone using it. Haultain, C.J.S., in his judgment, had the following to say:

I am of the opinion that this appeal should be allowed on the ground that there was no evidence

79[1940] 1 W.W.R. 441 at p. 443.

upon which a jury could reasonably find negligence on the part of the defendant. There was nothing unusual or out of the common in the apparatus in question, and it was being used in the ordinary way. That the pole should be knocked down is an ordinary incident of any jumping competition, and under ordinary circumstances there is no resulting danger. The accident which unfortunately happened might equally well have happened whether the end of the pole was broken or not. I do not think it requires any expert evidence to show that a pole, either blunt or pointed at the end, propelled by the weight and force of a boy jumping against it, would be liable to put an eye out, if, in the language of the medical witness, it struck it "on the proper spot."81

In British Columbia an eleven-year-old pupil was injured after school hours while engaged in a game of field hockey.82 The pupils had the teacher's permission to choose up sides for the game and the teacher was to come out at the completion of a staff meeting. The plaintiff was struck in the eye by the stick of another player who had raised his stick above his shoulder, which was a breach of the rules, after crossing between the plaintiff and the ball, which was another infraction of the rules. The Trial Court, in finding for the plaintiff, contended that had there been supervision the teacher would have halted play after the first rule infraction and there would have been no injury. The board appealed and the appeal was allowed. The Appeal Court felt

81[1920] 3 W.W.R. 979 at p. 980.

that any "careful parent" would not hesitate to allow his boy of eleven years to engage in a game of grass hockey without supervision and consequently, the teacher was not negligent in allowing the game to proceed without supervision.\textsuperscript{83}

In an Ontario case there was an action for damages caused by an accident to a pupil who fell off a toboggan while riding down a slope of land owned by the defendant board.\textsuperscript{84} Pupils had been tobogganing there for some twelve years prior to this incident without any accidents to pupils. Teachers were required to be in their classrooms by 8:45 a.m. and the accident occurred at about that time. The Court, in dismissing the action pointed out that there had been regular supervision of playground activities in the past and the board had discharged its duties by appointing competent, capable teachers whose duty it was to see that the rules and regulations were properly carried out.

It would appear from the cases considered that teachers or boards are not liable for injuries sustained by pupils out of school hours unless there is upon the grounds something that could be termed an allurement or a trap. The

\textsuperscript{83} 1 W.W.R. p. 327.

\textsuperscript{84} Scoffield et al. v. Public School Board of Section No. 20 of North York, 1942 O.W.N. 458.
status of the pupil changes from an invitee during school hours to a bare licensee or at most a licensee, out of school hours. The duty of care that a board owes to a licensee is of a lower degree than that owed to an invitee. Pupils entering upon certain portions of school premises out of school hours may be classed as trespassers and as such the duty of care owed to them by the board would be of a lower degree than that owed licensees.

Injury sustained off school grounds. The three reported cases in which pupils were injured off school grounds occurred in British Columbia. In each case the Court found the school authorities not liable for damages. In the most recent case of this nature a seven-year-old boy, upon stepping off the school grounds onto the boulevard, was knocked down and injured by a bicycle being ridden by a young girl.85 The plaintiff sued the board for damages. The Court, in holding the board not liable for damages, stated:

There is not around school grounds a zone over which the school authorities exercise supervision as, for example, do the authorities of a state over its territorial waters. School supervision does not extend beyond the school premises.86

86 (1941) 58 B.C.R. 157 at p. 160.
Another case concerned a fourteen-year-old boy who was injured while walking backwards out of the school building as he played catch with another boy.\(^87\) The boy was struck by a motor car which came upon the driveway. The Trial Court found the school board and the driver liable for damages. The Appeal Court, in reversing the decision in part, ruled that the action against the school board should be dismissed, because of the lack of notice required by The Public Schools Act.\(^88\) The driver was held liable and the infant plaintiff was deemed to have been guilty of contributory negligence and the damages were apportioned between the driver and the plaintiff.

In the other case a school pupil was injured, while on a highway immediately outside the school grounds, by the falling of a dead tree.\(^89\) The Trial Court held that the school board was liable for the injuries caused the pupil. The Appeal Court, in reversing the judgment, ruled that there is no duty imposed on a board of school trustees to protect pupils from injury on the highway after they have left school.


From the above cases, it appears that school officials are generally not liable for injuries sustained by pupils outside the school grounds. School authorities are not required to exercise supervision outside the school premises.

**Injury sustained during regular class periods.** Three cases have been reported in Canada in which pupils were injured during regular class periods. The three cases were unsuccessful. A sixteen-year-old Ontario boy was injured when he "flicked" a chisel in the vicinity of a revolving sanding wheel with which the chisel came in contact. The chisel was hurled downward and penetrated his thigh with the result that the leg required amputation. The class was under instruction at the time of the accident. The Court, in dismissing the action against the school board, held that the boy was solely responsible for the accident.

Human prudence would be taxed beyond reason, were it to endeavor to foresee every possibility of human ingenuity, as boyish mischievousness, in its search for opportunities to get into trouble, in even the remotest and most unlikely corners, nooks, or crannies. The evidence is that no one has any use for a wood chisel at a sanding machine, and that no such tool is ever used at such machine.

An Alberta pupil suffered injury when his hand came

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in contact with a mechanically operated saw during an examination. The examination was being conducted by the Department of Education and not by the board of trustees. The Trial Court found the board of trustees liable but the Appeal Court reversed the decision and held that the defendant board was not responsible for the plaintiff's use of the machinery nor should it be held liable because it did not prevent him, which it had no legal right to do, from taking the examination.

In a British Columbia case, a pupil was injured by an explosion in a laboratory. The accident occurred during the noon recess when the teacher was not present with the result that the plaintiff lost the sight of one eye. The accident took place in 1921 but the action was not initiated until 1929, after the plaintiff had reached his majority. The Court ruled that no action could be taken against the board of trustees as the Public Schools Act required such action to be brought within three months after the alleged act of negligence.

In the first two cases mentioned above, the equipment


used was in safe repair and there was adequate supervision of the activities. It is possible that the Court would have found for the plaintiff had the last-mentioned case been brought forward within the prescribed time limit. The standard of care in this instance does not appear to be of the degree required to pass the "careful parent" test.

Unsuccessful actions for injuries sustained during physical education activities. Courts acknowledge the fact that the mere possibility of injury is not sufficient cause to establish a breach of duty on the part of school authorities. In Ontario, a nine-year-old boy suffered a broken arm in a wrestling match which had been organized as part of a series of athletic contests by the teacher.\textsuperscript{94} The board of trustees and the teacher were sued for damages suffered by the boy. The Trial Court found for the plaintiffs, but the Appeal Court reversed the decision on grounds that wrestling was not inherently dangerous and even though no instruction was given as to holds, there was no actionable negligence on the teacher's part.

In a second Ontario case, a twelve-year-old pupil suffered a broken wrist during the break-up of a pyramid.\textsuperscript{95}


\textsuperscript{95}Murray et al. v. Board of Education of the City of Belleville, [1943] 1 D.L.R. 494, O.W.N. 44.
The Court found the defendant board of education not liable for damages sustained by the pupil as he had not been forced to take part in the exercises, and he had been coached in the performance of the exercises.

... the court ... can take notice that there is an element of danger in all sports and even in less dangerous ones, danger can be reduced to a minimum when the participants observe the rules of the game, play with reasonable prudence and care after having in the proper cases, been progressively trained and coached in such exercises. I find as a fact that the infant plaintiff had been reasonably trained and coached in the performance of this exercise. 96

An Ontario pupil, of fourteen years, suffered a broken elbow when he was injured in some unexplained manner while vaulting the horse. 97 The plaintiffs claimed the injuries were sustained by reason of negligence on the part of the board, in that no competent instructor was in attendance at the time. Evidence showed that the boy had received some instruction in this physical exercise, that he was aware that some risk was involved, and that he himself was clumsy at it. Although the instructor was not present during the activities and the senior boys assigned to supervisory duties were busy elsewhere in the gymnasium when the accident occurred, the Court held that the plaintiff could

96 [1942] 1 D.L.R. 494 at p. 496.

not recover damages. There was no evidence from which the effective cause of the accident could be inferred and if the school board was negligent in not providing proper supervision such negligence was not a *causa causans* of the injury.\(^{98}\)

Another Ontario pupil sought damages in respect to an injury alleged to have been sustained at an athletic meet.\(^{99}\) The injury was not reported at the meet where a doctor was on duty. The defendant board was unaware of the injury until action was commenced some five years after the athletic meet. The action was not initiated within the six month limit as was required by the *Public Authorities Protection Act*. The Appeal Court, without deciding whether the defendants were entitled to the protection of the Act, dismissed the action on the grounds that the statement of claim disclosed no reasonable cause of action.\(^{100}\)

From the cases reported, it would appear that lack of instruction in the proper methods of performing physical activities that are not inherently dangerous does not constitute negligence on the part of school authorities. In

\(^{98}\)[1940] 3 D.L.R. p. 466.

\(^{99}\) *Levine v. Board of Education of the City of Toronto*, [1933] 0.W.N. 238; affirming [1933] 0.W.N. 152.

\(^{100}\)[1933] 0.W.N. 238.
reference to the more dangerous physical exercises, lack of supervision of such activities does not in itself constitute negligence provided the participants have had instruction in the proper methods of executing such exercises. If, in the presence of a supervisor, an accident could as likely have happened, then the accident cannot be attributed to a lack of supervision.

Successful actions for injuries sustained during physical education activities. There is only one reported case in which the plaintiff has been successful in an action against school authorities for negligent acts in the performance of their duties in connection with organized athletic activities. The reported case originated in British Columbia some forty years ago.\(^{101}\) In this case the school board declared a school holiday and authorized a program of sports for the day. The principal of one of the schools organized a shooting contest as part of the activities. A twelve-year-old boy suffered the loss of an eye as a result of an injury sustained when the rifle he was using backfired. In an action for damages the Trial Court awarded damages against the school board but dismissed the action against the school principal. The decision of the lower

\(^{101}\text{Walton v. Vancouver Board of School Trustees, [1924] 2 W.W.R. 49, 34 B.C.R. 38, 2 D.L.R. 387.}\)
Court was affirmed by the Court of Appeal where it was held that the trustees were responsible for the holding of the competition and they should have surrounded it with proper safeguards.

**Unsuccessful actions for injuries sustained during school excursions.** In a Nova Scotia case, a horsedrawn bobsled carrying 15 to 20 pupils, on a school sponsored and chaperoned sleigh ride, "slewed" against a parked oil truck.\(^{102}\) The projecting legs of the sixteen-year-old female plaintiff were fractured when they were jammed between the truck and the bobsled. The Trial Court awarded damages to the plaintiff. A new trial was ordered by the Appeal Court on grounds that the jury did not act reasonably or judicially in finding that the infant plaintiff was not guilty of negligence in having her legs outside the bobsled. The evidence supported the finding that the driver of the bobsled was not negligent and the truck was legally parked in accordance with the Motor Vehicle Act.

**Successful actions for injuries sustained during school excursions.** An Ontario case concerned an excursion unauthorized by the board in which the side of an overloaded truck gave way spilling the pupils to the ground. The

\(^{102}\) *Taylor et al. v. Irvin Oil Company Ltd. et al.*, (1957) 39 M.P.R. 373.
teachers had decided to grant a half holiday to allow the pupils to attend a concert in a school in a nearby town.\footnote{Beauparlant et al. v. Board of Trustees of Separate School Section No. 1 of Appleby et al., \cite{1955} O.W.N. 286, 4 D.L.R. 558.} At least sixty-six pupils crowded into the truck for the trip. After a few miles of travel the side of the truck gave way and a large number of pupils were injured. The action for damages was brought against the board of trustees on the ground that the infant plaintiff, while in the custody of and under the control of the school board, or its servants or agents, during school hours was directed to travel in the vehicle for purposes connected with his schooling. The Court found that the trip was not authorized by the board and that the contemplated activities could not be brought within the broad and comprehensive general subject of "social studies."\footnote{1955} Consequently, the action against the board was dismissed. Had the action been brought against the teachers or the truck driver the decision might have been different.

\textbf{Injury sustained during school patrol operations.} Only one case has been reported in Canada in which injuries have been sustained by a pupil being directed by a school safety patrol. In this case a six-year-old girl ran out
from the patrol and was in collision with a passing truck. The patrol leader had stopped the group of children to allow a car to pass and the truck that struck the plaintiff was following the car. In the action against the truck driver and his employer the Court held that the defendants were liable for damages.

... a prudent and reasonable person in the driver's position would have apprehended the dangers latent in it, since he could not be certain that each group of children so young would have in mind that another car would be following the car that had passed or would be on the lookout for it or would be so alert that the driver need not sound his horn, an obvious precaution which might have prevented the accident.

Had the school board been charged in this action it might have clarified to some extent the position of the board with regard to liability for injuries sustained by pupils being conducted by school patrols. Where school safety patrols have been authorized by school authorities, liability for damages incurred by injuries to pupils being conducted by the patrol would in all likelihood fall upon the board of trustees.

Unsuccessful actions for injuries sustained in school transportation. There has been only one reported Canadian


106 3 W.W.R. 390 at p. 390.
case in which a pupil being transported was injured and no blame was attached to anyone. In this British Columbia case, a six-year-old girl was injured after safely alighting from the school bus.\textsuperscript{107} The plaintiffs sought damages against the bus driver and the school board alleging negligence on the part of the driver. The Court ruled that neither the driver nor the board of trustees had been negligent. All the precautions that they could reasonably be required to take in transporting the pupils to and from school had been taken. The accident had occurred after the bus had proceeded some distance from the unloading zone and it appeared that it had happened by reason of what the infant plaintiff did rather than from any negligence on the part of the driver.

**Successful actions for injuries sustained in school transportation.** In a recent successful action occurring in Ontario, a school bus collided with a train and several plaintiff passengers were injured.\textsuperscript{108} In the action that followed the owner of the vehicle was held liable and the

\textsuperscript{107} Lovell et al. v. Budd and the Board of School Trustees of School District No. 66 (Lake Cowichan), (1956) 5 D.L.R. (2d.) 324.

school board was also held liable on grounds that the
vehicle owner and his drivers were servants of the board.
This decision was appealed by the board and the Appeal Court
maintained that the owner was an independent contractor as he:

serviced and maintained his buses at his own
expense; hired, paid and discharged his drivers
without consulting the board; and the latter, far
from controlling the manner of driving, which is the
vital test, was neither entitled to assert such con-
trol nor did it seek to do so, and any instructions
from the board with respect thereto were in the way
of admonitions and solicitude for the welfare of the
pupils. . . . 109

The school board was not required by statute to
transport the pupils to and from school, and therefore could
not be held liable for the negligent acts committed by the
independent contractor in providing transportation.

In Saskatchewan, a horse-drawn school van overturned
and a pupil sustained an injury. The driver had lost con-
trol of the horses when one of the reins got loose from the
bit. 110 The Court found negligence on the part of the
driver and the school board sought to avoid liability on the
grounds that the driver was an independent contractor. The
Court ruled that the board was liable as it controlled the


110 Tyler and Tyler v. Board of Trustees of Ardath
route and was empowered to discontinue the use of the van at any time without notice to the contractor and the contract could not be assigned by the driver without the consent of the board. Taylor, J., in his judgment, stated:

The board dictates in entirety the extent of control it reserves to itself and what control and licence in execution may be exercised by the driver. In some cases it may be expedient to trust the driver more than in other cases. In any case, no matter to what extent the driver be trusted and reliance placed on his discretion, he remains the servant of the board. 111

A Manitoba pupil suffered a broken arm as a result of an accident sustained when a school van overturned. 112 In the action, the Court held that the accident was due to the driver's negligence and that the van itself was defective. The school board contended that the driver was an independent contractor. The Court ruled that the driver was a servant of the board and went on to emphasize that even if the driver was an independent contractor the board could not escape its responsibility by employing him as such, because the board was compelled by statute to transport the pupils to and from school. Quoting from Halsbury, the Court stated:

Where a person employs another to do work which does, or in the natural course of things will,


involve or result in a duty on the employer either towards the community or towards a third party, the employer cannot escape the responsibility for the performance of that duty by employing someone else to perform it, however competent such person may be, even though such person is an independent contractor and has agreed to assume the whole responsibility.\textsuperscript{113}

In an Alberta case a pupil was injured when she was thrown out and pinned beneath the van she had been riding in after it had collided with a truck at an intersection.\textsuperscript{114}

The driver of the van and the truck driver were both found to have been negligent in the operation of their vehicles. The school board was liable for the negligence of the van driver as a master-servant relationship existed. The Court did rule that the school trustees were entitled to contribution from the owner of the van, in respect to damages they were required to pay.

Where school boards have undertaken to provide transportation they must assume responsibility for the pupils' safety during such transportation. In some instances the responsibility for the safe transport of pupils may fall upon an independent contractor when one has been engaged for providing transportation facilities for the pupils.

\textsuperscript{113} Halsbury's \textit{Laws of England}, Vol. 27, p. 486, quoted in \textit{ibid.}, p. 412.

\textsuperscript{114} Sleeman and Sleeman v. Foothills School Division No. 38 \textit{et al.}, [1946] 1 W.W.R. 145.
It is evident from the cases considered that the degree of control exerted by an employer, over the manner in which services are carried out, is the criterion used to determine whether or not the services are being provided by an independent contractor. A school board will not be held liable for the negligent acts of independent contractors who are providing services that the board is permissively authorized by statute to carry out. On the other hand, school boards cannot escape liability for the negligent acts of independent contractors in carrying out services that the board is obliged to provide.

Unsuccessful action for injury involving independent contractors. A British Columbia pupil sought damages for an injury received when an iron section from a steam heating unit fell upon and broke his leg.\textsuperscript{115} The section weighed some five hundred pounds and had been placed in a safe position on the basement floor. The teacher later had the section placed against the wall in an almost perpendicular position. It was from this position that it fell injuring the pupil. The Court ruled that the contractors could not be held responsible for an injury resulting from the object being moved by a third party to a dangerous position, which

change the contractor could not have reasonably foreseen. In dismissing the action the Court emphasized that the judgment did not preclude the plaintiffs from bringing action against any other person or persons in connection with the injury. In other words the action had been launched against the wrong party.

Successful action for injury involving independent contractors. A Saskatchewan case concerned a pupil who was injured when a piece of timber supporting a pulley arrangement fell and struck him on the head. The contractors were engaged in repairing the roof of the school and had devised a pulley arrangement to lift materials to the roof. At the time of the accident two pupils were being lifted above the ground on the hoist by ten or twelve other pupils who were pulling on the rope. The timber on the roof supporting the pulley arrangement broke and a piece of it struck the plaintiff on the head. Evidence showed that the principal knew of the possible danger to the pupils as he had orally warned them to stay away from that area. Although the principal knew that the pupils had not heeded his oral instructions in the past, he did nothing to see that his instructions were carried out. Evidence also showed that

the construction workers had been forced to chase boys away from the ropes on several previous occasions, but had done nothing to keep the boys away or the equipment out of their reach. The Trial Court found both the contractors and the school board liable for damages in connection with the accident. The Appeal Court affirmed this decision and in so doing, Mackenzie, J.A., stated:

... the duty of supervision which the trustees failed to fulfill was one which arose out of a particular relationship which subsisted between them and the infant plaintiff. Such a duty falls without, and is altogether independent of, their agreement with the contractors for the repair of the roof.\textsuperscript{117}

In reference to the contractors the Justice continued:

I am also of the opinion that there was evidence of negligence on the part of the contractors. Apart altogether from the duty of the trustees to the pupils, the contractors were under the duty to take reasonable care to see that their operations in repairing the roof were carried on in a way which would not endanger the safety of those who were lawfully on the school premises. There is evidence to show that they failed in this duty.\textsuperscript{118}

The school board was liable in this instance because the statutes place supervisory responsibilities upon the school board and these responsibilities cannot be delegated to other parties.

\textsuperscript{117} [1946] 2 W.W.R. 19 at p. 30.

\textsuperscript{118} \textit{Ibid.}, p. 31.
Conclusions

Fleming asserts that the law of torts is concerned with the allocation of losses incident to man's activities in modern society.\textsuperscript{119} Hence, the law of torts undergoes change so as to conform to prevailing social conditions. Although it is difficult to enumerate the principles established by courts in actions arising out of negligence because of the changing element in tort law and because each case is unique, there does appear to be certain principles that may be inferred from the cases considered. Certain statutory provisions regarding liability, likewise deserve special mention.

1. School boards, in Saskatchewan, are not immune from liability for their torts. To be successful, however, actions for liability must be instituted against boards within the time limits specified by statute.

2. Teachers, in Saskatchewan, are immune from liability for damage caused by pupils to property, or for personal injury suffered by pupils in the course of activities sponsored by the teacher, the principal, or the board.

3. Pupils have a right to a standard of care from school authorities equal to the care that a "careful parent" would give to his child. This standard varies with the age

\textsuperscript{119}Fleming, \textit{op. cit.}, p. 4.
and ability of the pupil and with the activity in which the pupil is engaged. Constant supervision is not required.

4. Canadian courts, in recent cases, have held that the standard of care owed by school authorities to pupils is the standard owed by an invitor to an invitee. In the past, some courts had maintained that a higher standard than this was required because the pupil is "compelled" to attend school.

5. School authorities are required to maintain buildings and equipment in safe repair. They may be held liable for damages if injuries sustained by pupils have been caused by faulty equipment or unsafe buildings.

6. When the immediate cause of injury is some act of the pupil himself, absence of supervision on the part of school officials does not in itself constitute actionable negligence.

7. A teacher may be held liable for damages incurred through the aggravation of an injury for which the teacher was not initially liable.

8. In general, school authorities are not held responsible for injuries to pupils on school grounds out of school hours, unless there exists on the grounds an allure- ment or trap.

9. School authorities are not held responsible for injuries to pupils off school grounds, unless the pupils are
considered to be under the control of school authorities at
the time of the injury.

10. School authorities are generally responsible for
the tortious acts of their employees, except in the case of
independent contractors who perform services that the author-
ities are not expressly required to provide by statute.

11. Contributory negligence on the part of the plain-
tiff, does not constitute a complete defence as it once did.
When the plaintiff is guilty of contributory negligence the
degree of fault attributable to the plaintiff and defendant
is ascertained and the damages are apportioned accordingly.
Courts at one time maintained that a child of tender years
could not be guilty of contributory negligence but recent
legal opinion disagrees with this view. Instead, it "is a
question for the jury in each case whether the infant exer-
cised the care to be expected from a child of like age,
intelligence and experience."120

12. Courts will not hold school authorities liable
for damages in cases of mere non-feasance except where it is
established that they negligently failed to perform a duty
to the plaintiff which is imposed on them by statute.
School authorities are liable for mis-feasance where a dis-
cretionary duty is performed improperly.

CHAPTER X
CONCLUSIONS

Legal Knowledge Requirements of School Personnel

Since the publicly-supported school is a creation of law, all school administration is performed within a legal framework. School personnel must have a fundamental understanding of school law if they are to perform their administrative duties adequately. Therefore, the acquisition of a knowledge of the law, as it relates to schools, is the responsibility of all persons engaged in public school service.

School personnel, to be legally literate, should possess a knowledge and understanding of:

1. The pertinent statutes concerning the nature and legal source of public school control that have emanated from federal and provincial sources;

2. The regulations and orders authorized by various legislative Acts which relate to education, issued by orders of the Lieutenant-Governor in Council;

3. The policies and regulations formulated by the local school boards;

4. The legal principles that apply to school issues which have arisen from case law; and

5. Legal terminology, in order to read case law and legal literature with some degree of understanding.
Attaining Legal Literacy

The most appropriate method by which school personnel may acquire a knowledge of the law, as it applies to public education, is through the regular courses offered in school law by educational training institutions. Courses of this nature have been offered by training institutions through the years. They have tended, however, to be concerned, chiefly with statute, rather than case law. The probable reason for this is that such courses have been taught usually by educators, who have had little or no training in law. Such courses should be conducted by lawyers in order that students, in addition to their study of statute law, could explore judicial interpretations and deal with the legal principles underlying court decisions. As time passes and as educational practices become more complex, the body of school law increases and changes occur in existing law. This increase and change in the body of school law makes it necessary that educators keep abreast of legal happenings. The courses in school law taken during training must be supplemented for school personnel to obtain a knowledge of existing school law and keep abreast of the law as it changes. This may be accomplished by enrolling in a regular or summer school class offered by a training institution or through an in-service education program in school law.
An in-service education program could serve: (a) if conducted by means of institutes and conventions, a large body of teachers through the engagement of legal experts to address them on aspects of school law; (b) smaller groups through faculty meetings and special discussion meetings where pertinent areas of statute and case law could be discussed; (c) to familiarize teachers with the policies formulated by local school boards through study and discussion of school policy regulations and bulletins; (d) to help teachers in their selection of books and periodicals for a professional library which would assist them in gaining a knowledge of existing law and in keeping pace with changes as they occur; and (e) to instruct teachers on school safety problems and the legal implications of school safety laws.

Measures to Minimize Litigation

Certain procedures should be implemented by school administrators in order that the likelihood of their facing court action be reduced to a minimum. The following recommendations, if carried out, would, in the writer's opinion, tend to serve such a purpose:

1. School personnel should comply with all legal requirements. Legal action is sometimes instituted because someone was ignorant of the law or because someone deliberately disregarded it.

2. As a recognized part of school policy, written
rules should be adopted and enforced in the school. The
rules and regulations adopted should be clearly understood
by the students as well as by the teachers. Legal advice
should be sought before their adoption in order to ascertain
if the rules are such that a court would be likely to accept
them as being "reasonable."

3. When school authorities are faced with some
unique situation, competent legal advice should be sought
before a decision is reached regarding the action to be
taken. If school authorities act in good faith and adhere
to the recommendations of a competent legal adviser their
actions are more likely to be sound.

4. A definite plan of pupil supervision should be
instituted in the school. Although supervision in itself
does not rule out the possibility of accidents, a court is
less likely to hold school personnel liable for negligence
with respect to accidents that occur where there has been
adequate supervision.

5. School personnel should maintain a system which
provides for the regular inspection of school property and
school equipment. Failure to inspect and repair faulty
equipment can lead to injury which may result in court
action.

6. Special stress should be given to teaching the
units on safety that are included in the school curriculum.
Maintaining a record of all accidents that occur on the school premises will help to point out unsafe areas which require attention.

7. Despite all precautions accidents will occur. In such cases, no treatment beyond the necessary first aid measures should be given. Emergency referral cards should be kept up to date at all times. These cards should contain the name of the family doctor and the addresses of persons to contact when it is impossible to locate the pupils' parents.

8. Definite excursion regulations should be adopted and enforced. Before a pupil is taken on an excursion, a form should be provided for the parent to sign giving the parent's permission for his child to participate in the excursion.

Recommendations

In carrying out this study, the writer encountered several inconveniences in his attempt to ascertain the rights, privileges, and responsibilities of the Saskatchewan school pupil. The following recommendations, if implemented, would, in the writer's opinion, serve as facilitating factors in determining the law as it applies to education in this Province.

1. Interested parties could gain a greater understanding of school law, in a much shorter time, if such law
were codified. At the present time laws pertaining to school affairs are contained in upward of twenty statutes, which undergo amendment from time to time. A person desiring to know the law as it relates to a certain area of school affairs must search through a large quantity of statutory matter in order to assemble the pertinent material. By codifying the school law, all points relating to a certain aspect of the law would be contained in the same section of the code making it much easier to locate and study.

2. The study of school law would be simplified greatly if the statutes were revised more frequently. The last official revision of the Saskatchewan statutes took place over a decade ago, in 1953. Since that time many changes have taken place in school affairs and one must work back through the amendments to 1953 to determine the law as it stands at the present time.

3. The regulations, under the various Acts, were last consolidated in 1944. A more frequent revision and consolidation of the regulations authorized by orders of the Lieutenant-Governor in Council would ease the burden of determining the school law in effect at any particular time. Many regulations that were effected two decades ago have since ceased to apply to present day situations. For example, the regulations of 1944 regarding buildings are not
consistent with the present recommendations of the Department of Education in connection with buildings. In some instances regulations that appear in the 1944 consolidation have been superseded by regulations that have appeared in the Saskatchewan Gazette since that time, but school personnel do not ordinarily receive the Saskatchewan Gazette and many are likely to be unaware of the changes.

4. Individual issues of the Saskatchewan Gazette should be indexed and an annual index should be provided. There is no means of knowing if regulations under a specific Act are included in a specific issue of the Saskatchewan Gazette, except by searching through all the pages of the issue. It is true that each volume of Statutes of Saskatchewan contains an index of regulations under the various Acts, but there is a time lag of up to six months in this index. Furthermore, some of the regulations are not included in this index, and even if they were all included, very few school personnel have access to the annual Statutes of Saskatchewan. If each issue of the Saskatchewan Gazette contained an index, locating regulations would be simplified and the possibility of a person overlooking regulations would be lessened.

5. Educational personnel would be greatly assisted in keeping up with school regulations if the Department of Education printed in loose-leaf from the regulations as they
became effective and supplied each school and each school board with copies.

Although there are some difficulties to be encountered by school personnel in attempts to improve their understanding of school law, such difficulties can be overcome and great benefits can accrue to those who will take the time and effort to do so. Bolmeier, speaking of teachers and administrators, expresses this view quite cogently in the following words:

Most classroom teachers and school administrators do have the opportunity to improve their understanding of school law. Those who avail themselves of the opportunity will be broadening their qualifications for more useful service in the teaching profession. Teachers and administrators are all affected in many ways by school law, but only those who develop an understanding of legal principles as applied to school affairs can be relied upon to assist in improving school law to meet the needs of an ever-changing society.\(^1\)

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