THE LEGAL RESPONSIBILITIES OF THE PUBLICLY ELECTED SCHOOL BOARDS OF SASKATCHEWAN

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CHAPTER I

THE PROBLEM AND THE PROCEDURES USED IN THE STUDY

Introduction

The administration of our expanding school system is becoming increasingly more difficult as it becomes more complex. As one studies the development of our educational system, it is apparent that administration of schools has never been without problems. Many of these problems have been solved by discussion between the parties concerned, but there have been numerous occasions when the courts have been asked to resolve the situation.

Approximately a decade ago, Leipold wrote the following in reference to school administration and the law:

> The complexities of modern school administrative practices make an understanding of the fundamentals of school law necessary for all school personnel. A school board member or school administrator of the year 1954 cannot be a legal illiterate and still fill his position adequately.[1]

Reutter is of the opinion that a knowledge of fundamental principles of law is not sufficient for educators.

> Educators should know certain overarching principles of the law which are pertinent to educational problems. Furthermore, they should know how these principles have been applied in specific instances involving educational matters.[2]

Leipold, in another article, adds to the above opinion the recommendations that educational officials must know the contents of the state code and that they must bear in mind the opinions of all

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[1]L. E. Leipold, "A Digest of School Law," School Executive, 73:43, August, 1954.

[2]E. E. Reutter, "Essentials of School Law for Educators," Teachers College Record, 59:444, May, 1958.

school personnel, from the classroom teacher to the states' chief school officer.[3]

Saskatchewan's publicly supported educational system is a creation of the law and because of this there are few decisions, if any, of educational officials which do not contain a legal element. This fact makes a study of the legal aspects of education important for all persons involved in the provision of educational services, especially school board members. Actions based on decisions which are made in ignorance of legal provisions or stipulations are often the bases for litigation which may adversely affect the entire school system. Perhaps a desirable by-product of such litigation is that officials are made aware of the fact that the legal element of an educational decision must be considered.

There may be occasions when a school board finds it difficult to apply a specific legal principle. In such instances, both McCann[4] and Garber[5] suggest that competent legal advice should be solicited.

In order that our publicly supported schools fulfill their purpose of providing our nation with an enlightened citizenry, the persons involved in the operation of these schools have a duty to be

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[3]L. E. Leipold, "Four Steps to Understanding School Law," American School Board Journal, 136:22-3, June, 1958.

[4]Lloyd E. McCann, "Official Rulings Which Support Sound Educational Practice," American School Board Journal, 148:21-2, February, 1964.

[5]Lee O. Garber, "Why Schools Should Find a Competent Attorney and Follow His Advice," Nation's Schools, 68:64-6, August, 1961.

aware of the legal responsibilities of the publicly elected school board.

General Statement of the Problem

In the study of the legal responsibilities of the publicly elected school boards of Saskatchewan, the question of "what is law" arises. Remmlein defines "law" as follows:

> The word "law" used in general terms means the body of legal rules which stem from all sources, and in this sense it includes much more than statutory enactments.[6]

These sources are: constitutional provisions, federal and provincial statutes, regulations of the department of education, school board regulations, and judicial decisions.

The regulations issued by the department of education and local school boards have the same authority as legislative enactments. Many regulations of boards are in areas in which the statutes are either silent or not sufficiently explicit. Consequently, these regulations are often the subject of litigation. In this manner, judicial clarification and interpretation of controversial educational issues become valuable sources of legal principles supplementing constitutional provisions and statutory enactments.

It is beyond the scope of this study to attempt to cover all

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[6]Madeline Kinter Remmlein, School Law, Toronto: McGraw Hill Book Company, Inc., 1950, p. 1.

possible legal problems which may be the concern of the publicly elected school boards of Saskatchewan. It is also well to remember that the evolutionary nature of law complicates any such study. Every year new statutes are enacted and existing ones are amended in order to meet new problems and changing conditions. As is shown in the review of the literature, judicial interpretation of issues may also be changed if the judiciary is of the opinion that a change is needed.[7] In reference to this point, Reed states:

> Education Law touches the lives of more persons than any other branch of law. The law affecting education, like that in other areas, often needs to be adjusted to meet new conditions and problems.[8]

The purpose of this study is to synthesize legal data in certain areas of the legal responsibilities of the publicly elected school boards of Saskatchewan, as ascertained by legislation, statutory regulations, court decisions, and boards of reference. The data examined are not exclusively Saskatchewan oriented since other provinces have legislation which is similar, in some areas, to that presently in effect in this province.

Delimitation of the Study

The decision with respect to the subject matter areas to be included in this investigation presents some difficulty, since some

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[7]See pp. 12-3.

[8]Wayne O. Reed, "School Legislation," School Executive, 73:80, June, 1954.

of these areas have already been explored in a recent study.[9] The writer is of the opinion that a repetition of the material previously examined would not contribute significantly to the study of education and law. There are, however, certain aspects of the board's legal responsibilities which require additional examination when considering them from a different point of view. For example, in the part of this study concerned with school premises, the legal responsibility of boards in the selection of the site, obtaining the site, and control over the use of school facilities will be examined. The previous legal study, which centered on the school pupil, is concerned with school premises in so far as they provide accommodation and affect the health and safety of the students.[10]

This study is further delimited in that no examination is made of the legal responsibilities of the education committee of a county council in the county system of local government.[11]

The specific purposes of this study are:

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[9]Ivan Leland MacKay, "The Legal Rights, Privileges, and Responsibilities of Pupils in the Publicly Supported Schools of Saskatchewan," Unpublished Master's Thesis, University of Saskatchewan, 1964, 367 pp. This study includes a discussion of certain legal responsibilities of boards in relation to pupils. Topics included are: a study of the legal position of separate schools, issues associated with attendance at school, the legal bases of pupil control, transportation, and liability arising from negligence.

[10]Ibid., pp. 198-211.

[11]Despite the fact that Saskatchewan has legislation providing for the establishment of "Municipal Units" or "Counties", no such unit of local government has been established to date. Uranium City, which is located in the remote northern area of Saskatchewan, has a civic government which is similar in structure to that of a county system.

1. To ascertain the legal responsibilities of the publicly elected school boards through an examination of the relevant legislative enactments and statutory regulations;

2. Through an analysis of the relevant court decisions to enunciate general principles related to the legal responsibilities of the publicly elected school board;

3. To synthesize the decisions of boards of reference established by law to consider certain aspects of teacher-board contracts;

4. To evolve some recommendations that may assist school boards in Saskatchewan in formulating sound decisions in the provision of educational services.

The Need for the Study

With reference to a knowledge of law in general, people may be classified into the following three divisions:

1. Because of an absence of litigation, there may exist a naive unawareness of the law;

2. There may exist a fear of the law. This fear, when present, is usually the result of unfamiliarity with the law;

3. There may be the opinion that much more is known than is actually the case.[12]

Reutter stresses the need for a knowledge of law and urges educators to make use of such knowledge:

> . . . there is a need for intelligently assessing the legal bases of both everyday and long-range educational policies.

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[12]Reutter, op. cit., p. 441.

> Educators must help to make the law work as an instrument in the progress of education.[13]

It is hoped that this study will aid school boards in attaining a degree of familiarity with the law as it affects them and that it will help them in the application of legal principles to problems for which they must find solutions.

The Procedures of the Study

To ascertain the legal responsibilities of the publicly elected school boards of Saskatchewan, the appropriate portions of the following statutory material 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 1964;
5. Regulations under the Statutes of Saskatchewan, 1944;
6. Regulations included in the Saskatchewan Gazette, 1944-1964.

In order to ascertain the legal responsibilities of the school board as interpreted by court decisions, the relevant court cases originating in Saskatchewan are reviewed. In addition, court cases originating in other provinces are examined where statutory provisions in those provinces are similar to those presently in effect in Saskatchewan.

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[13] Ibid., pp. 449.

In order to ascertain the legal responsibilities of the school board as interpreted by boards of reference, it is necessary to review disputes in which such boards have been established.

Definition of Terms

The following terms are used generally throughout the study and are defined here for the convenience of the reader. Where specialized terms are used, they are defined at the point they occur.

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

1. H. C. Black, Black's Law Dictionary, 4th Ed., 1951.

2. Earl Jowitt, The Dictionary of English Law, 1959.

3. J. B. Saunders, Ed., Mozley and Whitely's Law Dictionary, 7th Ed., 1962.

Case law. The aggregate of reported judicial decisions that form a body of jurisprudence, as distinguished from statutes and other sources of law.

Injunction. This is a prohibitive writ issued by a court of law, at the suit of a party complainant, directed to a party defendant in the action, forbidding the latter to do some act which he is threatening or attempting to commit.

Mandamus. This is a court order 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. It is considered remedial and is issued to compel performance of duty and

redress past grievances.

Municipal council. This term applies to the elected representatives responsible for administering local government within the geographical boundaries of the municipality. It includes: rural municipal council, village council, town council, and city council.

Municipality. This term refers to the geographical area in which a form of local government has jurisdiction. It includes: cities, towns villages, and rural municipalities.

Natural law. This term denotes a system of rules or principles derived from God, reason, or nature, as distinct from man made laws. It is intended for the guidance of human conduct, independently of enacted laws or of the systems peculiar to any one people, and 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 condition.

Substantive law. This is the law actually and specifically enacted by the proper authority for the government of an organized society. The rules of conduct are laid down and enforced by sanctions.

Precedent. This is a decision of a court of law which is cited as an authority for deciding a similar state of facts in the same manner or on the same principle.

Regulations of an executive department. These are the general rules relating to a subject on which a department acts, made by the head of the department under some legislative enactment conferring power to make such regulations, and thereby giving them the force of law.

School board. This term applies to the elected or appointed persons responsible for administering the schools within certain geographical boundaries. It includes: board of trustees, public school board, high school board, collegiate institute board, separate school board, and larger school unit board.

School district. This term refers to the geographical area in which a school board has jurisdiction. It includes: rural school districts not included in larger school units, consolidated school districts, village school districts, town school districts, larger school units, and city school districts.

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

Organization of the Study

The major difficulty in organizing the material so that it will give the best possible degree of continuity and understanding is the fact that some topics are presented in many areas of board operation. The legal liability of the board is an example of such a topic. The writer, however, decided to devote an entire chapter to an examination of the board's legal liability.

The relevant case and statutory material is presented throughout each chapter and the legal principles arising from this material are summarized at the conclusion of each chapter.

The organization of the study is as follows:

Chapter 2: A review of the literature.

Chapter 3: A consideration of the legal authority of the

educational system in Saskatchewan.

Chapter 4: An examination of the corporate status of the school board.

Chapter 5: An examination of matters related to the financing of the corporation, including taxation.

Chapter 6: A consideration of certain aspects of school premises.

Chapter 7: A study of school board contracts.

Chapter 8: An examination of the legal liabilities of the school board.

Chapter 9: Conclusions.

CHAPTER II

REVIEW OF THE LITERATURE

Introduction

Most of the available material in the general area of education and law originates in the United States. However, this area appears to be of growing concern in Canada and recently there have been several notable contributions by Canadian scholars. Since most of the Canadian studies are quite broad in scope, the last section of this chapter is devoted exclusively to a general review of the Canadian literature.

In the main, the writer will attempt to review the literature from the point of view of the law as it applies to the school board.

School Law in General

A publication sponsored by the Montana school board association makes the following general comment about law:

> The law is a fluid thing, constantly changing. What is law at the time of writing this handbook may not be law a month or two later. Court interpretations, Supreme Court decisions, and Attorney General's opinions may change the apparent meaning of law. Trustees should realize that legislation enacted into law may be changed by any one of several methods.[1]

Garber gives examples in which the courts, especially the United States Supreme Court, have departed from legal precedent when, in their opinion, changing conditions expressed the need for a new principle.

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[1]Aaron W. Harper and Robert H. Jay, A Handbook for Montana School Board Members, Montana School Board Association, Inc., 1963, p. 53.

Four areas in which the United States Supreme Court has changed the educational scene are: (1) integration of the white and negro races in schools, (2) release time for religious instruction, (3) tort liability of school boards, and (4) Bible reading and prayer.[2]

Educational legislation may include too much detail on a specific issue and in this manner may tie the hands of school officials in their attempt to meet developing needs. Brickman criticizes legislators for enacting laws without sufficient consultation with professional educators and he advocates close cooperation, in the drafting of laws affecting education, between the two groups.[3] Kalven[4] and Keesecker[5] both express the opinion that educational interests are best served when the law does not tie the hands of state and local educational officials, but rather allows them to apply, enforce, and alter rules to achieve the most desirable program for the students.

Woods asserts that the customs, traditions, and mores of the people in the various states have a stronger influence on educational decisions than do written laws. Furthermore, he believes that these

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[2]Lee O. Garber, "How the Courts are Changing the Education Scene," Nation's Schools, 69:92-3,106, January, 1962.

[3]W. W. Brickman, "Legislative Follies and the Schools," School and Society, 86:296, June 21, 1958.

[4]Harry Kalven, "Law and Education," School Review, 65:302, September, 1957.

[5]Ward W. Keesecker, "Legislation as it Affects School Administration: Principles and Trends Across the Nation," School Life, 32:124, May, 1950.

customs, traditions, and mores are reflected in judicial interpretation of the law.[6]

The written law varies from state to state, but in all states constant revision is taking place. Cocking, in 1958, listed nineteen areas in which state legislatures had improved legislation affecting education.[7] Edwards advocates a go-slow policy for law-makers, regardless of the urge for change. Such a policy, in his opinion, is necessitated by the dual function of law: that of being a preservative and stabilizing influence as well as being concerned with adaptation and change.[8] In reference to the problem of past precedents versus change and adaptability, Gardner states that we must use past failures and successes as guides to develop successful patterns of action for the future.[9]

Hamilton and Mort consider many aspects of law in relation to education in the United States. They discuss many cases in their comparison of the conceptual design of education, which is the purposes to be attained, to the structural pattern, which is a combination of the legal system and practices in areas loosely defined by the law. They attempt to show that the structural

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[6]Ray C. Woods, "The Law Isn't the Last Word," School Executive, 77:62-5, February, 1958.

[7]Walter D. Cocking, "Schools and the Law," School Executive, 77:72, January, 1958.

[8]Newton Edwards, "Stability and Change in Basic Concepts of Law Governing American Education," School Review, 65:161-3, June, 1957.

[9]George K. Gardner, "Liberty, The State, and The School," Law and Contemporary Problems, 20:194-5, Winter, 1955.

pattern usually lags behind the conceptual design.[10]

Federal Participation in Education

In both Canada and the United States, education is the responsibility of the provincial and state authority respectively. However, in both countries, the federal governments are contributing substantial amounts of financial aid to education. Bolmeier is of the opinion that the United States federal government has almost unlimited power to promote education. As the basis for this opinion, he points to certain decisions of the United States Supreme Court.[11] However, in a later article, Bolmeier states that the trend toward greater federal participation does not mean federal control although many people do not take this point of view.[12]

Remmlein advocates acceptance of the theory of concurrent powers rather than mutually exclusive powers.

> . . . no power is exclusively a state power to the extent that it excludes the exercise of power by Congress unless the Constitution explicitly denies authority to the United States.[13]

The state authorities welcome financial aid for education from the

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[10]Robert R. Hamilton and Paul R. Mort, The Law and Public Education (Second Edition), Brooklyn: The Foundation Press, Inc., 1959, 641 pp.

[11]E. C. Bolmeier, "The Teacher and School Law," Elementary School Journal, 55:209, December, 1954.

[12]_____, "The School Principal's Proper Concept of School Law," The Bulletin of the National Association of Secondary-School Principals, 42:2, March, 1958.

[13]Madeline Kinter Remmlein, "Can Government Legally Control Education?" School Executive, 79:67, October, 1959.

federal government, but they have no desire to have the federal government participate in education in other ways. In view of this, Remmlein has stated the problem very succinctly in the following words:

> The problem then is how to preserve education as a state function by including statutory limitations on Congress within the bill giving aid.[14]

Legal Responsibility for Education

The state is responsible for the provision of educational services to all persons residing within its geographical boundaries. The state may, however, delegate responsibility and authority to local agencies. Regarding this delegation of powers, Hamilton and Mort have the following comment:

> A distinction is drawn between the delegation of legislative authority and delegation of authority to administer the law after it has been determined by the legislature. The distinction between legislative and administrative duties is indeed difficult to determine as an abstract matter. The only definite statement that may be made concerning the question is that courts are inclined to permit rather a wide delegation of powers to subordinate agencies through the device of holding the powers to be administrative in character, and that there is a point beyond which delegation may not extend. No case has been found which attempts to lay down any rule for the determination of what powers are legislative and what are administrative. Judicial liberality in permitting wide discretionary powers to be conferred upon subordinate agencies or officials may be explained by the fact that there seems to be no other practical device for effectuating the most workable district system within a state.[15]

The question of just what should be included in state legislation is answered by Remmlein who asserts that only broad policies

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[14]Ibid., p. 68.

[15]Robert R. Hamilton and Paul R. Mort, op. cit., p. 591.

should be enunciated with the details being left to the state and local administrative officials. The only exception to this would be the guarantee of a child's constitutional right.[16]

Compulsory Attendance Laws

Laws requiring students to attend school are on the statute books of all provinces and states. Woltz describes the reason for such laws in the following words:

> The controlling interest of the state is the development of a citizenry intelligent enough to maintain our democratic form of government. In the furtherance of this interest the free public schools have been established . . . .[17]

Kalven is of the opinion that compulsory education is probably the only instance in which the compulsory conferring of benefits is desirable.[18] Woltz, in extending this line of thought, claims that compulsory attendance laws are designed to operate only on a very small fraction of the population since most people want the benefits that accrue from an education.[19]

The School Board

The school board is a creation of the law and its powers are

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[16]Madeline Kinter Remmlein, "Statutory Problems," Law and Contemporary Problems, 20:137, Winter, 1955.

[17]Charles K. Woltz, "Compulsory Attendance at School," Law and Contemporary Problems, 20:10, Winter, 1955.

[18]Harry Kalven, op. cit., pp. 288-9.

[19]Charles K. Woltz, op. cit., p. 22.

limited to those expressly stated or implied by the statutes.[20] The operations of a board are restricted to the purposes for which it was created and it cannot participate in an activity outside the scope of that purpose. A board has the power to pass reasonable rules and regulations which will assist it in the provision of educational services. Leipold enumerates a number of problems facing boards and comments on the regulations designed to cope with these situations.[21] Garber also deals with problem situations which confront school boards.[22]

The powers of a board may be classified as being either ministerial, requiring little or no subjective judgement on the part of the board, or discretionary, permitting exercise of a board's subjective judgement. In Roach's opinion, boards must have this discretionary type of authority because of the great variation of educational needs within given areas. The courts will not usually interfere with a board's discretionary power unless the action of the board is unreasonable, in violation of existing law, or clear abuse of the authority.[23] Enns asserts that all powers, ministerial and

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[20]Lee O. Garber, "School Board's Authority Limited to Power Granted by Statute," Nation's Schools, 63:102, April, 1959.

[21]L. E. Leipold, "You Either Have the Right--Or You Don't," Clearing House, 28:69-77, October, 1953.

[22]Lee O. Garber, "Board's Bound by Power Specified in Statutes," Nation's Schools, 64:62, July, 1959; "School District Has No Police Powers," Nation's Schools, 68:48,83,86, July, 1961; "Board Has Right to Bar Pregnant Students from School," Nation's Schools, 69:84,104, May, 1962.

[23]Stephen F. Roach, "Abuse of School Board's Discretionary Authority," American School Board Journal, 138:67, February, 1959.

discretionary, must be carried out reasonably, for the intended purposes, and without negligence.[24] Roach considers a number of instances in which the board's authority to make specific regulations was questioned.[25]

Since school boards are composed largely of laymen who are not well versed in legal matters, courts have established the principle that school statutes are to be construed liberally and substantial compliance with such statutes, on the board's part, will be acceptable in ordinary circumstances. Courts are of the opinion that this principle allows the statutes to produce the intended beneficial results.[26]

The Legal Relationship of School Boards to Municipal Councils

The legal relationship existing between the two bodies of local government is summarized in the following comment:

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[24]Frederick Enns, The Legal Status of the Canadian School Board, Toronto: Macmillan Co. of Canada Ltd., 1963, p. 55.

[25]Stephen F. Roach, "Quasi-Judicial Decisions by Educational Officials," American School Board Journal, 128:45-6, February, 1954; "Good Faith Aspects of School Board Actions," American School Board Journal, 129:35-6, September, 1954; "Board Responsibility for a Principal's Disciplinary Action," American School Board Journal, 132:37-8, February, 1956; "School Board Discretionary Power and The Public Will," American School Board Journal, 135:68,70,74, September, 1957; "Board Rules Concerning Married Students," American School Board Journal, 136:56, June, 1958.

[26]_____, "Liberal Court Interpretation of School Statutes," American School Board Journal, 138:45, April, 1959.

> One of the pertinent legal principles invariably applied by the courts . . . might be stated as follows: School districts, even though coterminous with municipal boundaries, are local government units governed by a board of education. As such, they are separate, distinct, and free from the control of the municipal governing body except to the extent the education law provides otherwise.[27]

Transportation of Pupils

The decision of whether or not to transport pupils to school is usually decided by the distance from the pupil's home to the school. Punke emphasizes that the definition of a reasonable distance depends upon such variables as the type of road, traffic, and other hazards.[28]

When transporting pupils, it is essential that boards take the highest possible degree of care. This is made necessary, in Nolte's opinion, because the board cannot absolutely guarantee the safety of pupils while being transported.[29]

Since the tragedy at Lamont, Alberta, safety in transportation of students has been receiving considerable attention in Canada. In this connection, Nuttall describes recent developments in Alberta[30] and the Canadian Education Association summarizes latest happenings

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[27]Stephen F. Roach, "Conflicts Between School Districts and Municipalities," American School Board Journal, 139:33, July, 1959.

[28]Harold H. Punke, "Deciding Whether Pupils Ride or Walk," School Executive, 75:87-90, March, 1956.

[29]Chester M. Nolte, "Extraordinary Care Lessens Vulnerability," American School Board Journal, 148:40,42, June, 1964.

[30]J. W. Nuttall, "Bus Safety Receiving Increased Attention," School Progress, 31:40-1, August, 1962.

across Canada.[31]

Until 1959, school boards in the United States, as branches of the government, were not ordinarily liable in tort for injuries to students resulting from negligent acts of their employees. In 1959, however, the Illinois Supreme Court overthrew this well established legal principle of tort immunity in ruling against a school board in transportation litigation.[32]

School Board Contracts

School districts have been granted the power to contract only to fulfill their statutory responsibilities. On the basis of his work, Enns concludes that contracts on matters not permitted are prohibited.[33] Since mere good faith does not validate a contract, Hamilton and Mort assert that board members should acquaint themselves with details in relation to their power to contract.[34] The proper procedures and statutory stipulations must be observed by the board because these are designed to protect the public. It is especially important that statutory procedures be followed when the board is

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[31]Canadian Education Association, Division of Research and Information, "Pupil Transportation to Schools in Canada," The Alberta School Trustee, 33:8, April, 1963.

[32]E. C. Bolmeier, "Trends in Pupil Transportation Litigation," American School Board Journal, 140:39-40, February, 1960; Stephen F. Roach, "School District Tort Immunity Overruled," American School Board Journal, 139:53,66,70, October, 1959.

[33]Frederick Enns, op. cit., p. 179.

[34]Robert R. Hamilton and Paul R. Mort, op. cit., p. 295.

terminating contracts for services.[35]

Teacher Strikes

Strikes by teachers have not occurred frequently and one reason for this is that they are illegal in some states. In New Hampshire, the courts have taken this attitude for the following reasons:

1. Teacher strikes would be a denial of government authority since teachers are public employees;

2. Teacher strikes would be contrary to the public welfare and public policy;

3. The legislatures have granted public employees the right to bargain collectively but this does not include the right to strike.[36]

How School Boards Can Avoid Litigation

Because persons engaged in school work exchange much information about personnel, Seitz reminds schoolmen to be alert concerning the law of defamation. Some of the implications of this law for school boards are:

1. Communications regarding teachers should be exchanged by means of authenticated letters and not by telephone;

2. Rumors about personnel may be communicated, provided they are given as hearsay and not as fact. These rumors should be communicated

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[35]Stephen F. Roach, "School Boards and Teacher Contracts," American School Board Journal, 128:41, March, 1954.

[36]_____, "School Boards and Teacher Strikes," American School Board Journal, 135:54, 1957.

only to other parties whose interest falls in the qualified privilege category;

3. Criticism of other persons should be in the form of opinions.[37]

In order to keep their teachers out of court, Galfo advocates that boards discuss with their teachers situations from which litigation could arise, the legal bases of teacher responsibility, and the legal implications of safety laws.[38]

The following is a summary of the safeguards Leipold thinks boards should take in order to avoid litigation:

1. Be legally literate. This includes knowing school law and keeping abreast of legal happenings;

2. Have expert legal opinion available at all times;

3. Comply with statutory stipulations in carrying out their duties;

4. Maintain a system which provides for the regular inspection of school equipment and property;

5. Adopt and enforce definite regulations regarding school trips by students;

6. Provide all reasonable and necessary insurance;

7. Avoid controversies;

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[37]Reynolds C. Seitz, "The Law of Defamation: Trap for the Unwary Schoolman," American School Board Journal, 142:13-6,42, April 1961.

[38]Armand J. Galfo, "Keep Your Staff Out of Court," Overview, 2:54-5, April 1961.

8. Provide a unit of safety instruction in the schools.[39]

Canadian Literature

A book published in 1933 threw considerable light on the interpretation of school laws for Saskatchewan. It was designed to assist teachers and board members in the harmonious management of schools and endeavored to do this by discussing specific problems and possible solutions to these problems.[40]

Lamb has examined the legal liability of school boards and teachers for accidents. Sections of provincial statutes and cases are given in the study.[41]

A study by Bargen is concerned with case law as applied to the Canadian school pupil. Attendance issues, disputes regarding instruction, control of pupils and negligence are some of the topics included in his study.[42]

Enns, in his study, is concerned with case law as applied to the Canadian school board. The corporate status of the board, financial matters, contracts, pupil control, transportation of pupils,

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[39]L. E. Leipold, "You Can Stay Out of the Courts," American School Board Journal, 129:41,42,88, November, 1954.

[40]Augustus H. Ball and N. Latour Reid. School Administration --A Guide for Trustees and Teachers. Toronto: Gage and Company Ltd., 1933. 190 pp.

[41]Robert L. Lamb, Legal Liability of School Boards and Teachers for School Accidents, Ottawa: Research Division, Canadian Teachers' Federation, 1959. 76 pp.

[42]Peter F. Bargen, The Legal Status of the Canadian Public School Pupil, Toronto: Macmillan Co. of Canada Ltd., 1961. 172 pp.

and liability of the board are some of the areas that are examined.[43]

Toombs, in tracing the historical development of the control and support of Saskatchewan's educational system, deals at length with religious and language problems which were encountered by the authorities and the influence of these problems in shaping our publicly supported school system.[44]

MacKay has synthesized legal data regarding the rights, privileges, and responsibilities of the pupils in the publicly supported schools of Saskatchewan. Included in his study is an examination of the legal position of separate schools, issues associated with attendance, legal bases of pupil control, provisions to ensure the health and safety in the public schools, provisions for special services, legal bases of the curriculum, and liability arising from negligence.[45]

While separate schools are not unique to Saskatchewan, some of MacKay's conclusions in regard to Saskatchewan's separate schools are

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[43]Frederick Enns, The Legal Status of the Canadian School Board, Toronto: Macmillan Co. of Canada Ltd., 1963, 213 pp.

[44]Morley Preston Toombs, "The Control and Support of Public Education in Rupert's Land and the North-West Territories to 1905 and in Saskatchewan to 1960," Unpublished Ph. D. Dissertation, University of Minnesota, 1962, 1059 pp.

[45]Ivan Leland MacKay, "The Legal Rights, Privileges, and Responsibilities of Pupils in the Publicly Supported Schools of Saskatchewan," Unpublished Master's Thesis, University of Saskatchewan, 1964, 367 pp.

significant for school boards. These are:

> 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.[46]

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[46] Ibid., p. 142.

CHAPTER III

EDUCATION AND LAW: LEGAL FRAMEWORK IN SASKATCHEWAN EDUCATION

Introduction

The Canadian Constitution is not embodied in any single document or group of documents, but is composed of an unwritten element and The British North America Act, 1867,[1] and the amendments thereto. This Act brought into existence a federal system of government in Canada in which the powers of government are divided between the Dominion parliament in Ottawa and the various provincial legislatures. Sections 91 and 92 list those areas over which the Dominion and provincial authorities respectively are to have exclusive authority to make laws. Section 91 also includes a clause which reserves for the Dominion the residual powers, that is, those not listed in either section 91 or 92. In general, the Dominion has authority over matters of national importance while the provinces have authority over concerns more local in nature.[2]

The unwritten element of the Canadian Constitution consists of the following:

> . . . established customs and usages which have grown up over a long period of years. . . . principles of the common law as defined by the courts; British and Canadian Acts of Parliament and orders-in-council; judicial interpretation of the written constitution and other laws; the rules and privileges of Parliament; and many other habitual and informal methods of government in addition to those noted above. All these, many of them (despite the misleading term "unwritten") committed to writing, others in much more intangible and elusive form, exert a powerful influence on constitutional practice.[3]

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[1] Great Britain Statutes at Large, 30 & 31 Victoria, c. 3, 1867.

[2] Ibid., ss. 91-2.

[3] R. M. Dawson, The Government of Canada, Fourth edition, Toronto: University of Toronto Press. 1963, p. 64.

In Canada, education has been delegated to the provinces. This means that the provincial legislatures have complete authority to pass laws in relation to education, except that the Dominion has guaranteed, by law, the rights of a Protestant or Roman Catholic religious minority with respect to education.[4]

Provincial authorities have, in turn, delegated considerable responsibility for and control of educational services to local school boards. School boards, in the performance of their duties, are subject to provincial statutes and to the regulations under these statutes.

Courts of law are integral parts of any organized society and their services may well be essential elements in the settlement of disputes. In a federal system of government with its division of powers, there are constant jurisdictional disputes which the courts are asked to resolve.[5]

Constitutional Provisions

The Constitution of Canada is modelled along the lines of the British Constitution, which is unwritten. The major difference between these two constitutions is that the British Parliament is supreme in every respect. No court of law has any authority to declare an Act of the British Parliament invalid. Some of the outstanding characteristics for the Canadian Constitution are:[6]

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[4]Great Britain Statutes at Large, 30 & 31 Victoria, c. 3, s. 93, 1867. See pp. 31-2.

[5]Dawson, op. cit., p. 143.

[6]J. A. Corry and J. E. Hodgetts, Democratic Government and Politics, Third edition, Toronto: University of Toronto Press, 1959, pp. 104-5.

1. The Parliament of Canada is not supreme in every respect as is the British Parliament.

2. After the clear delineation of the distribution of legislative power has been determined, the Dominion Parliament and provincial legislatures enjoy, within their respective spheres, virtually complete supremacy.

3. The Rule of Law exists in Canada.

> The Rule of Law means, at least, that all actions of government must conform to the law and an individual cannot be prejudiced in person or property by the government or anyone else except in accordance with existing laws.[7]

The Rule of Law is designed to ensure individual freedom under the law. In order to do this, the law must (1) clearly define the boundaries of freedom of individual action, (2) ensure equal individual freedom for all, and (3) be observed and enforced.[8] In addition, there is limited judicial review of legislation. When an act of the Dominion or a provincial legislature comes before the courts, the constitutional question that arises is whether the division of powers, as set out by The British North America Act, has been violated.[9]

A federal democracy. The British North America Act of 1867 created the Dominion of Canada, a federal union of participating provinces. Consequently, this act, and the amendments thereto, is primarily concerned with the division of powers between the federal

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[7] Ibid., pp. 95-6.

[8] Ibid., pp. 401-2.

[9] Ibid., pp. 104-5.

and provincial authorities.[10]

The Fathers of Confederation, in drafting this document, structured it in the following manner:

1. Provinces were granted power over things which were essentially of a private nature.

2. The Dominion was to have all powers not expressly given to the provinces.

3. Lieutenant Governors of the provinces, to be appointed by the Dominion government, were given power to refuse to assent to any provincial legislative enactment or to reserve any such enactment for the pleasure of the Governor General.

4. The Dominion government was given the right to disallow any provincial law within one year of its passage.[11]

In early years, the provinces tended to be relegated to a relatively minor role in the governing of Canada. However, the practice in subsequent years has not substantiated this point of view since courts have tended to give broad interpretation to provincial jurisdiction over property and civil rights while simultaneously placing a narrow interpretation on the residual powers of the Dominion.[12]

The general power of the Dominion to disallow any provincial

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[10] Ibid., p. 89.

[11] Dawson, op. cit., pp. 30-1.

[12] Ibid., p. 32.

law was originally intended to exercise a degree of control over provincial governments. In this way, discriminatory legislation could be declared null and void. During the years immediately following confederation, this power of disallowance was used frequently. However, by the turn of the century there was a growing belief that disallowance was an invasion of provincial powers and thus, there was a decline in the number of instances in which the Dominion invoked its power, the last being in 1943.[13]

In practice, then, the provinces have played a major role, alongside the Dominion, in the governing of Canada. Decisions regarding the validity of legislative enactments have usually been left to the courts. Any interested party may challenge an enactment of the Dominion Parliament or a lesser governmental body. Courts will hear arguments by opposing parties and then declare the enactment to be either *intra vires*, within the power of the enacting body, or *ultra vires*, beyond the power of the enacting body.[14]

The British North America Act of 1867 gives the provinces the exclusive right to pass legislation regarding education, subject to certain restrictions. Section 93 of this Act 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

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[13] *Ibid.*, pp. 231-3.

[14] *Ibid.*, pp. 73-4.

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 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 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.[15]

When The North-West Territories Act was passed in 1875, the following provision was included:

> 11. When, and so soon as any system of taxation shall be adopted in any district or portion of the North-West Territories, the Lieutenant-Governor, by and with the consent of the Council or Assembly, as the case may be, shall pass all necessary ordinances in respect to education; but it shall therein be always provided, that a majority of the rate-payers of any district or portion of the North-West Territories, . . . may establish such schools as they may think fit, . . . and further, that the minority of the

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[15]Great Britain Statutes at Large, 30 & 31, Victoria, c. 3, s. 93, 1867.

> rate-payers therein, whether Protestant or Roman Catholic, may establish separate schools therein, and that, in such latter case, the rate-payers establishing such. . . separate schools shall be liable only to assessments of such rates as they may impose upon themselves in respect thereof.[16]

It was under the authority of this section that the ordinances affecting education were enacted. The North-West Territories Act was no longer applicable to Saskatchewan after this province was created in 1905. At that time, section 93 of The British North America Act was altered by the provincial constitution 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 North-West Territories Act passed in the year 1901 or with respect to religious instruction in any public or separate school as provided for in the said Ordinances.
>
> (2) In the appropriation by the Legislature of 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 thereof, 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

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[16] Statutes of Canada, 38 and 39 Victoria, c. 49, s. 11, 1875. The 1885 amendment to this Act eliminated the necessity for the establishment of a system of taxation prior to the organization of school districts.

> 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.[17]

Upon analysis of the excerpt from The Saskatchewan Act, the following questions arise concerning minority rights in relation to education:

1. Who, in the final analysis, is to determine whether the rights of a minority in relation to education have, in fact, been adversely affected by a provincial legislative enactment?

2. What guidelines are to be followed in determining the violation of such rights?

3. What kind of remedial legislation should be enacted if it is found that such rights have been violated?

An Ontario case, which was taken to the Judicial Committee of the Privy Council, provides an answer to the first question. The petitioners, representing a Roman Catholic separate school, claimed that certain Acts of the Ontario Legislature and regulations under these Acts prejudicially affected the rights conferred on the appellants by The British North America Act.

Viscount Haldane, in giving judgement, stated:

> Their Lordships are of the opinion that where the head of the executive in council in Canada is satisfied that injustice has been done by taking away a right or privilege which is other than a legal one from the Protestant or Roman Catholic minority in relation to education, he may interfere. The step is one from mere legality to administrative propriety, a totally different matter.

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[17]Statutes of Canada, 4 and 5 Edward VII, c. 42, s. 17, 1905.

> But it may be that those who had to find a new constitution for Canada when the B.N.A. Act was passed in 1867, came to the conclusion that a very difficult situation could be met in no other way than by transferring the question from the region of legality to that of administrative fairness.[18]

In other words, the Governor General in Council has the authority to determine whether or not an injustice has been done. Furthermore, interference in the matter may be justified on the grounds of administrative fairness.

The guidelines the cabinet might use in such a situation are not outlined anywhere; however, the Manitoba case of Brophy v. Attorney General for Manitoba[19] does shed some light on the question. In Manitoba, prior to 1890, there existed, by law, a system of denominational schools in which the Roman Catholics and Protestants managed and controlled their own schools. Each could select the books to be used in the schools and determine the character of religious teachings. All schools received a share of money from the provincial government which was supplemented by taxation on locally assessed property.

An Act of the Manitoba legislature in 1890 abolished the denominational aspect of schools and established a non-sectarian

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[18] R. C. Separate School Trustees for Tiny v. R., [1928] 3 D.L.R. 753 at p. 757.

[19] [1895] A.C. 202 at pp. 226-7. The Dominion's guarantee regarding the rights of a religious minority with respect to education are slightly different in Manitoba as compared with Saskatchewan. The situations are analogous to the extent that an appeal lies to the Governor General-in-Council from any Act which adversely affects the minority group.

system. If the Protestants and Roman Catholics wished to retain their own schools, they could do so but these schools would not receive provincial grants or local tax monies. The Roman Catholics considered the non-sectarian schools unsatisfactory for the education of their children because of the absence of the religious element.

As a result of this legislative enactment, litigation was launched by the Roman Catholics. The matter was taken to the Judicial Committee of the Privy Council which held that the rights and privileges of the Roman Catholic minority in relation to education which existed prior to 1890 had been affected. The Lord Chancellor, Lord Halsbury, stated that it was not for the Privy Council to dictate to the Governor General in Council as to what remedial action should be taken. He did say, however, that it should not be necessary to repeal the Act of 1890, rather it should be supplemented with provisions which would remove the grievances upon which the appeal was based.

The net result of the Manitoba problem was an agreement between the federal and provincial governments whereby the Manitoba legislature amended the Act of 1890 so as to allow, among other things, for religious instruction at specified times during the school day.[20]

Canada and the English system of law. British colonies have always taken portions of the British Constitution, which is unwritten, that are not incompatible with their particular situation. Consequently, many principles arising from British common law and custom

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[20]For a detailed analysis of the Manitoba situation, see Morley P. Toombs, "The Control and Support of Public Education in Rupert's Land and the North-West Territories to 1905 and in Saskatchewan to 1960," Unpublished Ph.D. Dissertation, University of Minnesota, 1962, pp.74-85.

have been accepted in Canada.[21] The English common law was originally the law that was common to the whole of England. Today, the usual meaning given this term is that it is the law which is the result of customs and court decisions.[22]

There were times when the English courts of common law did not give redress where needed. Persons finding themselves in such situations petitioned the King who then delegated to his Chancellor the task of finding equitable solutions to these situations. The Chancellor and later the Court of Chancery, not being bound by any common law procedures laid down rules which in time became part of the regular law of England known as equity. The Judicature Act of 1873 created a Supreme Court of the Judicature which administered both common law and equity, thus eliminating the duality of the courts.[23]

Dawson has the following comment regarding common law and equity as we know it today:

> In effect, equity has become a part of the common law system, enriching it with a special procedure for certain kinds of cases, a wider range of remedies, and a modified application of certain of the strict rules of the common law.[24]

The common law still furnishes much of the Canadian civil law today, although the statutes of our Dominion and provincial governments have

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[21]Corry and Hodgetts, op. cit., p. 89. This hold true except for the province of Quebec.

[22]Glanville Williams, Learning the Law, Seventh Edition, London: Stevens and Sons Ltd., 1963, pp. 23-4.

[23]Ibid., pp. 25-7.

[24]Dawson, op. cit., p. 422.

altered it in a number of areas.

Provincial Statutes

Since each province has virtually complete authority over educational matters, provincial legislatures have determined the structure of their educational systems. Provisions affecting education are found in many statutes of the province of Saskatchewan. The educational system of Saskatchewan is partially centralized and partially decentralized. Within the legal framework enunciated by the statutes, centralized duties are placed in charge of the department of education and decentralized duties are delegated to school boards. This delegation of duties to school boards does not relieve the province of ultimate responsibility for education since the Canadian Constitution lays this responsibility on the provincial legislature. In ruling on a case in British Columbia, The British Columbia Supreme Court held that the province is primarily responsible for education since it compels school attendance, sets the curriculum and examinations, and assumes a share of the cost.[25]

Provincial statutes affecting educational matters do not attempt to anticipate every problem that may arise and this results in the department of education and school boards being given considerable freedom in performing their prescribed tasks. Any restrictions imposed upon these bodies are laid down in the statutes.

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[25]McLeod v. Board of School Trustees of School District No. 20 (Salmon Arm), [1952] 2 D.L.R. 562, 4 W.W.R. 385.

The Department of Education

The department of education, in carrying out its delegated responsibility of administering and supervising the general overall educational system, has the authority to make administrative rules and regulations. In Saskatchewan, there are two different kinds of regulations originating in the department of education:

1. The minister, with the approval of the executive council, has the power to make regulations regarding supervision and inspection of schools, school buildings and premises, certification of teachers, textbooks, and a number of other related matters.[26] These regulations are contained in orders in council and have the effect of law;

2. Various sections in the statutes empower the minister to make ministerial orders with regard to such things as complaints arising from a decision of a school board, the giving advice to school boards on a number of matters, and the alterations of school unit boundaries.[27] While these orders are not contained in orders in council, they do have the effect of law.

All regulations emanating from a department of education are subject to review by the legislature; therefore, it can be said that this helps to make them non-discriminatory. Generally, these regulations govern the day to day operation of the schools. The

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[26] R.S.S. 1953, c. 169, s. 3; S.S. 1954, c. 46, s. 3, am.; 1955, c. 46, s. 3, am.; 1961, c. 29, s. 3, am.

[27] Ibid., c. 169, ss. 4-7; S.S. 1954, c. 46, s. 4, am.; c. 170, ss. 5-7; S.S. 1956, c. 32, s. 2, am.; 1957, c. 54, s. 2 am.; 1962, c. 55, s. 3, am.; c. 168, s. 5.

validity of any departmental regulation may be challenged, but the regulation is presumed valid until overruled by a court.

School Boards

Section 92 of The British North America Act gives the provincial legislature the exclusive authority to make laws regarding municipal institutions in the province and section 93 does the same with respect to education. In accordance with this authority, school boards have been established to oversee the administration and supervision of schools in a particular area. In other words, school boards are actually agents for the higher authority that has created them and can, if it so desires, eliminate them. It is highly improbable that provincial legislatures would abolish these bodies of local government because the immediate needs of the people can best be met by this level of government.[28]

School boards in Saskatchewan may be established under The School Act,[29] The Larger School Units Act,[30] and The Secondary Education Act.[31] Separate school boards, which have essentially the

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[28]Corry and Hodgetts, op. cit., p. 18.

[29]R.S.S. 1953, c. 169; 1954, c. 46, am.; 1955, c. 46, am.; 1956, c. 31 am.; 1957, c. 53 am.; 1958, cc. 61 and 99 am.; 1959, cc. 71 and 109 am.; 1960, c. 60 am.; 1961, c. 29 am.; 1962, c. 27 am.; 1963, c. 43 am.; 1964, c. 19 am.

[30]Ibid., c. 170; 1954, c. 47 am.; 1955, c. 47 am.; 1956, c. 32 am.; 1957, c. 54 am.; 1958, c. 62 am.; 1959, c. 72 am.; 1960, c. 61 am.; 1961, c. 30 am.; 1962, c. 55 am.; 1963, c. 61 am.; 1964, c. 20 am.

[31]Ibid., c. 168; 1954, c. 45 am.; 1955, c. 45 am.; 1956, c. 30 am.; 1957, c. 52 am.; 1958, c. 60 am.; 1959, c. 70 am.; 1960, c. 59 am.; 1961, c. 28 am.; 1962, c. 26 am.; 1963, c. 60 am.; 1964, c. 18 am.

same legal status as public school boards, may be established under The School Act[32] and The Secondary Education Act.[33] School boards have been delegated certain duties and powers by the statutes and regulations of the central authority, and these duties can be classified generally as being either mandatory or discretionary.

A mandatory duty, which requires little or no subjective judgement on the board's part, is exemplified by the following:

> 114. It shall be the duty of the board of every district and it shall have the power:--
>
> 1. to appoint a chairman, a secretary and treasurer or a secretary treasurer and such other officers and servants as are required by this Act;[34]

The following is an example of a discretionary duty, one which allows considerable use of the board's subjective judgement:

> 21. if deemed advisable, to effect insurance indemnifying the school district against liability in respect of any claim for damages or personal injury;[35]

Some sections of the statutes impose a mandatory duty on the school board but allow the board to use considerable discretion in the manner used to implement that duty.

7. to provide adequate school accommodation for the district.[36] The board is charged with the task of providing accommodation, but the

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[32] Ibid., c. 169, ss. 39-44.

[33] Ibid., c. 168; S.S. 1964, c. 18, s. 3, am.

[34] R.S.S., 1953, c. 169, s. 114 (1).

[35] Ibid., c. 169, s. 114 (21).

[36] Ibid., c. 169, S. 114 (7).

decision as to what constitutes "adequate" accommodation is left to the board.

The following comment by Crawford summarizes the philosophy underlying the concept of mandatory and discretionary duties as applicable to municipal governments:

> In general, the mandatory powers relate to functions which are of wider than local concern or which deal with matters of such fundamental importance in community living that the legislatures have felt the local citizens should be protected against inaction by their representatives.
>
> The optional powers which are granted may be exercised or not by councils as they see fit, but in many instances if councils do choose to exercise a power they may only do so subject to conditions and regulations provided by statute or by some authority authorized by statute.[37]

Boards have the authority to pass reasonable rules and regulations which will assist them in carrying out their responsibilities. These regulations may be challenged by any person, but until they are overruled by a court they have the effect of law. The courts have tended to construe school statutes liberally and substantial compliance with the statutes by the board in ordinary circumstances is acceptable.[38] However, courts will not hesitate to rule against boards if it is found that a board's action was unreasonable, in violation of existing law, or in clear abuse of its discretionary authority.[39]

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[37]Kenneth G. Crawford, Canadian Municipal Government, Toronto: University of Toronto Press, 1954. p. 99.

[38]Stephen F. Roach, "Liberal Court Interpretation of School Statutes," American School Board Journal, 138:45, April, 1959.

[39]_____, "Abuse of School Board's Discretionary Authority," American School Board Journal, 138:67, February, 1959.

The Courts and the Law

In order to be effective, the rule of law, which is one of the characteristics of the Canadian democratic system, requires an impartial judiciary devoted to the administration of justice. Therefore, it is essential that the judiciary be given such a position that they are not subject to the pressures which may be exerted upon other public officials.[40]

Jurisdiction of the courts. In the course of settling disputes which are brought before the courts, much more is done than simply imposing a punishment or delivering a judgement. According to Dawson, a court must take the following factors into consideration when resolving a dispute: (1) laws must be interpreted so as to give them fuller meaning and clarity, (2) punishment must be meted out only to those who have broken the law, (3) unauthorized acts of government officials must be nullified, and (4) the written constitution must be interpreted.[41]

The laws which must be interpreted include both those which are written and unwritten. The unwritten law is, in the main, the common law which, except for Quebec, comprises a substantial portion of Canadian civil law.

The punishment of law breakers and the nullification of illegal acts of government officials are measures designed to maintain

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[40]Corry and Hodgetts, op. cit., p. 402.

[41]Dawson, op. cit., p. 421.

the rule of law. There are certain instances in which a court, when convinced that a legal wrong is about to be committed, may grant an injunction forbidding a defendant from doing an act he is threatening to do.[42]

The interpretation of the written constitution involves the power to set aside as ultra vires any laws passed by the Dominion parliament or provincial legislatures which, in the court's opinion, are contrary to the division of powers as specified in The British North America Act. Since this division of power is not at all simple and clear cut, the courts are the instrument used in Canada to determine and maintain the areas in which the Dominion and provincial authority, respectively, may exercise their powers.

Courts may also be asked by the Governor General in Council or, in the provinces, the Lieutenant Governor in Council, for a legal opinion regarding the constitutionality of proposed legislation. While such judicial opinion does not bind the courts in subsequent litigation, it does give the executive sound legal advice.

The courts, in fulfilling their task, are often quite restricted in their scope of operation.

> 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

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[42] Ibid., p. 423.

> of the B.N.A. Acts regarding the organization of the executive and legislative branches of government.[43]

On the other hand, there are persons who claim that courts do not merely modify or revise, but that they actually make law. These persons do not support the view that if Parliament does nothing, the courts can do nothing.

> They [judges] must use their limited creative and abrogative powers effectively to make of law a living organism that grows and moves in response to the larger and fuller development of the nation.[44]

Independence of the courts. Judges in Canada are clearly separated from the sphere of the legislature and the executive. To effect this separation, the judges must be protected against influences which would tend to disturb the impartiality and detachment so necessary to their function. The following are factors involved in judicial independence:

> . . . he [the judge] receives almost complete protection against criticism; he is given civil and criminal immunity for acts committed in the discharge of his duties; he cannot be removed from office for any ordinary offence, but only for misbehaviour of a flagrant kind; and he can never be removed simply because his decisions happen to be disliked by the Cabinet, the Parliament, or the people. Such independence is unquestionably dangerous, and if this freedom and power were indiscriminately granted the results would certainly prove disastrous. The desired protection is found by picking with especial care the men who are to be entrusted with these responsibilities. The judge is

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[43]House of Commons, Special Committee on the British North America Act, Proceedings and Evidence and Report, Ottawa: King's Printer, 1935, p. 28. O. D. Skelton, Evidence before the Committee.

[44]H. E. Read, "The Judicial Process in Common Law Canada," The Canadian Bar Review, 37:293, May, 1959.

> placed in a position where he has nothing to lose by doing what is right and little to gain by doing what is wrong, and there is therefore every reason to hope that his best efforts will be devoted to the conscientious performance of his duty.[45]

Judicial interpretation of statutes. In interpreting legislation, one of the first decisions a court must make is whether or not a statute, or a section of a statute, is ambiguously worded. Statutes whose meaning is clear require little interpretation; however, the majority of the statutes include sections which are worded ambiguously or whose effect is doubtful.[46] The intent of the legislature is of the utmost importance and must be found in the words of the statute. Thus, the enactment must be looked at as a whole because the language of one section may affect the language of another. If the meaning is not clear, courts must examine the policy, scope, and nature of the enactment.[47]

In order to assist courts, rules of interpretation have evolved which are designed to keep out the risk of arbitrary interpretation. The following are some of the general rules of interpretation used by the courts:[48]

1. General words in a statute may have no definite meaning, but

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[45]Dawson, op. cit., p. 449.

[46]A. K. R. Kiralfy, The English Legal System, Second Edition, London: Sweet & Maxwell, 1956, p. 123.

[47]Sir Charles E. Odgers, The Construction of Deeds and Statutes, Fourth Edition. London: Sweet & Maxwell, 1956, p. 173.

[48]For a detailed discussion of general rules of statute construction and aids to construction see Kiralfy, op. cit., pp. 123-34, and Odgers, op. cit., pp. 172-254.

by looking at the mischief the statute is intended to remedy the meanings may be clarified. In this manner, the policy of a statute may be helpful.

2. Words are to be construed according to their popular sense. If they are used in reference to a particular business or trade, they will be presumed to be used in the sense usual in such business or trade.

3. Words are to be used in the sense they bore at the time the statute was passed.

4. The same words always bear the same meaning.

5. A statute, if clear, must be enforced regardless of the consequences.

6. If there are possible alternative meanings, the one which would lead to an absurdity is not taken.

7. 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 specific words.

8. Under the expressio unius exclusio alterius rule, where two words or expressions are placed together, one of which normally includes the other, it is presumed that the general term is used as excluding the other.

9. Statutes are usually regarded as applying to the future and not affecting what has gone before. However, retrospective effect may be expressed or implied as is the situation with regard to teacher pension legislation.

10. The preamble of the statute may be looked at only if there

is ambiguity in the text.

The Saskatchewan Interpretation Act contains a clause to the effect that all statutes and regulations are considered to be remedial and are to "receive such fair, large and liberal construction and interpretation as best ensures the attainment of the object of the Act, regulation or provision".[49]

School boards fall in the category of municipal corporations or quasi-municipal corporations. While quasi-corporations do not have all the characteristics and incidental powers of a municipal corporation, the distinction between the two in Canada, is more factual than legal.[50] Regarding construction of municipal statutes, Rogers says:

> In approaching a problem of construing a municipal enactment a court should endeavor firstly to interpret it so that the powers sought to be exercised are in consonance with the purposes of the corporation. . . . Statutes relating to municipal institutions are therefore to be distinguished from those applicable to private corporations the object of which is commercial profit and for this reason it has been said that they are not to be construed with as much rigidity as are the latter.[51]

Listed below are the various relevant types of municipal statutes, as classified by Rogers, and the manner in which certain rules of construction are applied to them.

1. Statutes creating public bodies, such as municipal authorities, must be read with due regard to the legal history of such bodies.

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[49]R.S.S., 1953, c. 1, s. 11.

[50]Ian MacFee Rogers, The Law of Canadian Municipal Corporations, Toronto: The Carswell Company Ltd., 1959, Vol. 1, p. 13.

[51]Ibid., p. 333.

2. Statutes involving penalties must be strictly construed. When an act or omission constitutes an offence under an Act and at common law, the offender shall, unless the contrary intention appears, be liable to be prosecuted under either or any of those Acts or at common law but is not liable to be punished twice for the same act or omission.

3. Taxing statutes must also be strictly construed. Generally, enactments providing for tax recovery and tax sales are given the most restricted construction possible in order to prevent the violation of a common law right which might result if a comprehensive construction were adopted.

4. In construing election statutes, the courts' duty is to keep strictly to the act itself. However, any statute conferring the franchise should be liberally construed.

5. Expropriation and forfeiture statutes are given the most restricted construction possible. In addition, the municipal authority must comply exactly with the terms of the enactment.

6. Statutes affecting common law rights are also construed strictly. It is a well established principle that common law rights are not to be held to have been taken away unless it is so expressed in clear language.[52]

Generally, it can be stated that courts have evolved the principle of strict interpretation of statutes which involve the rights of citizens. Driedger has the following comment about statutes

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[52] Ibid., pp. 342-6.

in general:

> Statutes are laws. They are supposed to settle rights and liabilities of the people, and they are enforced by the courts. They must be, so far as we can make them, precise . . . . Like all other serious works of literature, they must be read and studied with care and concentration. Every word in a statute is intended to have a definite purpose and no unnecessary words are intentionally used. All the provisions in it are intended to constitute a unified whole.[53]

Case Law and Legal Precedent. In any litigation there are always points of law and fact involved. The judge must determine what facts have been established by the proceedings and whether these facts violate the law. In handing down a decision, a judge states what is to happen to the parties involved and the reasons for his findings. The accumulated decisions of judges form a considerable body of law, and while this body of law originated with common law and equity, it is equally applicable to decisions regarding the interpretation of statutes.[54]

A judicial interpretation of a law is the origin of a legal principle. Until it is overruled, it serves as a precedent for subsequent cases in which the material facts are the same. If, as time progresses, a number of decisions are based on the precedent, it becomes more firmly established. In this manner, court decisions on educational issues have become legal principles which should guide

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[53]Elmer A. Driedger, The Composition of Legislation, Ottawa: Queen's Printer, 1957, p. xxii.

[54]Kiralfy, op. cit., p. 86.

school officials in performing their task.[55]

The decision of a court is usually based on a rather limited number of facts. This core of the case is known as the ratio decidendi. The casual comments made by a judge in ruling on a case, called the obiter dicta, are not binding on any court but are respected in proportion to the reputation of the judge making them. If a judge considers the facts on a case to be different from those cited in a precedent, he will "distinguish" the case. In other words, he will not follow the precedent.[56]

In the doctrine of legal precedent, lower courts are bound by decisions of higher courts. In Canada, a ruling by the Supreme Court of Canada binds all provincial courts and, in most occasions, itself as well. Since laws affecting education differ from province to province, a decision regarding an educational issue in one province may not bind the courts of another province. Changing conditions may also express the need to modify or even overrule a previously accepted legal principle.

Summary

The educational system of Saskatchewan has a legal framework which is composed of constitutional provisions, statute law, statutory regulations, and judicial decisions. Any one, or all, of these factors

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[55]C. Bolmeier, "Directions in School Law," American School Board Journal, 139:33, September, 1959.

[56]Glanville Williams, op. cit., pp. 66-7.

may have a bearing on a decision affecting the provision of educational services, and educational authorities must work within this legal framework at all times.

CHAPTER IV

THE PUBLICLY ELECTED SCHOOL BOARD: ITS CORPORATE STATUS

Introduction

The publicly elected school board is a corporation created by statute. It could perhaps be called a "quasi-corporation" or a "quasi-municipal corporation." The distinctive characteristic of such corporations is that they are created as government agencies by the legislative authority to administer provincial laws. While the school corporation does not have all the incidental powers of a municipal corporation, the distinction between the two, in Canada, is more factual than legal.[1] A further distinction between municipal corporations is:

> Municipal institutions can . . . be classified according to whether they are constituted as part of the general scheme of public administration or are incorporated for the benefit of a particular body of citizens. . . .[2]

The school board is also a public authority and the statutory duties it performs are for the public, not private, benefit.[3]

Unlike municipal councils, the school corporation cannot operate utilities for a profit and use the proceeds to defray the costs of its services; it must rely entirely on statutory permissiveness in the raising of funds to pay for the costs of operation. In fact, a board's entire sphere of operations is bounded by the powers expressly granted or derived from the statutes.

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[1]Ian MacFee Rogers, The Law of Canadian Municipal Corporations, Toronto: The Carswell Co. Ltd., 1959, pp. 12-3.

[2]Ibid., p. 12.

[3]Halsbury's Laws of England, Third Edition, London: Butterworth & Co. Ltd., 1954. Vol. 30, pp. 682-3.

The Corporation

There are two main classes of corporations, the corporation aggregate and the corporation sole. The corporation aggregate, in which category the school board falls, is defined as follows:

> . . . a collection of individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence.[4]

Creation of the Corporation. A corporation may be created by:

> . . . the authority of Parliament expressed either in a special statute creating a particular corporation . . . or in a general statute. . . . it is not that any particular form of words be used in the statute; it is sufficient if the intent to incorporate is evident.[5]

The School Act provides for the incorporation of school boards as follows:

> The Trustees of every district shall be a corporation under the name "The Board of Trustees of the _____ School District No. _____ of Saskatchewan".[6]

The Larger School Units Act[7] and The Secondary Education Act[8] have similar clauses with the following additional words:

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[4]9 Halsbury, op. cit., p. 4.

[5]Ibid., p. 28.

[6]R.S.S. 1953, c. 169, s. 103; S.S. 1957, c. 53, s. 6, am.

[7]R.S.S. 1953, c. 170, s. 32(1).

[8]Ibid., c. 168, s. 10(1).

> The corporation shall have a common seal and shall possess and may exercise all the powers vested in corporations by The Interpretation Act so far as the same are necessary for carrying out the provisions of this Act.[9]

The powers of corporations as defined by The Interpretation Act are:

> 14. In an Act words making a number of persons a corporation shall:
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> (a) vest in the corporation power to sue and be sued, to contract and be contracted with by its corporate name, to have a common seal and to alter or change it at pleasure, to have perpetual succession, to acquire and hold property or movables for the purposes for which the corporation is constituted and to alienate the same at pleasure;
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> (b) vest in the majority of the members of the corporation the power to bind others by their acts; and
>
> (c) exempt from personal liability for its debts, obligations or acts such individual members of the corporation as do not contravene the provisions of the Act incorporating them.[10]

The school board's constitution is the statute which incorporates it. This law imposes certain responsibilities and duties on the board and prescribes the rights and powers that may be exercised in fulfilling these obligations.

The school corporation and the municipal council. One fundamental difference between these two agencies of local government is that the school board as such is the corporation while the municipal council is only the body through which the municipal corporation operates. The municipal corporation consists of all the inhabitants residing within

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[9] Ibid., c. 170, s. 32(2); c. 168, s. 10(2).

[10] Ibid., c. 1, s. 14.

the boundaries of a municipality.[11] Another difference is that popular assent brings a municipal corporation into existence whereas a school corporation may be imposed on the public.[12]

The school corporation and the provincial government. School boards administer the policy of the provincial government in respect of education. The Department of Education Act[13] places that part of government which relates to education under the control of the department of education. Corporations constituted for public purposes are subject to control of government departments.[14]

Characteristics of a Corporation

Name of the corporation. The corporation's name must be expressed by the statute or be implied from the nature of it. It may act in its name without revealing the name of its members.[15] Variation in the precise name will not invalidate a deed of land or a contract so long as the identity is unmistakable.[16] In Re Gordon,[17] the treasurer of "The Pebble Lake Public School District No. 316 of the North-West Territories" sold a parcel of land. It was later

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[11] Ibid., c. 138, s. 9; c. 137, s. 9; S.S. 1960, c. 49, s. 29; c. 50, s. 25.

[12] Rogers, op. cit., p. 6.

[13] R.S.S. 1953, c. 22, s. 4.

[14] 9 Halsbury, op. cit., p. 589.

[15] Ibid., p. 9.

[16] Rogers, op. cit., p. 19.

[17] (1901) VII. Terr. L. R. 134.

contended that, because the word "Public" had been omitted, the transfer was invalid. The court held that the omission of that word did not invalidate the sale.

In the Greenwood case, the contractor, in accordance with the terms of a contract, posted a bond with The Board of Trustees for the Estevan School District No. 257 of the North-West Territories. After the contractor had begun carrying out the terms of the contract, the board objected to the bond because it was made in favor of "The Estevan School Board of Estevan". The court ruled that the irregularity in describing the board did not invalidate the bond since there was no doubt regarding the identity of the board.[18]

The fact that a board is not named correctly in legal proceedings is not necessarily fatal to actions by and against the corporation. An Alberta court held that although the corporation was misnamed in the proceedings, its identity was clear and allowed amendment of name in the pleadings.[19]

Location of the corporation. At common law every corporation of local jurisdiction must belong to a definite locality.[20] Thus, a school board must be associated with a certain area of which the boundaries must be clear and precise. Section 9 of The Larger School Units Act reads as follows:

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[18]Greenwood v. Estevan School Trustees, (1901) 15 W.L.R. 568, 3 Sask. L.R. 433.

[19]Sleeman and Sleeman v. Foothills School Division No. 38 et. al., [1946] 1 W.W.R. 145.

[20]9 Halsbury, op. cit., p. 15.

> 9. The minister shall cause to be prepared a map of the province on which shall be indicated the outlines of school units as they exist from time to time, and a record of the school districts comprising each school unit and each subunit shall be kept in the department.[21]

Seal of the corporation. A corporation aggregate can, as a general rule, only act or express its will by deed under its common seal. The seal is the only authentic evidence of what the corporation has agreed to do or what it has done. The seal is evidence of incorporation and lack of it is evidence of not being incorporated, although neither presence nor absence is conclusive evidence.[22] Any corporation may bind itself without using its seal in trivial matters of daily occurrence or in matters of urgent necessity.[23]

If the seal appears on a legal deed, affixed by persons empowered to do so, it is assumed that the necessary formalities were observed. Two of the necessary formalities are: the school board must have passed a resolution authorizing affixing of the seal, and the meeting at which the action was taken must have been a properly constituted meeting.[24]

In an Ontario case[25] the board claimed they were not liable for payment of a contract because the contract was not under seal. The board had already taken possession of a schoolhouse which had been built

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[21] R.S.S. 1953, c. 170, s. 9.

[22] 9 Halsbury, op. cit., pp. 13-4.

[23] Ibid., p. 84.

[24] Ibid., pp. 14-5.

[25] Marshall v. The School Trustees of School Section Number Eleven, Township of Kitly, 4 U.C.C.P. 373.

under the terms of the contract. The court held that a contract for the erection of a schoolhouse was of such importance that the board could be bound only under seal. Richards, J., also indicated that the only instances when corporations are bound without seal is where the charter states this or trivial common law exceptions such as appointment of a servant.

A Saskatchewan school board signed and sealed a contract with a construction company for the erection of a schoolhouse. However, there was some difficulty concerning the choice of the school site since the board selected one site while the municipal council authorized another. The plaintiff contractor started construction at the site selected by the board but later ceased work and sought to recover the sum of $1704.64 from the board. The court found that the meeting at which the contract had been signed and sealed had not been properly constituted. Therefore, the proceedings at that meeting were invalid.[26]

In the case of Parker v. Lion's Head Public School Board,[27] a teacher's contract was not under seal. The board had hired the teacher on a temporary basis while the teacher thought the position was to be permanent. When the board informed the teacher that her

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[26]Waterman Waterbury Manufacturing Company v. Slavanka School District, 1929 1 W.W.R. 598, 23 Sask. L.R. 338, 1929 2 D.L.R. 161, reversing 1928 3 W.W.R. 16, 1928 4 D.L.R. 522. Since the schoolhouse was eventually built on the site authorized by the municipal council, the board received no benefit from the work done by the contractor. In view of this, the court indicated that the board was entitled to recover the $500. it had paid on account to the contractor.

[27] 1934 O.R. 14, 1934 1 D.L.R. 430.

services were no longer required, she sued for wages in lieu of notice. The court ruled against the teacher because the contract had not been under seal.

Continuity of the corporation. A liability or obligation, once binding on a corporation, binds successors even though the successors are not expressly named.[28] The Alberta case of Royal Bank v. Acadia School Division[29] illustrates this principle. The bank held a debenture issue by a rural school district which had become part of the Acadia School Division. The division board declined to assume the debt and the bank initiated legal proceedings to recover the amount from the board. The court decision, in favor of the bank was based on section 33 of The School Act, which reads:

> All liabilities of each district shall be assumed by the divisional board and such liabilities shall thereafter constitute a debt owing by the division as if the same had originally been contracted by it and shall be payable by the division board out of the funds of the Board and thereafter the constituent districts within such division shall be freed and discharged therefrom.[30]

The Larger School Units Act contains a clause which is very similar to the foregoing Alberta provision.[31]

Distinct identity of the corporation. The individuals composing the corporation are entirely distinct from the corporation itself. The

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[28] 9 Halsbury, op. cit., pp. 8-9.

[29] [1943] 1 W.W.R. 256.

[30] R.S.A. 1941, c. 35, s. 33.

[31] R.S.S. 1953, c. 170, s. 44(2).

corporation is a legal person and anyone contracting with it must look to it for satisfaction, for he cannot recover from the individual members unless it is expressly stated in the statutes.[32]

Membership in the Corporation

The prerequisites of a person seeking election to a unit board are:

> 16. Each person nominated as a candidate for election as a member of the unit board shall be of the full age of twenty-one years, a British subject and a ratepayer of a district within the subunit for which he is nominated who is able to read and write and conduct school meetings in the English language.[33]

The School Act defines the qualifications of a board nominee as follows:

> 74. Each person nominated for the office of trustee shall be of the full age of twenty-one years, a British subject and a resident ratepayer of the district who is able to read and write and to conduct school meetings in the English language, and shall make and subscribe the declaration and take and subscribe the oath of allegiance . . . .[34]

The Secondary Education Act appears to have fewer prerequisites than either of the other two Acts:

> 12. Every resident ratepayer of the full age of twenty-one years whose name appears on the last revised voters' list of the municipality is qualified to serve as a member of the board.[35]

Nomination of candidates must be in the form prescribed by

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[32]9 Halsbury, op. cit., p. 9.

[33]R.S.S. 1953, c. 170, s. 16; S.S. 1955, c. 47, s. 3, am.; S.S. 1956, c. 32, s. 3, am.

[34]Ibid., c. 169, s. 74.

[35]Ibid., c. 168, s. 12.

statute and must be signed by the specified number of resident ratepayers.[36] If any ratepayer contests the validity of an election in a rural district, the minister of education has the authority to investigate the matter and make decisions as he deems proper.[37] Any person qualified to vote in a village or town school district or in a unit may contest the election of a school trustee in that district or unit; in such instances, The Controverted Municipal Elections Act lays down the procedures to be followed.[38]

In the Mantz[39] case in Alberta, a defeated candidate sought to have an election set aside on the grounds of a number of irregularities which he contended had occurred during the election. Feir, D.C.J., stated:

> After critical examination of each one of the objections made by the plaintiff, I cannot find that in any single one of them is there disclosed such a breach of the Act, or the principles of a sound election, constituting a denial of rights of electors, as to lead me to think that the election of the defendant should be set aside. It is well established that the effect of many minor

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[36] Ibid., c. 170, s. 17; S.S. 1956, c. 32, s. 3, am.; c. 169, s. 75; c. 138, s. 217 (This section of The City Act stipulates that nominations and election of school trustees in high school districts be held at the same time and place and be conducted in the same manner as the nomination and election of aldermen. This procedure is given by sections 125-7); c. 139, s. 204 (This section of The Town Act is similar to s. 217 of The City Act. Sections 112-5 state the procedures for nomination and election of aldermen in towns).

[37] Ibid., c. 169, s. 86.

[38] Ibid., c. 169, s. 92; S.S. 1961, c. 29, s. 5, am.; c. 170, s. 25; S.S. 1961, c. 30, s. 5, am.

[39] Rex ex rel Montgomerie v. Mantz, [1948] 2 W.W.R. 143.

defects in the procedure is not cumulative.[40]

The defeated candidate in another Alberta case sought to have an election invalidated on the grounds that twenty ineligible voters in four different categories had cast ballots. The court found that seven ineligible voters in the first listed category had, in fact, voted. Since the successful candidates majority had only been four votes, the court ruled that the election was invalid. The seven ineligible voters could have affected the outcome of the election.[41]

A North-West Territories case illustrates the liberal construction of election statutes. The chairman of the annual meeting of ratepayers, Dinnin, was nominated by Dickenson to run for the one vacant position on the board of trustees. One other person was also nominated. The nomination of Dinnin was then challenged on the basis that Dickenson was not a resident ratepayer of the district. A portion of Dickenson's land lay just inside the district while his farmhouse was across the road allowance outside the district boundary. Dinnin, as chairman, refused to disqualify his nomination and was subsequently elected to the board. Thompson, a resident ratepayer of the district, asked leave to file an application for quo warranto[42] proceedings against Dinnin. The court was equally divided on the case with the result that leave to apply was not granted.

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[40]Ibid., p. 150.

[41]In re The Controverted Elections Act Rex ex rel Andrews v. Wright, [1947] 1 W.W.R. 606.

[42]Information in the nature of a quo warranto is a method usually employed for trying title to a corporate or public office.

Richardson and Wetmore, J.J., ruled in favor of the plaintiff. Scott and Rouleau, J.J., in ruling against the plaintiff, held that a layman might reasonably conclude that Dickenson was a resident ratepayer since he had been permitted to vote as such at previous meetings.[43]

It would seem reasonable to conclude that courts are hesitant to interfere in school board elections unless there has been a denial of the rights of electors.

Disqualification and removal of members. The Larger School Units Act provides for the disenfranchisement of the corporate members as follows:

> 57. A member of a unit board who is convicted of an indictable offence or becomes insane or absents himself from three consecutive meetings of the board without being authorized by a resolution of the board to do so or ceases to be a ratepayer of a district in the subunit for which he was elected shall ipso facto vacate his seat and the remaining members shall declare his seat vacant and forthwith notify the minister.[44]
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> 58. (1) No member of a unit board shall enter into any contract, in which he has any pecuniary interest, with the board of which he is a member, in his own name or in the name of another, alone or jointly with another, and every contract so entered into shall be null and void.
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> (2) No member of a unit board shall receive payment for any work done for or for materials supplied to any person in connection with any contract awarded or purchases made by the board while such member held office on the board.
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> (3) A member of the board violating any of the

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[43]The Queen Ex Rel Thompson v. Dinnin, (1892) 3 Terr. L.R. 112.

[44]R.S.S. 1953, c. 170, s. 57; S.S. 1955, c. 47, s. 6, am.

> provisions of this section shall ipso facto vacate his seat and the remaining members shall declare his seat vacant.[45]

In addition, if two or more ratepayers regard a person as unfit to continue to act as a member of the unit board, they may take legal action designed to remove such a person.[46] The School Act[47] and The Secondary Education Act[48] contain clauses similar to those in The Larger School Units Act.

An Ontario trustee, who was a qualified teacher, taught school for two months and received remuneration from the board of which he was a member. The Court held that under The Public Schools Act[49] a trustee who becomes a teacher ceases to hold office as a trustee and after cessation of teaching shall not resume office until re-elected.[50] Both The School Act[51] and The Larger School Units Act[52] prohibit a teacher from holding the office of a trustee in the district in which he is employed.

A trustee who was a medical practitioner was engaged by the board of which he was a member to examine the pupils. He later rendered a bill

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[45]Ibid., s. 58 (1-3).

[46]Ibid., s. 59; S.S. 1961, c. 30, s. 9, am.

[47]R.S.S. 1953, c. 169, ss. 136-8; S.S. 1961, c. 29, ss. 7-8, am.

[48]Ibid., c. 168, ss. 18 and 74; S.S. 1961, c. 28, s. 6, am.

[49]R.S.O. 1927, c. 323, s. 133.

[50]Re Public School Board of Section No. 7 of the Township of East York and Mackenzie, 40 O.W.N. 84, [1931] 2 D.L.R. 558.

[51]R.S.S. 1953, c. 169, s. 255.

[52]Ibid., c. 170, s. 24.

to the board for $15 and requested payment. The court ruled, on the basis of The Public Schools Act[53] of Ontario, that the trustee had to vacate his seat.[54] At present, The School Act allows a trustee to receive remuneration in specified situations, "or a sum not exceeding $25 in any one year for labour or school supplies".[55] The Larger School Units Act has similar provisions, except that a trustee cannot receive a sum in excess of $10 in any one year for labour.[56]

The Saskatchewan case of Rex ex rel Chutskoff v. Riwny et al[57] illustrates the necessity of adhering to statutory provisions when attempting to remove trustees. The required number of petitioners asked that certain trustees be removed for neglect of duty under a section of The School Act.[58] The court found that the trustees had violated the law with respect to providing accommodation for students, but the petition was dismissed because one of the petitioners was not a resident ratepayer at the time proceedings began. According to the law, the petitioners had to be resident ratepayers.

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[53] S.O. 1881, c. 30, s. 13.

[54] Regina Ex Rel Stewart v. Standish, (1884) 6 O.R. 408. The court stated that, if, after ten days the offending trustee had not resigned, the board should declare his seat vacant.

[55] R.S.S. 1953, c. 137; S.S. 1961, c. 29, s. 7, am.

[56] Ibid., c. 170, s. 58(5); S.S. 1961, c. 30, s. 8, am.

[57] [1928] 3 W.W.R. 728, 23 Sask. L.R. 281, [1929] 2 D.L.R. 347.

[58] R.S.S. 1920, c. 110, s. 124. This provision is included in the present Act in R.S.S. 1953, c. 169, s. 138; S.S. 1961, c. 29, s. 8, am.

The ratepayers in a New Brunswick school district asked that one of the trustees be removed since the trustee refused to act as such. The trustee performed his duties as a member for a time, then refused to do so and made a statement to this effect. The court declared his office vacant.[59]

The trustees of an Alberta school district were disqualified when they worked at the school and paid themselves for services rendered.[60]

Another Saskatchewan case[61] shows the necessity of a school board following statutory procedure when an irregular vacancy occurs on the board. Such a vacancy occurred when Green, a board member, resigned in December. The other board members took no action in regard to this vacancy until the annual meeting of ratepayers in January at which time two new board members were elected, one to take Green's place and another to fill the vacancy created by the expiration of the term of one of the other trustees. The court held the election of McLellan, who filled the vacancy created by Green's resignation, to be invalid. Under the terms of The School Act, the board should have called a special meeting of ratepayers for the express purpose of filling the

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[59]Ex parte Kilby, Mclane and Others, (1873) 14 N.B.R. 219.

[60]Muirhead v. Bullhead Butte S.D., [1911] 1 W.W.R. 253, 4 Alta. L.R. 12.

[61]Lacourse v. McLellan & DeGraw, [1928] 3 W.W.R. 680, L.R. 159, [1929] 3 D.L.R. 73.

office vacated by Green.[62] Since there was no evidence that the January meeting of ratepayers was a special meeting, the election of McLellan was declared to be invalid.

A trustee who is a shareholder in an incorporated company doing business with the school board of which he is a member is not necessarily disqualified. This was the ruling of an Ontario court in Lee v. The Public School Board of the City of Toronto.[63] Osler, J., stated:

> . . . what the section prohibits is the act of the trustee himself - something for which he is directly responsible, or can control, or can individually do or refrain from doing or being a party to.
>
> The corporation of which he is a shareholder, and which is a different entity from himself, can enter into a contract with the school corporation of which he is a member without his assent, and, so far as the latter corporation is concerned, against his will; and yet it is contended not only that the contract must be void, but that he must forfeit his seat for an act which he may have opposed by every means in his power.
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> We ought, perhaps, if the section is fairly capable of it, to place upon it a construction which will not work such an apparent injustice.[64]

The court also referred to The Municipal Act which has a clause

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[62] S.S. 1923, c. 39, s. 11. The present provision is identical to the one which was in effect at that time, R.S.S. 1953, c. 169, s. 139(1). It provides that in the event of a vacancy," . . . it shall be the duty of the trustees remaining in office to call forthwith a special meeting of the resident ratepayers of the district to elect the number of trustees required to complete the board." R.S.S. 1953, c. 170, s. 27; S.S. 1959, c. 72, s. 22, am., states: "Where a vacancy occurs in the unit board the secretary of the unit board shall forthwith notify the minister. . . ." R.S.S. 1953, c. 168, s. 17(2) stipulates that: "Notice of the vacancy shall be sent by the board to the municipal council which shall forthwith take the necessary action to fill the vacancy."

[63] (1881) 32 U.C.C.P. 78.

[64] Ibid., p. 87.

protecting dealings between a municipal corporation and an incorporated company in which members of council are shareholders, provided the members do not vote on any matter in which they are so interested.[65] Wilson, J., was of the opinion that the prohibition clause referred only to contracts which are of a personal nature, and the contract in question was not such.[66]

An Alberta court cited the Lee case as a precedent and held that a contract between the board and an incorporated society of which two trustees were members was not such as was intended to be prohibited by statute, since the members concerned anticipated no personal gain as a result of the contract.[67] In another aspect of the same case, it was sought to have a board member disqualified because he had jointly contracted with the board for sale of fuel to be used by the school district. The court found that such a contract was in contravention of the law, but in view of the fact that the misdemeanor had occurred during the previous term of office, it dismissed the complaint. Lees, D.C.J., held that a trustee could not be removed for an act committed during a previous term.[68]

There are certain instances in which a court will exercise its discretion and refuse to grant leave to produce information by way of

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[65] R.S.O. c. 174, ss. 74-5. A similar clause is contained in S.S. 1960, c. 50, s. 76.

[66] (1881) 32 U.C.C.P. 78, at p. 84.

[67] Re School Ordinance, [1914] 5 W.W.R. 1268.

[68] Ibid., p. 1270.

quo warranto against a school trustee. In the case of Rex Ex Rel Tuttle v. Quesnel[69] the following facts were brought out by the court: (1) defendant Quesnel had sold three cords of fire wood to the district board, of which he was a member, for $9; (2) he had delivered the wood with the sanction of the other trustees since the school would have had to close had he not done so; (3) plaintiff Tuttle's reason for requesting the application was that one Northern, chairman of the board, had requested him to do so; (4) Northern and defendant Quesnel apparently did not get on very well together and Northern wished to have the defendant removed so that another trustee could be elected. The court dismissed the action because the property owner bringing the action was merely a person put forward as a nominal ratepayer and the action of the trustee complained of was not the real cause of the application.

There are several other statutory clauses under which a trustee may be disqualified, but there is no report of any litigation having taken place under any of these sections. A trustee may be barred from holding office for a period of two years if he votes for the diversion of sinking fund monies into other than authorized expenditures.[70]

Another section reads as follows:

> 206. No teacher, school trustee or superintendent shall in any way attempt to deprive such child of any advantage that it might derive from the ordinary education given in the school, and such action on the part of any school trustee, superintendent or teacher shall be held to be a

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[69](1909) 10 W.L.R. 722, 19 Man. R. 23.

[70]R.S.S. 1953, c. 169, s. 184(2).

> disqualification for and voidance of the office held by him.[71]

This section applies to "such child" as wishes to leave the room when religious instruction is being given, or who wishes to remain in the room without taking part in the instruction being given.[72] Again, a trustee who is convicted of allowing an emblem of any religious faith, denomination, sect, order, or society to be displayed on the school premises during school hours "shall be disqualified from holding office for such period as the minister may by order determine."[73]

Meetings of the Corporation

The school board can transact corporate business only at a legally constituted meeting at which a quorum of the board is present. When a special meeting is called, proper notice must be given to all board members or all board members must be present and must unanimously consent to waive the notice of meeting.[74]

A contract between the Waterman Waterbury Manufacturing Company and The South Arcola School District was signed by the chairman and secretary on behalf of the board but was not authorized at a meeting of the board. The contractor executed his part of the contract and was paid. Later, the contractor discovered that, as a result of a

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[71] Ibid., s. 206.

[72] Ibid., s. 205.

[73] Ibid., s. 254(3).

[74] R.S.S. 1953, c. 170, ss. 37-9; c. 169, ss. 108-9; c. 168, ss. 24, 27, and 28(a).

clerical error, the board still owed $399.96. The board declined to pay and the contractor sued for payment. Martin, J.A., held that section 105 of The School Act was imperative. This section stated that all board action must be taken at a regular or special meeting at which a quorum is present. Since there had been no compliance with this clause, the board could not be forced to make the additional payment.[75]

A New Brunswick court ruled that a school board was under no obligation regarding a certificate of indebtedness which had been issued at a special meeting of the board. It was found that one of the trustees had not attended the meeting because he had not been notified.[76]

In another case which involved the Waterman Waterbury construction company, a contract was signed and sealed at a special meeting of the board. The proceedings of this meeting were later held to be invalid because: (1) no proper notice of the meeting had been given, and (2) the waiver of notice had not been signed.[77]

An irregularity at a board meeting does not disentitle a teacher from recovering salary due him. In Hilkewich v. Laniwci School District,[78] the school board, at a special meeting on May 28, 1936, decided to terminate the teacher's contract as of June 30, 1936. The dismissal notice

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[75]Waterman Waterbury Manufacturing Company Limited v. South Arcola School District, [1928] 3 W.W.R. 690, 23 Sask. L.R. 227.

[76]Kelly v. Grimmer S.D. 25, [1927] 3 D.L.R. 704, 53 N.B.R. 298.

[77]Waterman Waterbury Manufacturing Company v. Slavanka School District, [1929] 1 W.W.R. 598, 23 Sask. L.R. 338, [1929] 2 D.L.R. 161, reversing [1928] 3 W.W.R. 16, [1928] 4 D.L.R. 522.

[78] [1937] 2 W.W.R. 386.

was given to the teacher on May 29. On June 13, the trustees hired another teacher, apparently to replace the plaintiff. Despite this fact, the plaintiff continued to teach until June 29 at which date the trustees prevented her from entering the school. From that date on she did not attempt to pursue the duties of a teacher. The plaintiff sued the board for salary for the days she had taught between the thirteenth and twenty-ninth of June, and for damages amounting to one month's salary in lieu of proper notice of termination of contract. The Trial Court found that both the meeting at which the contract between the teacher and the board had been signed and the one at which the contract had been terminated had not been properly convened. In view of this, the court held that no legal contract existed and dismissed the case. The teacher appealed from this decision and three days before the appeal was heard the provincial legislature passed an amendment to The School Act.[79] The amendment provided that any irregularity in calling a board meeting or in proceedings at a board meeting should not prevent a teacher from recovering salary due him under a contract entered into at such meeting. The court ruled in favor of the teacher since, in the court's opinion, the provisions of the amendment were clearly meant to be retroactive.

A board may decide to hold regular meetings at a specified place, date, and time. If it decides to do so by resolution, no further notice of any such meeting is necessary.[80] An Alberta court

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[79] S.S. 1937, c. 53, s. 6.

[80] R.S.S. 1953, c. 170, s. 37(1); c. 169, s. 108(2).

has ruled that meetings of the school board are to be considered as regular meetings unless it can be shown to the contrary.[81]

The Saskatchewan case of Bd. of Trustees for Clear Valley School District v. Clarkson[82] appears to question the necessity of the board passing a resolution in order to do what the statutes give authority to do. The validity of a meeting, at which the board passes a resolution for collection of taxes, was questioned by a ratepayer. The court stated:

> I think that a careful reading of the numerous duties of school trustees as set forth in sec. 116 of The School Act leads to the conclusion that every single move of the trustees need not be preceded by a formal resolution.
> . . . . . .
> I have reached the conclusion that a formal resolution was not necessary to entitle the board of trustees to sue and that it derives the power to sue directly from the statute.[83]

By-laws and Resolutions of the Corporation

A by-law is defined as follows:

> All regulations made by a corporation and intended to bind not only itself and its officers and servants, but members of the public who come within the sphere of their operation, may properly be called by-laws, whether they are valid or invalid in point of law; but the term may also apply to regulations binding only on the corporation, its officers and servants.[84]

A by-law is usually considered to be a continuing regulation, whereas

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[81] Olive School District v. Northern Crown Bank, [1917] 2 W.W.R. 549, 12 Alta. L.R. 344, 34 D.L.R. 16.

[82] [1942] 2 W.W.R. 522.

[83] Ibid., p. 524.

[84] 9 Halsbury, op. cit., pp. 41-2.

a resolution is generally declarative of a corporation's intention with respect to a particular matter of a temporary nature.[85] When enacting a by-law, the necessary formalities and statutory procedures must be followed in order for it to be valid.

The Larger School Units Act,[86] The School Act,[87] and The Secondary Education Act[88] refer to by-laws only with reference to the issuing of debentures. If a statute does not state that a by-law is necessary, it may be inferred that a resolution is adequate.[89]

Duties and Powers of the Corporation

The following is a general statement regarding the powers of statutory corporations:

> Statutory corporation . . . are confined to powers expressly or impliedly granted and those which may fairly be regarded as incidental to their express powers. They cannot go beyond the limits of these powers without being faced with the doctrine of ultra vires which renders nugatory any act done without legislative sanction. The presumption is that any power has been withheld which is not expressly given or fairly implied.[90]

Mandatory duties. A corporation cannot divest itself of certain powers and duties which have been entrusted to it for the provision of public services. This principle was raised in the Salmon Arm dispute

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[85]Rogers, op. cit., p. 366.

[86]R.S.S. 1953, c. 170, s. 88; S.S. 1954, c. 47, s. 13, am.

[87]Ibid., c. 169, s. 147.

[88]Ibid., c. 168, s. 51.

[89]Rogers, op. cit., p. 375.

[90]Ibid., p. 333.

in British Columbia.[91] The consolidated school district of Salmon Arm encompassed the city of Salmon Arm, the rural municipality of Salmon Arm, and some surrounding unorganized territory. The school board, in 1951, requisitioned the sum of $328,000 from the two municipalities. This request was disputed by the councils of the two municipal governments and, in accordance with the law, was referred to an arbitration board whose decision was to be binding on all parties concerned. The award of this board reduced the original requisition by $80,000. During the course of the year, the school board found that it did not have sufficient funds to operate the school district for the entire year and so it asked both the city and the rural municipality for supplementary financial grants. The city council granted the board's request, but stipulated that the money was to be used to provide educational services for the city children only. Since the rural municipal council refused to comply with the request for additional financial help, the board, on October 1, closed the schools to all children residing in the rural municipality of Salmon Arm. The municipal council immediately applied for a writ of mandamus to compel the school board to reopen the schools and provide education for all children. The Trial Court, in dismissing the action, recognized the board's contention that lack of funds made it impossible to operate the schools for the entire year. The municipal council appealed the decision and the Appeal Court granted the writ of

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[91] McLeod v. Board of School Trustees of School District No. 20 (Salmon Arm), [1952] 2 D.L.R. 562, 4 W.W.R. 385.

mandamus.

The court held that the board had violated the law in three ways: (1) it had not accepted the award of the arbitration board even though the decision of this board was, by statute, binding on it, (2) it had no authority to make an agreement with the city of Salmon Arm for additional grants, and (3) it had deprived a number of children under its jurisdiction of their statutory right to an education.

The plea that it is impossible to comply with a statutory duty because of lack of funds was held to be no answer to an application for a writ of mandamus. In this regard, Chief Justice Sloan stated:

> 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-fulfilment of their statutory duties.[92]

It was pointed out that it was not for the school board to say whether or not compliance with a statute is possible. Since the award of the arbitration board is final and binding, the duty of the board was imperative and quite clear. The court found that the board had not made a bona fide attempt to reduce its budget so as to comply with the award. The Public Schools Act makes it quite clear that a board must provide educational services for all children and the board cannot discriminate against any group of children.

What then, could the board have done? If the board was convinced, at the time of the arbitration award, that the award would not allow them to carry on a full instructional program for the entire

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[92] [1952] 4 W.W.R. p. 386.

year, it should have resigned.

> . . . people in public office ought to resign if they find no way left to carry out their statutory duties. They subject themselves to censure, invite public opprobrium and legal action, if in such circumstances they remain in public office and attempt to evade or pervert the statute by which their conduct is confined.[93]

The court, in granting the writ of mandamus, followed the ruling of an Alberta court in Henschel v. Board of Medicine Hat School Division No. 4.[94] In this instance, it was found that the board was not, in fact, providing adequate school accommodation for all students.

The school board had closed the school in the plaintiff's district and had agreed to pay $600 to the plaintiff in lieu of or for conveyance, in order that the children might attend school in Medicine Hat. The plaintiff built a house in the city because he was unable to rent one. During the school term, he remained on the farm while his wife and children lived in the city. At the beginning of the next term, the mother and children again moved to the city but the board refused to make further payments. They contended that the plaintiff was now a ratepayer in the city and they had no responsibility in the education of his children. In granting the writ of mandamus and damages claimed, Sissons, D.C.J., held:

> 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

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[93] Ibid., p. 390.

[94] [1950] 2 W.W.R. 369.

> 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.[95]

It seemed to be the thinking of the court that the plaintiff was a city ratepayer only because the defendant board had failed to provide adequate school accommodation in the district. Regarding performance of this particular duty Sissons, D.C.J., 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.[96]

The writ of mandamus, compelling performance of duty, is the only remedy where there is no other way to enforce obedience to the law. In the Salmon Arm case, the court had the following comment with respect to a writ of mandamus:

> Mandamus is of a highly remedial nature and one to be facilitated in order to secure efficient administration of justice rather than hedged about by refinements which detract from that end. . . . If it is not upheld here, the children are (to use Lord Mansfield's words) "put out of the protection of the law". The very circumstance that the children are without remedy requires no further reason for granting mandamus.[97]

In the Saskatchewan case of Perreault v. Kinistino School Unit No. 55[98] it was found that the board had not fulfilled the statutory

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[95] Ibid., p. 372.

[96] Ibid., p. 374.

[97] [1952] 4 W.W.R. 394.

[98] (1957) 21 W.W.R. 17, 8 D.L.R. (2d) 491, affirming (1956) 20 W.W.R. 145.

duty to provide transportation to school for the plaintiff's children. The children had been placed in a residential school after the board refused to arrange conveyance for them. Plaintiff then sued to recover from the unit the cost of boarding his children.

At the time of proceedings, the relevant provision of The Larger School Units Act read as follows:

> 51. It shall be the duty of every unit board, and it shall have the power:
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> > 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.[99]

The Trial Court, in finding for the plaintiff, ordered the defendant board to pay a reasonable sum in lieu of the costs of conveying the children to school. The board appealed this decision, but the Court of Appeal affirmed the judgement of the Court of Queen's Bench.

Discretionary duties. If a corporation is merely empowered to do an act, it will not be compelled to do it, even though the act is partially completed.[100] The courts will not interfere with discretionary authority as long as it is carried out in good faith, reasonably, and for the intended purpose.[101] When such discretionary

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[99] R.S.S. 1953, c. 170, s. 51(9).

[100] 9 Halsbury, op. cit., p. 65.

[101] 30 Halsbury, op. cit., pp. 687-8.

power is exercised, it must be cognizant of the common law rights of others but it does not have to provide for every contingency.[102] In other words, if a board uses its discretionary power and takes the proper precautions, no action will lie at common law for damage or nuisance which is the inevitable result of the exercise of such power.

In an early Saskatchewan case, the trustees of a rural school district wished to move the schoolhouse to the center of the school district to conform with the law. The difficulty in defining the center, because of the peculiar shape of the district, was apparently the reason for the previous trustees' failure to take action. The court ruled that the trustees had acted in good faith and dismissed the ratepayer's complaint against the board members.[103]

When the Ottawa Public School Board passed a resolution closing a certain school, a ratepayer brought action for an injunction to restrain the board from carrying out its resolution. The Ontario Supreme Court held that a court ought not to restrain a board from doing what the majority wish to do by virtue of statutory powers.[104]

Where a board interferes with personal and property rights, it must show that it does in fact have such powers. In such instances, statutory procedures must be followed closely for courts will strictly

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[102] Ibid., pp. 692-3.

[103] Bowman et al v. Faber et al, [1919] 3 W.W.R. 755.

[104] Law v. Ottawa Public School Board, 63 O.L.R. 1, [1928] 4 D.L.R. 483.

construe statues giving such powers.[105]

Limitations on powers. The school corporation cannot participate in activities which are not sanctioned by the legislature. In Re Almonte Board of Education and Almonte[106] it was held that the school board was not permitted to lease some of its property for revenue purposes. A similar ruling was given in Niagara Public School Board v. Queenston Women's Institute.[107] The court was of the opinion that a lease which is not authorized by statute is ultra vires and void.

There are many limitations on the powers of school boards and it is not the writer's intention to exhaust this particular area. The succeeding chapters will deal with specific school board powers, the limits of those powers, and the liability of the board in those fields.

Litigation by the Corporation

Legal proceedings on behalf of a corporation cannot be commenced by one or more of its individual members. A corporation must act as such in instituting litigation in its corporate name. A corporation may be sued as though it were an individual, but suit should be directed at the corporation and not at the individual members.[108] The function of the courts is to compel adherence to the statutes.

An individual may sue, on his own behalf, or on behalf of some

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[105] 30 Halsbury, op. cit., pp. 690-2.

[106] 64 O.L.R. 505, [1930] 1 D.L.R. 13.

[107] 59 O.L.R. 213, [1926] 4 D.L.R. 13.

[108] 9 Halsbury, op. cit., p. 91.

or all corporators, the corporation or its officers in the following instances: (1) to prevent the corporation either from beginning or continuing an act which is beyond its powers; and (2) to prevent the corporation from carrying out something which purports to be a corporate act, but which is actually an attempt by the majority of its members to practise fraud or oppression against the minority.[109] In such instances the court could enforce its decision by issuing an injunction. In other situations, judgements against the corporation may be enforced by a writ of mandamus.

Summary

The following conclusions may be drawn from the foregoing material involving the corporate status of the school board:

1. The school board is a statutory corporation and as such it is subject to the law of corporations.

2. The statute creating the board becomes the board's constitution from which it derives its powers and duties.

3. The school board as such is the corporation, whereas the municipal corporation consists of all the inhabitants residing within the boundaries of the municipality.

4. Since the board is a corporation constituted for public services, it is treated as an agency of the provincial government and is subject to the control of the department of education.

5. It is important that the precise name of the board appear on

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[109]9 Halsbury, op. cit., p. 93.

a legal document, but the fact that this does not appear on a document will not invalidate that document as long as there is no doubt as to the identity.

6. The geographical boundaries of each school district or unit must be clear and precise.

7. Generally, the school corporation can only act or express its will by deed under its common seal. However, in matters of every day occurrence or urgent necessity, the board can bind itself without the seal.

8. The presence of the seal will not bind the board if the prerequisites for affixing the seal have not been fulfilled.

9. The corporation is a legal person and has an identity distinct from those who are its members.

10. The corporation has a continuity of existence and a liability or obligation, once binding on a corporation, binds successors.

11. If a proven irregularity in election proceedings could have affected the result, the election will be declared void.

12. Courts appear reluctant to interfere in school board elections unless it can be shown that the will of the people has been contravened or there has been a denial of the rights of the electors.

13. The results of several irregularities in election proceedings are not cumulative.

14. A trustee shall not be a teacher in his own district.

15. If a trustee receives remuneration, except in certain instances, for labour or school supplies in excess of the stipulated

amounts, his seat will be declared vacant.

16. When an irregular vacancy occurs on a school board, it is the duty of the remaining members to take forthwith the action necessary to hold a new election and complete the membership on the board.

17. If a trustee refuses to perform his duties, the courts will, upon complaint by a ratepayer, not hesitate to declare his seat vacant.

18. Proceedings designed to remove trustees from office must adhere rigidly to statutory provisions or the action will fail.

19. A trustee who is a shareholder in an incorporated company, or a member of an incorporated society, doing business with the board is not necessarily disqualified. The courts have said that such contracts are not the kind which are prohibited by statute since the individual member does not anticipate personal gain as a result of the transaction.

20. A trustee cannot be removed for a statutory misdemeanor committed during a previous term of office.

21. A court may on an application for leave to exhibit an information by way of quo warranto against a trustee who has violated the Act, exercise its discretion and refuse the application, and will do so where the ratepayer is a person merely put forward as a nominal ratepayer and the action of the trustee complained of is not the actual cause of the application.

22. A contract, in order to be binding on a school board, must be ratified at a regular or special meeting of the board at which a quorum is present.

23. Where a special meeting of the board is called, proper

notice must be sent to each board member or the entire board, at that meeting, must sign the waiver of notice. If either of these conditions is not met, the proceedings at the meeting may be declared invalid.

24. An irregularity at a board meeting at which a teacher is engaged does not disentitle the teacher from recovering salary due him.

25. A meeting of a board is deemed to be a regular meeting unless it is shown to the contrary.

26. A resolution to terminate the contract of a teacher must be passed at a properly constituted meeting of the board.

27. By statute, a board of a secondary school district has the power "to fix the times and places of its meetings and the mode of calling and conducting the same."[110]

28. A school board must provide adequate accommodation for all children residing in the district and it cannot discriminate against anyone having the statutory right to attend school.

29. If the school board finds it impossible to carry out its statutory duties, it should resign.

30. Where a board makes provision for transportation of children from one district to another, it must provide for all children or pay a reasonable sum in lieu of the costs of conveyance.

31. Courts will not generally interfere with the discretionary authority of boards as long as such authority is carried out without discrimination, reasonably, and for the intended purpose.

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[110] R.S.S. 1953, c. 168, s. 28(a).

32. School boards are limited in their discretionary powers to those expressly stated or implied and powers not granted are held to be prohibited.

33. A lease not authorized by statute is ultra vires and void.

CHAPTER V

THE SCHOOL CORPORATION: FINANCE

Introduction

The school corporation depends entirely upon statutory permissiveness for methods it may use to raise and disburse funds in the course of its operations. The major sources of revenue are taxation on locally assessed property and legislative grants.

During recent years there has been a feeling among municipal officials, including school boards, that the tax rate on property cannot be increased to any great extent beyond the present level. One reason for this feeling is the result of the increase in funds needed by all municipal authorities to provide services for an ever expanding population.

This chapter will be primarily concerned with the school corporation's role in taxing procedures, the use of current revenue, and the corporation's borrowing powers.

School Board - Municipal Council Relationships

The interaction of school boards and municipal councils in Saskatchewan occurs mainly in the area of school finance. This relationship has been markedly free from legal disputes due, in part at least, to the fact that councils have no power of review over school board budgets. This is not the situation in all Canadian provinces; in Ontario, for example, councils examine the estimates of boards to determine whether the proposed expenditures are *intra vires* the board. But even in Ontario it has been established that the two bodies of local government are

distinctly separate and one has no right to interfere in the affairs of the other.[1]

Since the inception of local government in Saskatchewan, municipal councils have been the tax collecting agency for school boards. The school corporation requisitions the municipality for funds and the municipality must comply with the request.

Assessment of property. School boards are free from any responsibility in the actual procedures of valuating property for taxation purposes, and must accept the valuation determined by the land assessors. When the total taxable assessment has been fixed, the following is the duty of the municipality as stated in The School Assessment Act:

> 4. (1) On or before the fifteenth day of February in each year the clerk or secretary of every municipality and the minister [of municipal affairs] on behalf of a local improvement district, in which a portion of any school district lies, shall transmit to the board a certified statement of the total taxable property assessment and the total taxable business assessment of the portion of the district situated within the municipality or local improvement district as shown upon the last revised assessment role.[2]

A similar provision exists with respect to the duty of municipalities towards larger school unit boards,[3] but no such duty is required of councils towards the board of trustees of a high school district.

Budgetary procedures. There are variations in the manner in

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[1]Re Almonte Board of Education, 64 O.R. 505, [1930] 1 D.L.R. 568.

[2]R.S.S. 1953, c. 172, s. 4(1).

[3]Ibid., c. 170, s. 71.

which the different types of boards requisition the municipal councils for funds.

Unit boards must, not later than the first day in April of each year, determine:

> (a) the amount required to pay teachers' salaries for the year;
> (b) the amount required to provide for such operation expenses of the school districts as are to be paid from the funds of the unit;
> (c) the amount of estimated expenses incidental to the work and office of the board and the estimated amount of other lawful expenditures of the board;
> (d) the amount required to be levied through the uniform tax for any or all of the matters mentioned in subsection (2) of section 68;
> (e) the aggregate amount to be levied in the unit through the uniform tax;
> (f) the total assessment of property assessable for school purposes in the unit as shown on certified statements received . . .
> (g) the uniform tax rate in mills required to raise the levy referred to in clause (e):
>
> provided that, notwithstanding anything contained in this or any other Act, the unit board may vary the tax rate:
>
> (i) in a hamlet or village in a school district in a unit or in the rural portion of any such district containing a hamlet or village; or
> (ii) in a town school district included in a unit under subsection (1) of section 3 or in the rural portion of any such district.[4]

When the tax rate has been struck:

> 2. The unit board shall forthwith notify the proper taxing authorities and each board of trustees of a district in the unit containing a town or village or hamlet of the uniform tax rate mentioned in clause (g) of subsection (1) and of the rate or rates in each district containing a town or village or hamlet.[5]

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[4] Ibid., s. 69(1); S.S. 1958, c. 62, s. 10(1), am.

[5] Ibid., s. 69(2).

In succeeding clauses, provision is made for an appeal to the minister of education with respect to the variation of the uniform tax rate.[6]

A unit board is not compelled, by statute, to submit its budget to the municipal councils concerned; it merely informs the councils having lands within the unit of the rate to be levied. Thus, the board is the sole judge as to the legality of the expenditures included in the budget. In the past, boards have expended funds on items for which there is no statutory authority. The following excerpt is taken from a manual issued by the department of education:

> Re: Costs of Snow Removal. While there is no legal sanction for expenditures by school unit boards for costs incurred in snow removal, it is known that boards have incurred such costs.[7]

Apparently, the department of education does not disapprove of the inclusion of the item and perhaps this is a reasonable point of view, considering the winter climate of Saskatchewan.

The steps to be followed by boards organized under The School Act are stated in The School Assessment Act:

> 5. (1) On or before the first day of April in each year . . . the board of every district other than a high school district shall transmit to the clerk or secretary of each municipality and to the minister for each local improvement district, in which any part of the school district is situated:
>
> (a) a detailed statement, in such form as the minister [of municipal affairs] may prescribe, of the estimated expenditures of the district for the current year. . . .

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[6]Ibid., s. 69(3-6).

[7]Department of Education, "Budget Manual for School Units," Mimeographed, January, 1961, Item V.

> (b) a certified copy of the resolution of the board showing the amount required to be levied on the total assessment of the district, and in addition, where the district is not situated wholly in one rural municipality or local improvement district, the amount required to be levied in each municipality and in each local improvement district, in which any part of the district is situated. . . .
>
> (2) Where a rural district is not situated wholly in a rural municipality or local improvement district, the board shall apportion the total amount of school taxes to be levied among the municipalities or local improvement districts or the municipalities and local improvement district concerned, in such proportion as the total assessment of the portion of the district in each municipality or local improvement district bears to the total assessment of the district in the previous year.[8]

This is the only instance in which an itemized budgetary statement is sent to municipal councils. However, the municipalities have no authority to review the school board budget; the board requisitions the council for funds and the council sets a rate that will yield the required amount.

The School Assessment Act provides for an appeal from the division of liabilities where a school district does not lie entirely within a single municipality.[9]

The Secondary Education Act sets out the procedures for high school boards.

> 46. (1) The board of every district shall in each year prepare a statement of the estimated revenues and expenditures of the district for the year

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[8]R.S.S. 1953, c. 172, s. 5(1-2); S.S. 1958, c. 43, s. 1, am.

[9]Ibid., ss. 9-10; S.S. 1963, c. 27, ss. 2-3, am. The petition is to be sent to the secretary of the school board.

> and shall include therein such sum as may be required to meet the debenture charges mentioned in section 45 . . . .
>
> (2) Subject to subsection (4), the board shall on or before the first day of March in each year, or at such other time as may be specified by the council of the municipality in which the district is situated, request the council to levy a tax to provide for the portion of the estimated expenditure to be met by taxation.
>
> (3) Where a district is situated partly in one municipality and partly in another municipality there shall be an annual apportionment of the portion of the estimated expenditures to be met by taxation and the provisions of The School Assessment Act shall apply to such apportionment.
>
> (4) When, pursuant to the provisions of subsection (3) and The School Assessment Act, an apportionment is finally determined, the board shall forthwith request each municipality in which the district is partly situated to levy a tax to provide for its proportion of the estimated expenditures to be met by taxation.[10]

High school boards are not legally compelled to send their detailed budgets to municipal councils; they merely ask councils to raise the funds needed. It is then the council, not the board, which sets the tax rate.

It is important that boards submit their request to councils by the specified date. A New Brunswick board made its requisition one month after the date named by the statute and the city refused to make an additional levy for school purposes since it had already made the levy for municipal purposes. The court held that the council had a right to expect the board's requisition by the statutory date and that

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[10]Ibid., c. 168, s. 46(1-4).

the council had no authority to make a separate levy for school purposes.[11]

A Saskatchewan court indicated that the time and form of the requisition on councils could be of some consequence.[12] A separate school board asked the council for $3,095 for the general purpose of financing the school for the year. Dickson, D.C.J., stated:

> Council for defendant took exception to the demand on two grounds, namely, that it was sent too late in point of time and also that it was not in proper form. Sec. 35 of The School Assessment Act provides that the demand shall be made "on or before the fifteenth day of March in each year" and (subsec. 3) that there shall be attached to the application "an estimate shewing details." I take this as meaning that the estimate shall shew in detail the purposes for which the amount demanded is required with the sum to be allocated to each.[13]

The court went on to state that there was nothing to be done in this instance because the board had requested a sum of money from the council and the council had paid it over.

Collection of taxes. The Larger School Units Act stipulates that:

> 70. (1) The council of every municipality with lands in a school unit shall levy the unit tax when advised of the rate or rates in the manner herein provided and the Minister of Municipal Affairs or the unit board as the case may require shall levy the unit

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[11] Ex parte Carvill, (1873) 13 N.B.R. 222.

[12] Vonda R.C. Separate School v. Town of Vonda, (1922) 65 D.L.R. 762. The litigation centred around the contention of the separate school board, whose legal responsibilities are similar to those of a public school board, that they were not getting a fair share of corporation taxes.

[13] Ibid., p. 763.

> tax in respect of lands outside a municipality but within a school unit,[14]

Both The Village Act[15] and The Rural Municipality Act[16] make sections 68 - 79 of The Larger School Units Act applicable to taxation where either of these municipalities have lands within a larger school unit. Proceeds of taxes must be paid over to unit boards at least once a month.[17] Where a high school district or a town school district enters into a school unit by agreement with the unit board, such agreement may include a provision as to the tax rate to be imposed upon the ratepayers of the district.[18]

The Village Act[19] and The Rural Municipality Act[20] provide for collection of the desired funds for school districts not included in units. The School Assessment Act[21] states that municipalities must turn over the proceeds of the tax levy to boards in quarterly installments, except that the time of payments may be altered by mutual consent. Where a municipality has lands within a town district, tax moneys collected for the school district must be paid over at least monthly.[22]

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[14] R.S.S. 1953, c. 170, s. 70(1).

[15] S.S. 1960, c. 49, s. 331.

[16] Ibid., c. 50, s. 350.

[17] R.S.S. 1953, c. 170, s. 72.

[18] Ibid., s. 60.

[19] S.S. 1960, c. 49, s. 330.

[20] Ibid., c. 50, ss. 348-9, 344.

[21] R.S.S. 1953, c. 172, s. 6, S.S. 1956, c. 33, s. 3, am.

[22] Ibid., c. 172, s. 7; S.S. 1960, c. 50, s. 354.

The Secondary Education Act[23] requires councils to levy a high school rate sufficient to provide for the requested sum and to turn the proceeds over to the school district "from time to time." Where a municipality has issued debentures for purposes of a school district, it may withhold, from the proceeds of the high school tax levy, an amount "sufficient to meet the principal or sinking fund requirements and interest due and payable in that year in respect of such debentures."[24] The council must, however, advise the board, by February 1, of such amounts in order that the board may include these in its estimates.[25]

Since councils can only levy taxes once in any year, an Ontario court ruled that boards can submit only one requisition in a given year. In this instance, a public school board had submitted a provisional request by the required date and later demanded additional funds.[26]

The ratepayers of a Manitoba school district voted to have a new school built and the school board, in order to obtain funds for the construction, submitted a $30,000 money by-law to the ratepayers for approval. The by-law was defeated, submitted again, and defeated a second time. The board then requested the municipality to levy the required $30,000 in addition to the regular school tax levy.

A ratepayer brought an action for an injunction to stop the

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[23]R.S.S. 1953, c. 168, s. 47(1).

[24]Ibid., c. 168, s. 47(2).

[25]Ibid., c. 168, s. 45.

[26]Re Board of Trustees of the Public School of the Village of Beaverton and the Corporation of the Township of Thora, [1932] O.R. 663, [1932] 4 D.L.R. 458.

municipality from levying the heavy rate, but the Trial Court held that the municipality had no alternative but to comply with the board's request. The plaintiff appealed this decision and the Manitoba Court of Appeal upheld the appeal, Perdue, C.J.M., declaring that the levying of such a heavy rate would be contrary to the spirit of The Assessment Act since the tax becomes a debt of the taxpayer and is enforceable by levying distress or action.[27]

Restrictions on Uses of Current Revenues

Unit boards have statutory authorization to create and maintain a cash reserve, equivalent to one year's expenditures, by increasing, at its discretion, the uniform tax rate annually by not more than twenty percent of the estimated current requirements.[28] A special reserve for capital expenditure may be created by an annual levy of not more than three mills on the total taxable assessment.[29] This latter rate may be increased by authorization of the local government board. Unit boards are also empowered to use current revenue for:

> . . . acquiring, extending or improving a school site or a site for a teacher's or janitor's house or a building to be used for purposes of school administration; for acquiring, erecting, repairing, furnishing, equipping, moving or adding to a school building or teacher's or janitor's house or a building to be used for purposes of school administration; for fencing the school grounds; for acquiring or erecting a stable and other necessary outbuildings; for purchasing vans for conveying pupils;

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[27]Phillips v. Ross et al, [1921] 1 W.W.R. 298, 31 Man. R. 62, 56 D.L.R. 381, reversing [1920] 3 W.W.R. 544.

[28]R.S.S. 1953, c. 170, s. 68(1).

[29]Ibid., c. 170, s. 68(2); S.S. 1955, c. 47 s. 7, am.

or for any or all such purposes.[30]

The School Act[31] and The Secondary Education Act[32] permit boards to create a cash reserve by increasing the annual requisition by not more than ten percent of the estimated current requirements. In addition, The School Act[33] authorizes boards to spend fifty dollars per year per teacher employed for school purposes not otherwise listed. High school boards may also spend a specified amount per teacher on permanent improvements, the amount depending on the number of teachers employed.[34]

The following statutory restriction is not limited only to current revenues, but does include such funds.

245. If the board of any district:

(a) wilfully contracts liabilities in the name of the district greater or other than as provided or allowed by this Act;

(b) appropriates any of the moneys of the district for purposes other than are provided or allowed by this Act;

(c) uses the funds of the district directly or indirectly in paying a teacher for teaching a language other than those prescribed outside of school hours, or pays any portion of a teacher's regular salary in consideration for such service;

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[30]Ibid., c. 169, s. 143. Authority to use current revenue for these purposes is given to unit boards by section 68(2) of The Larger School Units Act.

[31]Ibid., c. 169, s. 115(1).

[32]Ibid., c. 168, s. 29(1).

[33]Ibid., c. 169, s. 114(45).

[34]Ibid., c. 168, s. 46(1).

> any two ratepayers of the district may recover as a debt for the school district in a court of competent jurisdiction from the members of the board who voted for or sanctioned such illegal action, jointly or severally, the sum for which the district has been rendered liable through the action of such trustees over and above the amount provided by this Act, in addition to the total amount of moneys that have been misappropriated by such trustees.[35]

Two questions arising from subsections (a) and (b) of the above section are: (1) what is meant by the term "wilfully?" and (2) what constitutes a misappropriation of funds?

The Alberta case of Lac Ste. Anne School Division No. 11 v. Buxton et al[36] clarifies, to some extent at least, the first question. The board of the school division paid, by resolution, a lump sum bonus of $3,000 to their retiring secretary. The minister of education, in accordance with statutory provisions, authorized legal action in order to recover the money. Proceedings were instituted under the following section of The School Act:

> 421. (1) In any case where:
>
> (a) the board of a district or division has wilfully entered, on behalf of the district or division, into a contract that is not authorized by this Act or whereby the district or division has incurred any liability in excess of the liability that it is authorized to incur by this Act, or
>
> (b) the board of a district or division has wilfully appropriated any of the moneys of the district or division for purposes other than those that are authorized by this Act,

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[35] Ibid., c. 169, s. 245.

[36] (1960) 33 W.W.R. 481.

> each trustee who has been a party to entering into the contract or to making the appropriation is liable to pay to the district or division all sums of money for the payment of which the district or division has been made liable to the extent that such liability is not authorized by this Act and to pay moneys that have been appropriated as aforesaid.
>
> (2) Any action for the recovery of money payable to the district or division under subsection (1) may be brought in any court of competent jurisdiction in the name of the board by the treasurer or by any person authorized by the Minister to bring the same.[37]

The bonus was paid on April 1, 1957, and the legal action commenced on October 7, 1958. The board claimed protection under The Public Authorities Protection Act which stated that there was no claim unless proceedings were instituted within six months of the date of the illegal action.[38] The court found that the payment of a lump sum to the secretary was ultra vires the board, but it held that this was not a "wilful" act since the board honestly thought it had the power to do what it had done. Riley, J., stated:

> The only evidence submitted indicates that the defendants acted honestly and reasonably and ought fairly to be excused from the breach of trust in accordance with the provisions of sec. 31 of The Trustee Act, R.S.A. 1955, ch. 346.[39]

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[37] R.S.A. 1955, c. 297, s. 421.

[38] Ibid., c. 262, s. 2. This Act is made applicable to Alberta school boards by s. 449 of The School Act. R.S.S. 1953, c. 17, s. 2(a) stipulates that legal proceedings must begin within twelve months of the date of the illegal action.

[39] (1960) 33 W.W.R. p. 486. The applicable section of the Act states that if it appears to the court that "the trustee has acted honestly and reasonably and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve the trustee either wholly or partly from personal liability for the breach of trust." The Trustee Act, R.S.S. 1953, c. 123, s. 51, is nearly identical to the clause in the Alberta statute.

The court, in dismissing the action, also took into consideration the fact that the board could have contributed to a superannuation scheme on behalf of the secretary and in this manner could have legally done what it had illegally done.

This case is not applicable to Saskatchewan in its entirety since boards have the power to make gratuitous payments to employees, other than teachers, retiring on account of age.[40] It is, however, an example of the liberal construction of statutes involving discretionary powers of trustees. It would appear that the Alberta court interpreted "wilful" as meaning dishonest or unreasonable.

Several Saskatchewan cases indicate what may constitute misappropriation of funds.

As the result of contested election proceedings in a school district, court costs of $370.65 were incurred by the parties involved. Shortly after this litigation, the department of education appointed one Neal as official trustee of the school district. Kellington, treasurer of the board, paid the entire amount of the court costs after the appointment of Neal as the official trustee. Upon investigation, Neal found that the minute book of the board contained a motion by Milne, another trustee, authorizing payment of the costs of the litigation which followed the election. Neal then brought suit to recover from Kellington but Milne, contending that payment of the court costs was a misappropriation of funds. The Trial Court found for the plaintiff Neal and Milne appealed this decision.

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[40] R.S.S. 1953, c. 169, s. 125(a); S.S. 1964, c. 19, s. 7, am.; c. 168, s. 35.

The Appeal Court found that Kellington had altered the minute book by substituting the words "court costs" for other words in a motion made by Milne. The court found no evidence that Milne had been a party to the fraud and consequently dismissed the action against him.[41]

In Board of Trustees of Eltham School District No. 2823 v. Langston and Ball,[42] a school board sued a previous board for alleged misappropriation of funds. A house had been obtained free of charge from a board member and the board proceeded to have it repaired at a cost of $109.20. The board had also travelled to Regina to consult with officials from the department of education regarding operation of the school, paying themselves a total of $35 for expenses incurred during the trip.

Regarding the first expense, the court held that the board had acted in good faith and in accordance with their statutory power:

> . . . to purchase or rent sites or premises for a house for the teacher, and to build, repair and keep in order such house; or, to enter into an agreement with any board or boards for the purpose of erecting, furnishing, and maintaining a teachers' residence on such terms as are mutually agreed upon.[43]

On the second count, it was found that the trip to Regina had not been reasonably necessary for the proper conduct of the affairs of the district since the board could have consulted the local

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[41] Neal v. Kellington and Milne, [1917] 2 W.W.R. 101, 10 Sask. L.R. 87. Kellington did not appeal.

[42] [1923] 3 W.W.R. 641.

[43] R.S.S. 1920, c. 110, s. 110(8). This provision is still on the statute books in R.S.S. 1953, c. 169, s. 114(8).

superintendent who was an official of the department of education. In view of this, the court was of the opinion that the money had been misappropriated. However, The School Act gave no authorization for a board to sue a previous board; it provided that "the treasurer of the district or some other person authorized by the minister may recover the debt."[44] On the basis of this clause, the action was dismissed.

Two members of a Saskatchewan school board worked for the district and paid themselves for work done. It was alleged that this money had been misappropriated and action was brought to recover the amount paid.[45] The Trial Court, in dismissing the action, concluded that this was not a misappropriation of funds. In the opinion of the court, this section was intended to keep boards of trustees and individual members of such boards within the limits of expenditure authorized by the Act, and it was also intended to provide a means whereby a school district might be indemnified for losses suffered through misuse of its moneys or by the assumption of unlawful liabilities on its behalf. No such loss was suffered in this case, since the district had the power to contract for the work done. The plaintiff appealed the decision, but the Appeal Court upheld the judgement of the lower court.[46]

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[44] R.S.S. 1920, c. 110, s. 214.

[45] R.S.S. 1930, c. 131, s. 239 as amended by S.S. 1931, c. 52, s. 21. This section is identical to R.S.S. 1953, c. 169, s. 245.

[46] McNabb and Jarnagin v. Findlay, [1932] 3 W.W.R. 255. Had action been initiated under a different section, the trustees might have been found guilty.

Borrowing Powers of the School Corporation

A non-trading corporation has no implied power to borrow and the matter of its powers in this connection must be determined from its constitution.

> . . . if the proceeds of a loan borrowed by a corporation in excess of its borrowing powers are applied in the payment of legitimate creditors of the corporation, so that the liabilities of the corporation are not increased, but the creditors only are changed, the lender, as against the corporation, is entitled to step into the shoes of the creditors so paid off to the extent to which his money has been legitimately so applied. . . .[47]

Anyone lending money to a school board must see to it that the transaction is intra vires or he may be without remedy. If the board goes beyond its powers, the lender may recover only to the extent that his money has been used to pay debts which the board was obligated to honor.

Short term borrowing. All three Acts under which school boards are constituted authorize the borrowing of money to meet expenditures until current taxes are available. Such a loan may be secured by promissory note by the chairman and secretary of the board on behalf of the district.[48] Unit boards may also borrow to meet current expenses on the security of legislative grants.[49] A similar power is given by The School Act, except that the promissory note must be under the seal of the board.[50]

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[47]Halsbury's Laws of England, Third Edition, London: Butterworth & Co. Ltd., 1954, Vol. 9, p. 69.

[48]R.S.S. 1953, c. 170, s. 82; c. 169, s. 142(1); c. 168, s. 49.

[49]Ibid., c. 170, s. 83.

[50]Ibid., c. 169, s. 142(3).

The School Act gives a board the power to make a temporary loan on the security of debentures, after a by-law authorizing the issuance of debentures has been passed, with the stipulation that the loan cannot exceed eighty percent of the total principal sum so authorized.[51] A similar power is given by The Secondary Education Act, except that the board petitions the municipal council to make the loan and the council must do so.[52]

Long term borrowing. Funds obtained on the basis of a long term loan are used for capital expenditures. The relevant section of The Larger School Units Act reads:

> 84. (1) When a unit board desires to borrow money for any or all of the following purposes, namely:
>
> (a) purchasing or otherwise acquiring or extending or improving, a school site or a site for a teacher's or janitor's house or a building to be used for purposes of school administration;
>
> (b) purchasing or otherwise acquiring, or erecting, repairing, furnishing, equipping, moving or adding to, a school building or a teacher's or janitor's house or a building to be used for purposes of school administration;
>
> (c) acquiring or erecting a stable or other necessary outbuilding;
>
> (d) purchasing vehicles for the conveyance of pupils;
>
> (e) consolidating the whole or any portion of the amount of the existing debt of the unit in respect of capital works;

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[51] Ibid., s. 186.

[52] Ibid., c. 168, s. 56.

> it shall pass a bylaw for the purpose as provided by section 88.[53]

The School Act[54] and The Secondary Education Act[55] contain clauses similar to the one given here. The procedures which must be followed in issuing debentures are spelled out in considerable detail.[56] In high school districts, the city or town council must submit the money by-law to a vote of the burgesses.[57] However, unit boards may issue debentures for capital expenditures up to one and one-half percent of the current taxable assessment without submitting the matter to a vote. If they wish to raise more than this, the question must be voted upon by the ratepayers.[58] The School Act requires boards to submit money bylaws to ratepayers for a vote.[59] If the vote is unfavorable, the board may appeal to the minister of education who may order an inquiry and upon receipt of the report may recommend to the local government board the amount of a loan and the purposes for which it is to be used. Such a recommendation has the effect of a favorable vote of the majority of ratepayers.[60]

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[53]Ibid., c. 170, s. 84(1); S.S. 1955, c. 47, s. 9, am.

[54]Ibid., c. 169, s. 143(1).

[55]Ibid., c. 168, s. 50.

[56]Ibid., c. 170, ss. 85-8; S.S. 1963, c. 61, s. 10, am.; c. 168, ss. 51-3.

[57]Ibid., c. 168, s. 51(2).

[58]Ibid., c. 170, s. 88(2).

[59]Ibid., c. 169, s. 147.

[60]Ibid., c. 169, s. 148.

School boards must adhere strictly to the procedures outlined and must manage school finances with the utmost care. A New Brunswick board allowed an unsold debenture, payable to the bearer, signed and sealed by the chairman and secretary treasurer, to get into circulation. The debenture was eventually purchased but when the bearer presented two interest coupons to the board for payment, the board refused to pay. A suit was then brought by the plaintiff to recover from the board. The jury was asked to answer two questions: (1) did the plaintiff obtain possession of the bond because of the carelessness of the trustees and their officers? (2) was the board and its officers guilty of negligence to the extent that it would be inequitable and unjust to find against the plaintiff? Both questions were answered affirmatively and the court found for the plaintiff. The board appealed this decision, but the appeal was dismissed.[61]

Trustees must be careful in conducting public business in order that the public interest be protected. If a debt is imposed upon the taxpayers because of the negligence of trustees, the trustees may expose themselves to personal liability.

Statutory restrictions. Two cases, both from the Maritime provinces, illustrate the principle that a school board must confine borrowing to the manner allowed by its constitution.

In Quinlan v. School Trustees,[62] a school board found itself with

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[61]Robinson v. The Board of School Trustees of Saint John, (1898) 34 N.B.R. 503.

[62](1914) 14 D.L.R. 376.

insufficient funds to carry on the operation of the school. Therefore, on two occasions, Quinlan, with the consent of the other trustees, borrowed a total of one hundred and fifty dollars from a bank on the security of a personal note of the trustees. The bank extended the loans, but finally sued for payment taking action against Quinlan personally. Since the defendant was not able to make full payment in cash, the sheriff seized some of his property. Quinlan then sued the board for the full amount of the loans he had made, but the personnel on the board had undergone a change and the new board contended that the method used to borrow the money had been ultra vires the board; thus, the transaction was illegal and the board claimed it was under no obligation to honor such a commitment.

The court ruled that the board did not have the power to borrow the money in such a way. The statutes outlined the ways in which funds could be raised and boards had no authority to go beyond those powers. Consequently, the bank had loaned the money to the individual trustees and not to the board. Since the district was legally liable for the expenses paid by Quinlan, the court found that there had not been any borrowing which had changed the total liability of the district. Therefore, all that had happened was a change in the legitimate creditors of the board. Debts, which the board was obligated to honor, had been paid personally by Quinlan. Therefore, in equity the board was bound to repay him.

This case also illustrates the principle that equity may take precedence over statutory technicalities.

In another New Brunswick case, a board borrowed money on a demand note when the statutes specifically stated that money was to be borrowed by issuing a certificate of indebtedness or debentures. When the bank sued to recover the money it had loaned, the court held that since the borrowing had been unauthorized, it could not be recovered from the board. The court did, however, allow the bank to recover from the board the amount for which the district had received value.[63]

When borrowing is ultra vires the school corporation, the person lending the money does so at his own risk. Recovery can only be made to the extent that the money has been used to pay the legitimate debts of the board.

Money borrowed for capital expenditures by issuing debentures is subject to the following statutory restriction:

> 84. (2) No moneys borrowed for any of the said purposes shall be used for any purpose other than that stated in the bylaw except:
>
> (a) where upon completion of the work stated in the bylaw there remains an unexpended balance, in which case the board may by resolution reciting the facts declare its intention to apply to the Local Government Board for authority to use such balance for any of the purposes provided for in this section, and the Local Government Board may grant permission to use the balance for such purposes and upon such terms and conditions as may be deemed expedient; or
>
> (b) where upon completion of the work stated in the bylaw there remains an unexpended balance, in which case the board may by resolution

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[63] Provincial Bank of Canada v. Trustees of School Dist. No. 2 in Parish of Saumarez, [1955] 2 D.L.R. 122, 35 M.P.R. 161.

> reciting the facts declare its intention to apply to the minister for authority to use such balance towards payment of the debenture coupons next maturing; and the minister may grant permission to use the balance for such purpose and upon such terms and conditions as may be deemed expedient.[64]

The School Act contains a clause nearly identical with the one cited here.[65] The School Act, however, limits the total debentures of a school district to not more than fifteen percent of the total assessed value of the assessable property of the district,[66] while unit boards are limited to eight percent of such value.[67]

Summary

The following principles can be drawn from the cases concerning the financing of the school corporation:

1. Municipal councils have no authority to interfere in the financial affairs of the school board. This holds true even in provinces, such as Ontario, where councils have a right to examine school boards budgets to determine whether the items are intra vires the board.

2. The board must submit its request to the municipal councils concerned by the statutory date and in the form required. If this is not done, councils may refuse to comply with the request.

3. A board may requisition upon a municipality only once a year.

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[64] R.S.S. 1953, c. 170, s. 84(2).

[65] Ibid., c. 169, s. 143(2).

[66] Ibid., c. 169, s. 176.

[67] Ibid., c. 170, s. 89; S.S. 1964, c. 20, s. 4, am.

4. Statutory provisions with respect to the borrowing of money cannot be circumvented by the levying of an extremely heavy school rate since this would be a violation of the spirit of the statutes.

5. When a board uses its discretionary authority in expending school funds and acts reasonably and honestly, it may be excused for a breach of trust even if that breach is contrary to the law. Payments made improperly but in good faith may be justified if similar payments could have been made legally.

It would appear that unit boards are less restricted in using current revenue than are other boards since they may use such funds for capital expenditures. Other boards may use only a stipulated amount of such moneys for permanent improvements. The reasons for this seemingly anomalous situation have never been discussed.

Another unanswered question is why boards organized under The School Act are required to submit an itemized budgetary statement to municipal councils when other boards are not required to do so. It is quite probable that in practice many boards actually do make councils aware of the extent of their budget, but in no instance can a council refuse to levy a school tax rate if the budget statement is in the proper form and submitted by the date specified.

CHAPTER VI

THE SCHOOL CORPORATION: SCHOOL PREMISES

Introduction

A necessary step in fulfilling the duty of providing accommodation for all children eligible to attend school is the acquiring of a school site. The procedures, as outlined by statute, must be strictly followed when obtaining a site, especially in the matter of expropriation of property. This method of acquiring property is permissible, but boards are generally loathe to exercise this power because it may cause hard feelings in a community.

In recent years there have been few new school districts organized and the trend toward centralization of school facilities has had the effect of decreasing contention over the choice of the school site.

The use made of school facilities has posed no involved problems in Saskatchewan. Boards have the authority to permit the use of buildings as they see fit and they allow many different organization to use the facilities.

The writer has not included a discussion of the board's duty to provide accommodation for pupils;[1] neither does the chapter include a synthesis of the procedures which must be followed and the precautions

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[1]Ivan Leland MacKay, "The Legal Rights, Privileges, and Responsibilities of pupils in the Publicly Supported Schools of Saskatchewan," Unpublished Master's Thesis, University of Saskatchewan, 1964, pp. 102-24. MacKay goes into considerable detail as to the duty of the board in providing accommodation for students. Topics considered are: the right to accommodation, equal opportunity for all pupils, the right to receive an education, and the assignment of pupils to schools.

which must be considered when planning educational facilities.[2]

Selection of Site

The trend toward centralization of school facilities has tended to decrease the importance of the location of the school site. In regard to site selection, Saskatchewan has had few problems in recent years which have been referred to the courts.

The School Act[3] and The Secondary Education Act[4] authorize boards to purchase or rent sites for school purposes. The School Act states that in every rural district the board shall acquire a school site on a road allowance at the center of the district.[5] If the site is further than two hundred yards from the center of the district, the board must seek the approval of the municipal council. Where a rural district is situated partly within two or more municipalities, the application for approval of the site must be sent to the council which approved the boundaries of the district.[6] The council may approve the site applied for or such other site as they deem advisable.[7] A majority of ratepayers may appeal the decision of the council to the minister of

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[2]This problem has been dealt with in considerable detail by James A. Burnett, "Elementary School Plant Planning for Urban Centres in Canada and The United States," An Unpublished Education 592 Paper, University of Saskatchewan, 1964, 75 pp.

[3]R.S.S. 1953, c. 169, s. 114(8).

[4]Ibid., c. 168, s. 28(c).

[5]Ibid., c. 169, s. 45(1).

[6]Ibid., ss. 45-7.

[7]Ibid., s. 48.

education who must then refer the matter to the courts. The decision of the court is final.[8]

The Larger School Units Act permits a unit board to appeal to the minister of education from a decision of a council regarding a school site in a district. Where there is such an appeal, the procedures outlined in The School Act are to be followed.[9]

If, in a rural district, a different or additional site is to be acquired, the application for approval is to be made in the same manner as that of a site away from the center of the district.[10] If, in a city, town or village, the board chooses a site not at the center of a district, ministerial approval must be received. The minister may, if he so desires, submit the question to the courts.[11]

High school boards have the power to select sites for high school purposes as they see fit and no council or ministerial approval is needed.[12] It would appear that the legislature intended to give high school boards greater discretion than the other types of boards in selecting the site. There is no explanation given for the apparent anomaly that an elementary school board and a high school board, having similar boundaries, are given differing powers with respect to a certain

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[8]Ibid., s. 49; S.S. 1961, c. 29, s. 4, am.

[9]Ibid., c. 170, s. 53; S.S. 1957, c. 54, s. 7, am.

[10]Ibid., c. 169, s. 51.

[11]Ibid., s. 52; S.S. 1961, c. 29, s. 4, am.; S.S. 1964, c. 19, s. 4, am.

[12]Ibid., c. 168, s. 43.

duty. In connection with the choice of a site, the regulations under The School Act stipulate that:

> A school site shall be selected with due consideration for present and future enrolments; location in respect to school population, traffic hazards and distracting noises; adequacy of level play areas; and drainage and soil conditions as they affect building construction and landscaping.
> . . . . . .
> Boards are encouraged to acquire school sites adjoining other property that can be used in conjunction with their sites for play and sports purposes.
> . . . . . .
> Where there is no municipal waterworks or sewage system the site shall be located with due consideration to water and sewage disposal.
> Construction must not be undertaken until title to the building site or a long term lease acceptable to the department has been secured.[13]

Case law concerning the selection of school sites has illustrated some rather interesting points which are related to the duties of a school board.

The Slavanka case points out the need for anyone dealing with boards of trustees to make certain such boards are adhering to the law. The contractor, on instructions from the trustees, proceeded with construction of a school building on a site which had not been approved by the municipal council. In fact, the council had approved a different site. The contract was declared invalid because of an irregularity at the meeting authorizing it, and the contractor was left without remedy as to the funds he had expended. Because the school was eventually built on the site approved by the council, the court ruled that the board could recover the sum of $500 which it had paid to the contractor

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[13]"Regulations under The School Act, s. 1," Saskatchewan Gazette, November 6, 1964.

on account. The court realized this would impose hardship on the plaintiff contractor but it was pointed out that the contractor had known that there was contention over the choice of the site and should not have proceeded with construction.[14]

In another early Saskatchewan case, the trustees initiated the work needed in order to move the schoolhouse to the center of the district since, in their opinion, this is where the school should have been located. An action attempting to hold the board liable was dismissed on the grounds that the trustees had acted in good faith because they were attempting to comply with the law.[15]

The board of another Saskatchewan school district selected a new site, obtained the approval of the municipal council, and then began proceedings to have the old site, instead of the new approved site, approved for a new school. Plaintiff obtained an interim injunction to stop the board from continuing these proceedings contending that since there had been no objection to the new site, the old one could not be approved. The court held that neither the board nor the council was bound by the earlier decision. Since there had been no violation of statutory procedure, the injunction was dissolved. The court refused to rule on the merits of the two sites on the grounds that this was a matter for the council and the board to decide.[16]

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[14]Waterman Waterbury Manufacturing Company v. Slavanka School District, [1929] 1 W.W.R. 598, 23 Sask. L.R. 388, reversing [1928] 3 W.W.R. 16, [1928] 4 D.L.R. 522.

[15]Bowman et al v. Faber et al, [1919] 3 W.W.R. 755.

[16]Carmen v. Newton School Trustees, [1921] 3 W.W.R. 347, 61 D.L.R. 58.

The boundaries of an Alberta school district were altered with the result that the school was near the outer limits of the district. The board wished to relocate the school on a site nearer the center of the district and proceeded, in accordance with the statutes, to make the necessary arrangements. The plaintiff, contending that the board had no power to abandon the old site, obtained an interim injunction restraining the board from carrying out its intention. The defendants appealed this decision and the Appeal Court, in dissolving the injunction, stated that such a contention was invalid unless based on an express enactment. Since the board had complied with the law, it should be allowed to carry out its intention.[17]

The intent of the law that the school be located as near to the center of the district as possible is in fairness to the property owners of the district.[18] However, in the great majority of instances today, the new sites are merely additional and in urban areas only ministerial approval is needed. The many factors which must be taken into consideration when selecting a site have generally had the effect of locating new school buildings near the outskirts of the villages and towns.

In cities, boards must also take into account municipal by-laws to which they are subject. The municipalities have been given the

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[17] Olstead, et al v. Board of Trustees for Coal Valley School District No. 1053 et al, [1924] 1 W.W.R. 211.

[18] Augustus H. Ball and N. Latour Reid, School Administration--A Guide for Trustees and Teachers, Toronto: Gage and Co., 1933, p. 26.

statutory right to impose certain controls and boards are subject to these. In the case of City of Toronto v. Board of Trustees of R.C. Separate Schools for City of Toronto,[19] the board had purchased property intending to convert it to school premises but was restrained from doing so because the zoning by-law restricted the area to residential uses only. The matter was carried to The Judicial Committee of the Privy Council which ruled that the board was subject to the by-law. Lord Case, in delivering the judgement, stated:

> School boards are public bodies and have rights given to them for educational purposes, but these rights were not intended to over-ride the powers given to municipalities for the protection of the community as a whole.[20]

In Rex v. Allpress et al[21] a Saskatchewan school board was convicted by a Justice of the Peace under the following section of The School Act:

> In case the board of any district acquires a school site in violation of the provisions of this Act each member thereof shall be personally liable, on summary conviction, on information laid by any ratepayer. . . .[22]

On appeal the court found that the board had not proceeded to acquire a site, as stated in the conviction, but had merely built on a site previously acquired. The court also stated that it was the actual

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[19] [1925] A.C. 81, [1925] 3 D.L.R. 880, reversing [1924] S.C.R. 368, [1924] 3 D.L.R. 113, which reversed 54 O.L.R. 224, which affirmed 21 O.W.N. 27, and 22 O.W.N. 518.

[20] [1925] 3 D.L.R. p. 885.

[21] 34 Can. C.C. 123.

[22] 6 Geo. V., 1915, c. 23, s. 50. A similar provision is contained in R.S.S. 1953, c. 169, s. 50.

acquisition of a site that was contrary to law and not the negotiations prior to the actual acquisition.

Expropriation of Property for School Purposes

In instances where a site cannot be acquired in the usual manner, the law allows boards to expropriate the approved property. The School Act has the following provision for the expropriation of property:

> 53. (1) The board of every district may, without the consent of the owner thereof or of any person interested therein, enter upon, take and appropriate all such real property as may be deemed by the Local Government Board necessary for the uses of the district, making due compensation therefor to the persons entitled thereto.
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> (2) Upon such entry the registered owner of the real property or the person having power to make a transfer thereof shall, on the written demand authorized by a resolution of the board of the district, forthwith execute and deliver to the board a transfer to the board of the real property, and if he fails to do so the Local Government Board shall forward to the registrar of the proper land titles office a notice, signed by the chairman of that board, that the real property described therein has been expropriated under this section, and upon receipt of the notice the registrar shall issue a certificate of title to the real property in the name of the board of the district.
>
> (3) If no mutual agreement as to the amount of compensation is arrived at within a period of sixty days from the date of entry, the amount shall be determined by two arbitrators, one to be appointed by the board and the other by the owner of the land taken.
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> (4) The two arbitrators so appointed shall have power to appoint an umpire.
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> (5) The Arbitration Act shall apply to the arbitration.[23]

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[23] R.S.S. 1953, c. 169, s. 53; S.S. 1954, c. 46, s. 6, am.

The Secondary Education Act also authorizes a high school board to expropriate property.[24]

A school board may not expropriate land belonging to another corporation. This principle was brought out in the Ontario case of The Public Utilities Commission of the Town of Mimco v. The Lakeshore District Board of Education.[25] The school board initiated expropriation proceedings on a portion of the commission's vacant land and the commission then applied for an injunction to restrain the board from acquiring the property. The court held that two corporations, both having powers of expropriation, should not be allowed to exercise such powers on one another since this would not be in the public interest. In other words, a school board may expropriate only privately held lands.

This principle was upheld in the fairly recent Manitoba case of Fort Garry Rural Municipality v. Fort Garry School District.[26] The counsel for the defendant board claimed that the statute empowering the board to expropriate implied a literal interpretation of that particular section. The court was of the opinion that if this contention was valid, the municipality could then later initiate identical proceedings on the same property. The rule of interpretation to be applied in this instance, said the court, was that consonant to reason and good discretion.

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[24]Ibid., c. 168, s. 44; S.S. 1955, c. 45, s. 4, am.

[25](1954) O.W.N. 151.

[26]16 D.L.R. (2d) 442, (1958) 26 W.W.R. 443.

An interesting situation arose in the British Columbia case of Lukiv v. Abbotsford School District No. 34[27] when the plaintiff asked that he be given possession of a plot of his land which had been in the possession of the school board for over twenty years. The court found for the plaintiff and ordered the defendant board to vacate the property, allowing sufficient time to relocate the facilities which had been built on the disputed parcel of land.

An amendment to The School Act, passed by the Saskatchewan legislature in 1958 gives a school board the power to expropriate land on which school buildings are located.[28]

Where an arbitration board is appointed to determine the amount of compensation to be paid for the property being expropriated, the question of "what is a reasonable amount?" is often a matter of concern. An Ontario court stated:

> The value to be ascertained is the value to the seller of the property in its actual condition at the time of expropriation, with all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired.[29]

While the award of the arbitration board is usually final, an appeal from its decision may lie to the courts in certain instances as is illustrated in a British Columbia case.[30] In this case, the

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[27]15 D.L.R. (2d) 257, (1958) 26 W.W.R. 645.

[28]S.S. 1958, c. 61, s. 3.

[29]Re Lennox and Toronto Board of Education, (1926) 58 O.L.R. 427, at p. 432.

[30]In re Arbitration between Board of School Trustees of Surrey School District No. 36 and Slank, [1948] 1 W.W.R. 514.

plaintiff, alleging misconduct on the part of the arbitration board, sought to have the award set aside. The court took the view that an award can be attacked only if it can be clearly shown that the arbitration board exceeded its jurisdiction or proceeded on an improper principle or has been guilty of impropriety of conduct or fraud. In this instance, the court ruled that the members of the arbitration board had not acted improperly when they struck from the record the entire testimony of a witness because he failed to answer one of the questions put to him. The plaintiff's motion also contended that the chairman was guilty of misconduct in that he searched in the land registry file to find what price plaintiff had paid for the land, and what the declared value of the land was at the time of registration for title. The court stated that in a proper case such conduct would be sufficient cause for setting aside an award, but it was of no consequence in this instance because this information had been freely given in the hearings. In upholding the award, the court stated that the arbitration board had acted in good faith and had conscientiously considered the relevant factors in their deliberations.

In the Ontario case of Board of Education for The Township of North York v. Village Developments Ltd.,[31] the school board appealed the award of an arbitration board alleging that the latter had proceeded to base the amount of compensation on an improper principle. The school board had expropriated property which was well suited for

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[31] [1956] S.C.R. 539, 74 C.R.T.C. 16, 3 D.L.R. (2d) 161.

the purpose of subdivision and sale as residential building lots. Approval of the subdivision plan had not been given at the time the board began proceedings, but was given shortly after the notice of expropriation. The Supreme Court of Canada found that the arbitrators had erred when they took into consideration the remuneration which the holder could have expected had the land been sold as building lots. The Supreme Court, in reducing the award, followed the principle of establishing the amount of compensation as the present value of the land to the holder.

Uses for Purposes Other than the Regular School Program

The School Act delegates to boards the following discretionary duty:

> by resolution to permit the school to be used outside of school hours on such terms as are deemed expedient by the board for any educational purpose or for any other lawful purpose, provided that the proper conduct of the school is not interferred with;[32]

In Ontario, a rather unique situation arose in the case of Niagara Public School Board v. Queenston Women's Institute[33] when the board attempted to lease a part of the school building to the women's organization for nine hundred and ninety nine years for the sum of $1 per year. In return for the lease, the organization contributed funds towards the original cost of a new school building. The organization used the building for nine years after which time the board repudiated the lease because it wanted to use the entire building for school purposes. The defendants obstructed the board claiming exclusive use and

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[32] R.S.S. 1953, c. 169, s. 114(14).

[33] [1926] 4 D.L.R. 13, 59 O.L.R. 213.

occupation of the disputed portion of the building. The board based its renunciation of the lease on the contention that the lease had been ultra vires the board. The women's institute then claimed the return of the $3,000 originally paid to the board plus interest on that amount. The defendants, in attempting to prove the lease valid, relied on the following statutory clause:

> To permit the schoolhouse and premises to be used for any educational or other lawful purposes which may be deemed proper, provided the proper conduct of the school is not interfered with.[34]

They argued that this paragraph enabled the board to let the premises for one day, therefore, they could let it for any number of days or for nine hundred and ninety nine years. The court pointed out that the statute did not authorize the board to let the premises, only to permit them to be used. The court also stated that a lease for such a long period of time would violate the spirit and intention of the Act.

> School buildings were intended to be erected and after erection to be used for the education of the children of the citizens or ratepayers of the school section, and it was never contemplated, nor, as I understand it, is there any language used in the statute from which it can fairly be contended, that a school board would have the right to do what was here attempted to be done. To hold otherwise would let in a flood of transactions on the part of boards of school trustees which would be entirely foreign to the intention of the Legislature and would enable the trustees indirectly to do things which by our own Courts it has been held they are not authorized to do.[35]

The lease was declared invalid and the board was ordered to repay

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[34] R.S.O. 1914, c. 266, s. 73(u).

[35] [1926] 4 D.L.R. p. 19.

the sum of $3,000.

The Secondary Education Act[36] contains no statutory clause permitting the board to authorize the use of school premises for other than school purposes. Both this act and The School Act[37] contain a provision which allows the board to dispose of or lease any of the "real property of the district" subject to ministerial approval.

It is not the intention of the writer to speculate as to what would happen if the minister of education for Saskatchewan were to approve a lease similar to the one described in the preceding case. Possibly, the result, if the matter were taken to the court, would hinge on the interpretation given the phrase "the spirit and intention of the Act."

Summary

The following principles arise from the discussion of the cases presented in this chapter:

1. The board should make sure that all statutory provisions have been complied with prior to the beginning of construction on any site.

2. If a board of trustees acts in good faith and attempts to comply with the law, the actions of the board will be upheld.

3. A school board may change its mind concerning location of the site.

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[36] R.S.S. 1953, c. 168, s. 34.

[37] Ibid., c. 169, s. 114(13).

4. In the construction of new school facilities, boards must comply with zoning by-laws passed by the municipality.

5. It is the actual acquisition of a school site in violation of the statute which imposes a liability on the members of a school board, and not the proceedings to acquire the site.

6. A school board may expropriate only privately held lands.

7. The board may expropriate property to which they do not have the title but on which they have located some facilities.

8. The award of an arbitration board may be set aside if the board members are guilty of misconduct or if they proceed on an improper principle.

9. A board, in allowing school facilities to be used for other than regular school purposes, must always keep in mind that the prime purpose of the buildings is for the education of children.

CHAPTER VII

THE SCHOOL CORPORATION: CONTRACTS

Introduction

The school board is a statutory corporation and may, in the performance of its duties, exercise only those powers which are expressly or impliedly conferred upon it. The school corporation has a general power to contract in furtherance of its corporate objectives; in fact, the school corporation exercises many of its powers and carries out many of its duties by contracting with other persons. The number and variety of school board contracts are extensive, but the subject matter is limited to such as will promote the purposes of education.

A detailed analysis of the great range of contracts into which school boards enter is beyond the scope of this study; neither does this chapter include a discussion on the general law of contract. It is hoped, nevertheless, that the arrangement of the material presented does give some understanding as to the wide range of subject matter with which school boards must be familiar when concluding contracts.

There have been many boards of conciliation established under The Teacher Tenure Act[1] to investigate the termination of a teacher's contract by a board of trustees. A detailed study of the reports of conciliation boards has not been made because the decision of such a board is not binding on either the school board or the teacher, unless both have agreed to accept the decision. On the other hand, the decision of a board of reference established under The School Act is binding on both the school board and the teacher. A number of the official reports of boards of

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[1] R.S.S. 1953, c. 185; 1954, c. 50 am.; 1961, c. 32 am.

reference have been examined and an analysis of them is given in this chapter.

Legal Elements of a Binding Contract

In order that a binding contract exist between two parties there must be an offer, an acceptance, and a "meeting of minds."[2]

> In order to constitute a binding contract there must be an offer made by one person to another, and an unqualified acceptance of that offer by the person to whom it was made, and the parties to the agreement created must intend that it shall be enforceable at law. Where the intended acceptance is not in accord with the terms of the offer, the court may find that there was no binding contract, even though both the parties to the purported contract contend that there was a binding agreement.[3]

A tender, even though it is in the form of an estimate, is an offer, which, when accepted, is a binding contract.[4] Rogers also states:

> Generally speaking a mere resolution or by-law whereby a corporation agrees to do something, without more, does not give rise to a legal obligation on the part of the corporation. A resolution authorizing a contract or accepting a tender is to be regarded as a mere expression of willingness to enter into an agreement but not necessarily a contract itself.[5]

Some of the foregoing principles are illustrated in the British Columbia case of Baynes & Horie v. Bd. Sch. Trustees of Vancouver.[6]

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[2]I. M. Rogers, The Law of Canadian Municipal Corporation, Toronto: The Carswell Co. Ltd., 1959, p. 933.

[3]Halsbury's Laws of England, Third Edition, London: Butterworth & Co. Ltd., 1954, Vol. 8, p. 69.

[4]Ibid., p. 70.

[5]Rogers, op. cit., p. 933.

[6][1927] 2 D.L.R. 698. The abbreviation in the citation of the case appears in the law report.

The tender submitted by the plaintiff contractor was accepted by the defendant, subject to certain conditions. Apparently, the board wished to negotiate with the contractor. In the course of negotiations, the board asked the contractor to submit a revised estimate, which was done. However, the plaintiff never signed the contract and the board claimed that he had thereby forfeited his deposit. The plaintiff sued to recover the deposit and the defendants counterclaimed damages for breach of contract.

The court held that a contract had never existed between the two parties because the board had not made an acceptance simpliciter[7] until it was too late. Murphy, J., stated:

> . . . in deciding whether a contract exists or not where it is attempted, as here, to constitute one not by a single document but by a series of negotiations between the parties, everything that occurs between them relevant to the alleged contract must be considered.
>
> The actions of both plaintiff and defendants . . . show, I consider, that neither of them intended or considered that a contract of any kind could come into existence until defendants had accepted plaintiffs' tender.[8]

The court ruled that a deposit cannot be forfeited unless the tender has been accepted, which had not been done until it was too late, and even then, this information was not communicated to the plaintiff. The court found for the plaintiff contractor and dismissed the school board's claim.

An element which must be complied with in the making of a contract

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[7]This term means "an unqualified acceptance."

[8][1927] 2 D.L.R. pp. 700-1.

is that board action must be taken at a duly constituted meeting of the board at which a quorum is present.[9] In Waterman Waterbury Manufacturing Company Limited v. South Arcola School District,[10] the chairman and secretary of the board had signed the contract on behalf of the board. There had been no board meeting, although the secretary had secured the agreement of all board members to the contract by telephoning them. The contractor completed the work and was paid for it, but he later discovered that, due to a clerical error, he had not been paid in full. The board declined to pay the additional amount on the grounds that they had a receipt marked "paid in full". The contractor sued to recover the amount, but the court held that the board did not have to pay since the contract had not been concluded at a properly convened meeting.

Another case[11] which involved the same company again illustrates the necessity of complying with statutory stipulations. A contract, which called for the erection of a schoolhouse, was signed and sealed at a special meeting of the board. However, proper notice of the meeting had not been issued; neither was the waiver of notice signed at the meeting by all members present.

The school board authorized the contractor to proceed with construction on a site which had not been approved by the municipal

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[9] R.S.S. 1953, c. 170, s. 39; c. 169, s. 109; c. 168, s. 27.

[10] [1928] 3 W.W.R. 690, 23 Sask. L.R. 227. See pp. 71-2.

[11] Waterman Waterbury Manufacturing Company Limited v. Slavanka School District, [1929] 1 W.W.R. 598, 23 Sask. L.R. 388, reversing [1928] 3 W.W.R. 16, [1928] 4 D.L.R. 522. See pp. 59, 72, and 116.

council. Because of contention over the site, the contractor later ceased work and sought to recover $1,704.64 from the board. The Trial Court, in finding for the plaintiff company, ruled that the board had tacitly waived notice and, therefore, the meeting had been proper. The defendants appealed this decision and the Court of Appeal upheld the appeal. MacKenzie, J.A., stated:

> The contract therefor which has been made in breach of such conditions, although executed in whole or in part, cannot impose any liability upon the defendants.[12]

In the action, the board had filed a counterclaim which sought to recover the $500 paid to the plaintiff on account. The Appeal Court held in favor of the school board on this point since the school was eventually built on a different site and the board had received no benefit from the work done by the plaintiff.

The following statutory regulation issued recently is relevant to the situation described in the preceding case:

> Construction must not be undertaken until title to the building site or a long term lease acceptable to the Department has been secured.[13]

Another element which must be present if the contract is to be binding is the corporate seal of the board. There have been several cases involving the validity of a contract with or without corporate seal;[14] and while it does appear generally necessary for the seal to be affixed

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[12] [1929] 1 W.W.R. pp. 608-9.

[13] "Regulations under The School Act, s. 1," Saskatchewan Gazette, November 6, 1964.

[14] For a discussion of these cases see pp. 58-60.

to a board contract, the case of The Brandon Construction Co. v. Saskatoon School Board[15] indicates that courts may not always rely on this general rule. The board, in calling for tenders, stipulated that the company to which the contract was awarded had to sign the acceptance within three days of the board's decision. If this condition was not met, the deposit accompanying the tender would be forfeit. When the construction company to whom the contract was awarded did not comply with this stipulation, it was informed that its deposit would not be returned. The plaintiff contractor brought action to recover the deposit from the board. The Saskatchewan Supreme Court ruled for the defendant, despite the fact that the call for tenders and the resolution awarding the contract were not under seal. The plaintiff appealed this decision, and the judgement was reversed on grounds other than absence of the seal. In the appeal hearings it was found that the board had purchased a different piece of property on which it wished to have the school built. The court also found no evidence of the board having suffered damages as a result of the plaintiff contractor not signing the contract. Therefore, the Appeal Court ruled that the deposit should be returned to the plaintiff. The fact that the corporate seal of the board was absent apparently did not play any part in the decision of the Appeal Court.

While it does appear that the seal is generally necessary when concluding a contract, it seems that it is more important that the contract be concluded at a duly constituted meeting of the board.

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[15](1913) IV W.W.R. 1243, 25 W.L.R. 6, 6 Sask. L.R. 273, reversing (1912) II W.W.R. 870, 21 W.L.R. 949, 5 Sask. L.R. 250.

Where the corporation has the authority to contract by resolution, such a resolution entered in the minutes and sealed renders further sealing unnecessary.[16]

The appointment of an agent:

> . . . must be, as a general rule, under the corporate seal, except where its constitution otherwise provides; but the board of directors, council or other governing body of a corporation aggregate may, by resolution or otherwise, appoint an agent . . . to execute on behalf of the corporation any agreement or other instrument not under seal in relation to any matter within the powers of the corporation.[17]

It would seem that the validity of a contract on which the seal does not appear may possibly be upheld, but a contract concluded at an improperly convened meeting is never valid.[18]

Statutory Restrictions

Since a school board is a creature of statute, it can enter into a binding and valid contract only by complying with statutory provisions, and any contract made in breach of such provisions is illegal and void. Furthermore, it cannot enter into contracts that are expressly or impliedly prohibited by its constitution.[19] For example, the courts have ruled that a board cannot rent out school property on a long term

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[16]Rogers, op. cit., p. 935.

[17]9 Halsbury, op. cit., p. 83.

[18]There is a variation to this rule in the instance of teachers' contracts. See p. 147.

[19]9 Halsbury, op. cit., p. 81.

lease since this is not in accordance with the intention of the statutes governing education.[20]

The statutes are also designed to prevent school board members from contracting personally with the school corporation to provide services or materials.[21] This stipulation is, as are most restrictions, designed to protect the best interests of the public.

A restriction that is not expressly stated in legislative enactments was developed in the late nineteenth century Ontario case of Smith v. The Fort William School Board Et Al.[22] The school board wished to have a new school built and a by-law was passed authorizing the board to borrow $12,000 for the construction. The board accepted a tender of $18,860 and it was estimated that it would take an additional $3,000 to complete the proposed schoolhouse. A ratepayer applied for an injunction restraining the board from continuing construction. The issue before the courts was the question of whether the school corporation could bind itself to erect a building for which it did not have the means to pay. The court was of the opinion that, because the board had to get the consent of either the municipal council or the ratepayers before it could proceed with the necessary expenditures, it should not contract a debt without the means of paying for it. Therefore, the contract entered into by the board was beyond its power and not binding upon it. The

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[20]See p. 123.

[21]See p. 66.

[22](1894) 24 O.R. 366.

court reasoned that if contracts, such as the one in contention were made binding, the ratepayers could be forced to pay for a school building when they might have refused to authorize such expenditures in advance.

Street, J., stated:

> I think it highly necessary that none of the safe-guards which the legislature has thought fit to interpose between the zeal or the possible extravagance of school boards, and the public which is to find the money should be disregarded. Then if it would be dangerous to allow a school board to force the hand of the electors by completing a school house, and then asking for the money with which to pay for it, it would be equally so to allow them to obtain a sum of $12,000 for the purpose of building a school house, and then to enter into a contract to spend $21,000 or $22,000 upon it. . . . The only safe principle to be laid down, in my opinion, is that the school board of a city, town, or incorporated village, have no power or authority to enter into any contract for the building of a school house until the necessary funds have been provided under section 116; and that if a certain sum has been provided under that section for the purpose of building a school house, they cannot be allowed to enter into any contract or undertake any work involving the expenditure of any greater sum.[23]

The court made the injunction permanent.

The court also discussed the repayment of the $2,625 which has been paid to the contractor on account. Of this amount, $1,300 was paid, with the concurrence of the building committee of the board, after the interim injunction had been issued. Since the board had been aware of the fact that they were not authorized to contract in excess of the funds available, the court stated:

> . . . the defendants, other than the school board, must be ordered to pay back to the school board the whole of the

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[23](1894) 24 O.R. 371-2. The reference to section 116 is to 54 Vict. c. 55, s. 116. This section provides for the borrowing of money by the municipal council; or if the council refuses to pass the by-law, the board may ask that the question be submitted to a vote by the ratepayers.

> $2,625 paid on account of the contract with interest from the time of payment . . . .[24]

This amount was reduced by the value to the board of the construction already undertaken.

A similar situation occurred in the Saskatchewan case of Lawrence v. Trustees of Beaver Valley School District No. 3804.[25] The defendants contracted with the Waterman Waterbury construction company for erection of a schoolhouse for the sum of $2,397.55. The contract was signed and sealed on August 15, 1917. Previous to this the ratepayers had rejected a by-law for $2,400. On November 19, 1917, the board passed a by-law authorizing the borrowing of $1,200,[26] and the local government board approved the loan on December 18, 1917. The plaintiff originally sought an injunction to prevent the defendant board proceeding with the erection of the building, but to no avail since the building had already been built. The court, however, issued an injunction restraining the school board from borrowing any more than the $1,200 authorized in the by-law to pay for the building. The defendants appealed this decision. At the hearing before the Court of Appeal, it was disclosed that prior to the trial the ratepayers had approved a by-law for the borrowing of an additional $1,000 for the schoolhouse. Lamont, J.A., stated:

> Had the building not been erected, an injunction might have

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[24] Ibid., p. 372. The defendants were: the school board, certain individual members of the board, and the contractor.

[25] [1918] 3 W.W.R. 607, 11 Sask. L.R. 435, 43 D.L.R. 318, reversing [1918] 3 W.W.R. 71, 11 Sask. L.R. 429.

[26] S.S. 1915 , c. 23, s. 130. This section allows the board to borrow $1,200 without referring the matter to a vote of the ratepayers.

> been granted restraining its erection until proper authority therefor had been obtained; Smith v. Fort William School Board et al, 24 O.R. 366. But, after the schoolhouse had been erected on a site approved of by the proper authorities, I know of no authority which prevents the ratepayers, with the sanction of the local government board, from paying for the same and taking it over for their own.[27]

The Appeal Court held that the judgement of the Trial Court had been in error and dissolved the injunction. The action of the school board was upheld despite the fact that the necessary financial arrangements had been made after the contract had been signed.

A situation which seldom occurs is illustrated in the Alberta case of Morrison v. Board of Trustees of Cassel Hill School District et al.[28] In response to an advertisement for teachers, the school board received thirty-seven applications for one vacancy. The board instructed the secretary to write letters offering the position to three of the applicants. When the secretary objected to doing this, the chairman of the board told him to mind his own business. The board listed the three applicants, to whom the secretary wrote letters of acceptance, in order of preference, the plaintiff being their second choice. When all three indicated they would accept the position, the board instructed the secretary not to report the previous meeting correctly in the minute book. Thus, the minute book was falsified to cover what the court later described as "their deceit." The court found that the defendants did not intend to engage the plaintiff, unless they could not get their first

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[27] [1918] 3 W.W.R. p. 609.

[28] [1925] 1 W.W.R. 526.

choice. As a result of the board's action, the plaintiff had refused offers of employment from two other school boards. On this basis, the court ruled that the plaintiff was entitled to damages from the board as a corporation. The board had practised deceit and should only have accepted one application because it had only one vacancy.[29] The plaintiff was awarded damages in the amount of $75 for actual monetary loss, and $25 for the worry and annoyance caused her by the board.

The restrictions imposed on the school corporation's power to contract are intended to prevent loss to the district. School boards should exhibit a high standard of conduct in matters pertaining to contracts.

School boards in Saskatchewan may use a considerable amount of current revenue for capital construction. Therefore, they are not strictly limited to expending only the amount of a loan.[30]

Contracts with Non-Instructional Personnel

Architects. Before a board can make financial arrangements for the construction of capital works, an architect must be employed to do some preliminary planning. The case of Savage v. Board of School Trustees of School District No. 60 (Alberni)[31] outlines board-architect relationships. The plaintiff architect was hired by the defendants to prepare plans for a new school. The architect made preliminary studies,

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[29]For a discussion of liability in this case, see p. 173.

[30]See p. 97.

[31][1951] 3 D.L.R. 39, 2 W.W.R. (N.S.) 30.

prepared sketches, working drawings, and specifications sufficient to allow the board to call for tenders. The architect twice estimated the cost of the proposed construction to be $110,000, and the board, on the basis of these estimates, prepared a money by-law for that amount. The board then called for tenders, and the lowest bid received was for $157,800. A considerable portion of the proposed building was then deleted from the plans in order to bring the cost within the amount of funds available, and the architect submitted a revised plan for the construction which, in his opinion, would cost no more than $110,000. The board again advertised for tenders and the lowest bid received was for $132,900.

The architect had made three incorrect estimates, whereupon the board terminated his contract and paid him $10,600 for services rendered. The architect then brought action to recover $8,730 which he alleged that the board still owed him. The Trial Court awarded the plaintiff only $7,560 and the plaintiff appealed this decision.[32] The Appeal Court, in dismissing the architect's appeal, held that the Trial Court had been correct in its assessment of the amount owing the plaintiff on the basis of quantum meruit.

At the time of the case, The Architectural Institute of British Columbia had the following statement regarding architect's fees:

> Clause 1 - The minimum charge to be made for an architect's services. . . . shall be six percent on the total cost of

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[32]Although no formal contract may exist between a school board and an architect, the board must pay for services from which benefit is received. This is usually based on quantum meruit which means, "as much as he deserved."

the works executed . . . .

Clause 6 - The percentage charge is made up as follows, viz.,

(1) Preliminary studies and sketch drawings, 20% of the entire fee.

(2) Preliminary studies, sketch drawings, working drawings and specifications, sufficient for tendering on, 60% of the entire fee.

(3) Preliminary studies, sketch drawings, working drawings, specifications, and details, 80% of the entire fee.

(4) Preliminary studies, sketch drawings, working drawings, specifications, details, superintending the works in the course of construction and passing accounts. Entire fee.[33]

In the initial litigation, the school board had also claimed damages for negligence on the part of the architect. This claim was dismissed by the Trial Court and the board cross-appealed this decision. With reference to the board's claim, the court stated:

> An architect holds himself out as a skilled person. If he furnishes an estimate as part of his contract it must, at his peril, be reasonably near the ultimate cost. And moreover, where any deficiency appears on its face to be unreasonable, the burden rests upon the architect to show how it arose and that he was not at fault.[34]

The court found that the architect had not exercised the degree of skill and care the law expects from a professional man. In other words, the plaintiff had not carefully considered the necessary factors in making his estimates. The board claimed $2,581.08 by way of damages and this was granted by the court.

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[33] [1951] 3 D.L.R. p. 41.

[34] 3 Halsbury, (2nd Edition) p. 333 quoted in [1951] 3 D.L.R. pp. 42-3.

In the case of Hutton v. Barton School Trustees,[35] the architect had drawn up complete plans and specifications for a new school, but the ratepayers rejected the money by-law. The plaintiff architect sought to recover $5,450 in fees but the court ruled that not all the plans would have been necessary for the guidance of the trustees. The court allowed $3,000 as a quantum meruit for such part of the plaintiff's work as the trustees had power to bind themselves to pay. It would appear that, while boards must pay for services from which they have derived benefit, they should not authorize completion of final plans until the necessary debenture issue has been approved by the ratepayers.

Construction. There are several situations, other than those already described, which may arise out of contracts which call for capital construction. One such situation is when a breach of contract occurs.

In the Ontario case of Deisenroth v. Toronto Board of Education,[36] the plaintiff contractor signed a contract with the defendant board. The contract was concluded in September, 1914, and in January, 1916, the defendant decided not to proceed with the construction and notified the plaintiff of this decision. While no actual construction had been done, plaintiff had spent time in making preparatory arrangements. The court assessed damages of $500 against the defendant.

It is generally standard practice for the architect, who

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[35](1926) 31 O.W.N. 358.

[36](1912) 12 O.W.N. 197.

supervises the construction of a building, to issue a certificate or statement certifying completion of the work. In the Manitoba case of Brown v. Bannatyne School District,[37] the terms of the contract called for the defendant school board to make the final payment within twenty days of substantial completion of the building. The plaintiff completed construction on December 21, 1911, and the architect issued the completion certificate on February 10, 1912. Apparently the board did not make final payment, alleging that the plaintiff did not complete the building in the time specified. The plaintiff then sued for the remainder of the contract price plus the amount deposited with the defendant as security at the time the contract was signed. The defendant counterclaimed damages for delay in completing the building. The court held that the right to final payment accrued to the plaintiff at the end of the twenty days from the time plaintiff had substantially fulfilled the contract. In other words, the final certificate issued by the architect was not in itself the completion, but merely evidence of the completion. Furthermore, the contract contained no clause making the certificate a condition precedent to final payment.

The court, in dismissing the defendant's claim, gave two reasons: (1) the school board had taken possession of a part of the building before the required completion date, and (2) the school board contributed to the delay in completing the project by requiring extra work by the contractor and in such circumstances the contractor is only required to complete the

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[37](1912) 5 D.L.R. 623 varying 2 D.L.R. 264, 22 Man. R. 260, 21 W.L.R. 80.

work in a reasonable time.

If a board wishes to safeguard itself by making the architect's certificate a prerequisite for final payment, it should be so stated in the terms of the contract. A board may also safeguard the public interest by adhering to the following conditions:

> When entering into a contract the owner should include in the contract a performance bond and also a maintenance bond by a contractor for a period of 12 months after completion of the structure.
>
> Before final settlement is made by the owner with the contractor, the owner should make sure the project is free of any claims or liens.[38]

Transportation. The recent Ontario case of Elliot v. Board of Trustees Billings Township School Area[39] illustrates the advisability of school boards obtaining legal advice when making a contract. The plaintiff contracted with the board to supply bus service for transportation of pupils on each school day for a specified period of each year. The basic agreement was to run for three years, on a year to year basis. A termination clause was included and provided that the contract could be terminated by mutual consent at any time, or on December 31 or August 31 in any year, provided written notice was given by either party one month prior to the date of termination. A further clause was included which stated that the agreement was to remain in effect unless terminated in accordance with the termination clause. The first year

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[38]Department of Education, "A Guide to School Plant Planning with Regulations," 1964, p. 8.

[39]25 D.L.R. (2d) 737, [1960] O.R. 583, [1960] O.W.N. 507, affirming [1960] O.W.N. 241.

of the contract, which commenced on September 6, 1955 and ended on June 30, 1956, passed without notice of termination. The defendant trustees called for tenders for bus service during the summer vacation and awarded the contract to another party. The plaintiff then sued for damages for breach of contract. The court held that there had been a breach of contract and brought down judgement for the plaintiff. The court did not accept the trustees' argument that no notice was necessary because the contract was to be renewed every year.

Labour unions. It appears that bus drivers and caretakers employed in school units are becoming unionized. This means that instead of negotiating with each individual, the board must bargain collectively with the representatives of the union if required to do so by an order of the labour relations board. Many unit boards object to having these employees certified as a bargaining unit and the Prince Albert school unit board took the dispute to the courts. In Prince Albert School Unit No. 56 v. National Union of Public Employees' Local No. 832,[40] the board applied for a writ of certiorari[41] concerning the order made by the labour relations board. This order stated:

> (1) All bus drivers, school caretakers, school and bus maintenance employees and office employees except the secretary-treasurer employed by the Prince Albert School Unit No. 56, Prince Albert, Saskatchewan, constitute an appropriate unit of employees for the purpose of bargaining collectively;

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[40](1962) 39 W.W.R. 314, 35 D.L.R. (2d) 361.

[41]This is the name of a writ of inquiry or examination. It is also an appellate proceeding for reexamination of an action of an inferior tribunal.

(2) National Union of Public Employees Local Union No. 832, represents a majority of the employees in the appropriate unit of employees referred to in paragraph (1) hereof;

(3) The Board of the Prince Albert School Unit No. 56, Prince Albert, Saskatchewan, shall bargain collectively with the duly appointed or elected representatives of the National Union of Public Employees' Local Union No. 832.[42]

The school board contended that bus drivers and caretakers did not fall in the classification of employees within the ambit of The Trade Union Act.[43] This Act authorizes the labour relations board to make such an order,[44] however, the school board argued that the affected persons were not employees but independent contractors. The Court of Appeal held that the authority to make such an order carried with it the power to determine who were employees of the board. The court also ruled that the findings of the labour relations board are not open to judicial review.[45] The unit board appealed the decision of the Saskatchewan Court of Appeal to the Supreme Court of Canada, but the appeal was disallowed.[46]

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[42](1962) 39 W.W.R. p. 315.

[43]R.S.S. 1953, c. 259; 1954, c. 67 am.; 1955, c. 65 am.; 1956, c. 54 am.; 1958, c. 11 am.; 1961, c. 48 am.

[44]Ibid., s. 5.

[45]Ibid., s. 17. This section reads as follows: There shall be no appeal from an order or decision of the board under this Act, and the board shall have full power to determine any question of fact necessary to its jurisdiction, and its proceedings, orders and decisions shall not be reviewable by any certiorari, mandamus, prohibition, injunction or other proceeding whatever.

[46][1963] S.C.R. p. vi.

The Saskatchewan Trustees' Association does not agree with the ruling of the labour relations board in the matter of classifying school caretakers and bus drivers as employees of the board. The 1964 annual meeting of the Trustees' Association passed a resolution urging the provincial government to pass legislation which would make part time employees exempt from the definition of employees within the ambit of The Trade Union Act.[47]

Teachers' Contracts

The greatest single item of expenditure in the budget of nearly every school board is "teachers' salaries". The legislature has seen fit to prescribe exactly, by statute, the procedures to be followed in the engagement and dismissal of teachers.

Elements of a contract. The following statutory sections are relevant to this topic:

> 214. A teacher shall not be engaged or dismissed except under the authority of a resolution of the board passed at a regular or special meeting.
>
> 215. (1) Subject to the following subsections, a teacher shall be deemed to have entered into a contract of employment with a board upon the making of an offer of employment to the teacher by the board and the acceptance of the offer by the teacher on or before the fourth day following the date of the offer.
>
> (2) Where there is no salary schedule in effect the board shall state in the offer the annual salary.
>
> (3) The teacher shall state in the acceptance of the offer the class and number of the valid certificate of qualification, issued under the regulations of the department that he holds.

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[47]"Resolutions Adopted," The School Trustee, 16:16-7, Resolution No. 47, April, 1964. No such legislation has been introduced to date.

(4) If the teacher accepts the offer on or before the fourth day following the date thereof the board shall forthwith give the teacher notice of confirmation of the contract.

(5) If the teacher rejects the offer within the period of four days following the date thereof the board shall be released from the offer.

(6) If the teacher accepts the offer after the fourth day following the date thereof no contract shall exist.

(7) Notwithstanding subsection (6), if the teacher accepts the offer after the fourth day following the date therof the board may, within four days after the date of acceptance, give him notice that he is under contract with the board, and the teacher shall be deemed to be under contract from the date of the notice.

(8) For the purposes of this section:

(a) an offer, an acceptance, a rejection of an offer or a notice shall be in writing and may be sent by registered or ordinary mail or by telegraph or delivered personally;

(b) the date of an offer, an acceptance, a rejection of an offer or a notice:

(i) sent by registered mail or by telegraph, shall be the date of the mailing or dispatch thereof;

(ii) sent by ordinary mail or delivered personally, shall be the date of receipt.[48]

The statute also states that, except when engaging substitute teachers, no written contract is required apart from the offer, acceptance, and the notice mentioned in section 215.[49] The following

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[48] R.S.S. 1953, c. 169, ss. 214 and 215; S.S. 1954, c. 46, s. 15 am.; 1956, c. 31, s. 3.

[49] Ibid., s. 216a; S.S. 1954, c. 46, s. 15, am.

provision is also included:

> 216f. Notwithstanding section 214, insufficiency of notice of or other irregularity in calling a meeting of the board at which a teacher is engaged, or irregularity in the proceedings at such meeting, or neglect or omission of the board to comply with any of the provisions of section 215 or to have the contract duly executed as required by section 216c shall not disentitle the teacher to recover any salary or remuneration due to him.[50]

A contract between a board and a teacher continues in force until terminated in accordance with statute.[51]

The foregoing sections from The School Act were made applicable to teacher-board contracts in a high school district by a 1954 amendment to The Secondary Education Act.[52]

In the case of Hilkewich v. Laniwci School District,[53] a teacher successfully claimed that the board had to pay her salary due her for services rendered despite the fact that the meeting at which the contract was signed was not a duly constituted meeting.

Termination of contract. A board of trustees may terminate the contract of a teacher as follows:

> 220. (1) Subject to the provisions of The Teacher Tenure Act, a board of trustees may terminate its agreement with a teacher, the termination to be effective on the thirtieth day of June, by sending by registered mail to the teacher not later than the twenty-fifth day of May in the year in which it is to take effect a notice of its intention to do so.

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[50] Ibid., s. 216f; S.S. 1954, c. 46, s. 15, am.

[51] Ibid., s. 216g; S.S. 1954, c. 46, s. 15, am.

[52] S.S. 1954, c. 45, s. 3.

[53] [1937] 2 W.W.R. 386. See p. 72.

> (2) A board of trustees may terminate its agreement with a teacher, to take effect at a date other than the thirtieth day of June by giving not less than thirty days' notice in writing of its intention to do so, but in such case the reason for the board's action shall be set forth in the notice and the teacher may, not later than fifteen days after the receipt of the notice, appeal to the minister for an investigation . . . .[54]

A teacher acquires "tenure" after serving for two consecutive years under the same school board.[55] The teacher may be dismissed at the end of either the first or second year of service without being given any reason for the dismissal.[56] If a tenure teacher is dismissed at the end of the school year, dismissal must be in accordance with the provisions of The Teacher Tenure Act. The only reasons for which dismissal action may be taken are:

> professional incompetency, neglect of duty, unprofessional conduct, immorality, physical or mental disability and such other cause as in the opinion of the school board renders the teacher unsuitable for teaching service in the position thus held by him, and in addition to stating the reason the notice shall state that in the opinion of the board the teacher is for those reasons unsuitable for teaching service in the position thus held by him.[57]

A teacher dismissed under these provisions may ask that a conciliation board be set up to investigate the matter.[58] The conciliation board

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[54] R.S.S. 1953, c. 160, s. 220(1-2). The provisions of c. 168, s. 66(1-2), are nearly identical.

[55] The first two years of employment are considered a probationary period.

[56] R.S.S. 1953, c. 185, s. 3.

[57] Ibid., s. 4(1); S.S. 1961, c. 32, s. 1, am.

[58] Ibid., s. 5. The board must give the teacher an opportunity to attend a meeting of the board, within 15 days of receiving the notice of termination, in order to show why he should not be dismissed.

shall consist of a representative of the teacher, a representative of the board and a third person selected by the other two.[59] Unless both parties agree beforehand to accept the verdict of the conciliation board, its decision is not legally binding on either party.[60]

The School Act contains an additional clause regarding dismissal of teachers. This section authorizes boards to:

> suspend or dismiss any teacher for gross misconduct, neglect of duty or refusal to obey any lawful order of the board, and to forthwith transmit a written statement of the facts to the department.[61]

The Secondary Education Act gives high school boards power to "appoint and remove such teachers, officers, and servants as they deem expedient . . . ."[62]

Boards of reference. If the contract of a teacher is terminated by a school board, with the termination date other than June 30, the teacher may appeal to the minister for an investigation within fifteen days of receipt of the notice of termination.

> 220. (3) A board shall not enter into a contract with a teacher to fill any vacancy which may occur until the expiry of the fifteen days allowed for appeal, or, in the case of an appeal, until the appeal is disposed of:

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[59] Ibid., s. 6.

[60] Ibid., ss. 10-11. The writer has not dealt in detail with the reports of boards of conciliation because the decision of such a board is not binding on either party, unless both the teacher and the school board agree to accept it.

[61] Ibid., c. 169, s. 114(33).

[62] Ibid., c. 168, s. 28(k).

Provided that a board may, if it thinks fit, employ a substitute teacher pending the disposition of an appeal.

(4) Any contract entered into contrary to the provisions of subsection (3) shall be null and void.

(5) Notwithstanding anything contained herein, the board may be released from its agreement by obtaining the written consent of the teacher.

221. (1) Upon receipt from a teacher or a board of an application, accompanied by a deposit of $15, for an investigation of the termination of the teacher's agreement, the minister may appoint for the purpose a board of reference consisting of three members, the chairman of which shall be nominated by the Attorney General, one member by the teacher and one by the board of trustees. The member nominated by the teacher or the board shall not be a member of the board of trustees.

. . . . . .

(3) The board of reference shall meet and make its decision within thirty days after the appointment of the chairman.

. . . . . .

(8) The scope of the investigation and the findings of the board of reference thereon shall, unless that board otherwise determines, be limited to the reasons given by the board or by the teacher in the written notice of termination of agreement.

(9) All questions brought before the board of reference shall be decided by a majority vote of its members. The chairman shall have the right to vote, and in case of an equality of votes he shall also have a casting vote.

(10) The board of reference may confirm the termination of the agreement or order the reinstatement of the teacher or make such other order as, in its opinion the circumstances warrant; and the chairman shall forward a copy of the board's findings to the minister, and to the teacher and board of trustees concerned.

(11) The decision of the board of reference shall be

> final and any order of the board as the result of an investigation shall be binding upon the board of trustees and the teacher.

(12) The Arbitration Act does not apply.[63]

The Secondary Education Act has provisions which are nearly identical to the foregoing excerpts.[64] School boards may also apply for an investigation if a teacher terminates his contract, with the termination date other than June 30.[65]

Legislation allowing for the establishment of boards of reference was enacted in 1935.[66] These boards have always had judicial powers and their findings are binding on both parties. There is no single board established to hear cases in all parts of the province, and therefore a board is appointed for each case under review.

There have not been a great number of boards of reference set up since 1935,[67] and official reports of such boards would seem to indicate that school boards do not usually terminate a teacher's contract during the course of the school year unless there is justification for such action.

In several instances where boards of reference have been established notices of termination of contract have been declared invalid

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[63] Ibid., c. 169, s. 220(3-5), and s. 221(1)(3)(8-12).

[64] Ibid., c. 168, ss. 66-7.

[65] Ibid., c. 169, s. 223; c. 168, s. 69.

[66] S.S. 1935, c. 48, s. 5; c. 49, s. 20.

[67] The writer wishes to thank the Saskatchewan Teachers' Federation for making available all the official reports of boards of reference. In accordance with the wishes of this organization, no names will be given in referring to actual cases.

due to meeting irregularities on the part of the school board. In one such instance, however, despite the fact that the notice of termination was held to be invalid, the board of reference, on the basis of the evidence heard, came to the conclusion that the teacher should not remain in the employment of the school board and the school board was ordered to accept the resignation of the teacher.

In other instances the issue has been: when a school board wishes to close a classroom because of board policy, can the contract of a teacher be terminated for the reason that the position is no longer in existence? The following three cases, which are discussed in considerable detail, center around this issue.

A school board terminated the contract of a teacher on May 25, giving "lack of progress" as the reason for the dismissal. A board of conciliation established under The Teacher Tenure Act, after holding an investigation, suggested that the teacher be reinstated. Two days after the decision of the board of conciliation, a meeting of the ratepayers of the district was held and the school board asked the parents whether or not they wanted the teacher to continue. It was intimated by the chairman of the school board that the alternative, in the event that the parents did not want the teacher to continue, would be to close the high school room in which the teacher was employed and transport the students to another school.[68] The day after the ratepayers meeting, the school board passed a resolution closing the high school room for

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[68]The official report of the board of reference does not state the outcome of the ratepayers meeting.

the following school year. Shortly before the school was to open for the fall term, the school board rescinded the motion of May 25 whereby the teacher's contract was terminated. They then passed another resolution terminating his contract and giving him thirty days notice on the grounds that the school room would not reopen for the fall term. The teacher was offered a transfer to any of three schools in which there were still teacher vacancies, but none of the schools was acceptable to the teacher and he requested that a board of reference be established. The following excerpt is taken from the majority report of the board of reference:

> We do not question the right of the School Board to close a room, but are of the opinion that it was not the intention of the School Board to close this room according to the evidence submitted to us, but on the other hand that the decision to close the room came as a means of terminating the contract. In other words, the contract was not terminated because the school room was closed, but rather the school room was closed in order to terminate the contract . . . . We feel that the course followed in dealing with _____ constitutes unfair practice and that he must be reinstated.
>
> We, therefore, direct that _____ be reinstated in the position which he held prior to the notice of termination of his contract.

The school board's representative on the board of reference did not agree with the majority report; however, the decision of the majority is final and binding.

In a similar case, the school board, on May 24, passed a resolution terminating the contract of the teacher effective June 30, on the grounds that the teacher's classroom was being closed. The teacher refused a transfer and requested the appointment of a board of conciliation. This board held that the only possible reason the school board could give for terminating the contract in this instance was the

unsuitability of the teacher for the position held.[69] Since this reason was not stated, and there was no suggestion that the teacher was unsuitable, the conciliation board ruled that the termination of contract was void. In July, the school board passed a resolution terminating the teacher's contract on the grounds that her position was no longer in existence since the staff of the school was being reduced from five to four. The teacher applied for a board of reference to investigate the matter. This board referred to the case discussed previously, but stated that the school board had acted without any "ulterior motive, bona fide, and in good faith." The majority of the board of reference upheld the action of the board while the teacher's representative filed a dissenting report.

In a third case the local ratepayers, in April, requested the school board to hire a new teacher to replace the existing teacher for the next term. Early in May, the school board passed a resolution to the effect that if the existing teacher's resignation was not received by May 24, her contract would be terminated. This motion was rescinded at a special meeting which took place a week later. Near the end of June, the local ratepayers asked the school board to close the school and transport the children to another school. The school board then passed a resolution closing the school. The teacher was notified that her contract was being terminated due to the low enrolment in her school and the extension of the centralization policy of the board.

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[69] R.S.S. 1953, c. 185, s. 4(1); S.S. 1961, c. 32, s. 1, am.

The teacher was given a month's pay in lieu of thiry days' notice, but she returned the cheque to the unit board and asked that a board of reference be established to investigate the matter. The majority decision of the board of reference upheld the action of the school board on the basis that the board had acted in good faith and in accordance with their established policy of centralization. Counsel for the teacher argued that this was another instance in which the board had closed a school in order to terminate the teacher's contract. In filing a dissenting report, the teacher's representative on the board of reference agreed with counsel's argument.[70]

A discrepancy exists with regard to the termination of a teacher's contract where a board is, for some reason, closing a school or reducing the teaching staff. The situation is solved where a school board offers a teacher a transfer and the teacher accepts; but where a board does not offer a teacher a transfer, or the teacher refused to accept a transfer, a tenure teacher cannot be dismissed, effective June 30, on the basis that his position is no longer in existence. The reason a board cannot take this action is that such a cause is not listed in the tenure act as justification for dismissal. However, if a board waits until June, July, or August, they may then dismiss the teacher on such grounds and their action will be upheld by a board of reference, provided such action was taken in good faith and with no ulterior motive.

Teachers' strike action. The only recent instance of a major

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[70]A teacher may be represented before such boards by legal counsel.

strike by Saskatchewan teachers occurred in Regina from September 1-3, 1964, when the elementary school teachers did not report for work.[71] One of the legal questions which arises in such a situation is: do teachers have the legal right to strike? This question is not dealt with by statute in Saskatchewan, but it may be inferred that, since teachers did strike and no legal action was taken to restrain them, they do have this right. Another question which arises is: is the individual teacher committing a breach of contract if he takes part in strike action since The School Act stipulates that a contract between a board and teacher shall remain in force until terminated in accordance with statutory provisions?[72]

These questions have not been answered to the satisfaction of all parties concerned. The only way in which they can be answered is through legislation or court decision.

Summary

The following principles arise from the discussion of the material presented on contracts:

1. In order that a binding contract may exist between two parties, there must be an offer, an unqualified acceptance, and a meeting of minds.

2. A contract must be concluded at a duly constituted meeting of the school board at which a quorum is present.

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[71]Both The Saskatoon Star Phoenix and The Regina Leader Post contain articles for the days stated, pertaining to the teachers' action.

[72]R.S.S. 1953, c. 169, s. 216g; S.S. 1954, c. 46, s. 15, am.

3. Generally, the corporate seal of the board must be affixed to the contract.

4. School boards must arrange for the necessary finances before concluding contracts which call for capital construction.

5. The cost of the proposed construction should not exceed the funds which have been made available for that purpose.

6. Offers of employment should not be sent to a greater number of applicants than the number of vacancies occurring.

7. School boards must pay for architectural services on the basis of quantum meruit. However, boards have the responsibility of protecting the public interest and should be careful to select a competent architect.

8. Boards have the legal right to initiate action by way of a suit for damages against an architect who is negligent in the performance of his duties.

9. A board will be liable for damages where it decides not to execute a valid contract.

10. Where a school board wishes to make the architect's completion certificate a condition precedent for the final payment to the contractor, it should be so stated in the terms of the contract.

11. A school board cannot claim damages for delay in completing a building when it takes possession of a part of the building before the specified completion date.

12. If the owner of a building under construction requires extra work to be done, the contractor is only expected to complete the work in reasonable time.

13. In order for a board-teacher contract to be legally binding, the statutory procedures and provisions must be strictly followed.

14. An irregularity at a meeting of the board at which a contract with a teacher is concluded will not deprive the teacher from collecting salary due him for services rendered.

15. A non-tenure teacher may be dismissed, effective June 30, by giving proper notice to the teacher by May 25.

16. A tenure teacher may be dismissed, effective June 30, only for such reasons as are listed in The Teacher Tenure Act. A teacher dismissed under these provisions has the right to request that a board of conciliation be set up to investiage the matter. The decision of this board is not legally binding on either the teacher or the board, unless both agree to accept it.

17. Any teacher who is dismissed, effective at a date other than June 30, has the right to ask for a board of reference to investigate the dismissal. The decision of this board is binding upon both the school board and the teacher.

18. The board may terminate the contract of a teacher, effective at a date other than June 30, on the grounds that they are closing the school in accordance with educational policy. If a school board acts in good faith, a board of reference will uphold its action.

Rogers makes this general comment regarding contracts:

> One principle that is clear and runs throughout all of the cases involving municipal agreements: a person entering into contractual relations with local authorities cannot assume that all proceedings respecting the authorizing of the contract have been properly taken and that capacity to

> enter into the contract exists. . . . Parties dealing with a municipal corporation are bound at their peril to take notice of the limits within which and the manner in which, the council has power to contract and bind the corporation.[70]

Perhaps the principle stated by Rogers should also be given in a positive way: when entering into contractual relations with other persons, school boards should make sure that all proceedings respecting the creation of the contract have been fulfilled.

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[70]Rogers, op. cit., p. 930.

CHAPTER VIII

THE SCHOOL CORPORATION: LEGAL LIABILITY

Introduction

The topic of legal liability of the school board is extensive and includes tort liability, contractual liability, and general liability. The risk of incurring liability is present in every phase of school board operation; therefore, one of the purposes of this section is to synthesize this aspect of case law discussed previously. A main area of concern in this chapter is the question of whether or not the school board is liable for acts committed by persons performing services for the board.

Tortious Liability

It is not the intention of the writer to attempt to deal with the law of tort in its entirety since such an attempt is beyond the scope of this study. This section will present some comments on tort law and litigation involving such law. There will be a discussion of a school board's liability for the acts of its servants and independent contractors.

The law of tort. A legal authority, in speaking about a definition of tort law 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.[1]

The word "tort" came into the English language as Norman-French and means "wrong." Tort liability is concerned mainly with compensating

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[1]J. A. Jolowicz and T. Ellis Lewis, (eds.), Winfield on Tort, Seventh Edition, London: Sweet and Maxwell, 1963, p. 1.

an injured party by compelling the wrongdoer to pay for the damages he caused. The same authority defines tortious liability as follows:

> 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.[2]

The duty referred to is determined by statute or common law. The duty which has been breached is towards persons generally; emphasis must be placed upon the word "generally." The duty not to commit a tort is not limited to "John or Mary or to any other named person or persons;" everyone is under a duty not to commit assault, battery, or any other tort against any person. While there are instances in which it is difficult to define exactly who are "persons generally," this element of generality appears in the majority of cases.[3] If a suit is brought, it may not be for a predetermined sum, but may instead be for such amount as the court in its discretion may award.[4]

Lord Atkin, in commenting on the duty of care, stated:

> The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, Who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, is my neighbour? . . . persons who are closely and directly affected by any act that I ought reasonably to have them in contemplation as being affected when I am directing my mind to the acts or omissions which are called in question.[5]

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[2] Ibid., p. 5.

[3] Ibid., p. 7.

[4] Ibid., p. 9.

[5] Donoghue and Stevenson, [1932] A.C. 562 at p. 580.

The duty of care to be exercised by a school board is extensive since a board is a public body and its acts or omissions may affect pupils, board employees, ratepayers, and parents.

The following are the general conditions upon which tortious liability is based:

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 other, negligence suffices. Others, called torts of strict liability, in varying degree are independent of fault.

3. . . . most torts require damages resulting to the plaintiff which is not too remote a consequence of the defendant's conduct. . . .[6]

These are the three conditions under which a tortious action may be brought against a private individual.

Liability of a corporation. A corporation aggregate may be held liable in tort provided that (1) the tort is one where an action would lie against a private individual, (2) the person who committed the tort was acting within the scope of his authority or of his employment, and (3) the act upon which the complaint is based is one which is intra vires the corporation.[7]

Master-servant relationship. A public corporation can only exercise its powers through servants, agents, or contractors. In order

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[6]Jolowicz and Lewis, op. cit., p. 17.

[7]Halsbury's Laws of England, Third Edition, London: Butterworth and Co. Ltd., 1954, Vol. 9, pp. 87-8.

to establish that a corporation is liable, the relationship of master and servant must be established between the corporation and the person who committed the act.[8]

> The relationship of master and servant is characterized by a contract of service, express or implied, between the master and the servant. A contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken.[9]

A corporation employer is responsible for the acts of its servants where these acts are committed within the scope of the servant's authority and in the course of his employment. Where the act committed is an act not authorized by the corporation's constitution, the corporation will not be held liable.

Employer-independent contractor relationship. While a corporation may be liable for all acts committed by its servants, it is liable only in certain instances for the acts of an independent contractor. When, in a master-servant relationship, the person actually doing the work commits an act for which he would be liable, the master is liable. In an employer-independent contractor relationship, the employer is not liable for negligence other than the improper and imperfect performance of the work the contractor was employed to do. This, then, is the vital distinction between the master-servant and employer-independent contractor relationship.[10] Other instances in which the employer is

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[8] Ibid., p. 88.

[9] 25 Halsbury, op. cit., p. 448.

[10] Hartaker v. Idle District Council, [1896] 1 Q.B. 335, at p. 353.

liable for the acts of an independent contractor are: (1) where the contractor is directed in his work and the manner of doing the work is controlled by the employer;[11] (2) where the contractor is employed to do work involving risk or danger,[12] and (3) where the contractor is employed to execute a particular duty which the employer is under a statutory obligation to do.[13] Where an independent contractor, however, exercises permissive powers which have been delegated to him the employer is not liable.

Case law involving school boards. There are several cases which illustrate the liability of a school board as a result of master-servant relationship. All of the cases discussed in this section involve the tort of negligence and, in most of them, the master-servant relationship was found to exist.[14]

In the Manitoba case of Cochrane v. Consolidated School District of Elgin,[15] a horse drawn van transporting students overturned thereby injuring the arm of the student plaintiff. The plaintiff brought an action for damages against the school board, but the board contended

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[11] Ibid., p. 353.

[12] Ibid., pp. 349-50.

[13] Ibid., p. 342.

[14] For a discussion of the tort of negligence, see I. L. MacKay, "The Legal Rights, Privileges, and Responsibilities of Pupils in the Publicly Supported Schools of Saskatchewan," Unpublished Master's Thesis, University of Saskatchewan, 1964, pp. 279-342.

[15] [1934] 2 W.W.R. 409, 42 Man. R. 257, affirming [1934] 2 W.W.R. 154.

that it was not liable because the van driver was an independent contractor. The court held, however, that the board was under a statutory obligation to provide transportation for pupils and it could not escape responsibility by employing an independent contractor. Since the van driver was found negligent, the board was found liable for damages resulting from the accident. The board appealed this decision, but the Appeal Court affirmed the verdict of the Trial Court stating that the van driver was, in effect, a servant of the board.

A group of pupils in a Saskatchewan School District was being transported when, due to negligence on the driver's part, the van overturned injuring one of the students.[16] The student plaintiff brought action against the school board and one of the issues before the court was the question of the board's liability since the conveyance of students was a discretionary duty of the board. The board contended that it was not liable because the driver was an independent contractor. The court ruled, however, that the driver was not an independent contractor but a servant of the board since he received his direction from the board. Taylor, J., stated:

> The board dictates in entirety the extent of the control it reserves to itself and what control and license 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 a servant of the board.[17]

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[16] Tyler and Tyler v. Board of Trustees of Ardath School District, [1935] 1 W.W.R. 337, [1935] 2 D.L.R. 814.

[17] [1935] 1 W.W.R. p. 344.

A recent Ontario case would seem to contradict the statement made by the Saskatchewan court in the previous case.[18] One Lyons was the owner of three buses under contract to the Erin High School Board. One of the buses, operated by Leitch, was in collision with a train with the result that several students were killed and several others suffered injuries. In the litigation which followed the accident, the plaintiffs sought damages from both the school board and the vehicle owner. One of the issues to be determined was the nature of the relationship between the owner of the bus and the school board. The plaintiffs contended that both Lyons and Leitch were servants of the board and therefore the board was liable for their negligent acts. The defendant board claimed that Lyons was an independent contractor. The Trial Court held that Lyons was a servant of the board because he, and his drivers, were under constant direction from the board and the principal of the school. Regulations as to the route to be followed by the buses and the picking up of students were given to Lyons to be transmitted to his drivers. Therefore, the relationship existing between the board and Lyons must be that of master and servant with the result that both were held liable for damages.

The school board appealed this decision, and in the appeal hearings the court carefully examined the agreement between Lyons and the board. The following clauses were included in the agreement:

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[18] Baldwin et al., McKinney et al., McLaren et al., v. Lyons and Erin District High School Board, [1961] O.R. 687, 29 D.L.R. (2d) 290, reversing [1961] O.R. 146, 26 D.L.R. (2d) 437.

1. The pupils designated by the board were to be transported in a properly licensed motor vehicle;

2. The buses were to follow a route prescribed by the board;

3. The board stated the times at which the students were to be picked up and the times the buses were to arrive at school;

4. Students were to be picked up at any place they might be along the prescribed route and were also to be allowed to alight any place they designated, unless the board specifically stated the points at which the bus was to stop;

5. The contract price per day was stated;

6. In case of any accident causing personal injuries, the driver was not to be relieved of liability;

7. The operator was deemed to be in the business of carrying passengers for compensation.[19]

The court, in upholding the appeal, stated that it was convinced that the status of Lyons was that of an independent contractor. Aylesworth, J.A., stated:

> . . . it would require cogent and unequivocal evidence to demonstrate that the parties in fact changed that relationship into one of master and servant.[20]

The court was also of the opinion that any communication between the board and Lyons with respect to the manner of driving the bus was not the exercise of control over the manner of driving, but more of a general

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[19] 29 D.L.R. (2d) p. 293-4.

[20] Ibid., p. 294.

admonition. It was not an attempt to interfere unreservedly and to take over the direction and control of the contractor's manner of driving the bus or buses. Lyons stated that he considered the carrying out of the board's and principal's suggestions nothing but good business salesmanship. Lyons serviced and maintained his buses at his own expense; engaged, paid, and dismissed his drivers without consulting the board. On the basis of these facts, the court came to the conclusion that the board never sought to achieve actual control and direction over the manner in which the buses were being driven and, consequently, was not liable for the injuries resulting from the negligent actions of Lyons or his drivers.

An interesting decision was brought down in the case of Sleeman and Sleeman v. Foothills School Division No. 38 et al.[21] A school bus had been in collision with a truck and both drivers were found to have been negligent in operating their respective vehicles. The court established the existence of the master-servant relationship between the school bus driver and the board and held that, since the driver had been negligent, the board was entitled to have a contribution from the driver for any sums that it had to pay.

If this situation is applicable in similar transportation accidents, it would seem essential that bus drivers be properly insured so as to cover themselves in case of an accident. This is the only reported case encountered by the writer in which a board was allowed

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[21] [1946] 1 W.W.R. 145.

to claim a contribution from its servant for any sums the board had to pay.

A decision handed down in an early Alberta case indicates that a school board is responsible for the acts of its agent. The school board appointed one Graham to oversee the excavation of the basement of the site where a new school was to be constructed. Graham instructed the contractor to place the earth excavated on the property adjoining the school site. As a result of this mound of earth, water which usually drained off plaintiff's property was turned back and filled the cellar of plaintiff's house causing serious damage. The school board was held liable for the damage because Graham was considered to be the agent of the board.[22]

A defence against the liability of a school board is the limitation of action clause which appears in the legislation pertaining to education of the various provinces. In Saskatchewan, this clause stipulates that:

> 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.[23]

In a British Columbia case[24] and again in a New Brunswick

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[22]Renwich v. Vermillion Centre School District No. 1446 Trustees, (1910) 15 W.L.R. 244, 3 Alta. L.R. 291.

[23]R.S.S. 1953, c. 169, s. 263; c. 168, s. 83 is similar.

[24]Duncan v. Board of School Trustees of Ladysmith, [1931] 1 D.L.R. 176, 43 B.C.R. 154, [1930] 3 W.W.R. 175.

case,[25] the limitation of action clause was relied upon in dismissing the action for negligence against a board. A British Columbia statute requires the party bringing the action to give the school board "one month's previous notice thereof in writing."[26] An action against a Vancouver board was dismissed on the basis of this section.[27]

Liability of the Board in Contract

A contract not made in consonance with statutory provisions cannot be enforced against a board; neither can such a contract be enforced against the other party. When a contract is made in accordance with the proper procedures, the corporate body is liable as a result of any act arising from the contract.

In one of the earliest cases on record, the board, as a corporation, engaged a teacher and agreed to supply fuel for the teacher's dwelling. When the board did not supply fuel, the teacher brought an action against the trustees as individuals. The court held that the corporation had contracted on behalf of the public and the trustees as individuals had no personal interest in the contract and could not be individually liable.[28]

This principle has been upheld by court decisions in the various provinces of Canada. A Nova Scotia board refused to pay the price

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[25]Longphee et al. v. Board of School Trustees of School District #14 in Parish of Shediac, (1957) 24 D.L.R. (2d) 723.

[26]R.S.B.C. 1924, c. 226, s. 131A; S.B.C. 1929, c. 55, s. 32 am.

[27]Ritchie v. Gale and Vancouver Board of School Trustees, [1935] 1 D.L.R. 362, 49 B.C.R. 251 [1934] 3 W.W.R. 703.

[28]Anderson v. Vansittart et al., (1849) 5 U.C.Q.B. 335.

previously agreed upon for the construction of a new school. The plaintiff sought to recover from the trustees individually, but the court held that the contract had been concluded legally on behalf of the corporation, therefore, the corporation, not the individual members, was liable.[29]

A teacher in New Brunswick negotiated a contract with two of the three trustees of a school district, but was later barred from entering the school by the school board. The plaintiff teacher sued for damages and judgement was brought down against the corporation on the grounds that it had committed a breach of contract.[30]

A Saskatchewan school board refused to permit a contractor to proceed with the erection of a school building contending that the bond posted by the contractor had to be that of a bonding company. The contractor had supplied a bond signed by himself and three citizens as sureties. The plaintiff contractor sued for breach of contract, but the Trial Court found for the board. The plaintiff appealed the decision and the Appeal Court reversed the decision, and the plaintiff was awarded damages amounting to the expenses incurred while preparing to carry out the construction plus profits he might have earned during the delay caused by the board's action.[31]

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[29]Livingstone v. School Trustees, Boularderie, (1880) 13 N.S.R. 535.

[30]Des Rosiers v. S.D. No. 1, Balmoral & Dalhousie, [1927] 3 D.L.R. 505, 53 N.B.R. 310.

[31]Greenwood v. Estevan School Trustees, (1910) 15 W.L.R. 568, 3 Sask. L.R. 433.

A school board must take care with regard to the wording of contracts because they may be held liable even if a contract is worded badly. In an Ontario case the board contracted for the erection of a schoolhouse and the contract specified that the building was to be built of good materials and finished in a workmanlike manner. Upon completion of the building, the board refused to pay the sum specified in the contract on the grounds that the workmanship was poor. The contractor sued for payment and the court found for the plaintiff. The comment was made by the court that the board had not taken proper care in drawing up the contract.[32]

The possibility of such a situation occurring today is rather slight because experienced architects, officials from the department of education, statutory regulations, and competent legal advice are available to assist boards in the drawing up of contracts.

Corporate Liability

In the normal course of operations, trustees act for the corporation and if liability results as a consequence of their action, it is the corporate body that is liable. In Morrison v. Board of Trustees of Casses Hill School District et al,[33] the school board deceived two of three applicants who applied for a teaching position into thinking each had been engaged to fill the position. The board had sent job offers to three persons, and when they received an

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[32]Coglan v. The School Trustees of School Section No. 4, in the Township of Tilbury East, in the County of Kent, (1874) 35 U.C.Q.B. 575.

[33][1925] 1 W.W.R. 526.

acceptance from each of them they hired the one who had been their preferred choice. The applicant who had been the second choice then sued the board for damages since she had refused several job offers after receiving a definite offer from the defendants. Boyle, J., stated:

> My recollection of the law, however, is that in the case of a public corporation performing public duties such as the defendant school board and where the act complained of was done in the regular course of the performance of a public duty, such as in this case the hiring a teacher, and damage is caused to some person by the manner in which the duty is performed, the act is the act of the corporation and not of the individual officers of it. This I think is the general principle although of course there are exceptions to the rule.[34]

Despite the deliberate deceit of the board, the liability was attached to the corporation and not the individual members.

Where a board acts in good faith, though in ignorance of statutory provisions, an action for damages against the trustees personally will probably fail. An Alberta school board honestly thought they had the power to pay the secretary treasurer of the board a gratuitous sum upon his retirement. An action brought to recover from the trustees failed.[35]

In the Quebec case of Bouchard v. Racine et al.,[36] a school commission spent a portion of its budget before the budget had been approved as required by statute. An action brought to recover the

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[34] Ibid., pp. 533-4.

[35] Lac Ste. Anne Sch. Div. No. 11 v. Buxton et al, 33 W.W.R. 481. See p. 99.

[36] [1956] Que. Q.B. 217.

money from the trustees personally was dismissed because the court found that the commissioners had acted in good faith. Furthermore, if there was any liability, it was incurred by the corporation and not the individual trustees.

At times, there appears to be a very fine line separating instances in which boards become individually liable from situations in which liability attaches to the corporation. The early Nova Scotia case of The Trustees of School Section No. 16, South District of Pictou County and James Cameron et al[37] is relevant to this point. A board of trustees resolved to move the schoolhouse to a new location even though the move was against the wishes of the community. The move was attempted at night resulting in considerable damage to the building while moving it only a few feet. For their action, the school trustees were dismissed by the commissioner of schools and three other persons were appointed to the board. The new trustees brought an action for trespass against the former board members who contended that they were the lawful corporation at the time of their act. Therefore, said the former trustees, the suit should be dismissed because a corporation cannot sue itself. The defendants further contended that they could not be sued individually because they were carrying out the work of the corporation. The Trial Court dismissed the complaint and the plaintiffs appealed from this decision to the Supreme Court of Canada. The highest court in the Dominion found that the Trial Court findings were based on

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[37](1879) 2 S.C.R. 690.

an incorrect premise. The lower court had proceeded as though the property was vested in the trustees personally, and as though the action was being brought for personal injury. The Supreme Court suggested that the Trial Court should have proceeded on the bases that the title to the property was vested in the corporation, which is continuous, and that the action was brought by a corporation for wrong done to the title and possession of the corporation.

In reference to liability, Ritchie, C.J., stated:

> The acts of the Trustees, no doubt, are the acts of the corporation, but only when within the scope of the authority conferred on them by the law establishing the corporation. Their acts are only the acts of the corporation, so far as they have such authority to act by virtue of the powers conferred on them.[38]

He went on to say:

> These three Defendants, without authority of law, undertook to remove this school house from its site, and did so in the most wilful manner, for it cannot be pretended that they were in ignorance of the law, or the duties and powers of Trustees, but they did it, in fact, in direct defiance of the law.
> . . . . . .
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> These three Defendants, then, were violating the law and acting outside of and beyond any power or authority given to Trustees of Schools over school property, and so abused the authority given them by law and became trespassers, and so rendered themselves liable to be sued as such by the corporate body on whose property they so trespassed . . . .[39]

If trustees act in a manner contrary to the law or in bad faith,

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[38] Ibid., p. 700. Since these remarks were made by a member of the Supreme Court of Canada, it is proper to consider that they carry considerable influence.

[39] Ibid., p. 702.

as distinguished from mistake, misapprehension, or neglect, they cease to act as a corporate body and become individually liable for their acts.

Individual Liability of School Board Members

Legislative enactments of Saskatchewan make trustees individually liable for the following offences; and disqualification may or may not be applicable:

1. Acquiring a school site in violation of statutory provisions;[40]

2. Contracting unlawfully with the board;[41]

3. Voting for the diversion of debenture moneys;[42]

4. Voting for the diversion of sinking fund moneys;[43]

5. Wilful neglect or refusal to exercise the corporate powers of the board in fulfilling its contracts, unless it can be shown that the member made reasonable efforts to have the board carry out its contracts;[44]

6. Contracting, in the name of the district, liabilities greater than allowed by statute; appropriating moneys for purposes other than those allowed by statute; and paying, from the district funds, "a teacher for teaching a language other than those prescribed outside of school hours;"[45]

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[40] R.S.S. 1953, c. 169, s. 50.

[41] Ibid., s. 137; S.S. 1961, c. 29, s. 7, am.; c 170, s. 58.

[42] Ibid., c. 169, s. 143(3).

[43] Ibid., s. 184(1).

[44] Ibid., s. 244.

[45] Ibid., s. 245.

7. Signing false reports;[46]

8. Retaining anything belonging to the district after ceasing to hold office;[47]

9. Failing to call a meeting of ratepayers when the duty to do so is clear;[48]

10. Authorizing or permitting the use of text or reference books not sanctioned by the department of education;[49]

11. Allowing an emblem of a religious faith to be displayed on public school premises during school hours;[50]

12. Receiving payment as an agent for the sale of merchandise to the district;[51]

13. Receiving any remuneration other than for the reasons stated in the statutes.[52]

All of the foregoing points have not been the subject of litigation; one reason for this is that courts are reluctant to hold trustees individually liable, unless the evidence is indisputable.

> A trustee is a man elected by the ratepayers because they have confidence in him; and I must be satisfied that these

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[46]Ibid., s. 246; c. 168, s. 76.

[47]Ibid., c. 169, s. 247.

[48]Ibid., 3. 252.

[49]Ibid., s. 253.

[50]Ibid., s. 254.

[51]Ibid., s. 256.

[52]Ibid., c. 170, s. 31.

> men have acted in bad faith, or at least wilfully, before I should be prepared to assess damages against them, or give costs against them, or even make any order against them, because an order for an injunction should go against the board of school trustees and not against . . . individuals.[53]

The Manitoba case of R. ex rel Wells v. Green[54] provides an example of trustees acting in bad faith. A school board by-law stated that all children who had to walk further than one mile to reach school would be transported. The plaintiff sought a writ of mandamus to compel the defendants to transport his children to school. The defendant board members contended that the plaintiff's house was two feet short of one mile from the school and they did not have to transport the students. The court learned that the children had been conveyed to and from school until April 22, 1912, and that after that date the van driver refused to permit them to ride the van. The court maintained that the distance from a home to school should be measured along the route usually taken by the children, and in this instance, this distance would exceed one mile. Further evidence at the trial disclosed that the plaintiff had supported the successful candidate in a municipal election in which one of the trustees had been unsuccessful. The court condemned the action of the board of trustees, stating that the members of the board showed ill-will towards the plaintiff.

> 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

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[53]Bowman et al v. Faber et al, [1919] 3 W.W.R. 755, at p. 757.

[54](1913) 23 W.L.R. 264, 10 D.L.R. 111.

> 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.[55]

The court granted the application for a writ of mandamus and assessed the costs of the action to the defendants personally as their actions had been carried out in bad faith.

A combination of illegal contracts and bad faith is exemplified in Muirhead v. Bullhead Butte S.D.[56] The trustees employed themselves personally in the construction of a schoolhouse and were subsequently advised by the Alberta department of education that they had disqualified themselves from office. Instead of vacating their office and calling for new elections, the board proceeded to levy a school tax rate which was set so high that it would yield in one year enough revenue for approximately two years of operation. When the plaintiff failed to pay his taxes, the school district issued a distress warrant against him and he promptly initiated legal action with the result that the court assessed damages and costs against the trustees personally.

In another case discussed previously, the individual members of the board and the contractor were held personally liable for $2,625, less the amount of construction which was of value to the board, because the board had proceeded to sign a contract and expend money in violation of statutory restrictions.[57]

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[55](1913) 23 W.L.R. p. 265.

[56](1911) I W.W.R. 253, 4 Alta. L.R. 12.

[57]Smith v. Fort William School Board et al, 24 O.R. 366. See p. 134.

The members of a Saskatchewan school board were held personally liable for the costs of litigation which resulted from their wrongful exclusion of a child from school. The court was of the opinion that in a matter as important as the child's right to an education, trustees should consult with legal counsel to determine the implications of their proposed action. Since the board had not done so in this instance, the court held the members of the board personally liable for the costs of the action.[58]

A trustee of another Saskatchewan school board, who was also the treasurer of the board, was held personally liable when it was found that he had altered the minute book to make it appear that the board had authorized payment of the costs of litigation which was the result of contested election proceedings. An official trustee appointed by the department of education successfully sued to recover the $370.65 which had been illegally paid.[59]

The members of a board were summarily convicted and fined for allowing almost all instruction in school to be given in the French language, which was contrary to law. The defendant board appealed the conviction, and the Appeal Court found that while the board had, in fact, violated the Act, summary conviction was not the proper remedy. The proper procedure was for five ratepayers to apply to a judge for

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[58]Wilkenson v. Thomas et al, [1928] 2 W.W.R. 700.

[59]Neal v. Kellington and Milne, [1917] 2 W.W.R. 101, 10 Sask. L.R. 87, 35 D.L.R. 142.

removal of the trustees for neglecting their duty.[60] Despite the fact that the board had violated the law, their conviction was quashed because the action against them was improperly taken. From this case, it may perhaps be concluded that where specific penalties, such as disqualification, are outlined by the statutes, no other action may be brought for the offense.[61]

This principle was again exemplified in the case of McNabb and Jarnagin v. Findlay[62] when two trustees did some work for the district and were paid. Action was brought to recover from the trustees personally, but the court ruled that the action was not initiated under the proper section of the statute.

A person acting as treasurer for a board of trustees is required to furnish a bond to secure the proper accounting of money and property that come to his hands.[63] It is a mandatory duty of boards of school units and high school boards to see that this bond is furnished by the treasurer.

There are several cases on record, none of which originated in Saskatchewan, which indicate that where trustees do not fulfill the

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[60]See p. 65.

[61]Boutin et al v. MacKie, [1922] 2 W.W.R. 1197. The trustees had violated R.S.S. 1920, c. 110, s. 178, and the charge was laid under s. 216(2).

[62][1932] 3 W.W.R. 255. The action was brought under R.S.S. 1930, c. 131, s. 239; S.S. 1931, c. 52, s. 21, am., whereas the trustees had violated s. 130, which stated that no trustee should receive more than $10 for labour in any one year. See

[63]R.S.S. 1953, c. 170, s. 51(19); c. 169, ss. 132-3; c. 168, s. 28(g).

duty of requiring a bond to be furnished by the treasurer they may be held personally liable should the treasurer not keep an accurate accounting of the board's assets.[64]

Summary

The following general principles arise from the discussion of the foregoing material:

1. A school board is liable for the tortious acts of its servants and agents, but in order to establish the liability of the board it is necessary to determine that the relationship existing between the board and its employee is that of master and servant.

2. A school board is generally not liable for the acts of an independent contractor unless it directs and controls the work done, or engages the contractor to do dangerous or unlawful work, or employs the contractor to execute a duty which it is under a statutory obligation to do.

3. To be successful, actions for liability must be instituted against boards within the time limits specified by statute.

4. As long as the school board acts within the powers outlined by statute the board as a corporation will be liable if liability attaches as a result of the act.

5. Board members may be held individually liable when they (1) act in bad faith, or (2) act in contradiction to a mandatory duty, or (3) wilfully violate the law, or (4) act in a discriminatory or

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[64]School Trustees of the Township of Hamilton v. Neal, (1881) 28 Gr. 408; The Attorney General v. Cameron, et al, (1908) 43 N.S.R. 49.

malicious manner, or (5) abuse their power.

6. Actions taken against trustees personally are subject to statutory time limits thus affording trustees some degree of protection.

7. Courts recognize that school board members are in an "exposed" position and are subject to public criticism at all times. For this reason courts are loathe to find against individual trustees unless the evidence is clear and indisputable.

CHAPTER IX

CONCLUSIONS

The will of the legislature respecting education is expressed in the various Acts pertaining to education. The three Acts under which school boards are organized are the constitutions for the different types of school boards and the provisions outlined therein must be adhered to and must not be exceeded. School boards cannot modify or alter statutory provisions since only the legislature has power to do this. Duties which are mandatory must be fulfilled and those which are discretionary may be carried out if the board deems it advisable to do so. While considerable responsibility for and control over education have been delegated to school boards, the ultimate responsibility for education lies with the provincial legislature.

The courts, in interpreting the statutes, have stated in the clearest terms that the primary concern of school boards is the education of children. The educational welfare of the school pupils is paramount and all else is supplementary to the realization of this objective. Courts are concerned with seeing that the school board satisfactorily achieves the purposes for which it was created.

Virtually every decision of the publicly elected school board contains a legal element which must be identified and then applied to the situation confronting the board. If this is to be done, school board members must have an adequate knowledge of legal provisions outlined in both statute and case law for without such knowledge it is difficult to develop the best possible educational facilities and programs for the students. The lack of an understanding, on the part

of a school board, of the legal framework of education may result in litigation which can be time consuming and costly. There are some isolated instances where litigation has resulted because a board has deliberately disregarded a statutory provision. If a board acts in this manner, it will be subject to public criticism and legal action. The understanding and application of legal principles to daily decisions of a board is not an easy task. However, in areas where the statutes are silent or not sufficiently explicit and in which there has been litigation, the courts clearly outline the legal responsibilities of the school board so that no great difficulty is generally encountered in understanding the specific issues involved. If a board is ever in doubt as to the implications of a proposed course of action, competent legal advice should be solicited. By consulting legal counsel before a decision is made, a board may save considerable time and money.

Statute Law

One of the factors which has complicated this study was the fact that a number of different statutes had to be read and checked in attempting to synthesize statute law with respect to the legal responsibilities of school boards. Provisions respecting education are found in upwards of twenty different statutes. Another factor which added to the difficulty in arriving at an accurate understanding of statute law was the fact that eleven years of amendments had to be checked constantly. The latest revision of Saskatchewan statutes took place in 1953 and since that time many amendments have been passed by the legislature modifying the law with respect to education.

When comparing the three Acts under which school boards are constituted there are several matters, such as the qualifications of school board candidates, which seem to be inconsistent. A person seeking membership to a unit board must be (1) twenty-one years of age, (2) a British subject, (3) a ratepayer of the subunit in which he is seeking election, and (4) able to read and write and conduct meetings in the English language.[1] The requirements of a person seeking election to a board of trustees organized under The School Act are identical to the foregoing, except that he must be a resident ratepayer, not just a ratepayer.[2] A candidate seeking election to a high school board must be (1) twenty-one years of age, (2) a resident ratepayer, and have (3) had his name on the last revised voters' list of the municipality.[3] The Secondary Education Act has no language requirement and, upon reading the relevant section, it appears that a trustee does not have to be even a British subject.

Under existing law, it is possible for a unit board member to reside outside the subunit he represents on the board. The desirability of such a situation existing at local government level is questionable.

The display of any religious emblem in a public school and the wearing of religious garb by a teacher is prohibited by a section in

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[1] R.S.S. 1953, c. 170, s. 16; S.S. 1956, c. 32, s. 3, am.

[2] Ibid., c. 169, s. 74.

[3] Ibid., c. 168, s. 12.

The School Act. The penalty for the violation of this section is quite severe, viz.: (1) a teacher may have his certificate suspended or cancelled and be subject to a $50 fine, (2) a trustee is liable to a fine not less than $25 and not more than $100 and may also be disqualified from holding office as a trustee, and (3) for the period of violation of the section the district shall not receive any legislative grants.[4] The law reports contain no record of any litigation under this section.

The provisions of the 1964 amendment to The Secondary Education Act seem to some extent, to be contradictory.[5] Provision is made for the organization of a separate high school district while at the same time provision is made for the disorganization of a public high school district and for the formation of a single board of education for the public schools.

It is now possible to have (1) a public elementary school board, (2) a public high school board, (3) a separate elementary school board, and (4) a separate high school board operating in a single geographical area. The existence of four boards within a single municipality would seem to complicate the coordination of the educational program, especially at a time when educators are attempting to implement the division system.[6]

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[4]Ibid., c. 169, s. 254.

[5]S.S. 1964, c. 18, s. 8.

[6]The division system is based on the nongraded system and divides twelve years of education into four divisions.

Case Law

An inherent danger in a study which makes use of case law is that the courts can change the interpretation of a statute, and thus portions of such a study may be invalidated at any time. This illustrates the need for school boards to receive regularly information regarding case law in order to keep abreast of legal happenings in education.

Recommendations

The following general recommendations arise from the discussion of the material in this study:

1. School boards should at all times carry out their responsibility towards school children in good faith and without discrimination against any individual or group.

2. There is a need for legal literature of a periodic nature to be made available to school boards, educational administrators, and possibly all educational personnel. This literature should keep such personnel informed as to changes in statute and case law concerning educational issues.

3. More frequent consolidation of the law concerning education would simplify its study, thus allowing interested parties to gain a greater understanding of such law. The ideal solution would be for all points relating to a specific aspect of law to be contained in one particular section.

4. It has been custom to revise Saskatchewan statutes in periods of not less than ten years. The last revision of these statutes took place in 1953. While in the past such periodic revision may have been

sufficient, the amount of legislation emanating from the legislature in recent years would seem to demand more frequent revision. More frequent revision would help to simplify the study of school law. In order to ascertain the exact state of the law at the present time, eleven years of amendments must be checked constantly.

5. All regulations under the various Acts, which are contained in orders in council, are printed in the Saskatchewan Gazette. Since the Gazette is not an easy publication to read, such regulations should be printed in loose leaf form and made available to school board members, educational administrators, and other educational personnel. The last consolidation of the regulations relevant to education took place in 1944 and since that time many of these have been changed in order to bring them in accordance with existing conditions. In many instances regulations which appear in the 1944 consolidation have been superseded by regulations which have appeared in the Gazette; but unless school boards receive the Gazette they are unaware of these changes.

6. The three Acts under which school boards are constituted should be redrafted to delete discrepancies or to explain the reason for the inconsistencies.

Since school trustees give freely of their time and talent, every effort should be made to assist them in the fulfilment of their responsibilities. School board members will encounter difficulty in their attempts to gain a better understanding of school law, but such difficulties can be surmounted by seeking competent legal advice.

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B.C.R.	British Columbia Law Reports
Can. C.C.	Canadian Criminal Cases
C.R.T.C.	Canadian Transportation and Railway Cases
D.L.R.	Dominion Law Reports
L.J.P.C.	Law Journal Privy Council
L.T.	Law Times
Man. R.	Manitoba Reports
M.P.R.	Maritime Provinces Reports
N.B.R.	New Brunswick Reports
N.S.R.	Nova Scotia Reports
O.L.R.	Ontario Law Reports
O.R.	Ontario Reports
O.W.N.	Ontario Weekly Notes
Que. Q.B.	Quebec Queen's Bench Reports
Q.B.	Queen's Bench Reports (England)
Sask. L.R.	Saskatchewan Law Reports
S.C.R.	Canada Supreme Court Reports
Terr. L.R.	Territories Law Reports
U.C.C.P.	Upper Canada Common Pleas
U.C.Q.B.	Upper Canada Queen's Bench

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A. LEGAL FRAMEWORK IN SASKATCHEWAN EDUCATION

(Chapter III)

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B. THE PUBLICLY ELECTED SCHOOL BOARD: ITS CORPORATE STATUS

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F. THE SCHOOL CORPORATION: LEGAL LIABILITY

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