

THE REMEDIATION AND DISMISSAL OF CATHOLIC TEACHERS IN SASKATCHEWAN'S  
CATHOLIC SEPARATE SCHOOLS FOR DENOMINATIONAL NONCONFORMITY

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## Abstract

It was the purpose of this study to investigate the remediation and dismissal of Catholic teachers in Saskatchewan's Catholic schools for reasons of denominational nonconformity.

Saskatchewan had, at the time of this study, in November of 1993, twelve Catholic school systems directed by Catholic directors of education. Eight participated fully in this study while two others provided some oral information. The remaining two declined involvement.

With the group of eight directors, a descriptive survey approach combined with interviews was employed. The survey data was collected by the use of the Nonconformity Questionnaire (NCQ). The questionnaire was composed of two parts: Part I, demographic data; Part II; questions focusing on actual cases of denominational nonconformity in the areas of Evidence, Procedures, Parties, Sanctions and, Threshold. All eight directors were asked to respond to Part I and the Threshold section but only two of the directors with experience in actual cases were asked to respond to the Evidence, Procedures, Parties and Sanctioning sections. All eight of the directors were interviewed by the writer. The interview of the two directors experienced with actual cases focused on triangulating their oral and NCQ responses and delving into their reasons for their responses. The other six directors, of the group of eight, were interviewed seeking responses to certain questions in order to understand their underlying assumptions and motivations in the area of denominational nonconformity.



The study revealed vis-a-vis policies and practices that:

1. Saskatchewan's Catholic directors deal with informal and formal complaints of nonconformity. Both types of complaints were usually lodged by a school administrator or fellow teacher. Informal complaints were investigated and dealt with in an ad hoc manner. Formal complaints were generally dealt with by means of a generic administrative policy. In almost all instances, investigations were carried out by the director of education. The teacher was always confronted with the allegation and given an attempt to deny or confirm the truthfulness of the complaint. If the complaint is denied the matter is closed. If confirmed, the teacher is given an opportunity to recant or change the behaviour.

2. The civil rights of a nonconformist teacher in the procedural stages vary, depending upon the board, but are circumscribed by case law and The Education Act (Sask.). A nonconformist's Canonical procedural rights played little if any role in administrative procedure.

3. In the matter of sanctioning, there was a clear preference for addressing the situation with warnings, giving the nonconformist ample time to reconsider and alter his or her behaviour. The clergy's role in this matter was advisory. It is clear that a school board may make ongoing demands upon the teacher's personal life in order to ensure the teacher's commitment to the remediation process.

4. The parties most involved with cases of denominational nonconformity were the teacher's parish priest, the director and school principal.

5. The director's personal threshold of nonconformity depends upon his own moral and religious rectitude as a Catholic and his interpretation of his responsibilities in the faith journey of one who has gone astray from the Church's teachings.

6. There was confusion in the Catholic community regarding objectively nonconformist behaviours in that they were perceived to be matters of conscience and thus subjectively acceptable and, at times, administratively tolerable. The religious or denominational threshold was perceived by some respondents to vary according to the norms within the local Catholic community, the composition of the school board, and the opinion of the local parish priest.

7. The administrative threshold of nonconformity appears to be governed by the frequency, seriousness, and publicity of the nonconformist behaviour circumscribed by the Faith Witness concept.

The findings of this research have both positive and negative implications. The unanimous agreement among Saskatchewan's Catholic directors that their treatment of Catholic nonconformist teachers must at least to some degree be governed by a pastoral model of administration bodes well for the considerate treatment of those teachers. On the other hand, the ad hoc manner in which many informal cases are treated and, with one exception, the nonspecific policies in place to deal with cases of nonconformity leave much to be desired in the protection of the legal and canonical rights of the teacher and, perhaps, the protection of the Catholic school boards'

power to sanction for denominational nonconformity.

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## CHAPTER ONE

### Introduction

The dismissal of a Junior High School principal in Prince Albert by that jurisdictions Catholic School Board, "...has prompted substantial criticism of both the Prince Albert Separate School Board and the Catholic Church....the board made an arbitrary decision to dismiss him, offering the Catholic Church and its doctrines as reasons for its decision." <sup>1</sup> [Writer's emphasis]

The above quotation which appeared in the December 21, 1979 issue of the Prince Albert Daily Herald might well make some Catholics feel uncomfortable and perhaps embarrassed. The article implies that Catholic school administrators and Catholic school boards act as an arm of the Church, ostensibly interpreting Church doctrine in determining culpability regarding the spiritual fitness of a Catholic teacher. To some Catholics this action may appear as a return to the times of the Holy Inquisition.<sup>2</sup> To other citizens it may just appear as another case of religious discrimination practiced by a moralistic minority against one of its own. Yet, today's teacher is a highly trained professional supported by a well funded and articulate professional body dedicated to the welfare of its members. Thus, a teacher in jeopardy of losing a teaching position is or ought to be aware of his or her contractual, common law, statutory and constitutional rights. The concerned reader of the above newspaper

article is left wondering, "Doesn't the law or the Saskatchewan Teachers Federation protect teachers against dismissal for arbitrary reasons?"

Many questions swirl around the dismissal of a Catholic teacher for denominational nonconformity, but in this area two questions seem to prevail: a) Upon what religious and legal basis is the power to dismiss for denominational reasons based?, and b) What acts or failures to act by a Catholic teacher constitute a serious enough breach of that faith's moral and ethical beliefs to warrant the imposition of sanctions for nonconformity?

These questions will be examined in this study.

### The Study

#### Purpose

It was the purpose of this Study: a) to examine the sacred and secular foundations upon which rests a Saskatchewan Catholic school board's religious and legal authority to sanction Catholic teachers for denominational nonconformity, b) to review the relevant literature taking into account germane constitutional, statutory, common and canon law authorities which provide insight into the sanctioning process, c) to gather original data from Saskatchewan's Catholic directors of education on the substantive, procedural and theoretical aspects of the sanctioning process, and d) to provide recommendations in the matter of sanctioning Catholic teachers for

denominational nonconformity. Parts a) and b) will be done in Chapter 2 in the Review of Literature. The recommendations are contained in Chapter 5 , while Part c), the results of which will be given in Chapters 4 and 5, will focus upon the following objectives:

1. To document those acts or failures to act by Saskatchewan's Catholic teachers which have been sufficiently nonconformist with denominational expectations to warrant administrative sanctions by Catholic separate school boards.
2. To delineate the procedures followed by Saskatchewan's Catholic Directors of Education in determining a) the evidential basis for and b) the administrative response to denominational nonconformity.
3. To examine the roles of key decision makers in determining the procedures and appropriate sanctions used in cases of denominational nonconformity in Saskatchewan's Catholic separate schools.

- 4.. To document the sanctions and related remedial measures prescribed in Saskatchewan's Catholic separate school districts, in cases of denominational nonconformity.
5. To examine the three thresholds of denominational nonconformity, a) religious, b) personal and c) administrative, which when crossed have resulted in administrative sanctions by Catholic separate school boards in Saskatchewan.
6. To provide policy and practice recommendations in the areas of evidence, procedures, sanctions, and threshold, apropos to sanctioning for denominational nonconformity.

#### Significance of the Study

The rational use of a constitutionally protected power requires clear definitions, policies and procedures to ensure its protection when under the scrutiny of an active judiciary and to secure due process for the alleged nonconformist. Arguably, anything less would invite further judicial review and a restrictive interpretation upon that power.

Saskatchewan's Catholic teachers deserve to know what acts or failures to act constitute denominational nonconformity. Therein, what single act or failure to act is considered so egregious that ipso facto it crosses the threshold leading to remediation or dismissal: horizontal denominational nonconformity? Alternatively, what acts or failures to act when considered in toto or cumulatively, constitute denominational nonconformity leading to remediation or dismissal for vertical denominational nonconformity. Fairness also dictates that Saskatchewan's Catholic administrators and teachers should know what procedures they may expect to face in these cases.

This study delved behind the silence surrounding the actions of those involved with the remediation and dismissal, constructive or otherwise, of Catholic teachers within Saskatchewan's Catholic separate school districts.

#### Delimitations

1. This study was delimited to cases of denominational nonconformity in Saskatchewan's Catholic separate school districts which have led to actual cases of teacher remediation and/or dismissal.

2. This study did not deal with cases which have not led to actual incidences of teacher remediation and/or dismissal, other than in the threshold area, for denominational nonconformity.

3. This study did not deal with the nexus of denominational nonconformity and the hiring of non-Catholic teachers or Catholic or non-Catholic employees by Saskatchewan's Catholic separate school boards.

4. The data for analysis was derived from descriptive survey questionnaires and structured interviews.

5. The perceptions of those persons other than Saskatchewan's Catholic Directors of Education was not be considered.

6. Paraphrases rather than quotations were used in this study to assure the anonymity of the respondents.

### Limitations

1. Only formal cases of denominational nonconformity were considered in the Evidence, Procedural, Sanction and Party sections of the Nonconformity Questionnaire.
2. Direct quotations of the small sample of respondents were not used in this study in order to ensure conformity to the study's confidentiality parameters.
3. The study does not contain a separate chapter or part dealing specifically with remediation as that matter permeates the study as an alternative to dismissal.
4. The conclusions and recommendations of this study are tentative as the number of Catholic directors of education who had actual experience with formal cases of denominational nonconformity were two in number.
5. Only Catholic schools with Catholic directors of education were considered in this study.

### Assumptions

1. That Saskatchewan's Catholic Separate School Boards of Education have the constitutional power



to sanction with remedial measures or dismissal for denominational nonconformity Catholic teachers within their school system who have failed to conform to the objective truths, beliefs, values and norms of the Catholic faith as determined by the Holy See.

2. It is assumed that all participants answered all questions fully and truthfully.

### Definitions

1. Autonomous Churches: A term,..." used in this Code [of Canon Law ] for groups of the Christian faithful bound together by a hierarchy according to the norm of law, and which are expressly or tacitly acknowledged as autonomous by the supreme authority of the [Catholic] church."(Mendonca, 1991, p.10).

2. Canonical Document: A document whose authority derives from the law of the Church as it finds its expression in Canon Law, Papal or curial documents.

3. Canon Law: "That body of laws enacted by the lawful ecclesiastical authority in view of accomplishing the mission entrusted to the [Catholic] Church by its founder....all laws enacted by the Pope or the ecumenical Council for the Universal Church constitute Canon Law....".(Mendonca, 1989-90, p.6.)

4. Catholic Separate School: A school within a Catholic separate school division created pursuant to sections 20(2), 22(2) and 26 of The Education Act (Sask.). In the event that there is no city within the division then pursuant to section 120 of

The Education Act (Sask.) the area is designated a school district.

5. Catholic Teacher: A person holding a legal teaching certificate of qualifications pursuant to The Education Act, (1978), section 196, hired by and teaching within a Catholic school, is baptised but not necessarily in the Catholic church and who espoused the Catholic faith when hired by the Catholic school Board.

6. Conciliar Document : Refers to a document produced by a Council of the Catholic Church.

7. Denominational Cause: A reason or reasons for an employer to sanction an employee by demanding remediation or dismissal of that employee, based upon that employee's failure to conform to the objective truths, beliefs, values and norms of a denomination's faith.<sup>3</sup>

8. Denominational Nonconformity: An act or failure to act by a Catholic teacher which is in conflict with the objective truths, beliefs, values and norms of the Catholic faith as stated by the Holy See. A "formal" case, or formal complaint, of

nonconformity is a matter of alleged nonconformity, usually based upon persistent complaints or a written complaint, which is known of by a Catholic director, formally brought to his board of education by him and acted upon by that board. An "informal" case, or informal complaint, of nonconformity is a matter of nonconformity, usually based upon an oral complaint, which is known of by the director of education and acted upon by him but not brought by him to his board for board action.

9. Denominational Remediation: Those acts or the cessation of those acts which are required of a Catholic teacher by the administration of a Catholic school Division in order to ensure the teacher's compliance and thus conformity with the objective truths, beliefs, values and norms of the Catholic faith as stated by the Holy See.

10. Diocesan Liaison: The personal representative of the bishop, called the local Ordinary, assigned by him to advise the local Catholic board of education and its administration.

11. Director of Education: A person appointed with that title and empowered under The Education Act

(1978) by a Catholic board of education of a Catholic school division.

12. Faith Witness: The personal example given by a lay member of the Catholic faith, a lay Catholic, in both his or her public and private life which manifests a sincere, bona fide belief in, commitment to, and conformity with the objective truths, beliefs, values and norms of the Catholic faith as stated by the Holy See.

13. Horizontal Denominational Nonconformity: A single act or failure to act by a Catholic teacher which is so egregious in relation to the objective truths, beliefs, values and norms of the Catholic faith that the Catholic school administration will react with sanctions, a) to compel that teacher's compliance with the faith, or b) to dismiss for denominational nonconformity.

14. Imprimatur : "Let it be printed... The technical term for licence to print. It does not imply any direct approval of the work, but merely certifies that the limits of Catholic orthodoxy have been observed." (Addis, 1957, p. 439.)

15. Lay Catholic: A member of the Lay Faithful defined in the constitution of the Church (Vatican II, 1964, p. 388) as:

...understood to mean all the faithful except those in holy orders and those who belong to a religious state sanctioned by the church (sic). Through baptism the lay faithful are made one body with Christ and are established among the people of God. They are in their own way made sharers in the priestly, prophetic and kingly office of Christ. They carry out their own part in the mission of the whole Christian people with respect to the church (sic) and the world.

16. Local Ordinary : Refers to a person who has legitimate authority by virtue of his office. In most cases this refers to the bishop. However, the Abbot of St. Peter's Muenster, Saskatchewan, within his territorial abbacy, is one of only nine local Ordinaries in the world who are not bishops.

17. Magisterium: The teaching office of the Catholic Church.

18. Nihil Obstat: Literally translated this means, "nothing obstructs or nothing stops"; the words by the Catholic censor of books confirming that the

document has been inspected and that it contains nothing anathema to the Catholic faith's teachings on faith and morals. (Attwater, 1941, pp. 362-363.)

19. Obiter Dictum: Literally translated this means, "a remark by the way....It is an observation or remark by a judge in pronouncing an opinion upon a cause, concerning some rule, principle, or application of law...but not necessarily involved in the case or essential to its determination; any statement of the law enunciated by the court merely by way of illustration, argument, analogy, or suggestion...obiter dicta ...lack the force of an adjudication." (Publisher's Editorial Staff, 1990, p.454)

20. Paideia: the production of an integrally developed human being. (Himes, 1988, p.48.)

21. Parish Priest: that member of the ordained Catholic priesthood who's parish is designated as the home parish of the alleged nonconformist Catholic teacher.

22. Ratio Decidendi: "The ground or reason of decision. The point in a case which determines the judgment." (Publisher's Editorial Staff, 1990, p. 1262.)

23. Remediation: An action or actions and/or ceassation of an act or actions required by either the Catholic director of education or the Catholic school board of a nonconformist Catholic teacher to manifest his or her conformity with the objective truths, beliefs, values and norms of Catholic faith as stated by the Holy See.

24. Sacrament of Reconciliation (Penance): As is stated in Rahner ( 1968, Vol. IV, p. 387.)

Penance [the sacrament of reconciliation] is the sacrament in which, through the authoritative pronouncement of the priest, the Church removes, in the power of Christ, the sins of the repentant sinner which he has committed after baptism....This pronouncement of the Church does not merely declare that forgiveness of guilt and reconciliation with God have taken place, but actually



effects this forgiveness....This reconciliation is also 'reconciliato cum Ecclesia' ...and admission to the "communio sacramentorum" [which is important]...especially as those in mortal sin are excluded from the Eucharist, the mystery of the Church and its unity....

25. Sacred Congregation for Catholic Education: Part of the Magisterium, teaching office, of the Catholic Church. Individual members are personally approved by the Holy Father, or his designate, to examine and explain the issues in Catholic education as perceived and defined by the Holy See. On March 1st, 1989, the Congregation's title was changed to the Congregation on Seminaries and Institutions of Study.

26. Threshold of Denominational Nonconformity: That point when a Catholic separate school board determines that due to the actions or inaction by a Catholic teacher, horizontal or vertical denominational nonconformance has been reached.<sup>4</sup>

27. Vatican I: The 20th Ecumenical Council convoked by Pope Pius IX (1816-1878), having one session from Dec. 8, 1869 to October 20, 1870 whereupon it was adjourned, sine die. (The Catholic University of America, 1967, p. 376.)

28. Vatican II: The 21st Ecumenical Council convoked by Pope John Paul XXIII (1958-1963) opened on October 11, 1962 with four sessions, adjourned on December 8, 1965. (The Catholic University of America, 1967, p. 376.)

29. Vertical Denominational Nonconformity: A series or cluster of acts or failures to act by a Catholic school teacher which, when considered individually, do not constitute denominational nonconformity sufficient for a Catholic school board to impose sanctions, but, when considered in toto, constitute a serious enough breach with the objective truths, beliefs, values and norms of the Catholic faith to be considered sufficient to support sanctioning for denominational nonconformity.

## CHAPTER TWO

### Review Of Literature

#### Introduction

Rome, from 1962 to 1965, was bustling with almost all of the Catholic Church's bishops and cardinals of the Roman and the twenty other autonomous Catholic churches, having been summoned by His Holiness Pope John XXIII on January 25, 1959 to an Ecumenical Council. The halls of the Vatican shone as a breath of exciting fresh air was let into the austere Catholic Church. Over ninety-two years had passed since the last Vatican Council, Vatican I, which had been adjourned sine die due to the war over the Papal States, but the winds of change and, as some Catholics might suggest, the Holy Spirit had produced from the Conclave of Cardinals a Holy Father who sought renewal for his Church. This man set in motion events which would shake the foundation of his Church, even to affecting such far-away, innocuous and plebian institutions as the separate schools in Saskatchewan.

The purpose of Part A of this Chapter is twofold: a) to introduce the reader to the Catholic Church's official position regarding its schools' *raison d'être*, including its expectations of Catholic

teachers, and b) to sketch the constitutional and common law bases which are supportive of both of these positions.

Part B of this Chapter will: a) review the policy of the Canadian Catholic School Trustees Association regarding denominational nonconformity; and b) examine (i) the threshold of nonconformity, ii) the form of charge used by Catholic school boards, iii) the procedures used in matters of denominational nonconformity, iv) the sanction options of Catholic school boards, and, v) the defenses open to nonconforming teachers.

## PART A

### The Sacred and Secular Foundations

#### The Catholic Church: Its Schools And Teachers

The Catholic Church, hereinafter referred to as the Church, believes that the Bible is the word of God written by divinely inspired men. The Church also notes that this Book holds teachers in reverence, saying: "And to some, his gift was that they should be teachers; So that the saints together make a unity in the work of service, building up the body of Christ." (Eph. 4:11-12)

With the above in mind, the Church has long been concerned with its schools and the spiritual qualities of its teachers, as Pope Pius XI (1929, p. 63) wrote in Divini Illius Magistri:

Perfect schools are the result not so much of good methods as of good teachers, teachers who are thoroughly prepared and well-grounded in the matter they have to teach; who possess the intellectual and moral qualifications required by their important office....

Hayes (1992, p.4) implies that with the decline in the number of new seminarians, brothers and sisters, and the increase in parental involvement in education, the Church was aware that the role of the laity in Catholic education was increasing. It was Vatican II and its document Gravissimum educationis (Vatican II, 1965, p. 734) that sought to illuminate what the rights and obligations of the laity involved in Catholic education were in the modern world. Due to the time involved in discussion and argumentation, it was agreed by the Council to mandate a post-conciliar commission, the Sacred Congregation for Catholic Education, hereinafter referred to as the Congregation, and conferences of bishops with the implementation of the Council's position on Catholic education.

The Congregation produced its first document on Catholic education, Catholic Schools (Sacred Congregation, 1977) on June 24, 1977. It stated that Jesus had founded his church as "...a living organism, living by the power of the Spirit." (1977, p.607) Its mission was to bring salvation to all of the world by evangelization. Part of that mission was to be fulfilled by the Catholic school whose,

task is fundamentally a synthesis of culture and faith, and a synthesis of faith and life: the first

is reached by integrating all the different aspects of human knowledge through the subjects taught, in the light of the Gospel; the second in the growth of the virtues characteristic of the Christian. (Sacred Congregation, 1977, p.614)

The fundamental task of Catholic teachers in Catholic schools was to inculcate in their pupils those objective Catholic values which would result in a "...personal integration of faith and life." (Sacred Congregation, 1977, p.616). Indeed, the Congregation stated that because a Catholic teacher shared and adhered to those common objective Catholic values and beliefs he or she had the spiritual legitimacy to teach in a Catholic school (Sacred Congregation, 1977, p.612).

The Congregation refined its position on lay Catholic teachers in its 1982 document (Sacred Congregation, 1982, p.639), Lay Catholics In Schools: Witnesses To Faith. It stated that:

...the first indispensable necessity in one who is going to be a lay Catholic educator is **sincerely to share in, and make one's own**, the statements that the Church, enlightened by Divine Revelation, has made about the identity of an educator.

[Writer's emphasis]

The document went on to say (Sacred Congregation, 1982, p.644) that, "The life of the catholic [sic] teacher must be marked by the exercise of a personal vocation in the Church, and not simply by the exercise of a profession." This echoed the Congregation's earlier statement (Sacred Congregation, 1977, p.625) where it said, "The witness and conduct of teachers are of primary importance in imparting a distinctive character to Catholic schools." [Writer's emphasis] Why? Because students must see that to live a life of faith in the secular world is possible not just in theory but in practice (Sacred Congregation, 1982, p.642). This may, perhaps, be best understood in proffering the question, "How else could one lead and teach in preparation for reception of the sacraments, i.e., the Sacrament of Reconciliation, when a sincere preparation and examination of the student's spiritual state and conscience in relation to the teachings of the Church are requisite?" If a Catholic school teacher was not bona fide in communion with the teachings of the Catholic faith, it is submitted that the Church believes that such hypocrisy, and lack of personal spiritual credibility, might certainly affect, if not the presentation of the objective teachings of the Church, the enthusiasm, commitment and spiritual insight with which they were taught. It might also be argued by Catholic school administrators, and has been suggested by Kearney (1987, p.8.), that, as teaching in a Catholic school is, inter alia, a spiritual ministry, the teacher cannot authentically heal and support students in their spiritual growth unless the teacher is committed to



his or her own spiritual growth as guided by the Magisterium of the Church.

This is especially true for guiding adolescents for whom the following phrase has significant meaning, "You can't talk the talk unless you walk the walk."

With the position of the Catholic Church more clearly delineated by the above documents, the Church encapsulated their juridical meaning in its 1983 Code of Canon Law (1983, pp.146-147). Canon 803 speaks to the responsibilities of teachers and says in full:

Can.803 (1) A catholic [sic] school is understood to be one which is under the control of the competent ecclesiastical authority or of a public ecclesiastical juridical person, or one which in a written document is acknowledged as catholic [sic] by the ecclesiastical authority.

(2) Formation and education in a catholic school must be based on the principles of catholic doctrine, and the teachers must be outstanding in true doctrine and uprightness of life.

(3) No school, even if it is in fact catholic, may bear the title 'catholic school' except by the consent of the competent ecclesiastical authority.

[Writer's emphasis]

Further, Canons 805 and 806 make it clear that the local Ordinary, in almost all cases the bishop, may dismiss or demand the dismissal of a teacher of religion in a Catholic school for moral reasons. Also, as Hayes (1992, p.18) suggests, it is his responsibility to supervise vigilantly the Catholic schools in his territory within which he is authorised to regulate educational policies. <sup>5</sup> Canons 805 and 806 read as follows:

Can. 805 In his own diocese, the local Ordinary has the right to appoint or to approve teachers of religion and, if **religious or moral considerations** require it, the right to remove them or to demand that they be removed. [Writer's emphasis]

Can. 806 (1) The diocesan Bishop has the right to watch over and inspect the catholic schools situated in his territory, even those established or directed by members of religious institutes. He has also the right to issue directives concerning the general regulation of catholic schools; these

directives apply also to schools conducted by members of a religious institute, although they retain their autonomy in the internal management of their schools.

(2) Those who are in charge of catholic schools are to ensure, under the supervision of the local Ordinary, that the formation given in them is, in its academic standards, at least as outstanding as that in other schools in the area.

Prima facie, the Code requires that a teacher conform to the principles, values and norms of the Catholic faith in both the teacher's professional and private lives. All teachers in Catholic schools must, by definition, teach their academic subjects within the context of the Gospel, and thus, arguably, all are teachers of religion. It is also interesting that at least one canonical scholar, Coriden (1985, p.568), has interpreted Canon 803(2) to mean that Catholic school administrators have a duty to monitor not only a teacher's quality of Catholic teaching but also that teacher's example of Christian living.

Pope John Paul II reiterated the Church's position on the necessity of Catholic teachers giving faith witness in their lives in two recent speeches. While in Australia in 1986 the Holy Father (John Paul II, 1986, p.477) told teachers, "Your profession as

teachers involves tasks that are linked to your baptism and to your own commitment in faith." While on a pilgrimage to the United States in 1987 the Holy Father (John Paul II, 1987, p.281) told teachers, "...Jesus shares with you his teaching ministry. Only in close communion with him can you respond adequately."

That same year the Congregation again spoke out in The Religious Dimension of Education In A Catholic School (Sacred Congregation, 1988, pp.225-226) stating that the school was a community in itself with the task of evangelization which required fidelity to the Gospel as proclaimed by the Church and as lived by those working in the school through their faith witness. The Congregation further stated (Sacred Congregation, 1988, p. 226), "Strong determination is needed to do everything possible to eliminate conditions which threaten the health of the school climate." The word conditions, it is submitted, refers not only to false doctrine but also to those giving false witness as opposed to faith witness.

The stage had been set by the Catholic Church to clash with those Catholic teachers in Catholic schools who strongly believe that their rights as citizens of Canada and Saskatchewan ought to protect them from spiritual and moral evaluation when, to them, the only relevant issue is professional efficacy rather than spiritual sufficiency.

The Church is well aware of this, in their view, Circean secular-spiritual dichotomy proposed by some lay Catholics and addressed that

very issue in Pope John Paul II's apostolic exhortation on the laity, Christifideles Laici, in 1989. The Holy Father stated that the postconciliar path of the faithful had led to two temptations, both of which were in error. One of these errors was (John Paul II, 1989, p.563) "...the temptation of legitimizing the unwarranted separation of faith from life, that is , a separation of the Gospel's acceptance from the actual living of the Gospel in various situations in the world." The Church believes, as Reck (1979, p.48) implies, that this false dichotomy is anathema to giving faith witness.<sup>6</sup> Finally, as stated by one Catholic priest (Williams, 1974, p.5.), "...there are no [spiritually] neutral teachers on this issue...."

This conflict of positions has also been addressed by the courts in Canada and will be dealt with in detail in Chapter II Part B of this study. However, to understand what legal protection has been afforded the Catholic Church's schools in Saskatchewan and to establish, on a balance of probabilities, that Catholic school boards have the legal right to sanction Catholic teachers for denominational nonconformity, it is necessary to briefly delineate the legal position of Catholic schools as contained in constitutional documents and as interpreted by the courts.

The following delineation speaks to denominational, dissentient and separate schools which, for the purpose of this study, shall be restricted to those schools which are Catholic separate schools, unless otherwise suggested by necessary implication.

The Constitution and Common Law Basis For Sanctions

The British North America Act, 1867, hereinafter referred to as the Constitution Act, 1867, offered by way of a constitutional compromise, through section 93, entrenched protection for the educational rights and privileges of the Protestant minority in Upper Canada (Quebec), and the Catholic minorities in Lower Canada (Ontario). (Brent, 1974-75, p.248). Section 93 reads as follows:

93. In and for each province, the legislature may exclusively make laws in relation to education subject and according to the following provisions:

1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the Union;

2) All the powers, privileges, and duties at the union by law conferred and imposed in Upper Canada on the separate schools and the 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.

In 1870, Saskatchewan was a part of the North West Territories, governed by the lieutenant governor of the province of Manitoba. In

that year the Dominion of Canada purchased Rupert's Land from the Hudson's Bay Company, which had authority over that area pursuant to a Royal Charter granted by the English Crown, and five years later, began organizing the newly expanded Territories by appointing a resident lieutenant governor and a council. By 1882, the Dominion had divided part of the Territories into districts, two of which, Assiniboia and Saskatchewan, comprise most of the present day province of Saskatchewan (The World Book, 1961, p.124).<sup>7</sup> Thereafter, in 1901, the Territorial Government passed Chapters 29 and 30 of the Ordinances of the North West Territories, giving denominational schools certain rights among which was the right to establish separate school districts with the same duties and rights as public school districts. When Saskatchewan became a province in 1905, the protection of denominational rights in education in the new province<sup>8</sup> carried over through section 17 of the Saskatchewan Act, which reads:

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

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of Chapters 29 and 30 of the Ordinances of the Northwest



Territories, 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 or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29, or any Act passed in amendment thereof or in substitution therefore, 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 set out in the said chapters 29 and 30; and where the expression "at the Union" is employed in the said paragraph (3), it shall be held to mean the date at which this Act comes into force.  
[Writer's emphasis]

Subsequent litigation at the Saskatchewan Court of Appeal, McCarthy v. The City of Regina et al., [1917], resulted in defining "at the Union" as being 1905, entrenching those rights and privileges enjoyed by Catholic schools at that time, and Regina School District v. Grattan Separate School Trustees (1914) defined "right and privilege" as:

...some special right or claim belonging to, or immunity, benefit or advantage enjoyed by, a **person** or **class** of persons with reference to separate schools, over and above those rights enjoyed at common law or under statutory enactment by the inhabitants of the province at large. It is some private or peculiar right or privilege as opposed to the rights possessed by the community.  
[Writer's emphasis]

The Supreme Court of Canada in Tiny Separate School Trustees v. The King (1927) recognized and acknowledged that denominational schools were different from public schools:

The idea that the denominational school is to be differentiated from the common schools purely by the character of its religious exercises or religious studies is erroneous. Common and separate schools are based on fundamentally

different conceptions of education. Undenominational schools are based on the idea that the separation of secular from religious education is advantageous. Supporters of Denominational schools, on the other hand, maintain that religious instruction and influence should always accompany secular training.

Further, in a subsequent case, dealing with the Human Rights Code of British Columbia, McIntyre J. speaking for a unanimous court in Caldwell v. Stuart, [1984] 2 S.C.R. 603, determined as essential, at pages 618 and 624-625, to his ratio decidendi that:

...the Catholic school is different from the public school. In addition to the ordinary academic program, a religious element which determines the true nature and character of the institution is present in the Catholic school. To carry out the purposes of the school, full effect must be given to this aspect of its nature and teachers are required to observe and comply with the religious standards and to be examples in the manner of their behaviour in the school so that students see in practice the application of the principles of the [Catholic] Church on a daily basis and thereby receive what is called a Catholic education.

[ In addition,]

...objectively viewed, having in mind the special nature and objectives of the [Catholic] school, the requirement of religious conformance [by teachers]

...is reasonably necessary to assure the achievement of the objectives of the [Catholic] school. [Writer's emphasis]

Notwithstanding that the court mentioned "in the school", the act which precipitated the Catholic school board's reaction was that the plaintiff teacher had married outside the Church. Thus it is arguable that this case determines by inference that the private life of a teacher is, at least in some cases and under certain circumstances, relevant in determining the conformity of a teacher to denominational beliefs, values and norms.<sup>9</sup>

In Re Essex County Roman Catholic Separate School Board and Porter et al. (1978), hereinafter referred to as the Re Essex case, the appeal court found that, based upon the wording and necessary implications of section 93 (1) of the Constitution Act, 1867, Catholic teachers in Catholic schools must conform to the beliefs of the Catholic faith or face dismissal for denominational cause.

The Government of Canada has recently reiterated its commitment to protect a denomination's pedagogical rights and privileges when

The Canadian Charter of Rights and Freedoms, hereinafter referred to as the Charter, addressed the issue in section 29 stating:

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect to denominational, separate or dissentient schools.

Subsequent litigation in the Supreme Court of Canada, Reference re an Act to Amend the Education Act (Ontario) (1987), determined that the above section does exclude Catholic schools from the Charter's application at least in so far as the Charter abrogates or derogates from a denomination's constitutionally protected rights and privileges. Indeed, in a recent case, Walsh and Newfoundland Teachers' Association v. Newfoundland (Treasury Board) and Federation of School Boards of Newfoundland (1988),<sup>10</sup> the Court of Appeal held that section 29 of the Charter reaffirms constitutionally entrenched denominational rights in education.<sup>11</sup>

However, it must be restated that the courts have not yet determined that Saskatchewan's Catholic schools may sanction a Catholic teacher for denominational nonconformance.<sup>12</sup> As Brent (1974-75, pp. 266-267) states:

With regard to the constitutional status of denominational schools, the entire area is totally

unsatisfactory....In order to determine those existing rights, it is necessary to ascertain the law as it was at the time the province joined the union, necessitating a search into history every time the matter comes before the courts."

There is however a great likelihood that the power to sanction Catholic teachers in Saskatchewan's Catholic separate school's does exist, given case law and the Ordinances of 1901.

Section 41 of the Ordinance is critical to Catholic schools and reads:

41. The minority of the ratepayers in any district whether Protestant or Roman Catholic may establish a separate school therein; and in such case the ratepayers establishing such Protestant or Roman Catholic separate school shall be liable only to assessments of such rates as they impose upon themselves in respect thereof. [Writer's emphasis]

It is the above section which empowers Catholics when in a minority to establish separate schools within a unitary system, whereas section 45 further asserts their rights to be coextensive to those of the public schools:

45. After the establishment of a separate school district under the provisions of this Ordinance such separate school district and the board thereof shall possess and exercise all rights, powers, privileges and be subject to the same liabilities and method of government as is herein provided in respect of public school districts.

The Ordinance goes on to provide for a teacher's contract with the employing board and the suspension or dismissal of a teacher, stating in section 151 and subsection 95(18):

151. The contract entered into shall be in the form prescribed by the commissioner and such form may be altered or amended as may be mutually agreed upon by the contracting parties provided such alterations or amendments are not inconsistent with any of the provisions of this Ordinance or the regulations of the department.

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

(18) To suspend or dismiss any teacher for gross misconduct, neglect of duty or for refusal or neglect to obey any lawful order of the board and to forthwith transmit a written statement of the facts to the department.

[Writer's emphasis]

The relevant issue in this study is the constitutional legality of sanctions meted out to a Catholic teacher by a Catholic school board for denominational nonconformity. Thus the questions raised are, (a) "Do Sections 41, 45, 95 (18) and 151 necessarily imply a derivative right to suspend or dismiss a Catholic teacher in a Catholic school for denominational nonconformity?"

It is submitted that there are certain rights and privileges which may be derived from the above sections of the Ordinance. In the Board of Education For Moose Jaw School District No.1 Of Saskatchewan et al. (1973), hereinafter referred to as the Moose Jaw case,<sup>13</sup> the court held at trial as part of its ratio decidendi, at p.738 that,

"...concerning selection of teachers, administrative or instructional duties or regulating the nature or quality of the instructional program....are certainly rights and privileges which the plaintiffs [the Catholic



school boards] have every right to claim. The absence of any one of them would remove the ability of the [Catholic] board, as delegates of the minority to operate the school system. Such would be a denial of all the rights and privileges protected in s. 93 of the British North America Act, 1867 as amended, and thus unquestionably prejudicial." [Writer's emphasis]

The court clearly recognized the right of Catholic school boards to select their teachers according to the Church's denominational criteria and thus it seems that reasonable contractual expectations could be included within the contract. Further, what a vacant, impotent and illusory right this would be if the corollary right to the continuance of the teacher's denominational conformity was not also required. Indeed, this was the position taken recently in the Walsh case (1988, p.26) where the Newfoundland Court of Appeal interpreted and cited the Caldwell Case stating, "The requirement of continuance of conformance to the faith by a teacher employed by a denominational school was recognized by the Supreme Court of Canada in Caldwell v. Catholic Schools of Vancouver Archdiocese. "

Thus it is submitted that as Catholics have the right to establish their own separate school systems and to require that an applicant teacher be a religious conformist it necessarily follows

that continuance of that conformity would remain a condition of employment.

Because the Catholic school board had prior to 1905 the power to suspend or dismiss teachers pursuant to the 1901 Ordinance s. 95(18) for, "...gross misconduct, neglect of duty or for refusal or neglect to obey any lawful order of the board....", it is arguable that these sanctions apply to denominational nonconformity. This very point was made, in part, by the Ontario Court Of Appeal in the Re Essex case, (1977, p. 255) where a Catholic school board dismissed two of their Catholic teachers who had entered into a nonsacramental civil marriage. Zuber, J. speaking for the Court found as a fact that in 1863, prior to Confederation, Ontario's Catholic schools had the same rights as public schools to hire and dismiss teachers and that thus s. 93 of the Constitution Act, 1867 was operative and therefore upheld the dismissal of the two nonconforming teachers, stating:

I take it to be obvious, that if a school board can dismiss for cause, then in the case of a denominational school cause must include denominational cause. Serious departures from denominational standards by a teacher cannot be isolated from his or her teaching duties since within the denominational school religious instruction, influence and example form an

important part of the educational process.

[Writer's emphasis]

It is submitted that Catholic school boards in Saskatchewan have the constitutional right to sanction by suspension and dismissal their Catholic teachers for denominational nonconformity. Consideration of the second issue regarding the appeal process from a Catholic board's decision will be addressed in Chapter II Part B of this study.

The question next arises, "Of what relevance are the Catholic Church's statements made after the Ordinance of 1901 and the Union of 1905? It might be argued that because the Church's statements on the laity in Catholic schools were made after 1901 they do not apply to Saskatchewan's Catholic schools. It is submitted that this argument is specious as the *raison d'être* and fundamental tasks of Catholic schools have been both prior and subsequent to 1905 always centered around salvation through evangelization, with faith witness being given in the past primarily by the clergy (Noonan, 1979, p. 3.). It is submitted that few would argue that a Catholic school board in the North West Territories of 1901 did not have the right to demand remediation or to dismiss a member of the clergy for nonconformity with the Church's teachings. Kelly (1990, p.40.) implies this point when drawing an analogy between Australia's early Catholic schools and those on the Canadian prairies, saying that "...each religious order had a specific spiritual code to

follow...[and thus breaches of that spiritual code]...were looked after in a setting removed from the schoolhouse." Indeed, throughout history, the Catholic Church has been famous, some might say infamous, for actively maintaining the right to discipline teachers in all of its educational institutions throughout the Holy See for actions which the Church considered in opposition to the objective truths, beliefs, values and norms of the faith. The Church has, as well, through the use of the imprimatur and nihil obstat, maintained control over written materials. Further, as the Saskatchewan Act, through the Ordinances, and the Saskatchewan Court of Appeal have recognized the right of Catholic Schools to exist in Saskatchewan and to function as denominational schools per se it would be but a sham if the Catholic Church did not have the derivative right to define its own spiritual dimension if done reasonably and in an objective manner. Therefore, given the Ordinances, Constitution Act, 1867, the Saskatchewan Act, the decisions of the Supreme Court of Canada and other lower courts in cases both within and outside of Saskatchewan, it is submitted that Saskatchewan's Catholic school boards have the constitutional right in certain situations and under certain conditions to sanction Catholic school teachers for denominational nonconformity, whether that nonconformity is evidenced in the teacher's private or public lives.

Teachers have sought refuge behind provincial statutory legislation and the Charter itself, claiming that notwithstanding the religious objectives of Catholic school boards, citizens ought not to

be sanctioned because their interpretation of Catholic objective truths, beliefs, values and norms, differs from local church leaders. These litigious clashes involving collective versus individual rights will be further examined in Chapter II Part B of this study. However, it is noteworthy to mention that in the Moose Jaw case dealing, inter alia, with whether or not a certain section of Saskatchewan's The Teacher Collective Bargaining Act prejudicially affected the rights of Saskatchewan's Catholic school boards to discipline Catholic teachers for denominational nonconformity, the Saskatchewan Court of Queen's Bench held in its ratio decidendi and the Appeal Court in obiter dictum that the aforementioned section did prejudicially affect the constitutionally protected rights of Catholic school boards to sanction Catholic teachers for denominational nonconformity. Therefore that section was held to be ultra vires, that is, of no force or effect.

### Summary

In summation, it is the officially espoused position of the Catholic Church in its conciliar, curial, canonical, papal, and episcopal statements that Jesus Christ is the Son of God who came on earth to give up his life for mankind that sins might be forgiven and that upon his ascension into heaven he left behind his church, the Catholic Church, to continue the good work of evangelization so as to lead mankind to salvation. Salvation being the goal, evangelization being the task, education was among the means to create "new creatures in Christ" (Sacred Congregation, 1977, p.607). Thus Catholic education is, as Himes (1988, p.48) says, a "...divinely planned paideia...." Essential to that task are Catholic teachers who, as lay ministers, participate in "...the priestly, prophetic, and kingly functions of Christ...."(Sacred Congregation, 1982, p.632) and take on the fundamental task of guiding, by their knowledge of the objective spiritual truths as revealed by Jesus Christ through his Church and by their sincere faith, the student to an integration of his or her own life and faith. This life of faith is not offered as a mere ideal to students but as a realistic goal made manifest by the teachers' faith witness. It is submitted that it is the Catholic teacher's sincere and willing conformity to the objective truths, beliefs, values and norms of the Catholic faith, both in his or her personal and public lives, which is the faith

witness spoken of in the Catholic Church's documents. Further, it is this faith witness which is considered by the Church to be both a condition precedent and subsequent, albeit spiritual in nature, to being a Catholic teacher in a Catholic school. It is the teacher's faith witness which is the sine qua non of faith in action in the Catholic school and it is, from the Church's point of view, a critical element to the ethos of that institution.

Some Catholic teachers have disagreed with the Catholic Church's position in the above regard believing that the Church's intransigence on faith and morals is contrary to the zeitgeist of the times. These teachers have asked, "Who has the right to judge the validity of my moral values? What right does my employer have to ask, let alone investigate, and judge my conduct during my personal time away from work? Who is going to judge what level or degree of religious conformity is acceptable and on what objective basis? <sup>14</sup> Moreover, even if my spirituality and conformity fail to meet the objective standards of Catholicism as defined by the Holy See, didn't Jesus say (John, 8:7) to those who deign to judge others, "If there is one of you who has not sinned, let him be the first to throw a stone." ?

The answers to these questions are complex and contentious, but, as aforementioned, it is clear that Saskatchewan's Catholic school boards have a constitutionally protected authority to establish Catholic schools in Saskatchewan and that the Supreme Court of Canada

will, in all probability, recognize that they are or ought to be distinctly different from public schools. Further, by reference to the common law, it is highly probable that Saskatchewan's courts will find that Catholic teachers in Saskatchewan's Catholic schools have certain denominational and, perhaps, contractual responsibilities which their counterparts in the public school system do not. Therefore, in matters of dismissal or remediation of behaviour of Catholic teachers in Saskatchewan's Catholic schools for nonconformity with Catholic teachings, there ought to be clarity in the areas of definitions, policies, procedures and sanctions.

It is submitted that as a simple matter of fundamental fairness Saskatchewan's Catholic school administrators and teachers deserve to know, in advance of any administrative action in this area, (a) what constitutes denominational nonconformity sufficient for the Catholic school administration to react, (b) the procedures which will be followed in such cases, and (c) who the decision makers are in these matters. These questions have not yet been answered in Saskatchewan, and as Lawton and Wignall (1989, p.19) have pointed out,

Although a number of court cases involving denominational and separate schools have been decided on the basis of whether a given reaction, such as the dismissal of an employee who has behaved in a particular way, is acceptable given the religious character of the school, the



particular behaviours that can justify dismissal are not fully spelled out. Consequently, one is left to surmise which behaviours and reactions are acceptable and which are not.

## PART B

### The Field

#### Introduction

Chapter II, Part B of this study will review: 1) the policy statement of the Canadian Catholic School Trustees, 2) the threshold of nonconformity, 3) the form of the charge used by Catholic school boards against nonconforming teachers, 4) the procedure used by school boards in cases of nonconformity, 5) the school boards' sanction options , and 6) the defenses open to nonconforming teachers.

#### Policy Guidelines

Pursuant to the Proposed Guidelines For The Employment Of Teachers as promulgated by the Canadian Catholic School Trustees Association a Catholic teacher is expected to contribute and participate in a school's religious functions and "... is expected to recognize that his/her personal lifestyle has an impact not only on the development of youth but also upon his/her credibility with youth." Paragraph 5.1 states further that:

The Catholic teacher in a Catholic school is expected to abide by the laws and regulations common to all members of the Catholic Church and,

by word and example, to encourage students to do likewise. When a teacher acts in flagrant and explicit contradiction of fundamental Catholic values, or of the official teachings of the Magisterium, or of the educational objectives of the Catholic Church, that action is incompatible with the exercise of that teacher's function in the school. [Writer's emphasis]

Commenting on these Guidelines, Brady (1979, p.6), past president of the Ontario English Catholic Teachers' Association, states that a teacher in a Catholic school has a duty both to parents and the children, " ...to live up to the ideals expressed, in keeping with their own religious understanding.... All teachers know ...that 'do as I say, not as I do' never works. What you are is what you teach."

Caldwell (pp. 608-609) provides some guidance in determining what good policies are in a Catholic school: a) hiring procedures requiring a certificate from a priest stating that the applicant is a practicing Catholic, b) a contractual requirement of continued observance of Catholic standards and the practice of the Catholic faith while an employee, c) retreats for Catholic teachers focused upon the role of the Catholic school and its teachers within the school and, d) a periodic written appraisal of each Catholic

teacher's performance as it, "...concerns itself with the teacher's performance as a Christian witness to the students." Apparently recruitment, hiring, inservice and evaluation policies are of use to the court in determining the level of reasonable expectation, in contractual terms, which a perspective or tenured employee must meet in order to be considered a conformist. Policy issues are not small matters and thus a copy of the policies dealing specifically with denominational nonconformity was requested from each of the eight fully participating Catholic directors of education in Saskatchewan in order to determine the expectation level of denominational conformity. 15

#### Threshold of Nonconformity

Under the Guidelines the threshold of denominational nonconformity appears to be reached when an act is considered by a Catholic school board to be so egregious that it is: 1) in contradiction to clearly accepted Catholic doctrine or conduct, 2) flagrantly and explicitly public and 3) irreversible. 16

Case law reflects these elements in that Catholic school boards have taken action to dismiss for denominational nonconformity when a teacher's actions have been contrary to the Code of Canon Law (Caldwell, headnote), or Church rules (Caldwell, p. 618) or contrary to bona fide Catholic doctrine [Casagrande v. Hinton Roman Catholic

Separate School District No. 155 and Board Of Reference (1987)<sup>17</sup> 51 Alta. L.R. (2d) 349 (Alta. Q.B.)] or a repudiation of Roman Catholicism (Walsh).<sup>18</sup> Nonconformity was manifest by: a) the pregnancy of a single teacher evidencing premarital sexual intercourse (Casagrande), 2) divorce of a Catholic male teacher on the grounds of mental and physical cruelty (Stack), 3) joining of another religion and marrying in that faith (Walsh), 4) marrying outside the Church in a civil marriage (Re Essex), and 5) marrying a divorced person, whose's marriage had not been declared a nullity by the Catholic Church, in a civil ceremony (Caldwell).<sup>19</sup>

Notwithstanding the Guidelines, a reading of the above cases establishes that the threshold of denominational nonconformity supportable by the courts has however only two elements: 1) the school authorities must act in good faith and, 2) the nonconformist's action must be explicitly contrary to the objectified teachings of the Catholic Church.<sup>20</sup> It appears that if <sup>one</sup> ~~this~~ element<sup>s</sup> <sup>are</sup> ~~is~~ present the courts will ipso facto find a sufficient ground for the Church's position that the teacher is no longer suitable or able to perform his or her duties within the Catholic school.

It is worth noting that a Catholic school teacher's nonconformity is also an issue in the United States, but, as in Caldwell, the law in that jurisdiction relating to Catholic schools, as private schools, is governed not by constitutional law but by the contract

of employment wherein the reasonable expectations of the Catholic school are or ought to be stated. 21

In the Canadian public school system a teacher's behaviour may also cross the threshold of acceptable behaviour resulting in sanctions by a public school board. In Shewan and Shewan v. Board Of School Trustees Of District No.34 Abbotsford, (1987) 21 B.C.L.R. 93, at p.97, 22 the court dealt with a married couple who decided to submit for publication a nude picture of the female teacher's front torso in an American magazine of questionable social merit. These public school teachers were suspended for six weeks by the Public Board of Education. The court on appeal was asked, inter alia, to determine if the teachers' act was "misconduct" under the School Act of British Columbia notwithstanding that the act was committed off-the-job. The court decided, inter alia, that:

...a teacher holds a position of **trust, confidence, and responsibility**. If he or she acts in an improper way, on or off the job, there may be a **loss of public confidence** in the teacher and in the public school system, a **loss of respect by students** for the teacher involved, and other teachers generally, and there may be **controversy** within the school and within the community **which disrupts the proper carrying on of the educational system**. [Writer's emphasis]

To establish operate misconduct, that is misconduct which legally justifies an administrative response, in the public school system a nexus <sup>23</sup> must be shown between behaviour which erodes the tripartite duties of trust, confidence and responsibility and which, on a balance of probabilities, may result in **adverse affects** to the educational institution. The act itself need not be illegal or even immoral as it is the teacher's duties in relation to the effect that are examined. <sup>24</sup> Although this analysis is somewhat reminiscent of the tort of negligence in that there is a duty which when breached producing damages is actionable, it has also been argued that Canadian public school teachers' conduct may be examined under contract law.

Givan (1988, pp.3-4) states that "It is now clear in Canadian law that the foundation of the teaching relationship rests in contract" which requires of the teacher a fundamental duty of exemplary conduct. He quotes a leading Canadian arbiter who states: <sup>25</sup>

The legislation, [The Education Act, R.S.O. c. 129 as amended by S.O. 1981 c.47 ss. 17 to 21, s. 235 (c)] properly understood, does not require teachers to be saints; it does, however, indicate the need for a higher standard of conduct than that required of other employees. Such high standards are not

uncommon in the professions; nor is it uncommon that a failure to achieve them results in the loss of professional status or employment....The education of children to respect the law and the listed virtues, however they may be overstated, is central to what school boards do and hire teachers to do. It is fundamental to the education process, as we see it, that teachers are seen not only to teach students, but to **practice within reasonable limits that which they teach.** [Writer's emphasis]

Givan's (1988, p.6) notes further that ,

Firmly established in arbitral jurisprudence is the doctrine that an employer may not discipline an employee for misconduct committed during off-duty hours. However, that doctrine is limited by the employer's ability to adduce that his interests and/or reputation have been, or are likely to be seriously prejudiced.

Perhaps, notwithstanding the tort similarity, the Shewan case rests in part on the contractual expectations of teachers which, according to Given's, justifies a school board's actions when those contractual expectations are not met by the employee.

In the United States public school systems, as pointed out



by Pyra and McConnell (1991, p.11), where the court finds a "rational nexus" between a teacher's out of school deleterious conduct and his or her in-school duties, the board may sanction a teacher. 26

In summation, it is clear that both the public and Catholic school systems expect much of their teachers. Contractually, both systems have reasonable behavioral expectations which their employees, once properly informed, are expected to meet. The differences are that the Catholic boards' expectations are spiritual in nature while the public boards' expectations are normative. Canadian courts seem to take the position that as long as the employing school board, Catholic or public, has reasonable expectations of a teacher's tasks and professional demeanour and, further, that these expectations are known or ought to have been known by the employee prior to entering into the contract it appears to be reasonable to expect conformance of behaviour.

It is clear that in the case of Canadian Catholic separate schools the ostensible threshold of administrative action in cases of denominational nonconformity is determined by the objective teachings of the Catholic faith and that once a teacher has been determined to be a nonconformist the Catholic school board's next steps are to: 1) charge the teacher, 2) provide adequate due process or procedural safeguards in order for the teacher to fairly answer the charge, and if appropriate, 3) determine and impose a reasonable sanction.

### The Charge

Case law is not definitive in determining which is the proper way of charging a Catholic teacher with denominational nonconformity. A Saskatchewan Catholic separate school board may sanction a nonconformist pursuant to The Education Act or, arguably, using the constitutional power granted through the Saskatchewan Act.

Re Essex held that in Ontario the Catholic school board was exercising a constitutional right in dismissing a teacher for denominational nonconformity and thus the charge was not governed by the statute. Casagrande established that in Alberta the ground for dismissal may be constitutional but the charge was properly circumscribed by the terms of the Education Act (Alberta) as the power of the school board to dismiss, if not the expressed reason, was found therein.

Saskatchewan's Education Act provides for dismissal without prior notice in Section 206 (a) which reads as follows:

**206. A board of education may:**

- (a) without [prior] notice, **suspend or dismiss** a teacher and terminate the contract of such teacher for **gross misconduct, neglect of duty or refusing or neglecting to obey any lawful order of the board**, but

the board shall, upon the written request of the teacher, provide to the teacher, within five days of the termination, a written notice of termination, and each such notice shall set out the reason or reasons for the termination; [Writer's emphasis]

Further, a school board may terminate with prior notice pursuant to Sections 206 (c) or (d) and 210 which read as follows:

206 (c) [A board of education may]

terminate its contract of employment with a teacher, where the termination is to be effective on June 30 in any year, by sending to the teacher by registered or certified mail, not later than May 31 in that year, a notice of termination in the prescribed form, and each such notice shall set out the reason or reasons for the termination.

(d) terminate its contract of employment with a teacher, where the termination is to be effective on a date other than June 30 in any year, by sending to the teacher by registered or certified mail, not less

than 30 days prior to the day upon which the termination is to take effect, a notice of termination in the prescribed form, and each such notice shall set out the reason or reasons for the termination.

210 Where a notice of termination is given pursuant to clause 206(c) or (d), [with prior notice] the reasons for the termination required by those clauses to be stated in the notice may include professional incompetency, unprofessional conduct, immorality, neglect of duty, physical or mental disability or any other cause which in the opinion of the board renders the teacher unsuitable for the position held by him, and the notice shall state that in the opinion of the board the teacher is, for the reasons so stated, unsuitable for the continued teaching service in that position.

[Writer's emphasis]

Saskatchewan's Catholic separate school boards have a

constitutional right to dismiss for denominational nonconformity and can argue that where such nonconformity constitutes any of the elements under section 206 (a), it may dismiss, unlike Casagrande, without giving prior notice. The difficulty with 206 (a) is that to invoke that section requires the board to establish that those elements have meaning within the definition of denominational nonconformity.

It appears that dismissal for denominational nonconformity, if it is contemplated in the statute, best fits dismissal with prior notice pursuant to sections 206 (c) or (d) and 210 for "...any other cause which in the opinion of the board renders the teacher unsuitable for the position then held by him...."

As mentioned earlier in this study it might further be argued that the right of the Catholic school board to dismiss for denominational nonconformity is not statutorily based but constitutionally based, and thus, the requirements of The Education Act for notice, a show cause hearing and a board of reference, do not apply in those cases because statutory rights do not override constitutional rights when the two are in conflict. The difficulty here is that the procedural provisions are of general application and do not, per se, derogate or impinge on the substantive right to dismiss for denominational nonconformity.

Whichever way a Catholic separate school board charges the

alleged nonconforming Catholic teacher, procedural matters will be in issue and that is the area to which this study now turns.

### Procedure

The purpose of this section is to examine the procedural parameters provided by: a) the common law in Canada and the United States for Catholic and private schools, b) procedural rights offered by The Education Act (Sask.) and the Charter, and c) the Catholic Church's position on due process and its members. These matters will be dealt with under five subheadings: 1) The Common Law, 2) The Education Act (Sask.), 3) The Charter, 4) Due Process And Private Schools In The United States, 5) The Catholic Church: Due Process & School Boards: a) Church Documents, b) Canon Law.

These topics have not been previously examined by many writers either as separate issues or as a fabric of issues involving denominational nonconformity, especially as that relates to canon law. Therefore this section of the study must by necessity go beyond a mere review of opinions to suggest implications when they seem to be implied from the original source material.

#### The Common Law

Catholic teachers dismissed for denominational nonconformity

have the common law right to be treated fairly. The determination of denominational nonconformity must not be arbitrary but rather measured against objectified Church rules (Caldwell- p.618), or the Code of Cannon Law (Caldwell-headnote) or bona fide Catholic doctrine (Casagrande - p.353). It is arguable that the procedure used by a Catholic school board in determining at least the facts supporting the allegation of nonconformity must be fair in that it meets the test established by Laskin C.J.C in Nicholson v. Haldimand-Norfolk Police Commrs. Bd., [1979] 88 D.L.R. (3d) 671 S.C.C. at pp. 682-83 where he said:

In my opinion, the appellant should have been told why his services were no longer required and given an opportunity, whether orally or in writing as the Board might determine, to respond. The board itself, I would think, would wish to be certain that it had not made a mistake in some fact or circumstance which it deemed relevant to its determination. Once it had the appellant's response, it would be for the Board to decide on what action to take, without its decision being reviewable elsewhere, always premising good faith. Such a course provides fairness to the appellant, and it is fair as well as the Board's right, as a public authority to decide, once it had the appellant's response, whether a person in his

position should be allowed to continue in office to the point where his right to procedural protection was enlarged. Status in office deserves this minimal protection, however brief the period for which the office is held. [Writer's emphasis]

The above position was taken by the court in Casagrande (pp.360-362) which held that the teacher had certain procedural rights deriving from section 89(1) of the Alberta School Act which required the board to act "reasonably": 1) detailing in the notice the reasons for termination and, 2) providing an opportunity by the teacher to make submissions to the board prior to its final decision.

#### The Education Act (Sask.)

In Saskatchewan The Education Act does not contain the word "reasonably" but, it is submitted that it may be implied and, in any event, a Catholic teacher in Saskatchewan has more rights under The Education Act than had the teacher in Casagrande under the Alberta act. Should a teacher be dismissed for denominational nonconformity due to an act prohibited by section 206 (a) of that Act for "...gross misconduct, neglect of duty or refusing or neglecting to obey any lawful order of the board...." then pursuant to section 209 the teacher may demand a show cause hearing before the school board . Section 209 reads:



209 A notice of termination given pursuant to section 206 shall state that the teacher may, at any time within 10 days after the day of receipt of the notice, apply to the board for an opportunity to attend at a meeting of the board to **show cause why the contract should not be terminated**, and the board shall make provision for the teacher to do so. Writer's emphasis]

If, notwithstanding the show cause hearing, the school board dismisses the teacher then he or she may apply pursuant to s. 212 (1) for a board of reference to investigate the dismissal. Section 212 reads:

212(1) Subject to subsections (2) and (3) [dealing with teachers over the age of 65 and teachers without tenure], where the notice of termination is given pursuant to section 206, the teacher may, within 20 days from the date of the postmaster's receipt for the envelope containing the notice of termination, **apply to the minister for an investigation of the termination by a board of reference** mentioned in section 214, and shall thereupon notify the board of education of the application.

A Catholic separate school board could choose to dismiss with prior notice pursuant to section 206 (c) or (d) for the reasons stated in s. 210 but again a show cause hearing and a board of reference may be requested by the teacher. Whether or not a board of reference has jurisdiction as a creature of statute to determine the procedural issue of dismissal for denominational cause has not yet been determined in Saskatchewan. The substantive issue can not be adjudicated by a board of reference given sections 222(2) and 360 as reproduced in endnote 27 to this study. These matters will, in part, be determined by whether the school board asserts a constitutional right standing in addition to, but separate from its rights under The Education Act.<sup>27</sup>

### The Charter

It has been earlier noted that the Charter has little application to the issue of sanctioning Catholic teachers for denominational nonconformity due to section 29 of that document which protects denominational rights. That section is reproduced again below:

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

Section 29 shields Catholic school boards from the section 15 Charter rights to gender equality (Casagrande, p. 358), freedom of conscience and religion (Reference re an Act to Amend the Education Act (1986) and association (Walsh p.28). What of other possible Charter rights?

The rights stated in Section 7 of the Charter have not yet been argued by a nonconformist teacher.<sup>28</sup> Section 7 reads:

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

The difficulty with arguing this section is that the section 7 rights are suspended in so far as they abrogate or derogate from a Catholic separate school board's right to sanction or to dismiss a teacher for denominational nonconformity. If the teacher's rights are suspended, then the procedural rights tied to those substantive rights are also inoperative. The rights are suspended by operation of section 29 which arguably removed the requirement that in abridging section 7 rights a Catholic separate school board act in accordance with the principles of fundamental justice. Thus, the Catholic school board need not ensure that its procedures in determining denominational nonconformity, conform to fundamental justice, as

that term was used by the court in Duke v. The Queen [1972] S.C.R. 917 at 923:

Without attempting to formulate any final definition of those words [fundamental justice] , I would take them to mean, generally, that the tribunal which adjudicates upon his rights must act fairly, in good faith, without bias and in a judicial temper, and must give him the opportunity adequately to state his case.

[Writer's emphasis]

However, it could be argued that, notwithstanding the suspension of section 7 rights under section 29, there are within section 7 other implicit or derivative rights which are in accord with a Catholic teacher's canonical rights which do not abrogate or derogate from a separate school's rights and privileges. Further if the teacher's canonical rights cannot by definition abrogate or derogate from a statutorily created body deliberating on a denominational issue as that matter is governed by the law of the Church, then the procedural protections offered by section 7 of the Charter arguably apply in cases of denominational nonconformity at least in so far as those rights are reflected in Church law. If this is correct then certain procedural and perhaps substantive rights may be held not to offend section 29 of the Charter. Further, <sup>29</sup> the Duke case may then apply resulting in the process

used by Catholic separate school boards to determine a case of denominational nonconformity drastically changing with the imposition of: 1) an independent adjudicator or board with no preconceived position, and 2) references to current precedents of a similar nature in substance and sanction. (Pyra and McConnell pp. 26-27). At the present time this argument is speculative.

### Due Process And Private Schools In the United States

Denominational nonconformists dissatisfied with the Canadian law's protection of their rights will find little succour in the case law of the United States. It appears that American courts offer no more than the minimal common law right to fairness to nonconforming teachers in American private schools.

Mawdsley ( 1989, pp.48 & 51) states that Catholic schools in the United States are considered to be in the category of private schools and "...school officials are usually aware that they are virtually immune from constitutional due process requirements....[which] ...is the result of general inapplicability of the fourteenth amendment to public schools." <sup>30</sup> It is Mawdsley's position that the applicable standard in dealing with employees is determined by contract law but that, nevertheless, the courts "...seem quite willing to impose upon the disciplinary options of such schools a general sense of fairness'<sup>31</sup>, at least in interpreting the terms of the contract.

Commenting further on Geraci v. St. Xavier High School 13 Ohio Op. 3d 146 (1978), Mawdsley (p.52) states the following:

[The] court's standard for both substantive and procedural fairness in non public schools is a clear and concise statement of the current status of the law: [The court said]

Although...a nonpublic school's disciplinary proceedings are not controlled by the due process clause, and accordingly such schools have broad discretion in making rules and setting up procedures for their enforcement, nevertheless, under its broad equitable powers a court will intervene where such discretion is abused or the proceedings do not comport with fundamental fairness.

[Writer's emphasis]

United States courts have therefore demanded very similar minimal safeguards for private school teachers as did the court in Casagrande: (1) notice of the offence, (2) notice of punishment, and (3) opportunity to present their side. It is not necessary that the procedural protection be explicit in the contract of employment for in Galiani v. Hofstra University, 499 N.Y.S. 2d 182 (App.Div. 1986)

the court held that "...if there is color of due process that is enough." 32

Nonconformist teachers in the Catholic school systems may persuasively argue that the law of the Church, canon law, requires that they be given more than the minimal procedural safeguards offered in Casagrande and through The Education Act (Sask.) when a Catholic board decides upon denominational matters which affect the canonical rights of a member of the Church. This is arguable as the Catholic Church is not silent on the issue of requiring that proper procedure is followed by its associations to ensure that a person's rights are protected.

#### The Catholic Church: Due Process & School Boards

##### Church Documents

It is submitted that Pope John XXIII in Pacem in Terris (Peace On Earth) [ April 11, 1963, p. 131] strongly intimated that all of Christ's faithful have a canonical right to due process when he stated :

As a human person he [man's] is entitled to the legal protection of his rights, and such **protection must be effective, unbiased, and strictly just.** To quote again Pope Pius XII: 'In consequence of that

juridical order willed by God, man has his own inalienable right to juridical security. To him is assigned a certain, well-defined sphere of law, **immune from arbitrary attack.**' [Writer's emphasis]

Further, Vatican II reiterated Pope John XXIII's concern in Gaudium et Spes: the Pastoral Constitution on the Church in the Modern World (December 7, 1965, pp. 206 -208 ) which states:

The present keener sense of human dignity has given rise in many parts of the world to attempts to bring about a politico-juridical order which will give better protection to the rights of a person in public life. These include the right freely to meet and form associations, the right to express one's own opinion and to profess one's religion both publically and privately. **The protection of the rights of a person is indeed a necessary condition so that citizens, individually or collectively, can take an active part in the life and government of the state.**

[Writer's emphasis]

[Further:]

If the citizens' responsible co-operation is to produce the good results which may be expected  
 ....there must be a statute of positive law



providing for a suitable division of the functions and bodies of authority and an efficient and independent system for the protection of rights.

[Writer's emphasis]

As Shaughnessy (1988, pp.39 & 46) states this theme was reiterated in a pastoral letter by the Catholic Bishops of the United States in 1971 entitled Justice in the World which clearly defined all peoples right to due process. Her position is that "The rudiments of due process should be met in any conflict: notice and hearing before an impartial tribunal."

#### Canon Law

Perry (1989, p.82) notes that in Church matters, "Due process is a right of the faithful." He cites Canon 128 as authority for this position, which states:

Can. 128: Anyone who unlawfully inflicts damage upon someone by a juridic act, or indeed by any other act placed with malice or culpability, is obliged to compensate for the damage inflicted.

A Catholic teacher may argue that his or her denominational rights under Canon 220 are the primary issue, not the employment contract, and that under Canon 221 he or she has a right to defend and to be judged with equity regarding the allegation of

nonconformity and the appropriate sanction, if nonconformity is found to exist. The relevant canons are as follows:

Can.220: No one may unlawfully harm the **good reputation** which a person enjoys, or violate the right of every person to protect his or her **privacy**.

Can.221 s.1: Christ's faithful may lawfully vindicate and **defend the rights they enjoy** in the Church, before the competent ecclesiastical forum in accordance with the law.

Can.221 s.2 :If any members of Christ's faithful are summoned to trial by the competent authority, **they have the right to be judged according to the provisions of the law, to be applied with equity.** 33

Can.221 s.3 :Christ's faithful have the right that **no canonical penalties be inflicted upon them except in accordance with the law.**

[Writers' emphasis]

The thrust of this argument is that when a Catholic separate

school board is dealing in denominational matters such as evaluating the behaviour of a Catholic teacher in order to determine if it conforms to objectified Catholic beliefs, and not merely the local Catholic community's beliefs, then the board is dealing with the rights of the Catholic teacher in what is essentially a Church matter. If a Catholic school board is an association under canon law then it is bound to recognize certain substantive and procedural rights of teachers: Canon 223 s.1. Thus the first question is whether or not a Catholic separate school board is an association bound by that denomination's code of canon law? Arguably the answer is yes.

Pursuant to Canon 301 s.1 only competent Church authority can establish such an association. Although such an association may be private, Canon 299, or public Canon 312, it is bound by Canon 305, making it subject to Church authority. It is likely, although at this point not certain, that Saskatchewan's Catholic separate school boards are, canonically speaking, public associations and thus are in canonical terms a juridical personality. As such, under Canons 114 and 223 they are subject to the duties and rights within the Church. However, under Canon 305, even as a private association, use of the word Catholic in terms of Christian education as its goal would result in the application of Canon law to the school board and its coming under the supervision and governance of the Church. The Canons mentioned above read as follows:

Can.113 s.2: In the Church, besides physical persons, there are also **juridical persons**, that is, in canon law **subjects of obligations and rights** which accord with their nature.

Can.114 s.1: **Aggregates of persons** or of things which are **directed to a purpose befitting the Church's mission** which transcends the purpose of the individuals, are considered **juridical persons** either by a provision of the law itself or by a special concession given in the form of a decree by the competent authority.

Can.223 s.1: In **exercising their rights**, **Christ's faithful**, both individually and in associations, **must take into account**, of the common good of the Church, as well as **the rights of others** and their own duties to others.

Can. 299s.1: By private agreement among themselves, **Christ's faithful** have the right to constitute associations for the purposes mentioned in can.298 s.1 [to foster a more perfect life, to promote public worship or christian teaching,

evangelization, works of piety or charity], without prejudice to the provisions of can.301 s.1.

Can. 301 s.1: It is for the competent ecclesiastical authority alone to establish associations of Christ's faithful which intend to impart Christian teaching in the name of the Church, or to promote public worship, or which are directed to other ends whose pursuit is of its nature reserved to the same ecclesiastical authority.

Can.305 s.1: All associations of Christ's faithful are subject to the supervision of the competent ecclesiastical authority. This authority is to ensure that integrity of faith and morals is maintained in them and that abuses in ecclesiastical discipline do not creep in. The competent authority has therefore the duty and the right to visit these associations, in accordance with the law and the statutes. Associations are also subject to the governance of the same authority in accordance with the provisions of the canons which follow.

can. 305 s.2: Associations of every kind are subject to the supervision of the Holy See. **Diocesan associations are subject to the supervision of the local Ordinary,** as are other associations to the extent that they work in the diocese.

can.312: **The authority which is competent to establish public associations is:**

1 the Holy See, for universal and international associations;

2 the Episcopal Conference in its own territory, for national associations which by their very establishment are intended to work throughout the whole nation;

3 the diocesan Bishop, each in his own territory, but not the diocesan Administrator, for diocesan associations, with the exception, however of associations the right to whose establishment is reserved to others by apostolic privilege. [Writer's emphasis]

As Donlevy (1993) states, "If a board of education is a juridic

person as a public or private association of Christ's faithful it clearly comes under the law of the Church with concomitant duties and rights."

Once it has been established that a Catholic separate school board is bound by canon law, it is then arguable that either its procedure must comport with canonical due process or, alternatively, it ought to stay any decision on a teacher's alleged nonconformity until the alleged nonconformist has had an opportunity to have his or her case heard and decided before the appropriate Church body. What due process or procedural rights might an alleged nonconforming Catholic teacher have under canon law that he or she does not have either under the Casagrande case or The Education Act s. 206 and following which might be argued before a school board or a civil court? In the United States Catholic parishes have dealt with trying to establish norms for due process which are at least sympathetic to the rights contained in canon law.

The Canon Law Society of America (United States) sponsored a report, On Due Process, which was approved for use within the Church in the United States and, after being reviewed by the Holy See, was granted a nihil obstat by Pope Paul VI in October, 1971.<sup>34</sup> Since that time American parishes have designed the appropriate procedures to be applied in certain cases, but as Perry (p.78) notes,

Basic procedural rights are common to these variations, e.g. the right to be informed of an accusation which might prejudicially affect one's rights, the right to be heard in defence of one's rights, the right in the face of an accusation which could result in the imposition of a penalty, to confront one's accusers, and the right to advocacy.

Casagrande established that all of the procedural rights mentioned above are not available to Catholic teachers under Canadian common law or pursuant to the Alberta Education Act in matters of dismissal for denominational nonconformity. However, the teacher's rights under canon law were not argued before the school board, board of reference or the court. It is submitted that a Catholic school teacher in Saskatchewan's Catholic separate schools may have the Canonical right, (a) to demand more procedural rights from a Catholic separate school board, or (b) to have an allegation of denominational nonconformity decided by a competent ecclesiastical body and to appeal that decision through the applicable Canonical appeal procedures prior to the school board making its final determination of nonconformity.<sup>35</sup> It is further possible that upon an application for judicial review of a decision based upon an alleged act of nonconformity, assuming that a board of reference has jurisdiction to rule in the matter, the civil law court may require that a definitive finding of fact by a competent Church body is



required prior to its hearing the case both for the act of nonconformity and the sanction prior to the school board imposing a sanction on the teacher.

<sup>36</sup> It may also be arguable that when a Catholic school board acts to sanction a teacher for denominational nonconformity, that board is bound by the due process rules of that denomination in determining the type of sanction, which is the area to which this study now turns.

### Sanctions

Once a Catholic teacher has been found to be a denominational nonconformist the school board must decide on its course of action: dismissal or discipline. Dismissal as a sanction has been previously dealt with under the threshold and procedural sections of this study, but lesser sanctions have only been seen through Casagrande and the Guidelines, due to the lack of material available. The latter provides for a leave of absence as <sup>37</sup> Paragraph 5.2 states:

Catholic Boards must recognize the possibility of evolution in faith - among teachers as among all pilgrims. The obligation of compassion and understanding for a teacher already employed, who experiences doubt, difficulty, and confusion in matters of faith, is expected of the entire Catholic educational community' - Board, parents,

and other teachers - provided that the real purpose of Catholic education can continue to be achieved. Therefore, the presence of teachers who are experiencing difficulties of faith but are sincerely searching for truth must be compassionately tolerated as long as such teachers respect the objectives and methods of the Catholic school, exercise discretion concerning their personal problems because of possible negative influence on young people, and exhibit a sympathetic attitude toward efforts to promote the explicit expression of the Christian point of view in the school - recognizing that the Catholic school must bear witness to its convictions. When these conditions cannot be met, leave of absence should be considered as the first alternative. 38

The Guidelines suggest that a two part test must be met prior to a Catholic school board being prepared to act compassionately with understanding and tolerance. The first part of the test has two elements which require that the teacher a) is sincere in his or her search or confusion which causes the behaviour, and the second element requires b) that the teacher respects the Catholic schools' efforts while exercising discretion in not exhibiting the nonconformist behaviours or attitudes to students. The second part of the test is objective in that compassion will only be extended if the

real purpose of Catholic education can still be achieved. Should any element of the two part test not be present then a leave of absence is the suggested first alternative. The second alternative may well be suspension pursuant to s.206 of The Education Act (Sask.) in that the teacher, presumably having been warned of his or her nonconformity, may be suspended for , "...refusing to obey any lawful order of the board...."

Casagrande speaks to the issue of sanctions other than dismissal. In that case, the unmarried teacher knew when applying for a teaching position that she was pregnant, and failed to disclose this information to the recruiter. After being hired, and then requesting maternity leave she was warned both verbally and in writing that further premarital sexual intercourse would result in her dismissal. Although the teacher did not challenge the school board's right to demand remediation, arguably, she could have. The teacher might be dismissed for a single egregious act of denominational nonconformity but, may he or she be required to remediate for less egregious behaviour? It is submitted that in Saskatchewan the answer is yes.

It is submitted that a Catholic school board might require that a nonconforming teacher attend counseling sessions with a parish priest or require that the teacher become more involved with parish activities, rather than or in addition to, being required to cease a certain act. At present there seems to be no literature available

which offers guidance in determining what options the Catholic school board has in dealing with nonconforming teachers in matters other than dismissal. It should be noted, however, that when a Catholic school board sanctions but does not dismiss, the procedural question of what rights to due process or procedural fairness to which a Catholic teacher is entitled, remain relevant but unanswered.

### Defences

#### The Charter & The Saskatchewan Human Rights Code

The potential defenses open to a nonconforming Catholic teacher in Saskatchewan are, in civil law, procedural in nature. As aforementioned, neither the substantive nor procedural rights contained in the Charter are ostensibly available to the nonconformist teacher. However, The Saskatchewan Human Rights Code provides rights to all people in Saskatchewan. [Hereinafter referred to as the "Saskatchewan Code".]

Part 1 of the Saskatchewan Code provides for the protection of a person's freedom of conscience, expression and association. The relevant sections are as follows:

4 Every person and every class of persons shall  
enjoy the right to freedom of conscience, opinion

and belief and freedom of religious association, teaching, practice and worship.

5 Every person and every class of persons shall, under the law, enjoy the right to freedom of expression through all means of communication, including, without limiting the generality of the foregoing, the arts, speech, the press or radio, television or any other broadcasting device.

6 Every person and every class of persons shall enjoy the right to peaceable assembly with others and to form with others associations of any character under the law.

Part II sections 9 and 16 of the Saskatchewan Code prohibit certain discriminatory practices and reads as follows:

9 Every person and class of persons shall enjoy the right to engage in and carry on any occupation, business or enterprise under the law without discrimination because of his or their race, creed, religion, colour, sex, marital status, disability, nationality, ancestry or place of origin.

16(1) No employer shall refuse to employ or continue to employ or otherwise discriminate against any person or class of persons with respect to employment, or any term or condition of employment, because of his or their race, creed, religion, colour, sex, marital status, disability, age, nationality, ancestry or place or origin.

Notwithstanding the above rights the Saskatchewan Code also provides for protection for Catholic separate school boards under section 16 subsections (5) and (10) which read as follows:

(5) Nothing in this section deprives a college established pursuant to an Act of the Legislature, a school or a board of education of the right to employ persons of a particular religion or religious creed where religious instruction forms or may form the whole or part of the instruction or training provided by the college, school or board of education pursuant to **The Education Act**.

(10) This section does not prohibit an exclusively non-profit charitable, philanthropic, fraternal,

religious, racial or social organization or corporation that is primarily engaged in serving the interests of persons identified by their race, creed, religion, colour, sex, marital status, disability, age, nationality, ancestry or place of origin from employing only or giving preference in employment to persons similarly identified if the qualification is a reasonable and **bona fide** qualification because of the nature of the employment.

Specifically, Saskatchewan's Catholic school teachers have the right to freedom of conscience, expression and association and not to be discriminated against because of their religion or creed. However, those individual rights are balanced against the rights of the Catholic minority, delegated to their school board, <sup>39</sup> to employ teachers who espouse and continue to practice the Catholic faith as determined by the Holy See.

In Re St. Paul's Roman Catholic Separate School District No. 20 And Canadian Union Of Public Employees et al (1982) 131 D.L.R. (3d) 739 the court dealt with a Roman Catholic secretary who was fired by a Catholic school board because she was living in a common law relationship. She challenged the school board's right to terminate her on the basis of what she claimed was her marital status.

The importance of this case is that, albeit in obiter and at the Queen's Bench level, Catholic separate schools were determined not to be employers under the Saskatchewan Code.<sup>40</sup>

Estey, J. held that because the secretary was not married she had no marital status and thus, the arbitration award in her favour was set aside. He stated that he agreed , however, with the board of arbitration on one point,

I support its conclusion that the Code has no application in the interpretation of the collective bargaining agreement as **the applicant** [the Catholic school board] **is not, in my view, an employer under the Code**. The applicant is, in my view, 'an organization that is operated primarily to foster the welfare of a religious...group and that is not operated for private profit', and therefore is not an employer under the provisions of the Code.

[Writer's emphasis]

In Saskatchewan, a nonconforming Catholic teacher apparently, has no remedy under the Saskatchewan Code when sanctioned for denominational nonconformity. The argument may be raised in future cases that the statements in the St. Paul's case were in obiter. Moreover, Part I of the Saskatchewan Code ought to apply to support



nonconforming Catholic teachers in Saskatchewan's Catholic separate schools, as that Code is not in "pith and substance" a statute referring to education. While it is a provincial statute and thus in its offending part would normally be held to be ultra vires the Saskatchewan legislature, the "pith and substance" argument, if successful, would result in the Saskatchewan Code in part or in whole being non offensive to section 17 of the Saskatchewan Act.<sup>41</sup> Should this be held to be the case, then Saskatchewan's Catholic separate school boards would have to argue that section 16 of the Saskatchewan Code is an answer to the nonconformist teacher's argument in that in relation to "...creed, religion,...[and] marital status." under section 16(1) the board is not deprived, due to section 16(5), of its, "...right to employ persons of a particular religion or religious creed...." as religious instruction permeates the Catholic school. Further, if Mr. Justice Estey is correct then under section 16(10) of the Saskatchewan Code the Catholic separate school boards are not employers for the purposes of section 16. However, it might be argued that the section 16(5) right to employ Catholics only applies to section 16 rights, not to the rights enumerated heretofore under Part I, sections 4, 5 and 6: freedom of conscience, expression and association. It appears that to respond effectively, the Catholic separate school board would have to argue that if Part I of the Saskatchewan Code applies to cases of denominational nonconformity, then the Catholic minority is, under section 4 of that Code, a "...class of persons" who enjoy through their Catholic separate

schools "...freedom of conscience, teaching, practice and worship" which, prima facie, requires that Catholic school boards have the right to sanction Catholic teachers for denominational nonconformance. It is submitted that if Catholic separate school boards have in place, the policies and procedures referred to in Caldwell and as stated in other parts of this study, their position would be greatly strengthened before the courts, in the event that the Saskatchewan Code is seen as operative in cases of sanctioning for denominational nonconformity.<sup>42</sup>

#### Judicial Review, The Education Act & Canon Law

Other than the Saskatchewan Code, the only defenses open to an alleged nonconformist teacher are procedural in nature through (1) judicial review of a board of reference's decision and, (2) canon law. As aforementioned, the teacher may have the right to have his or her case heard before the appropriate Church adjudicative body prior to the school board acting to either sanction or dismiss the teacher. The importance of Canon law in this area becomes apparent in ensuring that the denomination follows its own rules, both in ensuring the rights of the Catholic teacher and, the procedure under which it must act prior to arriving at a definitive statement which would bind the denominational school board.

### Collective Agreements

It should be noted that in Saskatchewan, although salaries and other matters are bargained collectively on the provincial level, each board of education has a local contract which, inter alia, deals with grievance procedures. A grievance is defined under s. 2(q) of The Education Act as follows:

s.2(q) "Grievance" means any disagreement between the parties to a collective bargaining agreement with respect to the meaning or application of the collective bargaining agreement or any violation of the collective bargaining agreement.

Notwithstanding the above procedure it is Bucsis' (p.111) position that due to section 232(4) of The Education Act:

these agreements contain no terms regulating the selection or employment requirements of teachers, [therefore] the grievance procedure provided is of no assistance to teachers who are subsequently dismissed. By statute, collective agreements are prohibited from dealing with such matters.

Section 232(4) of The Education Act reads as follows:

Section 232(4): No collective bargaining agreement shall contain terms regulating the selection of teachers, the administrative and instructional duties of teachers or the nature or quality of an instruction program.

In Saskatchewan's Catholic separate schools a nonconforming Catholic teacher has, to this point in time, no obvious substantive or procedural rights under the Charter, The Saskatchewan Human Rights Code, the provincial or local collective agreements, The Education Act (other than possibly procedural rights) and thus, it is submitted, ought to look to Church law for both rights and procedure to protect his or her interests.

### Conclusion

Chapter II Part B has attempted to examine a wide range of issues which impact upon a nonconforming Catholic teacher in Saskatchewan's Catholic separate schools. This Part has been legalistic in nature, but as Magsino and Covert (1984, pp.254 - 255) state, the issue for society is ideologically based. It is society trying to come to grips with the conflict between individual and collective or denominational rights as exercised by denominational school boards.

on one hand, the traditional religious ideology insisting on a holistic viewpoint which weaves, in a seamless pattern, all of life, religion, education, and teaching together. On this viewpoint, teachers are an important part of religious-life education and must therefore always be academic, moral, and religious examples for the child. Equally important, however, is the primacy of the religious community - particularly the teaching church - in determining not only the operation of the schools but also its members' and teachers' conduct. On this viewpoint, therefore, the teacher subserves the purposes of the church as laid down by church authority....On the other hand, the secular, individual-oriented ideology has established strong inroads in Canadian society and education....Whether teachers should have rights to personal and professional autonomy, or whether they should have autonomy circumscribed by denominational authority, cannot be resolved by arguments about schools. Inevitably we are brought to an examination of competing ideologies in society. 43

This study will not attempt to balance these rights but will

attempt to clarify for the benefit of both Catholic teachers and Catholic Separate school boards, what behaviours among other things are relevant when nonconformist behaviour is alleged.

## CHAPTER THREE

### Research Design

#### Introduction

Research which uses a survey to collect data at a given point in time on a specific matter is described as descriptive survey research (Sax, 1979, p.18). This study aimed at examining, among other things, the attitudes of all twelve Saskatchewan's Catholic separate school directors in relation to five areas of sanctioning for denominational nonconformity: 1) Evidence, 2) Procedures, 3) Sanctions, 4) Parties, and 5) Threshold. However, that aim had to be adapted somewhat as only eight of the directors agreed to fully participate in this study. Two other directors agreed to provide some oral information while the last two directors refused to participate at all. Of the eight fully participating directors, only two had actual experience with what they termed as "formal" cases of denominational nonconformity. A formal case was briefly described by all eight directors as a case brought to the attention of their board of education for action. Given the above it was necessary to restrict responses to the Evidence, Procedures, Parties and Sanctioning sections to the two directors with experience in actual cases of denominational nonconformity. The remaining six fully participating directors were asked to respond only to the Threshold of Nonconformity section: the responses from which are in Appendix F to this study. A descriptive survey of the areas was therefore conducted, as described above, by means of a questionnaire: the

Nonconformity Questionnaire, hereinafter referred to as the NCQ, a copy of which is Appendix A to this study. (The NCQ Answer Sheets are Appendix B to this study.)

All eight of the participating directors were interviewed by the writer in order to determine, among other things, the factors comprising their personal attitudinal and administrative thresholds of both horizontal and vertical denominational nonconformity.

Therefore, this Chapter focuses upon the study's methodology: sample; collection of data; Nonconformity Questionnaire and Interview's content, reliability and validity; and ethics. A summary of this Chapter follows thereafter.

## Methodology

### Sampling

Sampling was not an issue in this study as there are only twenty directors of education in Saskatchewan which have authority over Catholic separate schools. However, there was some concern that only twelve of those directors were members of the Catholic faith and thus only the latter group were targeted to respond to the NCQ and to participate in the interview. This course of action was taken as to include the non-Catholic directors would, arguably, introduce into this survey the opinions of those who have little, if any, appreciation of the Catholic faith's expectations of the Catholic teacher in a Catholic school. Therefore this study does not



speak to nor does it make any recommendations in policy or procedure to those Catholic school districts administered by non-Catholic directors of education.

The small number of respondents puts into question the significance of a statistical analysis of the data. The writer made every attempt at having all twelve of the Catholic directors respond to the NCQ and to participate in the interviews. As stated earlier, eight of the twelve directors fully participated in this study. Two of the others participated to a limited extent by providing oral information. The remaining two directors refused to participate.

#### Collection Of Data

A letter requesting participation in the NCQ survey was sent to all of the aforementioned directors within several weeks of Committee approval of the thesis proposal. The letter requested, a) that the director complete the NCQ and hold it until an interview was scheduled, at his convenience, with the writer, b) that the director suggest interview dates which would be convenient for him, c) that the NCQ be given to the writer on the interview day. A copy of that letter is found in Appendix D to this study.

The writer personally interviewed each of the eight fully participating directors of education for approximately ninety minutes usually in the director's office. The dialogue was free ranging, with each subject encouraged to extrapolate and embellish on his

responses. However, specific questions, as hereinafter reproduced, were asked of each subject: excepting that those questions dealing the areas of Evidence, Procedures, Parties and Sanctions as they related to the NCQ responses were omitted when interviewing the six directors who had no experience with formal cases of denominational nonconformity. The latter course was chosen in order to restrict the Evidence, Procedures, Parties and Sanctions responses only to actual cases cases of nonconformity. It was the purpose of the interview to determine, 1) the subjects' personal tolerance threshold for denominational nonconformity, 2) the subjects' administrative tolerance threshold for denominational nonconformity, 3) the levels of congruency and incongruency in the two above tolerance thresholds, 4) the subjects' most important element in his or her administrative tolerance thresholds, 5) the subjects' basis for believing or not believing that a Catholic teacher may in certain circumstances be a denominational nonconformist with administrative impunity, 6) the subjects' understanding and use of or non use of the vertical denominational nonconformity concept. Therefore, the writer sought for certain commonalities of assumptions and definitions and correlations of concepts from among all of the Catholic directors of education for Saskatchewan's Catholic separate schools.

#### Nonconformity Questionnaire

##### NCQ Content

The NCQ, is composed of two parts. Following an introductory

preamble on the NCQ's nature and purpose, Part I is a request to provide basic demographic data. Part II requests respondents to provide responses in the areas of A) Evidence, B) procedures, C) Sanctions D) Parties and E) Threshold. The response options in the Evidence, Procedures and Sanction sections were drafted to allow a factual response on a five point Likert scale; 1) always, 2) almost always, 3) sometimes, 4) almost never, 5) never. The responses requested in the Parties section asked the respondent to circle those parties which have been involved with various aspects of actual cases of denominational nonconformity. The Threshold of Nonconformity section was drafted to allow the respondents, all eight fully participating directors, to determine if each item presented was an example of denominational nonconformity and if so, to choose what the appropriate sanction might be given the following alternatives: dismissal, temporary suspension, warning or no administrative action. The reason for choosing a differentiation in scale terminology was that, in the writer's opinion, matters of evidence, procedures, parties and sanctioning are non personalized administrative attitudes while the threshold question is individually attitudinal.

The writer developed the aforementioned questionnaire as there was no similar instrument available in the literature. The NCQ's Parts and individual items evolved from case law and literature examined in this study's Review of Literature. Some of the evidence items were suggested by those cases which stated or suggested that the court received and accepted expert testimony on the truths,

beliefs, values and norms of the Catholic faith. Other items were suggested by the obvious legal issues of probity and admissibility of evidence as common law and The Saskatchewan Evidence Act, R.S.S. 1978 c. s-16, would be relevant at a board of reference hearing and in court proceedings. Further, given the effect that erroneous hearsay can have on a Catholic teacher's career, issues of liable and slander under The Liable and Slander Act, R.S.S. 1978 c. L-14 prompted further questionnaire items. Lastly, the gathering of evidence by Catholic separate school board's on alleged nonconformist Catholic teachers induced questions dealing with inquisitorial and investigatory procedures which could result in unintended breaches of The Privacy Act, R.S.S. 1978 c. P-24. 44

The study's procedural area contains many items suggested by Casagrande and Caldwell where procedural fairness and good faith in the decision making, respectively, were considered prerequisites to an enforceable decision by a Catholic school board to sanction a nonconformist Catholic teacher. Also, the due process and equity considerations of canon law required the inclusion of items dealing with procedural fairness.

The NCQ section on Parties was created and proffered to reflect the obvious fact that it is highly unlikely that a Catholic separate school board composed of lay Catholics would determine denominational culpability or sanctions for nonconformity without first having sought counsel from at least one if not more of the following: the

local bishop or Abbot or his designate, the nonconformist's parish priest, the nonconformist's principal or the board's solicitor. The purpose of this part of the NCQ was to determine who has input into the denominational nonconformity decisions of culpability and sanctioning.

The sanctioning section reflects, in part, the case law in that both Casagrande and the Guidelines suggest that besides dismissal other sanctions are possible. Thus, the items in the dismissal part of the NCQ reflect the possibilities mentioned in case law and the literature.

The NCQ's threshold of nonconformity items seek in a very limited way to identify specific nonconformist behaviour and thus to address the concern of Lawton and Wignal (1989, p.19) that few examples of denominationally based culpable behaviours which trigger an administrative response are known.

The structured response method was chosen as it has the following advantages: 1) flexibility, 2) ease of construction, (Hopkins, p. 293), 3) wide and successful use in measuring attitudes, (Sax 1980, p. 100) 4) ease of item analysis (Sax 1980, p. 501) 5) reliability and validity are easily established, 6) economy of data collection (Sax, 1973, p. 537) and, it is submitted, that this method is not threatening to respondents as they are not asked to originate issues or concerns.

### NCO Reliability

Reliability "describes the extent to which measurements can be depended on to provide consistent, unambiguous information. Measurements are reliable if they reflect "true" rather than chance aspects.... (Sax, 1980, pp.255-56)

The basic requirement of a questionnaire is that it is reliable, in that it is stabile and repeatable or precise . However, given the fact that only two of the twelve possible respondents participated in the Evidence, Procedures, Parties and Sanctioning sections of this study a statistical examination of the results was simply not relevant.

### NCO Validity

The validity of a questionnaire indicates the extent to which the instrument measures what it purports to measure.

The validity measures used in this study with the Nonconformity Questionnaire are the non-statistical tests of face and content validity. Face validity, it is submitted, is established as the writer, his supervisor, the Judicial Vicar for the Saskatoon Diocese and the secretary of the Saskatchewan School Trustees Association, Catholic Section all examined the NCQ and suggested corrections, deletions, additions and other changes which were included in the final product.

"Content validity refers to the extent to which an item measures some specified objective." (Sax, 1980, p.191). Content validity states that the instrument measures what it is supposed to measure as the items are selected, as Hritzik (1981, p. 47) states, upon a "rational and empirical" basis. In order to do this, the researcher has, in preparation of the questionnaire items, examined the Catholic school trustee's Proposed Guidelines, statutory law, case law and documents of the Catholic Church. This examination resulted in the isolation of those areas of concern which point to both substantive and procedural questions dealing with denominational nonconformity.

### The Interview

"The interview may be thought of as a nondisguised, intrusive, controlled observation of an individual's behaviour in a one-to-one situation... [It] consists of oral interactions between a respondent and an interrogator. The questions posed may be highly structured ...or unstructured... but they are always determined by the kind of information the interviewer desires." (Sax, 1980, p.528).

### Content

The interview questions were eight in number and are reproduced hereafter,

1. What is your understanding of the phrase, "Conformity to the truths, beliefs and values of the Catholic Church" ?

2. a. Do you believe that there is any relationship between that conformity and teaching in a Catholic school?

b. When, if ever, do you feel that this relationship is significant?

c. What does the word "significant" mean to you in this context?

3. (a) What have been your sources for an initial complaint against a Catholic teacher for denominational nonconformity?

(b) What, if anything, is required of the complainant?

4. (a) What formal procedures, if any, does your school district have in matters of denominational nonconformity?

(b) What informal procedures, if any, does your school district have in matters of denominational nonconformity?



5. (a) Who is asked to provide input into determining the culpability of an alleged nonconformist?

(b) Why are they and not others asked for input?

(c) Who asks them for input?

6. (a) What actions or inactions do you believe justify dismissal for denominational nonconformity?

(b) What actions or inactions do you believe justify temporary suspension for denominational nonconformity?

(c) What actions or inactions do you believe justify a warning to a Catholic teacher about his or her denominational nonconformity?

(d) What, if any, requirements may a Catholic school board impose on a nonconformist teacher who has been temporarily suspended or warned due to his or her nonconformity?

7. Under what circumstances, if any, do you believe that a Catholic teacher can with impunity fail to conform to the official teaching of the Catholic Church on matters of faith and morals?

8. (a) What is your understanding of the statement, "Nonconformity with Church teachings may be

exhibited by a number of actions or failures to act which individually are not so egregious as to be nonconformist but which in toto equate to nonconformity." ?

(b) What do you think are some of those actions or failures to act?

(c) At what point, if ever, does the sum of those actions or failures to act require administrative intervention by a Catholic school administration?

### Reliability

The issue of interview validity was problematic, so also was reliability. Normally, interview stability would be achieved by having the writer interview the respondents on two occasions. Objectivity would be achieved by having two research observers agree on how to classify each response. However, given the subjects' time constraints and the confidential, and perhaps controversial, nature of the subject's personal and administrative thresholds of denominational nonconformity, it is submitted that the subjects would neither have had the time to be interviewed twice nor would they have been willing to have two individuals present during the interview. Therefore, the writer submits that reliability was, in this case, attained through other means. Sax (1980, pp.529-30) points out that the reliability of interviews "...depends on such factors as the degree of structure, factualness, and clarity of the questions; the

willingness and ability of the respondent to cooperate...." [and further , Sax (1979, p.238), that] "The reliability and validity of the interview depend on the interviewer's skills and personal characteristics and on the respondent's ability and willingness to report the type of information requested."

The writer has practiced as a barrister and solicitor in the province of Saskatchewan for several years with experience in the area of litigation. He has also been a school administrator and is permanently certified as a teacher in both Alberta and Saskatchewan. It is submitted that these three factors when combined with the structured interview questions offer an acceptable level of reliability to the interview. Further, to allay the subjects' concerns regarding the denominational intimacy of the interview, they were informed that a letter had been sent to all of the bishops and the Abbot of Saskatchewan informing them of the nature, purpose and methodology of the study. A copy of that letter is in Appendix E to this study. Further, to reduce the inevitable distortions which came about by use of the NCQ and the Interview individually, the writer sought to triangulate the results from both sources. Lincoln and Guba, (1985, p. 306) state that this method , "...makes data believable." and quote Webb et al. (1966, p.3) saying:

Once a proposition has been confirmed by two or more measurement processes, the uncertainty of its interpretation is greatly reduced. The most

persuasive evidence comes through a triangulation of measurement processes. If a proposition can survive the onslaught of a series of imperfect measures, with all their irrelevant error, confidence should be placed in it.

Therefore, it is submitted that the interview results were as reliable as possible given the aforementioned constraints.

### Validity

Establishing the validity of interview data is difficult. However, as the writer was concerned with the expressed attitudes of the respondents, it is acceptable if those responses are simply accepted as such, without assuming any predictive validity. Sax (1979, p.242) states that, as verbal responses, "...these responses are ipso facto, valid....as expressed attitudes."

### Ethics

The writer ensured: that each subject was informed of the nature and purpose of this study prior to commencement; that anonymity and privacy, which were defined in the subject's terms and strictly adhered to, were provided; that all dialogue would be held confidential excepting that the writer's academic advisor would have

access to all material ; that responses would be accurately recorded; that the subject could withdraw at any time; that these assurances would be provided in writing by the writer prior to the interview. Each subject was advised to seek prior approval from his or her employer for participation in this study. The above was stated in the Consent Form which is Appendix C to this study and was signed by each participant prior to the writer's receipt of the NCQ and prior to the conducting of each interview.

Further, both the NCQ and the Interview questions, with other statements, were submitted to the University of Saskatchewan Advisory Committee On Ethics In Behavioral Sciences Research Committee for approval prior to this study proceeding. Following the receipt of a letter from that Committee requesting changes, those changes were made and submitted to that Committee.

### Summary

Chapter 3 has focused on the components of the Nonconformity Questionnaire and the Interview. The NCQ's content, reliability, validity sample and data collection were examined. The interview's purpose and methodology were outlined.

The necessity of using these two methods for the collection of data was evident as the NCQ is appropriate for gathering restricted responses to specific questions the interview provided the subjects with the opportunity to explain the deep structural reasons for their

responses, thereby manifesting their intellectual not just behavioral schemata in the area of sanctioning for denominational nonconformity. Moreover, the credibility of thesis study's findings are arguably enhanced by triangulating NCQ and Interview responses.

## CHAPTER FOUR

### Analysis Of Data And Discussion

#### Introduction

The parameters of this study included the objective of surveying and interviewing the twelve Catholic Directors of Education employed by Catholic School Boards in Saskatchewan regarding their administrative treatment of nonconforming Catholic teachers. Eight directors participated fully, two partially and two not at all. The two partial participants were willing to provide oral information but believed that the Nonconformity Questionnaire, hereinafter referred to as the NCQ, was too legalistic in nature to capture the essence of what was essentially a pastoral matter. Of the two nonparticipants, one stated that his board was unwilling to participate "at this time" while the other nonparticipant stated that "We do not prejudge situations".

The purpose of this Chapter was, as stated on page two of this study, "to gather original data from Saskatchewan's Catholic directors of education on the substantive, procedural and theoretical aspects of the sanctioning process." Pursuant to that objective the NCQ and interviews sought responses to the following objectives:

1. To document those acts or failures to act by Saskatchewan's Catholic teachers which have been sufficiently nonconformist with denominational expectations to warrant administrative sanctions by Catholic separate school boards.
2. To delineate the procedures followed by Saskatchewan's Catholic Directors of Education in determining a) the evidential basis for and b) the administrative response to denominational nonconformity.
3. To examine the roles of key decision makers in determining the procedures and appropriate sanctions used in cases of denominational nonconformity in Saskatchewan's Catholic separate schools.
4. To document the sanctions and related remedial measures prescribed in Saskatchewan's Catholic separate school districts, in cases of denominational nonconformity.
5. To examine the three thresholds of denominational nonconformity, a) religious, b) personal and c) administrative, which when crossed have resulted in administrative sanctions by Catholic separate school boards in Saskatchewan.



This Chapter provides the NCQ and interview responses for each of the above objectives, followed by a discussion of that data. Thereafter, a Chapter summary will follow.

#### Objective No.1

To document those acts or failures to act by Saskatchewan's Catholic teachers which have been sufficiently nonconformist with denominational expectations to warrant administrative sanctions by Catholic separate school boards.

Of the eight directors who fully participated in the study, only two had dealt with "formal" cases of denominational nonconformity, that is, cases which they brought to their employing board's attention and upon which that board acted. However, the interview portion of the study revealed that "informal" cases, those which were dealt with by the administration without reporting to the school board, were dealt with by all of the eight participants. Thus it became clear that the eight respondents perceived that only formal cases of denominational nonconformity were applicable to the Evidence, Procedural, Sanction and involved Party sections of the NCQ used in this study. This resulted in a new limitation and two new definitions being added to the study. The new limitation was: "Only formal cases of denominational nonconformity were considered in the Evidence, Procedural, Sanction and Party sections of the NCQ." The

new definitions were of "formal" and "informal" cases of denominational nonconformity.

The two respondents who dealt with formal cases averaged 32.5 years of experience in education including 14.5 years as directors dealing on average with four cases each of denominational nonconformity. The remaining six respondents averaged 27 years of experience in education including 5.3 years as directors.

The two directors with experience in actual cases of formal denominational nonconformity provided the following responses to the Threshold of Nonconformity section of the NCQ. Its purpose was to determine which of a select number of actions or inactions have been considered by the Catholic directors of education to be nonconformist, and, in a matter to be dealt with under Objective 4, what have been the sanctions meted out in these cases. The Threshold of Nonconformity responses of the six other participating directors is Appendix F to this study. A chart showing the responses of all eight of the participating directors' responses to the NCQ Threshold section is provided in the discussion section following the data given by the two experienced directors of education.

RESPONSES OF TWO CATHOLIC DIRECTORS OF EDUCATION WITH EXPERIENCE WITH  
"FORMAL" CASES OF DENOMINATIONAL NONCONFORMITY

Dismissal

- (1) The two respondents agreed that six of the twenty - six

items were sufficiently nonconformist to warrant dismissal:

[#2] living in a common law relationship;

[#10] marrying a non Catholic without the presence of a Catholic priest, in a civil or Protestant ceremony;

[#11] living in a homosexual or lesbian relationship;

[#18] refusing to participate in religious activities in the school due to personal convictions;

[#19] refusal to participate in school sponsored spiritual retreats or religious inservices;

[#25] and regular attendance at non-Catholic church services to the exclusion of attending Catholic Church services.

#### Temporary Suspension

(2) The two respondents agreed that two items warranted a temporary suspension:

[#17] refusing to answer questions from school authorities regarding one's alleged acts of denominational nonconformity;

[#26] conviction of an indictable offence contained in the Criminal Code of Canada.

### Warning

(3) The two respondents agreed that six items would result in a warning being given to the nonconformist teacher:

[#1] writing antiCatholic material for publication;

[#5] not regularly attending Sunday mass;

[#9] privately supporting abortion on demand organizations;

[#13] supporting publically the position that premarital sexual activity is acceptable if hygienically safe sexual practices are used;

[#22] regularly attending a male or female strip club;

[#24] and advocating to other adults in the school the use of triple X, pornographic video tapes as sexual aids for use by married couples.

### Not Nonconformity

(4) Both respondents agreed that two items were not instances of nonconformity:

[#7] not participating in parish activities;

[#12] and being a homosexual or lesbian.

#### Nonconformity Not Actionable

(5) On the matter of some actions being nonconformist but warranting no action the respondents disagreed. One respondent determined that three items were examples of nonconformity but did not warrant any administrative action:

[#4] engaging in premarital sexual intercourse;

[#6] not regularly receiving the sacraments;

[#23] irregularly attending a male or female strip club.

The other respondent determined that the above three items were not cases of nonconformity.

#### Disagreement On Categories

(6) Although the respondents agreed that the remaining items, #3, 8, 14, 15, 16, 20 and 21, were cases of denominational nonconformity, they did not agree on the appropriate sanction to be

imposed. This matter will be addressed under Objective 4 of this study.

### Discussion

The NCQ results show that for Catholic teachers the following actions will, in the opinion of Catholic directors who have dealt with these matters, result in dismissal: living in a common law relationship; marrying a non Catholic without the presence of a Catholic priest, in a civil or Protestant ceremony; living in a homosexual or lesbian relationship; refusing to participate in religious activities in the school due to personal convictions; refusal to participate in school sponsored spiritual retreats or religious inservices; and regular attendance at non-Catholic church services to the exclusion of attending Catholic Church services. It is submitted that all of these actions are public and are either irreversible or display a defiance of the school authorities as representatives of the Catholic Church.

Experienced directors also would temporarily suspend nonconforming Catholic teachers for refusing to cooperate in an investigation or if convicted of an indictable offence.

Warnings to Catholic nonconformist teachers would be issued both for public and private actions or inactions in six cases involving writing anti-Catholic material for publication, publically or privately supporting abortion on demand, supporting premarital sexual

activity, advocating use of pornographic video tapes, regularly attending strip shows and lastly, not regularly attending Sunday mass.

Although Objective 1 deals with actual cases of nonconformity, it is interesting to briefly examine the NCQ results from the six participating Catholic Directors who had no experience with actual formal cases of nonconformity. Their responses are represented in Appendix E to this study. Their responses to the Threshold of Nonconformity section of the NCQ do not exhibit the same unanimity as the experienced directors responses. In fact, the group of six responses were so disparate in comparison to each other and the experienced directors that one can only conclude that, in general, there is little agreement among the majority of Saskatchewan's Catholic directors of Education regarding what is nonconformity and what the appropriate sanction ought to be in particular cases. Therefore, it is submitted, in all but the clearest cases of unrepentant nonconformity, both the determination of nonconformity and the sanction is ambiguous.

In an attempt to better understand the NCQ Threshold of Nonconformity responses, which were provided by all eight participating directors, the process of triangulation was utilized by interviewing those directors. A chart representing the responses of all eight directors of education is herein provided:

## RESPONSES OF EIGHT CATHOLIC DIRECTORS OF EDUCATION FROM THE NCQ

## THRESHOLD SECTION

Item #	Not Den.	Nonconf. Nonc.	Dismissal	Temp. Sus.	Warning	No Action	No Response.
--------	----------	----------------	-----------	------------	---------	-----------	--------------

1.		8		2	6		
2.		8	3		5		
3.		8	2	1	4	1	
4.	1	7	1		6	1	
5.	1	7			5	2	
6.	2	5			1	4	1
7.	5	2				2	1
8.		8		3	5		
9.		8			8		
10.		8	5		3		



## RESPONSES OF EIGHT CATHOLIC DIRECTORS OF EDUCATION FROM THE NCQ

## THRESHOLD SECTION

Item #	Not Den.	Nonconf. Nonc.	Dismissal	Temp. Sus.	Warning	No Action	No Response.
--------	----------	----------------	-----------	------------	---------	-----------	--------------

11.		8	4		3	1	
12.	2	6	1		2	3	
13.		8			8		
14.	3	5	1		4		
15.	1	6	2		1	3	1
16.		8	5	1	1	1	
17.		8	2	4	2		
18.		8	4		4		
19.		8	3	1	4		
20.		8	2	1	5		

## RESPONSES OF EIGHT CATHOLIC DIRECTORS OF EDUCATION FROM THE NCQ

## THRESHOLD SECTION

Item #	Not Den.	Nonconf.	Dismissal	Temp. Sus.	Warning	No Action	No Response.
21.		8	1		6	1	
22.	1	6			5	1	1
23.	2	5			3	2	1
24.		8	2	1	5		
25.		8	4	1	3		
26.	1	4	1	2	1		3

The above NCQ data from all eight of the fully participating directors and the following questions from the interview guide were appropriate to Objective No.1.

6 (a) What actions or inactions do you believe justify dismissal for denominational nonconformity?

(b) What actions or inactions do you believe justify temporary suspension for denominational nonconformity?

(c) What actions or inactions do you believe justify a warning to a Catholic teacher about his or her denominational nonconformity?

In general, the interview responses of all eight directors coincided with their NCQ responses in that all of the respondents believed that continuing to live in a common law relationship after having received a warning, marrying outside of the Church, living in a homosexual or lesbian relationship, and continuing to not practice the Catholic faith after a warning were grounds for dismissal. Further, no other actions or inactions would be grounds for dismissal unless there was evidence of a conscious, intentional and unrepentant attitude on the part of the nonconformist.

In examining the issue of temporary suspension the NCQ responses were confirmed. The determining factors in issuing a temporary suspension were the severity of the nonconformity and the possibility of reconciliation. The interviews further confirmed the NCQ findings that, rather than dismissal or a temporary suspension, a warning issued by the director of education and or the board to the nonconformist was the preferred course of action when faced with a case of nonconformity. In some cases directors issued warnings without prior consultation with their board. At least in some cases no written record was produced by the respondents.

## Objective No.2

To determine the procedures followed by Saskatchewan's Catholic Directors of Education in determining a) the evidential basis for and b) the administrative response to denominational nonconformity.

The Evidential Basis

RESPONSES OF TWO CATHOLIC DIRECTORS OF EDUCATION WITH EXPERIENCE WITH  
"FORMAL" CASES OF DENOMINATIONAL NONCONFORMITY

The responses of the two directors with experience in actual cases of formal nonconformity provided the following responses to the Evidence section of the NCQ. Their responses displayed a congruence of opinion on items #5, 10, 11, 12 and 13; therefore it seems reasonable to state that, in actual cases of denominational nonconformity in Saskatchewan's Catholic schools, the following points can be made:

[#5] Students, solely, have never been sources of allegations of nonconformity;

[#10] Catholic school administrators will sometimes investigate allegations of nonconformity, depending on whether they perceive the allegation as being a formal complaint;

[#11] When an allegation of nonconformity is made, school administrators have almost always interviewed persons other than the alleged nonconformist regarding the allegation;

- [#12] A Catholic school board has never hired private investigators to investigate allegations of nonconformity; and
- [#13] A Catholic school board has never searched public records to substantiate allegations of nonconformity.

With regard to NCQ items #3, 6 and 8, there was disagreement between the respondents in that one respondent stated that in his experience:

- [#3] When an alleged nonconformist denies an allegation there has never been follow-up to confirm the denial;
- [#6] A fellow teacher has never been the source of an allegation of nonconformity;
- [#8] A parish priest has never been the source of an allegation.

The other respondent's experience was different in that:

- [#3] There was almost never any follow-up on an allegation if a teacher denied the allegation;
- [#6] A fellow teacher was sometimes the source of an allegation;
- [#8] A parish priest was almost never the source of an allegation.

Examination of the responses to NCQ items #1, 2, 4, 7, 9 and 14

indicate that;

[#1] Never or almost never was a complainant required to provide a sworn, written statement to substantiate an allegation of nonconformity;

[#2] Always or almost always an alleged nonconformist was required to either confirm or deny the allegation of nonconformity;

[#4] Sometimes or almost always a parent of a pupil was a source of an allegation of nonconformity;

[#7] Sometimes or almost always a school administrator was a source of an allegation of nonconformity;

[#9] Sometimes to almost never was a school board member a complainant;

[#14] Sometimes to almost always a complete written record of the school board proceedings dealing with an allegation of nonconformity was kept on file by the school board.

### Discussion

The Evidence section of the NCQ represents a snap shot in time of

the past experiences of the respondents. During the interviews, the two experienced respondents made clear that their responses, as recorded in the NCQ, to actual cases of nonconformity reflected the past. They stated that their responses to nonconformity today would be different. Nevertheless, an alleged nonconformist would still be required to confirm or deny the allegation made against him or her. Further, the most common complainant had been, and remains, a teaching colleague or school administrator. In the past, the complainant did not have to provide a written statement, a written record of the proceedings was usually kept, but follow-up on the allegation, when denied by the teacher, was on an ad hoc basis.

In order to test the NCQ responses with other data the interviews asked all of the eight respondents the following questions:

3 (a) What have been your sources for an initial complaint against a Catholic teacher for denominational nonconformity?

3(b) What, if anything, is required of the complainant?

Question 3 sought to determine the evidential source and requirements of complaints about nonconformists. As expected, little if anything had been expected of complainants. Thus the probity of the complaint and the complainant's motivation were not examined prior to an investigation. However, several respondents made clear

that today the complainant would be expected: to give his or her identity, to possibly provide the complaint in writing, to allow the identity of the complainant to be revealed to the alleged nonconformist, and, in some cases, to confront the nonconformist with the complaint prior to the administration proceeding. Notably, only one of the respondent's took the position that today there ought not to be any informal procedures when dealing with complaints as this invites litigation and is an affront to the dignity of the individual.

#### The Administrative Response (Procedural)

#### RESPONSES OF TWO CATHOLIC DIRECTORS OF EDUCATION WITH EXPERIENCE WITH "FORMAL" CASES OF DENOMINATIONAL NONCONFORMITY

In order to examine the administrative procedural response to nonconformity, the NCQ Procedures section invited responses to eleven statements. The two directors who had actual experience with formal complaints of nonconformity provided the data given below. Congruency of responses was noted only with NCQ items #10 and 11.

[#10] There has never been a right of an alleged nonconformist to have the school board withhold making a determination on the matter of nonconformity or sanctions prior to a ruling having been made by the local bishop or his designate and until the appropriate Church appeal procedure has been exhausted.



[#11] A nonconformist teacher has never had the right to receive a written record of the school board proceedings dealing with his or her case.

There was wide disagreement between the respondents over NCQ items #5, 7 and 9. It was one respondent's position that:

[#5] An alleged nonconformist had a right to be given written notice that a hearing of the school board would be held on the alleged allegation and that specifics of the allegation would be included in that notice;

[#7] An alleged nonconformist never has the right to cross-examine the complainant at a hearing held by the board dealing with the alleged nonconformity.

[#9] An alleged nonconformist had the right to have a solicitor acting for him or her present at the board meeting where the allegation was to be discussed;

The other respondent's position on these items was that:

[#5] An alleged nonconformist is never given written notice that a hearing of the school board would be held on the alleged allegation of nonconformity;

[#7] An alleged nonconformist almost always has the right to cross-examine the complainant at a hearing held by the board dealing with the alleged nonconformity.

[#9] An alleged nonconformist at a school board meeting where at the alleged nonconformity is discussed has no right to have his or her solicitor present.

There was some congruence between the respondents on NCQ items #4, 6 and 8.

[#4] Procedurally the teacher sometimes to always had the right to be asked to confirm or deny the allegation of nonconformity;

[#6] Sometimes to always the teacher had the right to be invited to the board meeting where his or her nonconformity would be discussed;

[#8] Sometimes to always the teacher had the right to present his or her case at the above mentioned hearing of the board.

The responses to NCQ items #1, 2 and 3 were less telling than the above responses as they establish that:

[#1] Always or almost always an alleged nonconformist has the right to have oral notice that an allegation of nonconformity has been made against him or her;

[#2] Never to sometimes a teacher has the right to receive written notice that an allegation of nonconformity has been made against him or her;

[#3] Sometimes to almost always the teacher has the right either orally or in writing to be informed that the allegation of nonconformity is being investigated by the school administration.

### Discussion

The procedural section of the NCQ shows that the respondents have never encountered a case where an alleged nonconformist argued for or sought a ruling from the local bishop or through a Church decision making body on the matter of nonconformity prior to or after the school board deciding his or her case. Further, there was little congruence in responses concerning the rights of a nonconformist presenting his or her case before the school board, confronting the complainant, having legal counsel present or cross-examining the complainant. There was agreement that the nonconformist should be told at least orally that a complaint had been made and that the matter was being investigated by the administration. However, the teacher did not have the right after the investigation, whatever the

results might have been, to see the written record of the proceedings.

In order to test the above responses against interview data, the following questions were raised during the interviews of all eight respondents. The interview responses of the two directors who had dealt with actual nonconformity cases coincided with their NCQ responses in so far as formal cases were concerned. However, the interview questions allowed them to expand their responses to include their procedural response to informal cases of nonconformity. The interview responses of the directors comprising the group of six other participating directors provided insight into how they procedurally dealt with informal cases of nonconformity.

4 (a) What formal procedures, if any, does your school district have in matters of denominational nonconformity?

4(b) What informal procedures, if any, does your school district have in matters of denominational nonconformity?

Questions 4(a) and (b) sought to determine if there were formal or informal procedures in place in school districts to deal with denominational nonconformity. The responses revealed that of the eight respondents only one school board had a specific policy in

place to deal with these matters. The other respondents had only generic school board policies dealing with the disciplining of employees. Therefore, as expected, the informal procedures of receiving, investigating, reporting and determining complaints of denominational nonconformity were handled in an ad hoc fashion by each director, depending upon his perceived belief of the seriousness of the alleged nonconformity and whether he was dealing with a formal or informal complaint. Therefore it is submitted that it is reasonable to say that, in general, the surveyed Saskatchewan Catholic directors of education will deal with informal cases of denominational nonconformity in an ad hoc manner on a case by case basis, and formal cases pursuant to their generic standard operating administrative procedure, with the exception that a priest will have an advisory role.

### Objective No.3

To examine the roles of key decision makers in determining the procedures and appropriate sanctions used in cases of denominational nonconformity in Saskatchewan's Catholic separate schools.

### RESPONSES OF TWO CATHOLIC DIRECTORS OF EDUCATION WITH EXPERIENCE WITH "FORMAL" CASES OF DENOMINATIONAL NONCONFORMITY

The Parties section of the NCQ contained ten items. The purpose

of the items was to provide a glimpse into who are the players when deciding a case of denominational nonconformity. Once again, only the two directors with actual experience in cases of denominational nonconformity were asked to respond to the NCQ Parties section.

The results are as follows:

(1) Both respondents agreed that the director of education and the teacher's school principal were involved with the receiving of a complaint, but one respondent suggested that, in his experience, so also were the teacher's parish priest and a member of the school board;

(2) On checking the facts of the alleged nonconformity, both respondents agreed that the director of education would be involved, but one of the same respondents also suggested that the teacher's parish priest was also involved;

(3) On the preparation of the alleged nonconformist's dossier, the respondents agreed that the director of education would be involved, but one of the same respondents suggested that the teacher's school principal would also be involved;

(4) Regarding the decision to proceed to a full school board meeting with the dossier, there was division between the respondents. One respondent's experience suggested that the three parties involved were the director, the teacher's parish priest

and the personnel committee of the school board. The other respondent suggested that the director, the teacher's school principal and a school board committee were the parties involved in deciding whether or not to proceed to a full school board meeting with the dossier;

(5) With regard to which parties would be involved with the school board meeting to discuss the dossier, the respondents were again divided. One respondent suggested that the director, the teacher's parish priest, the teacher and a representative of the Saskatchewan Teacher's Federation (S.T.F.) would be present. The other respondent suggested that, in his experience, the teacher, the director, the teacher's school principal and a member of the clergy such as the bishop's representative would be at this meeting but not an S.T.F. representative.

(6) The respondents agreed that the director of education was the person who would inform the alleged nonconformist teacher of the school board's decision;

(7) Regarding the hearing of the alleged nonconformist teacher at a school board meeting, the respondents agreed that the director and a member of the clergy, either the teacher's parish priest or a representative of the local bishop, would be involved with the hearing;

(8) At the board hearing to finally decide on the issue of nonconformity, the respondents agreed that the director and the teacher's parish priest or the bishop's representative would be involved;

(9) Regarding deciding on the appropriate sanction for a nonconformist teacher, the respondent's differed in that one's experience was that this was a decision of the board alone, while the other's experience was that the director, school board and the teacher's parish priest would be involved;

(10) The respondents again differed in stating who would be involved with administrative follow-through to determine whether or not the sanction was having the desired affect. Both respondents agreed that the director would be involved, but differed otherwise; one suggested that the parish priest would be involved whereas the other respondent suggested that the teacher's school principal would be involved.

### Discussion

The NCQ sanctioning results, provided by the two experienced directors, indicate that the sources of complaints in cases of nonconformity is usually a teaching colleague or the teacher's school administrator. The complaint is usually delivered to the director of education or the school principal. The subsequent investigation involves the director and, in some cases, the teacher's parish



priest. The preparation of the teacher's dossier is carried on by the director and, in some instances, by the teacher's school principal. (Presumably, in very large systems this would be the job of the superintendent of personnel). At the board meeting to discuss the matter, the NCQ responses indicate that, whereas the director and the parish priest are present, the teacher's school principal and a representative of the Saskatchewan Teachers' Federation may also be in attendance.<sup>45</sup> At the board level, the sanction is either decided by the school board or the board in consultation with the director and the teacher's parish priest. It is the director who delivers the board's decision to the teacher. It is the director and also, alternatively, the school principal and the parish priest who were involved with any follow-up thereafter.

The interview questions put to all eight respondents are given below.

5(a) Who is asked to provide input into determining the culpability of an alleged nonconformist?

(b) Why are they and not others asked for input?

(c) Who asks them for input?

There was congruity between the NCQ responses and the interview results both provided by the two experienced directors. All eight respondents seemed in agreement that these matters were best handled by those in a "need to know" position in that what was at stake was

the teacher's reputation and dignity as an individual. One respondent noted that the procedure must be and appear to be fair as what was at stake was the community's, staff's, parents' and students' perception that their school board acted not only in a judicious but Christian manner. Several respondents suggested that the legal aspects would be addressed by the director who was best advised to seek advice from the Saskatchewan School Trustees lawyer prior to acting on a nonconformity matter. In almost all cases, the eight respondents expressed the concern that the clergy ought to be involved at the beginning of the process, not only in the later stages. This position was based upon the belief that the matter was a pastoral concern involving both the teacher and the Catholic community.

#### Objective No.4

To document the sanctions and related remedial measures prescribed in Saskatchewan's Catholic separate school districts, in cases of denominational nonconformity.

#### RESPONSES OF TWO CATHOLIC DIRECTORS OF EDUCATION WITH EXPERIENCE WITH "FORMAL" CASES OF DENOMINATIONAL NONCONFORMITY

The NCQ Sanction responses of the two directors with experience in actual cases of denominational nonconformity disclosed three areas of concurrence: items # 1, 2, and 3.

[#1] Both respondents agreed that in cases of nonconformity where dismissal is appropriate, the Catholic school board has offered the nonconformist teacher the opportunity to resign prior to being terminated;

[#2] Both respondents also agreed that where dismissal is deemed appropriate, Catholic school boards have never offered the nonconformist teacher the opportunity to a letter of recommendation on the teacher's teaching abilities with no comment regarding his or her denominational nonconformity if the teacher resigns;

[#3] Agreement was also evident in that where dismissal is appropriate the Catholic school board will never fire a teacher without prior notice.

There was great disagreement between those two directors regarding NCQ items # 4, 6 and 7. One respondent reported that in his experience:

[#4] When a sanction is required but dismissal is inappropriate the Catholic school board never requires as a condition of continued employment that the nonconformist acknowledge the Magisterium's supremacy in matters of faith and morals;

[#6] When a sanction is required but dismissal is inappropriate the Catholic school board never requires as a condition of

continued employment that the teacher attend regular spiritual counselling sessions;

[#7] When a sanction is required but dismissal is inappropriate the Catholic school board never requires as a condition of continued employment that the teacher becomes actively involved in the teacher's parish activities.

The other respondent's experience was different in that:

[#4] The Catholic school board almost always requires that the nonconformist teacher acknowledge the Magisterium's supremacy in matters of faith and morals;

[#6] The Catholic school board almost always requires as a condition of continued employment that the teacher attends regular spiritual counselling sessions;

[#7] The Catholic school board always requires as a condition of continued employment that a nonconformist teacher become actively involved in his or her parish activities.

The responses to the remaining items #5 and 8 indicate some congruence between the two experienced respondents:

[#5] When a sanction is deemed appropriate but dismissal inappropriate a Catholic school board will sometimes to always require that the nonconformist recant any anti Catholic beliefs as a condition of continued employment;

[#8] When a sanction is deemed appropriate but dismissal inappropriate sometimes to almost always it will be required as a condition of continued employment that the teacher makes periodic representations as to the current status of his or her conformity.

### Discussion

The responses to the sanction section of the NCQ indicate that prior notice will always be given to a teacher who is to be dismissed. Further, in such cases, the nonconforming teacher will be given the opportunity to resign, but no incentive is provided. In the area of remediation there was disagreement between the two experienced respondents whether or not a teacher is required to acknowledge the supremacy of the magisterium and whether or not regular spiritual counselling and /or involvement in parish activities is required of the teacher by the board. Sometimes, however, the board will require that the nonconformist recant anti-Catholic views and may be required to make representations of his or her continued conformity.

It should also be noted that when the two experienced respondents replied to the NCQ Threshold of Nonconformity section they did not agree on the appropriate sanction to apply for items #3, 8, 14, 15, 16, 20 and 21, that is, posing nude for a magazine, publically supporting abortion on demand organizations, publically supporting the drinking of alcohol by students under the age of 19 years, being divorced by one's spouse on the ground(s) of being found by a civil court to have been either mentally or physically cruel, lying to school authorities about one's lifestyle in order to hide the true facts, repeated verbal criticism, in the school, of the Church's official position on a matter of faith and/or morals, repeated verbal criticism, outside of school hours, of the Church's official position on a matter of faith and/or morals. Indeed, One respondent determined that posing nude for a magazine warranted a temporary suspension but the other respondent proffered a warning. In the case of publically supporting abortion on demand organizations, one respondent suggested a warning the other a temporary suspension. The respondents further disagreed on the matters of publically supporting the drinking of alcohol by students under the age of 19 years and being divorced by one's spouse on the ground(s) of being found by the civil court to have been either mentally or physically cruel. In the latter cases, one respondent stated that those cases were not examples of denominational nonconformity, the other respondent would give warning to the teachers in both cases.

In the case of items #16, 20 and 21, the respondents again

disagreed in that one respondent said all three cases were grounds for dismissal but the other would suggest only a warning: lying to school authorities about one's lifestyle in order to hide the true facts; repeated verbal criticism, in the school, of the Church's official position on a matter of faith and/or morals; and repeated verbal criticism, outside of school hours, of the Church's official position on a matter of faith and/or morals. The question of what sanction is appropriate to a given case appears to be at the discretion of the director of education.

The remediation question was dealt with by all of the eight respondents in the interview under Question 6(d) which reads:

6(d) What, if any, requirements may a Catholic school board impose on a nonconformist teacher who has been temporarily suspended or warned due to his or her nonconformity?

The eight respondents suggested that, often, with a minor matter the mere cessation of activity would be sufficient remediation for the administration. However, in more serious cases of nonconformity, the respondents generally agreed that a nonconformist could be required to become actively involved in his or her parish, or to regularly attend Sunday mass, or attend and participate in regular counselling sessions with his or her parish priest. One respondent

suggested that the latter course offered the nonconformist the opportunity to hear from a representative of the Church on the matter of concern and allowed the director to have feedback from the priest on the progress of the nonconformist.

#### Objective No.5

To examine the three thresholds of denominational nonconformity, a) religious, b) personal and c) administrative, which when crossed have resulted in administrative sanctions by Catholic separate school boards in Saskatchewan.

#### The Religious (Denominational) Threshold Of Tolerance

Two of the eight respondents spoke briefly and in a general manner of the relevance of Canon Law to matters of denominational nonconformity. However, several respondents suggested that what had in the past been viewed by Catholics as nonconformity had changed. It was suggested that this change had resulted in a watered-down concept of nonconformity which was due to the following causes: the varying opinions of parish priests who were shifted throughout their diocese on a regular basis, the changing perceptions of the Church's expectations by the laity who comprised the school boards, and the



acceptance of certain behaviours as the norm among the local Catholic community. Many respondents found this amorphous condition unsettling as it caused a shifting of the administrative threshold notwithstanding past understandings of administrators. to paraphrase one director,

In what I saw as a clear case of nonconformity the parish priest told me not to bring the matter to the school board as the board would not, due to its political composition, support any administrative action.

Therefore, it is submitted that the denominational threshold of tolerance for denominational nonconformity has been clouded not by the doctrine of the Catholic Church but by the interpretation put upon it by some of the clergy and school board trustees, and by the acceptance of nonconformist behaviour by the Catholic laity.

#### The Personal Threshold Of Tolerance

Each of the eight respondents' personal threshold of tolerance for nonconformity was found to be a factor in whether or not he would choose to act administratively in matters of teacher nonconformity. In order to arrive at the factors which comprised their personal

threshold's of tolerance for nonconformity, the writer asked each of the eight respondents three interview questions.

Interview Question # 1 sought common expectations of denominational nonconformity from all eight of the respondents. It was expected that their personal threshold would in part be defined by their expectations of conformity as they defined that term.

Interview

Through Interview Question #2 the writer sought to determine if there was any congruence of the eight respondents' personal beliefs regarding conformity and their responses provided in the NCQ Threshold of Nonconformity section.

Question 7 sought to further examine that issue by positing a potential conflict between the administrative inability to act when faced with nonconformity which the respondent personally believed crossed both the denominational and his personal threshold of tolerance. The results of the interviews were as follows.

1. What is your understanding of the phrase,  
"Conformity to the truths, beliefs and values of  
the Catholic Church"?

The interviews disclosed that the respondents' understanding of the conformity concept was defined in subjective and objective terms. Objectively, the general rules of the Church were to be

followed by teachers in both their public and private lives. Subjectively, manifestations of that conformity were seen as the teacher being visibly involved with the local faith community and in the manner in which the teacher spoke of and inter-acted on a daily basis with students in the school. Conformity required leaving one's dissident ideas outside of the school and only expressing challenges to Church teachings through legitimate Church sponsored bodies. Thus disagreement was allowed for but only in areas of legitimate dissent and only by those who publically manifested both the will and intent to live within the rules of the Church. Therefore it is submitted that conformity, defined for this purpose as acting within the director's personal threshold of tolerance for nonconformity, is viewed on a personal basis, which may be differ from respondent to respondent. In some cases respondents theoretically saw the objectified rules of the Church as a goal always to be sought but practically applied their personal threshold of tolerance which was defined by the general principals of the Church as practiced by the local Catholic community.

2(a) Do you believe that there is any relationship between that conformity and teaching in a Catholic school?

(b) When, if ever, do you feel that this relationship is significant?

(c) What does the word "significant" mean to you in this context?

The above question dealt with the relationship between and the significance of conformity and teaching in the Catholic school. All of the respondents agreed that conformity was important, but in several cases the definition of conformity changed from the responses given in interview Question #1: which asked "What is your understanding of the phrase, 'Conformity to the truths, beliefs and values of the Catholic Church'?" It was suggested by one respondent that conformity in the school context meant religious conformity as required by written school policies. Another respondent suggested that whereas teacher conformity was significant, it was most significant in the elementary grades. There was, as suggested by the NCQ responses, disagreement among the respondents with what was nonconformity in specific cases. Further, the respondent's personal threshold varied not only with what was acceptable behaviour in the local Catholic community but also according to his perception of his own spiritual condition. To paraphrase one director,

I've gone to strip shows and would find it difficult to judge a teacher as being a nonconformist for doing so.

Interview Question 7 asked:

Under what circumstances, if any, do you believe that a Catholic teacher can with impunity fail to

conform to the official teaching of the Catholic Church on matters of faith and morals?

The majority of the eight respondents displayed some discomfort at being asked this question. One respondent stated that every case of nonconformity required a response from the administration. The majority of respondents felt that in very personal matters such as using birth control or not attending the sacraments due to personal feelings of unworthiness the nonconformist teacher should be left alone to walk his or her faith journey. Whether or not administrative intervention was determined as desirable was at the sole discretion of the director of education. Therefore it seems reasonable to assume that the director's personal threshold of tolerance for nonconformity influences and at times determines whether or not administrative action will take place.

It seems reasonable to conclude that the personal threshold of tolerance for nonconformity of the respondents is governed by their personal experiences, their understanding of the Catholic Church's position on matters of faith and morals and to some degree by the acceptance of the local Catholic community of what the Catholic Church considers nonconformist behaviour.

#### The Administrative Threshold Of Tolerance Of Nonconformity

The NCQ threshold responses provided information which suggests

that the respondents viewed the administrative threshold of nonconformity differently in the majority of cases. However, when a respondent viewed that threshold as having been crossed, he preferred the course of reconciliation through warnings. Temporary suspensions were viewed as being almost as serious as dismissals. The matter of nonactionable nonconformity rested, as the interviews latter disclosed, upon the respondents' understanding of the vertical nonconformity concept. Disagreement regarding the appropriate sanction to impose in particular cases left the consequences of several actions and inactions in doubt. The responses to interview Question #7 provided some insight into the eight respondents administrative threshold of tolerance for nonconformity. Further, the responses to interview Question #8 provide evidence for the proposition that a Catholic teacher may be involved with several act of nonconformity yet retain his or her position.

7. Under what circumstances, if any, do you believe that a Catholic teacher can with impunity fail to conform to the official teaching of the Catholic Church on matters of faith and morals?

Question seven asked when can a teacher be a nonconformist with impunity. It was expected that the eight respondents would differentiate between egregious and nonegregious actions or failures to act and to differentiate between his personal and administrative

thresholds of nonconformity. As expected, there was some conformity with the NCQ in that some respondents believed that there were cases when a nonconformist could act with impunity. The NCQ offered specific examples of actions and inactions which as stated earlier in this study were considered by some respondents as being non actionable. The interviews revealed that this inaction was based upon the following perceptions of the respondents: fear of civil litigation, fear of nonsupport from the school trustees and/or the Catholic community and/or the local parish priest. Some respondents suggested that inaction might also be based upon the lack of one or more of three elements proffered by one director: severity of the offence, frequency of the offending behaviour, or a lack of publicity associated with the offence. Further, as stated earlier in this study, some respondents felt that some matters, while technically nonconformist, were so personal as to be solely within the personal domain of the nonconformist: contraception and nonparticipation in certain sacraments.

It is true to say that the respondents' personal threshold of nonconformity was in some cases lower than their administrative threshold and in other cases higher than the latter, depending upon the personal convictions of the respondent and, it is submitted, the level of nonconformist behaviour practiced in the local Catholic community.

The idea that a Catholic teacher could be involved with many acts

of nonconformity yet retain his or her position, up to a certain point, whereupon the administration would act to sanction the teacher was earlier referred to as vertical denominational nonconformity. It was the purpose of Question 8 to examine this issue.

8(a) What is your understanding of the statement, "Nonconformity with Church teachings may be exhibited by a number of actions or failures to act which individually are not so egregious as to be nonconformist but which in toto equate to nonconformity."?

8(b) What do you think are some of those actions or failures to act?

8(c) At what point, if ever, does the sum of those actions or failures to act require administrative intervention by a Catholic school administration?

This question addressed the issue of vertical denominational nonconformity. All of the respondents agreed that a cluster of minor nonconformist actions or failures to act could compel the administration to respond to that nonconformity. Unexpectedly, none of the respondents saw the collection, retention and scrutiny requirements as onerous or as an intrusion on the private life of the nonconformist. The respondents offered examples of individual action which when repeated or in sum would demand a response: sexual promiscuity, binge drinking of alcohol, continued failure to become



involved in the Catholic community, and a bad attitude regarding Catholic teachings. As expected, the responses to Question 8 (a) were highly idiosyncratic.

The respondents all agreed that when the nonconformist actions or inactions became public such as to upset the balance between the interests of the teacher performing the duties of a role model within the school or the community or so as to damage the reputation of the institution then the administration would react as its administrative threshold would then have been crossed. The respondents saw the necessity to act as being based upon their duty to their students, community and institution.

### Discussion

In some matters of denominational nonconformity the religious threshold is clearly delineated by public acts of defiance of clearly stated Church rules. However, it is the perception of the majority of the respondents that in all other cases that threshold is very unclear. Further, it is dependent upon the opinions of local parish priest, the moral/ethical outlook of those trustees who compose the local school board and the acceptance and, as one respondent suggested, the practices of many in the local Catholic community of nonconformist behaviours.

The respondents' personal threshold of tolerance for nonconformity may be defined in terms of their individual past experiences, their view of their own level of conformity to Church

teachings, their knowledge of their faith from both a pastoral and conceptual point of view, and at least in part, by the views of the local Catholic community of which they form a part.

The administrative threshold of tolerance for nonconformity is defined firstly by either the public nature of the nonconformity or the egregiousness of the nonconforming act. Although influenced by the local Catholic community's threshold of tolerance, the respondents would all act to protect the reputation of their institution and the faith witness offered to their students as their first priorities. Secondary issues influencing the administrative threshold deal with evidence, public support, and the possibility of engaging in costly law suits.

#### Summary

Chapter 4 has attempted through the NCQ and interviews to document the nonconformist actions and inactions by Catholic teachers which have and will result in an administrative response. The list was not intended as exhaustive, but the responses thereto demonstrate that the Guidelines of the Canadian Catholic School Trustees Association are being followed by Saskatchewan's Catholic directors of education. All of the respondents agreed that acts which were a "flagrant and explicit contradiction" of the faith, "incompatible with the exercise of that [Catholic] teacher's function

in the school" would result in an administrative response. However, that sine qua non only applies to clear and thus easy cases. There is some confusion among some of the respondents regarding whether or not certain behaviours are nonconformist and whether other behaviours are sufficiently nonconformist to warrant administrative action. In the latter instances the respondents apparently either do nothing or handel the situation in an ad hoc manner under the guise of an informal case of nonconformity.

The NCQ and interview results indicate that the procedural methodology used in both formal and informal cases of nonconformity is in all cases, with one exception, done in an ad hoc manner or pursuant to a generic administrative policy. There is no expressed concern in those policies for the canonical rights of the individual nor of the Canonical obligations of the Catholic school board.

The key decision maker in matters of nonconformity is the school board, but involved with the spiritual determination of the behaviour are the director and the local Catholic priest. The nonconformist's school principal may be involved for evidential and for purely administrative reasons. Surprisingly, in one case, the local Saskatchewan Teachers' Federation's representative has been involved as a counsellor to the alleged nonconformist.

The sanctions and related remedial measures proffered by the

respondents indicates that the preferred sanction is to issue a warning to the nonconformist teacher, stating that unless the offending behaviour is changed further administrative action will be required. This preference seems based upon the respondents' belief that all Catholics are on a personal faith journey and that those in leadership positions are morally and ethically bound to assist those in that journey. To paraphrase one respondent,

A director must judge what is in the best interests of the community, the institution and the children. However, we must also remember that we are all sinners and that to react too quickly and judgmentally does not provide for the future reconciliation of the nonconformist with the Church.

Yet, after confirmation of the nonconformity and when a warning is determined to be insufficient, the administration may require that the teacher publically exhibit certain conforming behaviours in his or her personal life to manifest compliance with the Catholic faith. It is, perhaps, this pastoral colouring of what would in other cases be a purely administrative decision that caused the disparate responses to the NCQ sanctioning section.

There are at least three thresholds of tolerance of

denominational nonconformity involved in cases of nonconformity.<sup>46</sup> The religious or denominational threshold is defined by the objective truths, beliefs, values and norms of the Catholic faith as stated by the Holy See. However, the operational threshold is a matrix of the religious position of the local Catholic priest, the moral/ethical position of the local school trustees, and the acceptance of nonconforming behaviour of the local Catholic community. To paraphrase one respondent,

My concern is that as nonconformist behaviours become more acceptable to the local Catholic community there is reflected in teachers and the school board a relaxed acceptance of these behaviours as being the norm and therefore acceptable or at least not susceptible to an administrative response.

The directors' personal threshold is determined by their past experiences, their perception of their own level of conformity, their bias towards either a legal or pastor view of the Church's rules and principles, and their knowledge of their faith, all of which are coloured by the views of the local Catholic community within which they live.

The directors' administrative threshold is primarily determined by either the public nature or the egregiousness of the act of nonconformity with which they must deal. Other factors influencing

this threshold are: the level of public support for taking administrative action both in the community and at the school board level, the possibility of civil litigation, evidential issues, and the impact upon the institution, school and students if no action is taken.

## CHAPTER 5

### Summary, Conclusions, Recommendations and Implications

In this Chapter, the nature of the study is summarized, major conclusions are drawn, policy and practice recommendations are offered, and implications for research are discussed.

#### Summary

It was the purpose of this study: a) to examine the sacred and secular foundations upon which rests a Saskatchewan Catholic school board's religious and legal authority to sanction Catholic teachers for denominational nonconformity, b) to review the relevant literature, taking into account germane constitutional, statutory, common and canon law authorities which provide insight into the sanctioning process, c) to gather original data from Saskatchewan's Catholic directors of education on the substantive, procedural and theoretical aspects of the sanctioning process, and d) to provide recommendations in the matter of sanctioning Catholic teachers for denominational nonconformity.

The related literature and case law provided the conceptual framework for this study.

The sample used in this study was to have been the twelve Catholic directors of education employed by Catholic school boards in the province of Saskatchewan. Eight directors participated fully.

Two additional directors provided oral information only, and the remaining two directors refused to participate. Data was obtained from the eight fully participating directors through the Nonconformity Questionnaire (NCQ) and from an interview by the writer with each of these directors. The NCQ was composed of a booklet containing three sections: introduction, request for demographic data and a request for substantive data. The latter section was broken into five parts. From the first three parts of that section a five point Likert scale obtained responses dealing with evidence, procedures and sanctions as they related to actual cases of nonconformity. The fourth part dealt with parties involved with the nonconformity process and the roles of persons involved in the nonconformity process. These four sections were restricted in responses as only those respondents with actual experience with cases of denominational nonconformity as Catholic directors of education were asked to respond. The remaining fifth section of the NCQ was to be responded to by all of the respondents. It requested the respondent to classify a collection of actions and inactions as being conformist or nonconformist and, if the latter, to select one of the following as being the appropriate administrative response: no action, dismissal, temporary suspension, or warning.

Following the completion of the NCQ, the writer then interviewed each of the eight directors of education who participated in the study in order to collect more in-depth data pertaining to the results provided by the NCQ.



## Conclusions

In relation to the problems under investigation, the following limitations must be stated:

1. Although there have been few " formal" cases of nonconformity in Saskatchewan's Catholic schools all of the eight fully participating directors of education have actually or hypothetically dealt with informal instances of nonconformity. Further, when a formal case of nonconformity does arise it is viewed as an extremely serious matter by those involved.

2. The number of directors who had actual experience with formal cases of denominational nonconformity and thus who supplied the hard data from the NCQ in the matters of Evidence, Procedures, Sanctions and Parties requires that the writer state that the following conclusions and recommendations are tentative.

Notwithstanding the small number of formal cases of nonconformity as described above, the following conclusions were drawn.

1. Saskatchewan's Catholic school boards have the constitutional right and the religious obligation to demand that their Catholic teachers conform to the objective truths, beliefs,

values and norms of the Catholic Church as stated by the Holy See. It is also clear that the norms of the Holy See have now been objectified beyond Canon Law by the new Universal Catholic Catechism which provides a set of universal rules and beliefs by which all Catholics are bound.<sup>47</sup> Further, Pope John Paul II's encyclical, Veritatis Splendor, provides that a decision of individual conscience is subject to objective moral analysis by the Church, thus further objectifying the truths, norms and expectations of Catholics.<sup>48</sup>

2. The original data gathered by both the NCQ and the interviews show that Catholic directors have divided complaints into two types, informal and formal. Informal complaints are based upon mere statements from complainants and are investigated in an ad hoc manner by the administration but not necessarily reported to the school board. The allowing of informal and formal complaints certainly puts the complainant squarely subject to The Libel and Slander Act (Sask.) in the event that the oral or written statement is not true and if it results in damage to the alleged nonconformist's reputation and/or position. Formal complaints have required that the complainant consent to his or her name possibly being made public. Formal complaints are those which have been brought to the school board's attention. More recently, it has been suggested that more would be required by complainants in that at least one experienced director would only proceed on a complaint if a written statement signed by the complainant was proffered to the school district. Once

an investigation is initiated, the pattern of evidence gathering indicates that the teacher will be confronted by the director and given an attempt to deny or confirm the truthfulness of the complaint. In the normal course of events, the most common complainant is a fellow teaching colleague or school administrator. It submitted that it is worthwhile considering whether or not an alleged nonconformist's rights under The Privacy Act (Sask.) are contravened by directors of education investigating the private life of a teacher especially on the basis of informal complaints as it is submitted that the latter may prove to be the least likely to be of substance.

3. The study's examination of procedures following a formal complaint indicates that the director or his representative confronting the alleged nonconformist with a complaint always takes place. If a denial is received from the teacher the matter is closed. If the substance of the allegation is confirmed by the nonconforming teacher then the normal procedure is to offer the nonconformist an opportunity to consider his or her position and to recant or change the behaviour with or without a public manifestation of that change of attitude. The rights of a nonconformist teacher in the investigatory, inquisitorial and subsequent procedural stages are not consistent from board to board, although all of the respondents in this study acknowledge that the teacher has some rights. At the present time there is little doubt that the legal procedure required of a Catholic school board to dismiss a teacher is, as stated in

Casagrande, within the parameters of The Education Act (Sask.). That is, minimal legal protection. Further, there is no question that a Board of Reference has no jurisdiction in denominational matters in Saskatchewan's Catholic schools. The question of Canonical procedural rights due to the alleged nonconformist has not been addressed in case law excepting that Caldwell and Board Of Education For Moose Jaw School District No.1 Of Saskatchewan at al. make clear that Church law is very relevant to the issue of denominational nonconformity and Catholic teachers.

4. The matter of sanctioning as examined by the NCQ and interviews shows a clear preference on the part of the respondents to address and to ameliorate the situation with warnings, giving the nonconformist ample time to reconsider and alter his or her behaviour. The clergy always have a role in the sanctioning process, either as advisors to the decision makers or the teacher or both. It is the opinion of the respondents that, as the Church is a "sinful" Church and all Catholics are on their own faith journey, it is important that those entrusted by the Catholic community with the responsibility of educating the youth show a reasoned, seasoned, calm, caring and pastoral approach to nonconformity by one of its employees. This approach is said to be in keeping with the Gospel. A teacher who recants on nonconformist behaviour may find that words alone will not suffice as the respondents are clear that the school board may make ongoing demands upon the teacher's personal life in order to ensure the teacher's commitment to the remediation process.

The extent of intrusion into the private lives of nonconforming teachers has not been determined by the courts but it is clear through Walsh and thus through Caldwell that continuance of conformity is required of Catholic teachers within Catholic school systems. If this is so, then the extent of intrusion may indeed be great. Unfortunately, the Guidelines do not speak to the issues of ensuring conformity through remediation, especially in cases of vertical denominational nonconformity.

5. When a matter of nonconformity is so egregious as to upset the primary function of the teacher as role model in either or both of the school and the Catholic community, then a temporary suspension or dismissal will be reluctantly considered. The manner in which a teacher is dismissed will always be as private as possible in order to minimize the public damage to both the reputation of the teacher and the school system.

6. The parties most involved with cases of denominational nonconformity are the teacher's parish priest, the director and, presumably, the personnel superintendent if the school district is large enough to have such a position. The teacher's school principal and personnel committee member of the board may also be involved in the process, at least in evidential matters. Generally, the local bishop is not directly involved. However in one diocese one bishop was actively involved in all cases of nonconformity.

7. The director's personal threshold of nonconformity depends upon his own moral and religious rectitude as a Catholic and his interpretation of his responsibilities in the faith journey of one who has gone astray from the Church's teachings. Some respondents believed that, as with the prodigal son, the door should always be open to a teacher who has erred to reconcile with the Catholic community and school board. Only continued outright defiance of the board or Church teachings would compel these directors to act to terminate its relationship with a nonconformist teacher. Other directors see nonconformity as prima facie defiance of the Church's teachings and thus warranting an immediate harsh administrative response.

8. As perceived by the respondents, there has been some confusion in the Catholic community wherein behaviours objectively nonconformist were subjectively acceptable as the determining moral factor was the individual's own conscience. This point is well recognized and is responded to by the Catholic Church in Pope John Paul II's encyclical to the world's Catholic bishops, Veritatis Splendor. Further, the religious or denominational threshold was perceived by some respondents to vary according to the norms within the local Catholic community and according to who had been elected to the school board or who had been appointed as the local Catholic priest. Thus, the denominational threshold was unclear in the mind of many Catholics who dared not "cast the first stone". This perhaps

explains the variety of responses in the threshold section of the NCQ.

9. The administrative threshold of nonconformity appears to be governed by the frequency, seriousness and publicity of the nonconformity.

### Recommendations

One objective of this study was to provide policy and practice recommendations in the areas of evidence, procedures, sanctions, and threshold apropos to sanctioning for denominational nonconformity. It is to these areas that this study now turns.

### Evidence

#### Policies

The following policies are recommended to better accommodate the treatment of denominational nonconformity in Saskatchewan's Catholic schools:

1. That the Saskatchewan School Trustees Association

(S.S.T.A.): Catholic section create and mandate a committee of its members, representatives of the Catholic clergy, representatives of the directors of Catholic education and Catholic school administrators to examine and proffer provincial wide policy

guidelines endorsed by the S.S.T.A., Catholic Section, in the handling of cases of denominational nonconformity.

2. That a Canon Law lawyer acting on behalf of the Saskatchewan Bishops and Abbot be involved with the creation of all policies dealing with denominational nonconformity within Saskatchewan's Catholic schools.

### Practices

1. That in the area of evidence associated with a complaint of denominational nonconformity, the following be used as a guideline:

(a) No informal complaints, as that term has been known, be accepted by Catholic school administrators because: 1) in these matters the integrity, privacy and reputation of the alleged nonconformist are at issue, 2) to properly respond to the allegation by confronting the complainant, the complainant's identity ought to be known to the alleged nonconformist; and 3) in the event that the complainant is a member of the Saskatchewan Teachers' Federation he or she is bound by that organizations Code of Ethics and thus is compelled to first let the alleged nonconformist know of the complaint.

(b) Only formal complaints will be dealt with by Catholic



school administrators. This requires that complainants put in writing the substance of their complaint and sign it, knowing that their names may become public and, further, that the alleged nonconformist teacher will know the complainant's name.

2. That when a formal complaint has been lodged against a Catholic teacher, the administration will provide a copy of the complaint to that teacher and shall give a reasonable time to the teacher to respond to the complaint.

3. That the rights of the teacher going before a school board to respond to an allegation of nonconformity be clearly enumerated in board policy.

4. That an ongoing evaluation of the conformity of Catholic teachers to their faith while teaching in a Catholic school system, as reported by the Supreme Court of Canada in Caldwell, be included in regular employment evaluations.

### Procedures

#### Policies

1. That it be the policy of the Saskatchewan Catholic Separate School Boards to employ those procedures in cases of denominational nonconformity which comport with the spiritual and legal

responsibilities of the trustees, the dignity and rights of the Catholic teacher alleged to be a nonconformist, and the requirements of both civil and canon law to ensure that due process, fundamental fairness and a pastoral vision is reflected and embodied in those procedures.

2. That the procedural elements of the nonconformity process be institutionalized on a provincial wide basis, taking into account the above procedural policy recommendation.

#### Practices

1. That the alleged nonconformist, hereinafter referred to as the teacher, be notified in writing that a complaint against him or her for nonconformity is being investigated by school authorities.

2. That the teacher be advised at the onset of any investigation of nonconformity and that a canon law lawyer is available to him or her, at the diocese's expense, for consultation.

3. That the teacher be provided with a copy of the written document which is the source of the complaint.

4. That the teacher be advised that any written information

which he or she wishes to provide will be accepted by the administration for inclusion in that teacher's dossier.

5. That the teacher be advised that he or she is required within a reasonable time to confirm or to deny the complaint in writing to the administration.

6. That in the event that the administration's investigation establishes that the complaint was unfounded that the teacher will be informed of that finding in writing and further that the school board will also be so informed and the matter will be closed at that time.

7. That in the event that the administration's investigation provides evidence which on a balance of probabilities gives grounds for the complaint of nonconformity, then the teacher and the school board will be so informed. Further, within a reasonable time thereafter, a meeting of the school board shall be held on the matter of the complaint. The teacher shall be given a copy of the evidence collected and informed of the aforementioned meeting with the opportunity to attend with representation and to answer the complaint according to specific guidelines passed by the board of education.

8. That upon the board of education arriving at a decision to sanction the teacher the latter will receive written notice of the

decision, the reasons for that decision and that, where appropriate, reconciliation will be offered upon specific terms.

9. That specific follow-up criteria be established to determine conformity is ongoing in the case of nonconformity but that such criteria take into account the confidentiality of the relationship between a member of the clergy and the teacher.

10. That the administration keep a complete record of all cases, informal and formal, and of all proceedings in these cases and that all cases be reported forthwith to the board of education.

### Sanctions

#### Policies

1. That the Saskatchewan School Trustees Association - Catholic Section establish a committee to examine appropriate sanctions in order to better achieve the remedial objectives sought by school boards dealing with matters of nonconformity and to provide for uniformity throughout the province.

#### Practices

1. That the diocesan liaison and perhaps a wider body of clergy

recommend appropriate sanctions in the area of nonconformity which are closely related to the nature of the nonconformity alleged.

2. That the sanction determined applicable by the board of education be discussed between the teacher and the teacher's parish priest to perfect the exact manner in which the remedial measure is expected to assist in the change in behaviour and also to ensure that the sanction is appropriate in all of the circumstances.

#### Parties

##### Practices

1. That the Catholic clergy, excluding the nonconformist's parish priest, be involved in all phases of the nonconformity process, not only in an advisory capacity but also in the design and operation of the administrative process as that matter is primarily viewed as a denominational concern.

2. That in every case of nonconformity a civil law solicitor be retained to advise the administration and the school board of the proper procedure both to ensure that the rights of the teacher are respected and that the board exercises its denominational and legal responsibilities.

##### Practices

1. That, as stated above, the teacher's parish priest be

intimately involved with each step of a case of denominational nonconformity. Further, that all of the parties involved with the case acknowledge that the teacher's parish priest acts as an advisor to his parishioner not the school administration or school board.

2. That a canon law lawyer be consulted to ensure that the teacher's canonical rights are respected, including but not restricted to the right to counsel and to appeal to the appropriate Church body for appropriate remedies.

### Implications

#### General Implications

The intent of this research was to examine the issue of the remediation and dismissal of Catholic teachers in Saskatchewan's Catholic separate schools for denominational nonconformity. There were three dimensions to this research. On one level the legal and religious foundations were examined. On the second level, through the NCQ, the actual state of the process dealing with evidence, procedures, parties and actual sanctions was examined. On the third level, the personal, religious and administrative reasons for seeking remediation and/or dismissal of a nonconformist were examined through the interviewing of the respondents to the NCQ.

It became clear during this study that some of the respondents wanted guidance in dealing with cases of nonconformity and certainly wanted to know what their colleagues were doing in the area. It was

suggested at least twice to the writer that a provincial wide approach would be preferable to the present situation. It was also evident that many respondents were disturbed by the fact that the administrative threshold varies with the election of board members and the appointment of a liberal or conservative priest to the school district. Further, it was expressed to the writer that when a significant portion of the local Catholic population is not living according to the values, norms and rules of the Church they are more likely to support an academically qualified or socially popular teacher than a director and board who are involved in sanctioning that same teacher for nonconformity.

During the course of this study it became clear to the writer that, as the majority of Saskatchewan's Catholic directors of education have no experience with denominational nonconformity and because it is such a contentious issue when it arises, there is a necessity for policies and procedures to be drafted for the benefit of directors, school boards, teachers and the Catholic community at large.

#### Implications For Educational Research

A number of implications for further research stem from this study:

1. The matter of non Catholic teachers teaching in

Saskatchewan's Catholic school has yet to be addressed.

2. The matter of Catholic non-teaching staff employed by Catholic school boards has not yet been addressed.
3. The matter of recruitment procedures apropos to Catholic teaching positions has not been addressed.
4. The matter of inservice for Catholic teachers, although recently commenced in Saskatchewan with attendance on a voluntary basis, and how that may or may not affect the issue of nonconformity has not been addressed.
5. The matter of what Canon law procedures are available for alleged nonconformist teachers has yet to be examined.
6. The opinions of the Catholic clergy regarding denominational nonconformity may be examined.



## ENDNOTES

1. See Bucsis (1981, Saskatchewan Law Review, p.95.) wherein she quotes the article: "December 21, 1979. Kathy Gannon, Prince Albert Daily Herald."
2. The Holy Inquisition: Properly referred to as the Inquisition, "...a special permanent tribunal established by Pope Gregory IX [February, 1231 A.D.] to combat heresy....[as well as] witches, diviners, blasphemers, and sacrilegious persons." (Catholic University of America, (Vol. VII) 1976, pp.535-536.).The Inquisition reached its height in the second half of the 13th century. The procedure allowed for accusations from all sources, heretics, those excommunicated and those who might profit from the accusation. Moreover, the accused was not permitted to know his accusers and thus could not confront and cross examine them. Legal representation was unheard of as to represent an accused made one an accomplice and thus as culpable as the accused. Notwithstanding the institutionalization of torture to secure confessions [by Pope Innocent IV, May 15, 1252 A.D.], a procedure unheard of in Canon Law but common in Roman Law, it has been argued that "...the Inquisition did not inflict true punishment, but only salutary penances for the spiritual benefit of former heretics who had returned to the faith. " (Catholic University of America, (Vol. VII) 1976, p. 538.) However, "...the manipulation

of this tribunal for reasons of state, the excesses attendant upon its procedures...make the Inquisition, as it evolved in practice, indefensible." (Catholic University of America, (Vol.VII) 1976, p.540.)

2. Alternatively, see Lawton & Wignall (1979, p.19) where they state, "Denominational cause is the term used to describe the practice of discrimination in employment practices which is justified on the basis that particular denominational attitudes are essential for the performance of a specific job." This definition was not used in this study because the inclusion of the word "discrimination" might indicate a bias, a colloquially pejorative connotation.
4. It is submitted that in theory there are three inter-related thresholds which compose the matrix for the operant denominational threshold referred to in this definition: 1) the religious, 2) personal and 3) administrative. It is one of the objectives of this study to determine if this is indeed the case and to examine the relationship and relative importance of each to the decision by a Catholic separate school board to sanction a Catholic teacher for denominational nonconformity.

5. See also the Grattan case where a local Ordinary, who is in almost every case a bishop, may personally have a special right or claim vis-a-vis Catholic schools in civil law as that right or claim preexisted 1905 and crystallized at that time.

Note also that the Sacred Congregation (1977, p.623) stated that the bishop has the authority to "...watch over the orthodoxy of religious instruction and the observance of Christian morals in the Catholic schools...[and further (1977, p.617) that the teaching of religion is] ...not merely confined to 'religious classes...."

6. Reck (1979, p.48) cites: To Teach as Jesus Did (1973). National Conference of Catholic Bishops. Washington, D.C.: USCC Publications Office, wherein the American bishops stated that to integrate the secular and sacred requires a merging of the Gospel and academics but, "...more importantly, by the presence of teachers who express an integrated approach to learning and living in their private and professional lives."

7. Noonan (1979, pp. 1-14) provides a lucid account of the historical development of the Province of Saskatchewan and the Ordinances of the Territories.
8. Lupul (1974) provides a detailed study of the religious and political maneuvering of the Church and politicians in determining the final outcome of the safeguards offered Catholic schools in the proposed Saskatchewan Act.
9. Givan (1988, p.5) states that public school teachers private lives are, at times, open to the scrutiny of their employing boards when the latter's "...interests and/or reputation have been, or are likely to be, seriously prejudiced." Also see Shewan and Shewan v. Board of School Trustees of School District No. 34 (Abbotsford) (1988) wherein a public school teaching couple were suspended after cooperatively providing a photograph of the female spouse's breasts for publication in an American magazine of questionable social merit. Note also a case comment on the Shewan case: Bezeau, 1990.

10. For a newspaper comment on Walsh see: " Board Was Justified in Dismissing Teacher Who Joined Salvation Army." St. John's Evening Telegram, January 1986.
11. For a summary of collective rights under the Charter see: Dickinson, Gregory M., MacKay, Wayne A. Eds.(1989). "Education & Group Rights Under The Charter: 1.) Denominational Separate & Dissident School Rights" in Rights, Freedoms and the Education System in Canada: Cases and Materials. Toronto, Edmond Montgomery Publications Limited.
12. Fish, Brian L. (1979). "Constitutional Aspects of teacher Dismissals." Alberta Law Review, 17, 545-51; speaks to the fact that Chapters 29 and 30 of the North West Territories Ordinances of 1901 determine the rights of denominational schools. Fish provides some judicial principals from his readings.
13. The situation in Saskatchewan is that in certain geographic areas the Catholic population is in the majority and, thus, their schools are defined as being Catholic public schools, whereas, the minority non Catholic population's schools are separate public schools. This anomaly produces Catholic public schools with denominational qualities which are not protected by the courts, as are Catholic separate schools in Saskatchewan. The

reason, based upon the Canadian constitutional compromise, is that it is the intent of the law to protect the educational rights of the minority class of persons, Catholics or Protestants.

It is also interesting to note that, whereas the 1901 Ordinance and, thus, the Saskatchewan Act protect the rights and privileges of Roman Catholics in education, the twenty other autonomous churches of the Catholic Church do not have this protection.

See case commentaries: Durocher (1974) and Magsino (1983).

14. Hague (1990, p.17) reported on the 1990 symposium of the Alberta Catholic School Trustees' Association held in Edmonton, Alberta which stated that the themes, "...are set in the perspective of the Catholic church's teachings on religious education...[and that one theme is] **Good teachers not be prohibited from teaching in Catholic schools solely on the grounds that they are not 'practicing Catholics'.**" [Writer's emphasis]

15. Caldwell was decided on contractual terms without reference to the constitution. Saskatchewan's separate school boards may use contract law to sanction a nonconforming Catholic teacher but, this argument is weaker than the constitutional power granted them under the Saskatchewan Act, as the contractual argument

would be successfully met by defenses under the Charter, The Education Act, and The Saskatchewan Human Rights Code.

16. The Catholic church holds that a sacrament once administered is permanent and that, once instituted, the Church has no power to affect it. This position was stated by the Church at the Council of Trent (Rahner, 1968, pp.379-380) and reads:

Though the Church speaks of OT [Old Testament] sacraments (which were valid in their day and efficacious for salvation after their fashion)...., the decisive element in the NT [New Testament] sacraments is that they were instituted by Christ ...according to their "substance" ....over which therefore, the Church has no power....

Thus, the marriage of two baptised Christians before any legitimate minister of a Christian faith is presumed to be permanent. Only an annulment by the Catholic Church in the public or private forum declaring that the marriage was nonsacramental, and thus, void ab initio allows a Catholic to enter into a "second" marriage.

17. For a newspaper report on Casagrande see: The Globe and Mail, June 19, 1986.

18. In Casagrande, an unmarried teacher knew, when applying for a teaching position, that she was pregnant and failed to disclose this information to the recruiter. Shortly after having been hired she requested maternity leave. She was warned both verbally and in writing that further premarital sexual intercourse would result in her dismissal. Several months later, she became pregnant again and applied again for maternity leave. She was dismissed for denominational nonconformance because it was found that she had practiced pre-marital sexual intercourse. The school board's decision was upheld both at a board of reference and upon appeal to the Alberta Court of Queen's Bench.
19. There are two cases which do not follow the norm of court support for denominational nonconformity justifying sanctions. Re Essex County Roman Catholic Separate School Board and Tremblay-Webster et al (1984) 45 O.R. (2d) 83 (Ont. C.A.) and Syndicat des Professeurs de Ville de Laval (Jean Bonnier) c. Commission Scholaire Chomedey de Laval (1982), Recueil des Sentences de L'Education, 22, 2127: 126-133. In Tremblay, the court dealt with a Catholic teacher dismissed for denominational nonconformity as he married outside of the Catholic Church. The issue was whether or not the matter was grievable under the provincial wide collective agreement. It was decided that, in Ontario, the Catholic school boards had, by the collective agreement, given jurisdiction under the collective agreement to the arbitration board to hear cases of dismissal for



denominational nonconformity. Whether or not a Catholic separate school board in Saskatchewan can by contract give up or modify its constitutional rights is not directly relevant to this study.

The Bonnier case is also not helpful. In Bonnier, a male Catholic school teacher in Quebec was suspended by the Catholic school commission for one and one-half months for immoral conduct, as he had posed for a nude photograph with a former female student. The photograph was published in a weekly paper. At arbitration, the decision was in favour of Bonnier, holding that to appear nude was not contrary to Catholic beliefs. On appeal, the court upheld the arbitration decision as no authoritative evidence had been presented at the arbitration which would contradict the proposition that nudity was contrary to the Catholic Church's teachings.

These two cases are contractually and evidentially based, respectively, and although ostensibly they appear to undermine a Catholic school board's right to sanction for denominational nonconformity, they are of little value to this study.

20. In Caldwell, McIntyre J. held at page 622, in his ratio decidendi that in having a bona fide qualification for employment, quoting from his judgment in Ontario Human Rights Commission v. Etobicoke (Borough of), [1982] 1 S.C.R.:

To be a bona fide occupational qualification and requirement a limitation, such as a mandatory retirement at a fixed age, must be imposed honestly, in good faith, and in the sincerely held belief that such limitation is imposed in the interests of the adequate performance of the work involved with all reasonable dispatch, safety, and economy, and not for ulterior or extraneous reasons aimed at objectives which could defeat the purposes of the Code [of Human Rights]. In addition it must be related in an objective sense to the performance of the employment concerned in that it is reasonably necessary to assure the efficient and economical performance of the job without endangering the employee, his fellow employees and the general public.

The court then stated that the Etobicoke test, which was applicable to the case before them, had two branches. The first was subjective, demanding that the requirement was imposed honestly, in good faith and sincerely in order to achieve adequate performance. The second branch was objective and the court held that religious conformity of Catholic teachers, objectively viewed, was reasonably necessary to assure a Catholic education of the students [Caldwell, pp. 622-625.]

Noteworthy is that the court also made clear that in Caldwell the decision was not dismissal for denominational nonconformity per se but whether the Appellant teacher could in effect be dismissed because she had willingly contravened canon law and thus removed herself from that class of practicing Catholic who were guaranteed, under section 8 of the Human Rights Code of British Columbia, not to be discriminated against by Catholic school employers. The court held against the Appellant in that she had given up her bona fide qualification as a practicing Catholic and thus was not protected by the Human Rights Code.

It seems clear that once a teacher in Saskatchewan has been determined to be a denominational nonconformist and that there is no bad faith involved by the Catholic separate school board a court will, unless there have been procedural irregularities, uphold the school board's decision.

21. See Mawdsley, p. 51.

22. For a case commentary see: Bezeau (1990).

23. See Pyra and McConnell, (1991, p. 97).

24. See Pyra and McConnell at p. 97.

25. Givan's cited: Re Etobicoke Bd. of Ed. and O.S.S.T.F. (1981), 2 L.A.C. (3d) 265 at 271.
26. Golden v. Bd. of Education of the County of Harrison (1981) W. Va. 285 S.E. 2d 665 at 668. See also Kowalski and Benway (1979, pp.39-41) for examples of public school teachers dismissed for immorality defined by cases of: dishonesty, mere advocacy of illegal drugs usage, critical and derogatory statements about an employer, and the use of profane language.
27. This point is contentious as at least one legal author has assumed that a board of reference would have partial jurisdiction. Bucsis (1981, p. 109) takes the position that,

A Board of Reference has the mandate to investigate decisions which lead to dismissals. The investigation is concerned with two main issues. Was the true cause for the dismissal as stated by the separate school board? Is the cause a valid one? Where the teacher involved is not disputing the first issue and where the policies of the separate school board clearly specify that this is the reason for dismissal, the jurisdiction of the Board of Reference is at an end. Arguments that attempt to show the invalidity of the policies themselves will not be entertained, since judicial

review is expressly contemplated by The Education Act.

Bucsis further points out:

There is no privative clause in this Act. Section 222(3) contemplates that either party to an investigation may apply to the Court of Queen's Bench for an order to set aside the decision of the board of reference on the grounds that: a) there is an error of law on the face of the record; b) the board of reference lacked jurisdiction to hear the matter; or c) the board of reference exceeded its jurisdiction.

The Education Act, sections 222 and 360, portions of which are hereafter reproduced, state that a board of reference is prohibited from acting to affect the rights of separate schools as they are protected under section 17 of the Saskatchewan Act.

s.222(1): The decision of the board of reference shall be final and any order given pursuant to section 221 shall be binding upon the parties to the investigation.

(2) Nothing in this section shall be deemed to limit or abridge any right

conferred upon a minority of electors pursuant to section 360.

(3) A board of reference shall have full power to determine any question of fact necessary to its jurisdiction, but notwithstanding subsection (1), either party to an investigation may make an application to the Court of Queen's Bench for an order to set aside the decision of the board of reference on the grounds that:

(a) there is an error of law on the face of the record;

(b) the board of reference lacked jurisdiction to hear the matter; or

(c) the board of reference exceeded its jurisdiction.

s.360: Nothing in this Act shall affect any right conferred by The School Act upon any minority of electors in any district established pursuant to that

Act, whether Protestant or Roman Catholic, and no alteration of boundaries of a school division shall be made unless it can be shown that the rights provided to any class of persons under section 17 of the Saskatchewan Act will not be prejudiced thereby.

28. The argument has not yet been made that a practicing homosexual or lesbian Catholic teacher in Saskatchewan's Catholic separate schools ought to be sanctioned for denominational nonconformity. This type of case may ostensibly give Saskatchewan's Catholic separate schools difficulty under section 7 of the Charter. Being a homosexual is not per se against the teaching of the Church. The argument would centre, therefore, around whether the practice of homosexuality or lesbianism by the teacher is contrary to Church teachings, and if so, then the issue is not one of being but acting. Further, is the way one acts due to a legitimate life condition over which one has no control, which is accepted as not morally wrong per se according to the Church, a legitimate ground to dismiss for denominational nonconformity? Arguably, the Catholic separate school board could successfully claim that their position is that the homosexual or lesbian act is sexual activity outside of the bounds of sacramental marriage and thus like all sexual activity outside that sacrament, contrary to the Faith. Further, because the Church's position is biblically not

scientifically based its position appears unassailable. However, a homosexual or lesbian who states that he or she is not and does not intend to be sexually active may apply for a teaching position in a Catholic separate school system and can not legally be discriminated against merely on the basis of their sexual orientation. This appears to be the present position of the Church in the document produced by the Congregation for the Doctrine of the Faith / Revised Text (1992). Origins, 22, (10), 173-177. See also Saskatchewan [Catholic Church] Hierarchy Statement Regarding Proposed Amendments To The Human Rights Code Of The Province Of Saskatchewan Concerning Sexual Orientation, (March 22, 1992).

29. Even if a nonconformist teacher successfully argued his or her procedural rights under section 7 of the Charter, the argument would then move to section 1, which reads:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The onus thus shifts to the Catholic separate school board to



establish that its right to dismiss and/or otherwise sanction Catholic teachers for denominational nonconformance is demonstrably justifiable in a free and democratic society.

30. The 14th amendment states,

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

31. The quasi-constitutional fairness standard : Corso v. Creighton University 731 F. 2d 529 (8th Cir. 1984). See also Mawsdley, Legal Aspects of Plagiarism 19-20 (NOLPE 1985).

32. In Galiani, the student's due process to which he was entitled prior to suspension was the institution's conformity to its disciplinary procedures.

33. The purpose of the term equity, according to McIntyre (1989-90, p. 44) is that it,

...mitigates the rigors of justice with the benevolence of charity.... Both Pope Paul VI and Pope Paul II expressed a desire to maintain this dimension of canon law, which they identify with a form of wisdom. In this way, the Church is able to reconcile any tension between a 'legislative' or a 'judicial supremacy'.

The Code Of Canon Law provides for both judicial and administrative procedures to protect the rights of the people. However, as noted by McIntyre (p.44),

...the church sees recourse to tribunals as a last option; indeed the bishop and his judge(s) are to exhort the faithful to arrive at 'an equitable solution' and 'suitable means' without formal processes (c. 1446). Other types of reconciliation seem more compatible with the christian ethos.

Donlevy (1993) defines canonical equity, by paraphrasing Pope Paul VI, as follows:

...Equity governs the application of norms to

concrete cases, with the salvation of souls as the goal which is always kept in view. Equity takes the form of mildness, mercy and pastoral charity and seeks not a rigid application of the law, but the true welfare of the individual...It is the fruit of benignity and charity and justice tempered with the sweetness of mercy; it is the qualitative precept of the norm of law and the norm of the application. More especially, it is an attitude of mind and spirit that tempers the rigor of the law. It is a human corrective element and a force for proper balance.

34. This Report is reproduced as Appendix A (pp. 186-221) to the Canon Law Society of American's Due Process In Dioceses In The United States 1970-1985: Report On A Task Force Survey (1987).
35. The Canon Law Society of America's report on Due Process in Dioceses In The United States 1970-1985 contains within it, on pages 40 - 43, a section on "Due Process in Diocesan Education Offices" and notes inter alia, at pp. 40-42:

Education offices present a somewhat unique approach. There is more emphasis on civil procedure

than in diocesan "due process" offices, or in some religious institutes.... Although some dioceses report "schools" cases in their regular diocesan due process experience, many dioceses seem to prefer separate norms in educational matters. In most instances education office procedures were designed with public school models in mind, or with the advice of civil lawyers, due to the legal ramifications connected with issues relating to contracts.

...Policies attempt to provide safeguards for all involved in the procedures. Some list rights which the participants are guaranteed...Most policies either set time limits for the various stages of the process, or provide for the participants to do so. These limits usually must be observed, and consequences are often spelled out for the party who fails to meet them...Whether counsel is permitted during the procedures varies depending on the policy. Some policies reflect a more ecclesial approach, emphasising conciliation, and hence are wary of the adversarial tone which the introduction of counsel might inject into the proceedings. Others, based more on civil law or public school procedures, regularly **permit representation by**

**counsel....Confidentiality** addressed in some of the policies...Generally, it seems to be preferred although **a record can be obtained by the parties involved**, particularly if they bear the cost of producing it.... **Costs are not expressly addressed in many policies**;those that do deal with the issue show a range of approaches, from no cost to the parties bearing the full expense of the procedure.

[Writer's emphasis]

The above report indicates the variety of levels of procedural protection offered Catholic employees of private Catholic schools in the United States. The important point is that the Church acknowledges that a Catholic teacher has rights based in both civil and canon law. In Canada and particularly in Saskatchewan, it is submitted that the Catholic Church ought to decide whether or not the determination of a denominational ground for sanctions should be made by a school board generally composed of lay Catholics. Although advised by the clergy, the school board decides the fact of nonconformity, the level of nonconformity and the appropriate sanction. This may be inappropriate without the alleged nonconformist teacher first having his or her substantive and procedural canonical rights provided to him or her either by the Catholic separate school board or before a Church body where at the issues are to be decided.

36. This would be consistent with the Canadian courts position: see Harelkin v. University of Regina (1979), 3 W.W.R. 676 (S.C.C.); and Bucci (p. 109) wherein she states, "...the Court of Queen's Bench will not entertain an application for judicial review unless a complainant has exhausted all the domestic remedies available."

37. Lawton and Wignal (1989, p.192) speak to the issue of nonconformity warranting dismissal and non dismissal. They see the key to the sanctioning issue as being the teacher's willingness to submit to Church authority. They state:

...what actually seems to underlie the concerns of denominational authorities is whether the person involved acknowledges and accepts the authority of the Church over his or her behaviour, or if he or she refutes this authority in public action. In the latter case, the religious authority that the school is teaching the children to accept would be undermined. Thus matters handled in full privacy, such as the use of artificial birth control, would probably not arise as a cause for dismissal in a Roman Catholic school system, whereas the public advocacy of such practices in contradiction of the Church's teachings in the matter would be.

38. Herein lays the answer to the statement, "If there is one of you who has not sinned, let him be the first to throw a stone." as the quotation goes on to say "Go and sin no more." Further, the Church may judge an individual's action as immoral but not the actor if he or she is misled by a wrongly formed conscience: John Paul II, (1993) Veritatis Splendor, at p. 316. Nevertheless, the Church's position appears to be that the effect of false rather than faith witness given by a nonconforming Catholic teacher who is acting according to his or her conscience is contrary to the agreement entered into by the teacher upon accepting a teaching position in a Catholic school. Moreover, notwithstanding that a nonconformist teacher is acting according to his or her ill formed conscience it is the duty of the Church and its Catholic school boards, to judge the actions of its employees according to the objective standards of the Catholic faith. This is deemed necessary not only to prevent scandal but also to ensure faith witness, based upon the Church's objectified truths, as exemplified by the life of teachers who must have a correctly informed conscience. What sanction is appropriate for any given action or inaction evidencing false witness is addressed later in this study.

39. There is some question whether it is a class of persons or the Catholic school board trustees that have this right. Finkelstein (1985, pp. 1302-1324), commenting on the Tremblay case where the court held that the Catholic school boards of Ontario had freely

bargained away some of their constitutional prerogatives through the provincial wide collective agreement, states:

The 'class of persons' protected by section 93 are individual families, not school trustees...the parents of children attending these denominational schools may well not have voted for the particular trustees in office and yet, even as dissenters, their section 93 rights are curtailed.

See also: Durocher, R. (1974, pp. 6-7), who, commenting on the Moose Jaw case at the trial level, provides added support for the proposition that it is the 'class of persons' not the trustees that have the constitutional rights under section 93 of the Constitution Act, 1867.

Contra Finkelstein see: Lawton and Wignal (1989, p. 192) where they state that the Tremblay and Stack cases establish that:

...the courts have ruled that if school boards agree in such negotiations [provincial wide collective agreements] to a reduction in their denominational rights, then they must abide by the agreements because they entered them voluntarily.

Section 17 of the Saskatchewan Act also states, "any class of



persons...." which implies that the rights are those of the class not the school trustees.

40. Bucsis (1981, pp. 107-108) provides an interesting analysis of the impact the Saskatchewan Code might have on dismissal for denominational nonconformity arguing that, under that Code, a Catholic who is a nonconformist is still a Catholic and, thus, may not be discriminated against by a Catholic separate school board, unless the courts interpret the term "religious creed" to, "...not imply mere individual beliefs, but a set of beliefs or principles." at least as those related to certain subjects such as "...divorce and pre-marital cohabitation...." Bucsis' statement was made one year prior to the St. Paul's case being decided but may still be relevant due to the level of the Court from which the decision proceeded.

However, contra Bucsis, see Caldwell where it was established that a nonconformist may be a nominal Catholic, and not be involved with "formal religious instruction" (Caldwell, p.605) but have voluntarily "...ceased to be a member of the identifiable group of **practicing Catholic supporters...**" (Caldwell, p. 612). [Writer's emphasis] Moreover, see in Chapter One of this study the definition of the Sacrament of Reconciliation wherein a Catholic in serious or mortal sin, presumably for nonconformity with Catholic

teachings, is excluded from "...the Eucharist, the mystery of the Church and its **unity**." [Writer's emphasis]

41. Section 52 of the Constitution Act, 1867 provides for the primacy of the Constitution of Canada, which includes section 17 of the Saskatchewan Act, over all other laws. However, if in "pith and substance" the Saskatchewan Code was found to be a law of general application and thus not offensive to section 17 of the Saskatchewan Act, it would necessarily follow that the Saskatchewan Code did not "prejudicially affect any right or privilege with respect to separate schools..." and thus section 52 would provide no protection for Catholic separate schools. Section 52 reads,

52.(1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

(2) The Constitution of Canada includes

(a) the Canada Act 1982, including this Act;

(b) the Acts and orders referred to in the schedule; and

(c) any amendment to any Act or order referred to in paragraph (a) or (b).

(3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.

Further, as due to section 29 of the Charter the theoretical nonconformist teacher seeking protection under the Saskatchewan Code would not be claiming Charter rights the Catholic separate school board would find no support under section 29 of the Charter for it speaks only to denominational rights which are abrogated or derogated by the Charter.

42. See Bucsis (1981, p.107) for an interesting comment on the significance of the inclusion of the words religious creed in the Saskatchewan Code.

Note also that in 1993 the Saskatchewan government has announced that it will make changes to the Saskatchewan Code to protect homosexuals and lesbians against discrimination. It seems inevitable that at some time a homosexual or lesbian Catholic teacher will run afoul of the Catholic separate school system and argue the Saskatchewan Code. (See: The Saskatoon Star Phoenix, Thursday, March 18, 1993, p.A 11. and Bill No. 38 of 1993, An Act to amend The Saskatchewan Human Rights Code, Saskatchewan Bill R1, 3rd Session, 22nd Legislature, 1993.

43. In 1992 the Saskatoon Public School Board sent an open letter to the Director of the Saskatoon Catholic Separate School Board stating in effect that the two school boards should consider, for economic reasons, building one high school in a certain area of Saskatoon. The public board saw this as an excellent way of saving the people of Saskatoon money by not duplicating certain services. The response from the Catholic Director was negative. It is submitted that the Board of the public school system displayed a lack of understanding towards the preceived necessity of faith witness by teachers in a Catholic separate school.
44. It is submitted that a derivative right, perhaps privacy, under section 7 of the Charter might be involved in the methodology with which a Catholic separate school board pursued an investigation of an allegation of nonconformity by a Catholic teacher.
45. This leads to an interesting question as suggested by Pyra, Dr. J. (1993). The Saskatchewan Teachers' Federation (S.T.F.) and its representatives have no jurisdiction in denominational matters. However, the S.T.F. representative may act as an advisory rather than representative capacity for an alleged nonconformist. This would presumably mean that the S.T.F. representative would not

have standing at any board meeting held on a matter of nonconformity.

46. It is possible to speculate upon a fourth threshold. The local Catholic community may have a collective threshold of tolerance for nonconformity which evolves over time and influences the director's and the school board's threshold of tolerance for teacher nonconformity.
47. The original French text of the Catechisme de l'eglise Catholique Mame-Librairie Editrice Vaticane. Paris, 1992, has not been translated into English as of November, 1993. However, in dealing with the proposed amendments to The Saskatchewan Human Rights Code, the Saskatchewan Hierarchy, the bishops and Abbot, cited the new Universal Catholic catechism as authority for their position on homosexuality. See: Saskatchewan Hierarchy Statement dated March 22, 1992. See also the newly proclaimed section of The Saskatchewan Human Rights Code which protects sexual orientation but which also appears to maintain the Catholic school boards rights under sections 16(5) and 16(10) of that act. See: The Saskatchewan Human Rights Code as amended by Bill No. 38 of 1993, An Act to amend The Saskatchewan Human Rights Code. Saskatchewan Bill R1. 3rd Session, 22nd Legislature, 1993.

48. Veritatis Splendor, (John Paul II, (1993) makes clear that in the eyes of the Church nonculpability does not mean that the act is morally neutral. As that document states on page 316:

It is possible that the evil done as the result of invincible ignorance or a nonculpable error of judgment may not be imputable to the agent; but even in this case it does not cease to be an evil, a disorder in relation to the truth about the good.

Further, on that page:

In forming their consciences the Christian faithful must give careful attention to the sacred and certain teaching of the church [sic]. For the Catholic Church is by the will of Christ the teacher of truth. Her charge is to announce and teach authentically that truth which is Christ, and at the same time with her authority to declare the principles of the moral order which derive from human nature itself.

Moreover, again on that page, the Catholic Church holds that freedom of conscience is freedom in the truth as pronounced by the Church, which,

puts herself always and only at the service of conscience, helping it to avoid being tossed to and fro by every wind of doctrine proposed by human deceit (Eph. 4:14), and helping it not to swerve from the truth about the good of man, but ...to attain the truth with certainty and to abide in it.

## REFERENCES

1. Addis, William E., Arnold (Ed.) Scannell, T.B., Hallett, P.E., Albien, Gordon (Rev. Eds.). (1957). A Catholic Dictionary (16th ed.). Routledge & Kegan Paul Limited, London.
2. Attwater, Donald (Gen. Ed.). (1941). A Catholic Dictionary. The Macmillan Company, N.Y.
3. Bezeau, Lawrence M. (1990). "Female protestant teachers should not pose in the nude." The Canadian School Executive (April). 10-12.
4. Bill No. 38 of 1993. An Act to amend The Saskatchewan Human Rights Code. Saskatchewan Bill R1. 3rd Session, 22nd Legislature, 1993.
5. Board of Education For Moose Jaw School District No. 1 Of Saskatchewan et al. v. Attorney -General For Saskatchewan et al. (1973), 41 D.L.R. (3rd) 732 (Sask. Q.B.), (1975) 57 D.L.R. (3rd) 315 (Sask. C.A.).
6. Brady, Doreen (1979). "Teachers don't have to be saints, but guidelines are useful." Reporter, 4, (8), 6.
7. Brent, Audrey S. (1974-75). "The Right To Religious Education And The Constitutional Status Of Denominational Schools." Saskatchewan Law Review, 40 (2), 239-267.



8. Bucsis, Myra J. (1981). "The Dismissal Policies Of The Saskatchewan Separate School Boards." Saskatchewan Law Review, 46 (1), 95-121.
9. Caldwell v. Stuart, [1984] 2 S.C.R. 603.
10. Canada Act 1982 (U.K.), 1982, c.11.
11. Canadian Catholic School Trustees Association, Proposed Guidelines For The Employment Of Teachers. Available from, Mr. Julian Paslawski, Executive Secretary, Catholic Section Saskatchewan School trustees Association, 19 Fraser Cres., Saskatoon, Saskatchewan. S7H 3G9.
12. Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982 being Schedule B to the Canada Act 1982 (U.K.), 1982, c.11.
13. Canadian Encyclopedic Digest ;Western Third Edition (Vo. 11B-Title 53 pp. 53/53 - 53/119. January 1992.
14. Canon Law Society of America (1987). Due Process In Dioceses In The United States 1970 - 1985 (Report on A Task Force Survey). Washington, D.C.
15. Carnarvon, Lord (1912). House of Commons Debates (March 12,

- 1912). In Brent, Audrey S. (1974-75). "The Right To Religious Education And The Constitutional Status Of Denominational Schools." Saskatchewan Law Review, 40, (2), 239-267.
16. Casagrande v. Hinton Roman Catholic Separate School District No. 155 and Board of Reference (1987), 51 Alta. L.R. (2d) 349 (Alta. Q.B.).
17. Catechisme de l'eglise Catholique, Mame-Librairie Editrice Vaticane. Paris, 1992.
18. Congregation for the Doctrine of the Faith (1992). "Responding to Legislative Proposals on Discrimination Against Homosexuals: Revised Text." Origins, 22, (10), 173-177.
19. Constitution Act, 1867 (U.K.), 30 & 31 Vic, c. 3.
20. Coriden, J.A. (1985). "The teaching office of the church [cc. 747-783]." In Coriden, J.A., Green, T.J., Heintschel, D.E. (Eds.). (1985). The Code Of Canon Law: A Text and Commentary. New York: Paulist Press.
21. Corso v. Creighton University, 731 F. 2d 529 (8th Cir. 1984).

22. Dickinson, Gregory M., MacKay, Wayne A. (1989). Rights, Freedoms and the Education System in Canada: Cases and Materials, Toronto: Edmond Montgomery Publications Limited.
23. Donlevy, Paul R. (1993). Father Donlevy (B.A., B.Th., M.Th., B.C.L., M.C.L., J.C.L.) is the Judicial Vicar for the Saskatoon diocese of the Catholic Church. Holy Spirit parish, 114 Kingsmere Place, Saskatoon, Saskatchewan. S7J 3V7. (306) 374-1425.
24. Duke v. The Queen [1972] S.C.R. 917.
25. Durocher, R.O.M.I. (1974). "Trustee-Teacher Relations In Public Catholic Schools." Catholic Trustee, (1974) 5-8.
26. Eph. 4:11-12. In, "Teaching In A Changing World." (1986). Momentum, (Dec.), 7-19.
27. Finkelstein, Neil (1986). "Legal And constitutional Aspects Of Public Funding For Private Schools In Ontario : Appendix D to Shapiro (Commissioner), Report of the Commission on Private Schools in Ontario (1985). In Laskin's Canadian Constitutional Law (Vol. 2, Third ed). Toronto: Carswell.
28. Fish, Brian L. (1979). "Constitutional Aspects of Teacher Dismissals." Alberta Law Review, 17, 545-51.

29. Fraas, John W. (1983). Basic Concepts In Educational Research. Lanham, MD: University Press of America.
30. Galiani v. Hofstra University, 499 N.Y.S. 2d 182 (App.Div. 1986).
31. Gannon, Kathy, (December 21, 1979). Prince Albert Daily Herald.
32. Geraci v. St. Xavier High School, 13 Ohio Op. 3d 146 (1978).
33. Givan, David (1988). "Private lives and teacher discipline." The Canadian School Executive (Sept.). 3-7.
34. Golden v. Board of Education of the County of Harrison, W. Va. 285 S.E. 2d 665 at 668 (1981).
35. Hague, William (1990). "The Catholic Teacher in a Time of solidarity." Salt, 12, (1), 5-20.
36. Hayes, Sr. Mary Ann (October, 1992). "The Rights And Obligations Of Teachers: A Canon Law Perspective." A Paper presented at the 27th Annual Canadian Canon Law Convention, Toronto.
37. Hiller, Stephen D. and Casey, James T. (Eds.) (1992). The Canadian Encyclopedic Digest (Western Third Edition) Volume 11B Title 53 Toronto, Carswell.

38. Himes, Michael (1988). "The mission of the church and educational leadership." Momentum, (Feb.) 47-49.
39. Hogg, Peter W. (1982). Canada Act 1982 Annotated. Toronto: Carswell.
40. Holy See (1983). The Code Of Canon Law (English Translation) (The Canon Law Society Trust, Trans.) London: Collins Liturgical Publications. (Original work published 1983)
41. Hopkins, Kenneth D., Stanley, Julian C., Hopkins, B.R. (Eds.). (1990). Educational and Psychological Measurement and Evaluation (7th ed.). Englewood Cliffs: New Jersey.
42. Hritzuk, Eugene (1981). A Study Of The Existing And Desired Instructional Supervision Practices Of Principals In Saskatchewan Schools. Masters Thesis, University of Saskatchewan: Saskatoon Saskatchewan.
43. Human Rights Code, R.S.B.C. 1979, c. 186, s. 8.
44. John 8:7, The Jerusalem Bible (1961). Garden City, N.Y.: Doubleday & Company.
45. John XXIII (1963). "Pacem in Terris (Peace On Earth)." In Walsh, Michael and Davies, Brian (Eds.), Justice & Peace- Papal

Documents from Rerum Noarum through Centesimus Annus : Revised & Expanded North American Edition (1991), (pp. 125-155) Mystic, Connecticut: Twenty-Third Publications.

46. John Paul II (1986). "The Catholic School and Its Teachers." Origins, 16, (26), 477-479.
47. John Paul II (1987). "The Catholic School of the '80s." Origins, 17, (17), 277-281.
48. John Paul II (1989). "Christifideles laici: The lay members of Christ's faithful people." Origins, 18, (35), 561-569.
49. John Paul II (1993). "Veritatis Splendor: The Splendor of Truth." Origins, 18, (23), 297-336.
50. Kearney, Suzanne M. (1987). "Wholeness and holiness: we have a gift to share." Momentum, (Sept.), 6-8.
51. Kelly, Jack (1990). "The Mustard Seed in the Office: The Spiritual Dimension of Leadership Among Catholic High School principals." Salt, 12, (11), 39-43.
52. Kowalski, Theodore J. and Benway, Michael P. (1979). "Dismissal for Immorality". The Education Digest, (Sept. 1979). 39-41.

53. Lawton, S.B. & Wignall, R. (1989). "Denominational Cause and Employment in Religious Schools." The Alberta Journal of Educational Research, 35, (3), 189-195.
54. Lincoln, Yvonna S. , Guba, Egon G. (1985). Naturalistic Inquiry, Beverly Hills, California: SAGE Publications, Inc.
55. Lupul, Manoly R. (1974). The Roman Catholic Church and the North West School Question. University of Toronto: Toronto.
56. McCarthy v. The City of Regina et al., [1917] 1 W.W.R. 1105 (Sask. C.A.).
57. McIntyre, John P. (1989-90). Clergy And Laity (cc. 204-297) DCA 5202d. Saint Paul University, Ottawa: Faculty of Canon Law.
58. Magsino, Romulo F. (1983). "Denominational and Teacher Rights: An Update on a Recurrent Conflict." Morning Watch, 11, (1-2), 39-45.
59. Magsino, Romulo F. and Covert, James R. (1984). "Denominational Thrust in Education: Some Issues Affecting Canadian Teachers." Canadian Journal Of Education, 9, (3), 243-260.
60. Mawdsley, Ralph D. (1989). Legal Problems of Religious and Private Schools. National Organization On Legal Problems Of Education.

61. Mendonca, Augustine (1989-90). The Nature Of Canon Law: DCA 2101a. Saint Paul University, Ottawa: Faculty Of Canon Law.
62. Mendonca, A. (1991). Interecclesial Legislation: DCA 2207c. Saint Paul University, Ottawa: Faculty Of Canon Law.
63. Nicholson v. Haldimand - Norfolk Police Commrs. Bd., [1979] 88 D.L.R. (3d) 671 (S.C.C.).
64. Noonan, Brian (1979). Saskatchewan Separate Schools. Altona, Manitoba: Friesen Printers.
65. Ontario Human Rights Commission v. Etobicoke (Borough of), [1982] 1 S.C.R. 202.
66. Perry, Joseph N. (October, 1989). "Accessibility Of Due Process For The Laity." A Paper presented at The Fifty-First Annual Convention Canon Law Society Of America, Seattle, Washington.
67. Pyra, Dr. J. (1993). Professor of Educational Administration, College of Education, University of Saskatchewan. (Retired)
68. Pyra, J. and McConnell, W.H. (June 1, 1991). "Moral Cause for Dismissal of Teachers." A paper Presented at CASEA Conference: Queen's University.



69. Piux XI (1929). "Divini Illius Magistri." In Discussion Club (ed.). Seven Great Encyclicals (37-75).
70. Publisher's Editorial Staff. (1990). Black's Law Dictionary (6th ed.). St. Paul, Minn.: West Publishing Co.
71. Rahner, Karl et al. (Eds). (1968) Sacramentum Mundi: An Encyclopedia Of Theology (Vo. 4). Montreal: Palm Publishers.
72. Rahner, Karl et al. (Eds). (1968) Sacramentum Mundi: An Encyclopedia Of Theology (Vol. 5). Montreal: Palm Publishers.
73. Re Essex County Roman Catholic Separate School Board and Porter et al. (1977), O.R. (2nd) 433 (Ont. H. Ct.), aff'd (1978), 21 O.R. (2nd) 455 (Ont. C.A.).
74. Re Essex County Roman Catholic Separate School Board and Tremblay-Webster et al (1984) 45 O.R. (2d) 83 (Ont. C.A.).
75. Re Etobicoke Board of Education and OSSTF (1981), 2 L.A.C. (3rd) 265, 1982, C.C. L. 5050.
76. Reck, Sr. Carleen (1979). "What's 'Catholic' about Catholic schools?" Momentum, (Oct.), 45-49.

77. Reference re an Act to Amend the Education Act (Ontario) (1986), 53 O.R. (2nd) 514 (Ont. C.A.), aff'd (1987), 40 D.L.R. (4th) 18 (S.C.C.).
78. Regina School District v. Grattan Separate School Trustees (1914), 7 Sask. L.R. 451 (Sask. C.A.).
79. Re St. Paul's Roman Catholic Separate School District No. 20 And Canadian Union Of Public Employees et al (1982) 131 D.L.R. (3d) 739 (Sask. Q.B.).
80. Sacred Congregation for Catholic Education (1977). "Catholic Schools." In Flannery, Austin (Ed.), Vatican II More Postcounciliar Documents Vol.II (pp. 606-629). Grand Rapids, Michigan: Wm. B. Eerdsams.
81. Sacred Congregation for Catholic Education (1982). "Les Laics Catholiques: Lay Catholics In Schools: Witnesses To Faith." In Flannery, Austin (Ed.), Vatican II More Postcounciliar Documents Vo. II (pp. 630-661). Grand Rapids, Michigan: Wm. B. Eerdsams.
82. Sacred Congregation for Catholic Education (1988). "The Religious Dimension Of Education In A Catholic School." Origins, 18, (14), 213-228.
83. Saskatchewan Act, 4-5 Edw. VII, c.42.

84. Saskatchewan [Roman Catholic] Hierarchy Statement Regarding Proposed Amendments To The Human Rights Code Of The Province Of Saskatchewan Concerning Sexual Orientation. (March 22, 1992.)  
Available from, J. K. Donlevy, 1037 Osler Street, Saskatoon, Saskatchewan. S7N 0T5.
85. Sax, Gilbert (1979). Foundations of Educational Research. Englewood Cliffs, New Jersey: Prentice - Hall.
86. Sax, Gilbert (1980). Principles Of Educational And Psychological Measurement And Evaluation (2nd ed.). Belmont, California: Wadsworth Publishing Company.
87. School Act, R.S.B.C. 1979, c.375, s.122.
88. School Act, R.S.A. 1980, c.S-3 s. 89 (1), (2).
89. Shaughnessy, Mary Angela. (1988). A Primer on School Law: A Guide For Board Members in Catholic Schools Washington, D.C.: National Catholic Educational Association. (ERIC Document Reproduction Service No. ED 296 447)
90. Shewan and Shewan v. Board of School Trustees of School District No. 34 (Abbotsford) (1988), 21 B.C.L.R. (2nd) 93-100 (B.C.C.A.).

91. St. John's Evening Telegram (January, 1986). " Board Was Justified in Dismissing Teacher Who Joined Salvation Army."
92. The Education Act, R.S.O. c.129 as am. by S.O. 181 c.47, ss. 17 to 21, s.235(c).
93. The Education Act, R.S.S. 1978, Supp., c. E - 0.1.
94. The Globe and Mail, (June 19, 1986). Casagrande.
95. The Privacy Act, R.S.S. 1978, c. P-24 (as ammended).
96. The Saskatchewan Evidence Act R.S.S. 1978 c. S-16 (as ammended).
97. The Saskatchewan Human Rights Code, R.S.S. 1978, c. S-24.1, as am. by S.S. 1989-90, c.23, s.9; S.S. 1980-81, c.41,s.16; S.S. 1989-90, c.23, s.16.
98. The Saskatoon Star Phoenix, (Thursday, March 18, 1993), at A-11.
99. The Libel and Slander Act,R.S.S. 1978, c. L-14 (as ammended).
100. The Teacher Collective Bargaining Act R.S.S. 1978, c. T-4. (Repealed January 1, 1979 by The Education Act, R.S.S. 1978, Supp., c. E - 0.1.)

101. The World Book Encyclopedia (Vol.16).(1961). Chicago: Field Enterprises Educational Corporation.
102. Tiny Separate School Trustees v. The King (1927), S.C.R. 637.
103. The Catholic University of America (Eds.). (1976). New Catholic Encyclopedia (Vol. IV). Washington, D.C.: McGraw Hill.
104. The Catholic University of America (Eds.) (1976). New Catholic Encyclopedia (Vol. VII). Washington, D.C.: McGraw Hill.
105. The School Ordinance C.O., c. 75, s.1: Being Chapter 29 of, School Ordinances 1901, 4-5 Edw VII, c. 29 - 30.
106. Vatican II (1964). "Lumen Gentium: Dogmatic Constitution On The Church." In Flannery, Austin (ed.), Vatican Council II The Conciliar Documents (pp. 350-440). Collegeville, MN: Liturgical Press, 1980.
107. Vatican II (1965). "Gravissimum educationis: Declaration On Christian Education." In Flannery, Austin (ed.), Vatican Council II The Conciliar And Post Conciliar Documents (pp. 725-749). Collegeville, NM: Liturgical Press, 1980.
108. Vatican II (1965). "Gaudium et Spes: Pastoral Constitution on the Church in the Modern World." In Walsh, Michael and Davies,

Brian (Eds.), Proclaiming Justice & Peace: Papal Documents from Rerum Novarum through Centesimus Annus (pp.157-220). Mystic, Connecticut: Twenty-Third Publications, 1991.

109. Walsh and Newfoundland Teachers' Association v. Newfoundland (Treasury Board) and Federation of School Boards of Newfoundland (1988), 71 Nfld & P.E.I.R. 21 (Nfld. C.A.).
110. Webb, E.J., Campbell, D. T., Schwartz, R.D., Sechrest, L. (1966). Unobtrusive Measures. Chicago: Rand McNally.
111. Williams, Rev. J.M. (1974). "Catholic Teachers Told of Their Responsibilities." Catholic Trustee, (Dec.) 5.

APPENDIX A  
NONCONFORMITY QUESTIONNAIRE (NCQ) BOOKLET

INTRODUCTION

DEFINITION:

Denominational Nonconformity: An act or failure to act by a Catholic teacher employed by a Catholic separate school board, which is in conflict with the objective truths, beliefs, values and norms of the Catholic Church as stated by the Holy See.

The purpose of Catholic schools is to create "new creatures in Christ".<sup>1</sup> Essential to that task are Catholic teachers who, as lay ministers, participate in "...the priestly, prophetic, and kingly functions of Christ...."<sup>2</sup> and take on the fundamental task of guiding, by their knowledge of the objective spiritual truths as revealed by Jesus Christ through his Church and by their sincere faith, the student to an integration of his or her own life and

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1. Sacred Congregation for Catholic Education (1977). "Catholic Schools". In Flannery, Austin (Ed.), Vatican II More Postconciliar Documents Vol. II (at p. 607). Grand Rapids, Michigan: Wm. B. Eerdmans.

2. Sacred Congregation for Catholic Education (1982). "Les Laics Catholiques: Lay Catholics In Schools: Witnesses To Faith." In Flannery, Austin (Ed.), Vatican II More Postconciliar Documents Vol. II (at p. 632). Grand Rapids, Michigan: Wm. B. Eerdmans.

faith. This life of faith is not offered as a mere ideal to students but as a realistic goal made manifest by the Catholic teacher's faith witness. However, there are occasions when a Catholic teacher fails to live up to the religious expectations of his or her employer. On these occasions a Catholic separate school may sanction that Catholic teacher for denominational nonconformity.

The broad purpose of this study is to determine the basis and procedures for sanctioning Catholic teachers in Saskatchewan's Catholic separate schools for denominational nonconformity. In order to partially achieve this objective Part I of this questionnaire requests basic demographic information, while Part II is divided into five sections which delve into the following areas of concern: A) Evidence, B) Procedures, C) Sanctions, D) Parties, and E) Threshold.

The response options in the evidence, procedures, and sanction sections have been drafted to allow a factual response on a five point graduated scale from always to never. However, if you have had no personal experience with cases of denominational nonconformity please skip Parts II A) Evidence, B) Procedures, and C) Sanctions. The responses requested in the parties section ask that you indicate which parties, to your knowledge, have been involved with various aspects of actual cases of denominational nonconformity. Once again, if you have had no personal experience with cases of denominational nonconformity please skip Part II D) Parties. The Threshold of



Nonconformity section is designated as Part II E) and has been drafted to allow you to provide your opinion as a director of education regardless of whether or not you have yet dealt with a case of denominational nonconformity. In this Part you are provided with twenty -six (26) items and you are asked to decide if the item is or is not an example of denominational nonconformity and if it is, does it warrant dismissal, temporary suspension, a warning or no administrative action.

There are no right or wrong answers to the questionnaire questions as what are sought are your experiences and perceptions in the area of sanctioning for denominational nonconformity.

May I also state that I am not asking for, and I should not be given, information about any individual cases that would lead to identification of particular nonconformists.

Your participation in this study is greatly appreciated.

PART I  
DEMOGRAPHIC DATA

Please see NCQ Answer Sheet for the questions and responses requested.

PART II - A

EVIDENCE

Instructions:

A. Please do not do this Part unless you have had experience with actual cases of denominational nonconformity.

B. Please read each of the following statements.

C. Please circle the appropriate letter on page 2, Part II - A (EVIDENCE) on your NCQ Answer Sheet.

D. Please note that on your NCQ Answer Sheet:

- |                |               |
|----------------|---------------|
| a - represents | ALWAYS,       |
| b - represents | ALMOST ALWAYS |
| c - represents | SOMETIMES     |
| d - represents | ALMOST NEVER  |
| e - represents | NEVER         |

In my experience,

1. The complainant of an alleged act of denominational nonconformity by a Catholic teacher is required to provide a sworn, written statement to substantiate the allegation.
2. The alleged nonconformist is asked to confirm or deny the allegation.
3. If the alleged nonconformist denies the allegation there is follow-up by the school board to confirm the veracity of the denial.
4. A parent of Catholic children is a source of an allegation of teacher nonconformity.
5. A student is a source of an allegation of teacher nonconformity.
6. A teacher is a source of an allegation of a colleague's nonconformity.
7. A school administrator is a source of an allegation of a colleague's nonconformity.
8. A parish priest is a source of a an allegation of a Catholic teacher's nonconformity.

9. A member of the central school board office staff is a source of an allegation of a Catholic teacher's nonconformity.
10. The school division investigates an allegation that a Catholic teacher is an alleged nonconformist.
11. The school division interviews persons other than the alleged nonconformist regarding the evidential basis for denominational nonconformity when an allegation of nonconformity is made.
12. The school division hires private investigators to confirm or deny the allegation of nonconformity by a Catholic teacher.
13. The school division will search public documents, i.e., Church marriage records, to substantiate alleged nonconformity by a Catholic teacher.
14. A complete written record of the school board proceedings dealing with an alleged case of denominational nonconformity is kept on file by the school board.

## PART II - B

PROCEDURES

A. Please do not do this Part unless you have had experience with actual cases of denominational nonconformity.

B. Please read each of the following statements.

C. Please circle the appropriate letter on page 2, Part II - B (PROCEDURES) on your NCQ Answer Sheet.

D. Please note that on your NCQ Answer Sheet :

- a - represents ALWAYS,
- b - represents ALMOST ALWAYS
- c - represents SOMETIMES
- d - represents ALMOST NEVER
- e - represents NEVER

In my experience, Catholic teachers have the following procedural rights in cases of denominational nonconformity:

- (1) To receive oral notice that an allegation of nonconformity has been made.
- (2) To receive written notice that an allegation of nonconformity has been made.
- (3) To be informed either orally or in writing that the matter is being investigated.

- (4) To be asked to confirm or deny the allegation in person or in writing that the allegation is false.
- (5) To be given written notice that a hearing of the school board will be held on the matter with the specifics of the allegation contained in the notice.
- (6) To be invited to the hearing stated in (5) above.
- (7) To have the right at the hearing to cross-examine the person or persons making the allegations.
- (8) To have the right at the hearing to present his or her position.
- (9) To have the right to have a solicitor acting for him or her present at the hearing.
- (10) To demand that the school board not make a final decision on the matter of nonconformity or sanctions prior to having a ruling on the matter from the local bishop or his designate and until the appropriate Church appeal procedure have been exhausted.
- (11) To receive a written record of the school board proceedings dealing with their case.

**PART II - C****SANCTIONS**

A. Please do not do this Part unless you have had experience with actual cases of denominational nonconformity.

B. Please read each of the following statements.

C. Please circle the appropriate letter on page 2 Part II - C (SANCTIONS) on your NCQ Answer Sheet.

D. Please note that on your NCQ Answer Sheet:

- a - represents ALWAYS,
- b - represents ALMOST ALWAYS
- c - represents SOMETIMES
- d - represents ALMOST NEVER
- e - represents NEVER

1. When a sanction is determined by a school board to be applied in the case of denominational nonconformity, and **DISMISSAL** is determined to be **APPROPRIATE**, the Catholic school board will offer the teacher the opportunity to resign prior to being terminated.

2. When a sanction is determined by the school board to be applied in the case of denominational nonconformity, and **DISMISSAL** is determined

to be **APPROPRIATE**, the Catholic school board will offer the teacher the opportunity to receive a letter of recommendation on the teacher's teaching abilities with no comment regarding the teacher's denominational nonconformity if the teacher resigns.

3. When a sanction is determined by the school board to be applied in the case of denominational nonconformity, and **DISMISSAL** is determined to be **APPROPRIATE**, the Catholic school board will fire the teacher with no prior notice given to the teacher.

4. When a sanction is determined by the school board to be applied in the case of denominational nonconformity, but **DISMISSAL** is determined **INAPPROPRIATE**, the Catholic school board will require as a condition of continued employment that the teacher acknowledge the Magisterium's supremacy in matters of faith and morals.

5. When a sanction is determined by the school board to be applied in the case of denominational nonconformity, but **DISMISSAL** is determined **INAPPROPRIATE**, the Catholic school board will require as a condition of continued employment that the teacher recant any contra Catholic beliefs.

6. When a sanction is determined by the school board to be applied in the case of denominational nonconformity, but **DISMISSAL** is determined **INAPPROPRIATE**, the Catholic school board will require as a condition of continued employment that the teacher attend regular spiritual



counselling sessions.

7. When a sanction is determined by the school board to be applied in the case of denominational nonconformity, but **DISMISSAL** is determined **INAPPROPRIATE**, the Catholic school board will require as a condition of continued employment that the teacher become actively involved in the teacher's parish activities.

8. When a sanction is determined by the school board to be applied in the case of denominational nonconformity, but **DISMISSAL** is determined **INAPPROPRIATE**, the Catholic school board will require that the teacher make periodic representations as to the current status of the teacher's denominational conformity.

PART II - D

PARTIES

A. Please do not do this Part unless you have had experience with actual cases of denominational nonconformity.

B. In this Part of the NCQ you are asked "Based upon your experience, which of the listed parties have been involved in the nonconformity process?" There are ten (10) items and six (6) parties in this section: 1) Director of Education, 2) Nonconforming Teacher's School Principal, 3) Nonconforming Teacher's Parish Priest, 4) Local Bishop's Representative, 5) School Board's Lawyer and 6) the School Board. Please read each item listed in this Part. Then circle those horizontal "X's" under each of the parties who to your knowledge are generally involved with the nonconformity process.

B. Again, please circle the "X" under the party or parties who are involved in the process. Please respond on your NCQ Answer Sheet, page 3 Part II - D (PARTIES).

From my experience the parties marked with a circled "X" are involved with:

1. receiving an allegation of nonconformity
2. checking on the facts of the alleged nonconformity
3. preparation of the alleged nonconformist's dossier

4. the decision to proceed to a full school board meeting with the dossier
5. attendance at the school board meeting to discuss the dossier
6. informing the alleged nonconformist of the board's decision regarding the allegation
7. the hearing of the alleged nonconformist at a scheduled board meeting
8. deciding finally on the issue of nonconformity
9. deciding finally on appropriate sanction
10. if the sanction is less than dismissal, following through administratively, to determine if the sanction is having the desired affect

## PART II - E

### THRESHOLD OF NONCONFORMITY

A. In this Part of the NCQ you are asked two questions: 1) "In your opinion, is the item stated an act of denominational nonconformity? If not, circle the first "X" beside the item number on the NCQ Answer Sheet and move on to the next item." 2) "If in your opinion, the item is an act of denominational nonconformity what sanction, if any, is appropriate? Please circle the "X" under the appropriate sanction or if no sanction is called for circle the "X" under no

action.

There are twenty-six (26) separate items. There are five (5) categories: 1) Non Denominational Nonconformity, 2) Dismissal, 3) Temporary Suspension, 4) Warning, and 5) No Action. After each of the twenty-six items you are asked to circle the "X" under one of the categories.

B. The following items are offered for your consideration:

1. writing anti-Catholic material for publication
2. living in a common law relationship
3. posing nude for a magazine
4. engaging in premarital sexual intercourse
5. not regularly attending Sunday mass
6. not regularly receiving the sacraments
7. not participating in parish activities
8. publically supporting abortion on demand organizations
9. privately supporting abortion on demand organizations
10. marrying a non Catholic without the presence of a  
Catholic priest, in a civil or Protestant ceremony
11. living in a homosexual or lesbian relationship
12. Being a homosexual or lesbian
13. supporting publically the position that premarital sexual  
activity is acceptable if hygienically safe sexual  
practices are used

14. publically supporting the drinking of alcohol by students under the age of 19 years
15. being divorced by your spouse on the ground(s) of being found by a civil court to have been either mentally or physically cruel
16. lying to school authorities about one's lifestyle in order to hide the true facts
17. refusing to answer questions from school authorities regarding one's own alleged acts of denominational non-conformity
18. refusing to participate in religious activities in the school due to personal convictions
19. refusal to participate in school sponsored spiritual retreats or religious inservices
20. repeated verbal criticism, in the school, of the Church's official position on a matter of faith and/or morals
21. repeated verbal criticism, outside of school hours, of the Church's official position on a matter of faith and/or morals
22. regularly attending a male or female strip club
23. irregularly attending a male or female strip club

24. advocating to other adults in the school the use of triple x, pornographic, video tapes as sexual aids for use by married couples

25. regular attendance at non - Catholic church services to the exclusion of attending Catholic church services

26. conviction of an indictable offence contained in the Criminal Code of Canada

**THE END**

**NOTES TO RESPONDENT**

Thank you for having completed the Nonconformity Questionnaire.  
Please put your NCQ Answer Sheets in the NCQ Booklet.

## APPENDIX B

## ANSWER SHEET PAGE 1

## DEMOGRAPHIC DATA

1. Please circle the number appropriate to your response:

(a) Sex:            1. Male            2. Female

(b) Marital Status : 1. Married      2. Single      3. Divorced  
4. Re-married

2. Please write the number appropriate to your response on the line provided. Round off all responses to the nearest whole number.

(a) Years in teaching \_\_\_\_\_

(b) Cumulative years as a director of education \_\_\_\_\_

(c) Approximate number of cases of denominational nonconformity dealt with by you during your cumulative years as a director of education

## ANSWER SHEET PAGE 2

## PART II - A

## EVIDENCE

1. a. b. c. d. e.
2. a. b. c. d. e.
3. a. b. c. d. e.
4. a. b. c. d. e.
5. a. b. c. d. e.
6. a. b. c. d. e.
7. a. b. c. d. e.
8. a. b. c. d. e.
9. a. b. c. d. e.
10. a. b. c. d. e.
11. a. b. c. d. e.
12. a. b. c. d. e.
13. a. b. c. d. e.
14. a. b. c. d. e.

## PART II - B

## PROCEDURES

1. a. b. c. d. e.
2. a. b. c. d. e.
3. a. b. c. d. e.
4. a. b. c. d. e.
5. a. b. c. d. e.
6. a. b. c. d. e.
7. a. b. c. d. e.
8. a. b. c. d. e.
9. a. b. c. d. e.
10. a. b. c. d. e.
11. a. b. c. d. e.

## PART II - C

## SANCTIONS

1. a. b. c. d. e.
2. a. b. c. d. e.
3. a. b. c. d. e.
4. a. b. c. d. e.
5. a. b. c. d. e.
6. a. b. c. d. e.
7. a. b. c. d. e.
8. a. b. c. d. e.



## ANSWER SHEET PAGE 3

## PART II - D (PARTIES)

	Director of Educ.	Teacher's School Principal	Teacher's Parish Priest	Bishop's Rep.	School Board's Lawyer	School Board
1.	X	X	X	X	X	X
2.	X	X	X	X	X	X
3.	X	X	X	X	X	X
4.	X	X	X	X	X	X
5.	X	X	X	X	X	X
6.	X	X	X	X	X	X
7.	X	X	X	X	X	X
8.	X	X	X	X	X	X
9.	X	X	X	X	X	X
10.	X	X	X	X	X	X

## ANSWER SHEET PAGE 4

## PART II - E (THRESHOLD OF NONCONFORMITY)

NOT DENOMINATIONAL		TEMPORARY			
	NONCONFORMITY	DISMISSAL	SUSPENSION	WARNING	NO ACTION
1.	X	X	X	X	X
2.	X	X	X	X	X
3.	X	X	X	X	X
4.	X	X	X	X	X
5.	X	X	X	X	X
6.	X	X	X	X	X
7.	X	X	X	X	X
8.	X	X	X	X	X
9.	X	X	X	X	X
10.	X	X	X	X	X
11.	X	X	X	X	X

## ANSWER SHEET PAGE 5

## PART II - E (THRESHOLD OF NONCONFORMITY)

NOT DENOMINATIONAL		TEMPORARY			
	NONCONFORMITY	DISMISSAL	SUSPENSION	WARNING	NO ACTION
12.	X	X	X	X	X
13.	X	X	X	X	X
14.	X	X	X	X	X
15.	X	X	X	X	X
16.	X	X	X	X	X
17.	X	X	X	X	X
18.	X	X	X	X	X
19.	X	X	X	X	X
20.	X	X	X	X	X
21.	X	X	X	X	X
22.	X	X	X	X	X

## ANSWER SHEET PAGE 6

## PART II - E (THRESHOLD OF NONCONFORMITY)

NOT DENOMINATIONAL

TEMPORARY

NONCONFORMITY

DISMISSAL SUSPENSION

WARNING

NO ACTION

23.	X	X	X	X	X
24.	X	X	X	X	X
25.	X	X	X	X	X
26.	X	X	X	X	X

THE END

## APPENDIX C

## CONSENT FORM

THE REMEDIATION AND DISMISSAL OF CATHOLIC TEACHERS IN SASKATCHEWAN'S  
CATHOLIC SEPARATE SCHOOLS FOR DENOMINATIONAL NONCONFORMITY

1. I have been informed of the nature, methodology and purpose of this study.
2. I have been advised to seek approval from my employer in order to participate in this study.
3. I have been advised that I may withdraw from participating in this study at any time.
4. I have been advised by the researcher that only he and his academic advisor will see the data provided by me and further that one (1) year after the study has been completed the aforementioned data will be destroyed by the researcher.
5. I have been advised by the researcher that at my request he will provide me with a copy of the completed study at his expense.
6. I have been advised that the researcher will not ask for, and should not be given, information about any individual cases of denominational nonconformity that would lead to identification of individual nonconformists.

## CONSENT FORM PAGE TWO

7. I have agreed to participate in this study under the conditions set out above. I acknowledge that the information provided by me is accurate, and I give my permission for the researcher to use this information as data for publications related to this study.

---

Participant's Signature

---

Researcher's Signature

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 1993.

## APPENDIX D

## LETTER TO CATHOLIC DIRECTORS OF EDUCATION

Dear \_\_\_\_\_:

The shortage of Catholic clergy has revolutionized Catholic schools in that the laity have become the primary conduits for Catholic education. This change from clerical to lay professionals has resulted in many challenges to Catholic school administrators. One such challenge is the necessity, from time to time, of reminding Catholic teachers that they participate in the "priestly, prophetic, and kingly functions of Christ" and that their vocation is also a ministry. There are, however, times when sanctioning a Catholic teacher for nonconformity is required.

I am a graduate student at the University of Saskatchewan's College of Education. My research topic is, "The Remediation And Dismissal Of Catholic Teachers In Saskatchewan's Catholic Separate Schools For Denominational Nonconformity". I am asking for your assistance in the collection of data in order to examine the issues related thereto. In the latter regard, at your convenience, can you please complete the attached questionnaire? One week after having

mailed this letter to you I will phone your office to ask for an interview date and time which are convenient to you. The interview, which shall take approximately one hour, will serve two functions: 1) to follow - up on the issues addressed in the Nonconformity Questionnaire and 2) to provide you with an opportunity to return the Nonconformity Questionnaire Booklet and Answer Sheets to me.

In no event am I requesting nor should I receive information about any particular case of denominational nonconformity.

In order to assist you in deciding whether or not to participate in this study please allow me to provide you with the following relevant information.

The broad purpose of this study, as the title suggests, is to determine the basis and procedures for sanctioning Catholic teachers in Saskatchewan's Catholic separate schools for denominational nonconformity. The latter term is defined as,

Denominational nonconformity: An act or failure to act by a Catholic teacher employed by a Catholic **separate school board**, which is in conflict with the objective truths, beliefs, values and norms of the Catholic Church as stated by the Holy See.

The topic is centered upon the following questions: a) What



is the Catholic Church's officially espoused position regarding the conduct of Catholic teachers in Catholic schools, 2) What is the legal basis in civil, constitutional and canon law which supports this position, 3) What is the evidential basis commonly used for alleging denominational nonconformity, 4) What are the administrative procedures applied when denominational nonconformity is alleged, 5) What are the sanction options when denominational nonconformity is established, 6) Who are the parties involved in determining denominational nonconformity and the administrative response thereto, 7) What is the threshold of denominational nonconformity which, when reached, will cause the Catholic board of education to sanction a Catholic teacher?

The study's methodology is twofold: descriptive survey and interviews. Both methods involve the participation of the twelve Directors of Education in Saskatchewan who are both Catholic and contracted with Catholic separate school boards.

As you can see, your participation is critical to the collection of data upon which the study will be based. Hopefully, Catholic trustees, administrators and teachers will find that an examination of the above questions will be useful in the shaping of policies and the future use of this extraordinary authority granted to Catholic schools. Therefore a copy of the completed study will be provided to you upon your request at my expense.

Please be assured that as a graduate student and as a member of the Saskatchewan Law Society I am well aware of the confidentiality and privacy issues surrounding your participation in and responses to this study. I undertake to you that only my advisor and I will have access to your questionnaire and interview responses.

Given the religious nature of this study and the fact that pursuant to Canon Law they have the ultimate responsibility for Catholic education, I have, as a matter of courtesy, informed the Saskatchewan bishops and Abbot of the purpose, methodology and questions which comprise this study.

Should you wish, at any time, to contact me or my thesis advisor, Dr. J. Pyra, please feel free to do so.

Kent Donlevy (306) 933-2459

Dr. Joseph Pyra (306) 966-7631

Once again, your assistance with this study is greatly appreciated.

Yours truly,

J. Kent Donlevy

**APPENDIX E**

LETTER TO BISHOPS AND ABBOT

Your Excellency:

I am a practicing Catholic living in the City of Saskatoon and am completing my Masters of Education degree at the University of Saskatchewan.

I am writing to you today as a matter of courtesy because my proposed thesis topic examines an area within which you have great interest, Catholic education. The topic is " The Remediation and Dismissal Of Catholic Teachers In Saskatchewan's Catholic Separate Schools For Denominational Nonconformity". This topic is controversial and deals, as you are aware, in large measure with the beliefs, values and spiritual tenants of the Catholic faith, especially in the areas of faith and morals.

The broad purpose of this study, as the title suggests, is to determine the basis and procedures for sanctioning Catholic teachers in Saskatchewan's Catholic school for denominational nonconformity.

**Denominational Nonconformity: An act or failure to act by a Catholic teacher employed by a Catholic separate school board, which is in conflict with the objective truths, beliefs, values and norms of the Catholic Church as stated by the Holy See.**

This topic is centered upon the following questions: a) what

is the Catholic Church's officially espoused position regarding the conduct of Catholic teachers in Catholic schools, 2) What is the legal basis in civil, constitutional, and canon law which supports the Catholic Church's position, 3) What is the evidential basis commonly used for alleging denominational nonconformity, 4) What are the administrative procedures applied when denominational nonconformity is alleged, 5) What are the sanction options when denominational nonconformity is established, 6) Who are the parties involved in determining denominational nonconformity and the administrative response thereto, 7) What is the threshold of denominational nonconformity which when reached, will cause the Catholic board of education to sanction a Catholic teacher?

The study's methodology is twofold: descriptive survey and interviews. Both methods involve the twelve Directors of Education in Saskatchewan who are both Catholic and contracted with Catholic separate schools.

I believe that Saskatchewan's Catholic school trustees, administrators and teachers will benefit from a clarification and analysis of the above issues.

At your request, I undertake to provide your excellency with a summary of my findings at the completion of the study.

Yours truly,

J. Kent Donlevy

## APPENDIX F

This Appendix deals with the responses provided by six participating Catholic directors of education for Catholic schools who responded to the Threshold of Nonconformity section of the Nonconformity Questionnaire (NCQ) but who have not dealt with a case of nonconformity based upon a formal complaint.

### Dismissal

In the area of dismissal there was no unanimous response to the items. However, item #16 which dealt with lying to school authorities about one's lifestyle in order to hide the true facts was perceived by four of the six respondents as sufficient grounds for dismissal. Three of the respondents agreed that item #10 was sufficient for dismissal; marrying a non Catholic without the presence of a Catholic priest, in a civil or Protestant ceremony.

Two of the respondents supported the proposition that items #3, 11, 15, 17, 18 and 25 were sufficient to dismiss: posing nude for a magazine; living in a homosexual or lesbian relationship; being divorced by your spouse on the ground(s) of being found by a civil court to have been either mentally or physically cruel; refusing to answer questions from school authorities regarding one's own alleged acts of denominational nonconformity; refusing to participate in religious activities in the school due to personal convictions; regular attendance at non-Catholic church services to the exclusion of attending Catholic church services.

Only one of the respondents felt that items #12, 14, 19, 20 and 26 were sufficient to ground dismissal: being a homosexual or lesbian; publically supporting the drinking of alcohol by students under the age of 19 years; refusing to participate in school sponsored spiritual retreats or religious inservices; repeated verbal criticism, in the school, of the Church's official position on a matter of faith and/or morals. The interviews revealed that most of the respondents categorized the above actions as deserving a warning which if not heeded by the nonconformist teacher would result in dismissal or temporary suspension.

#### Temporary Suspension

The responses to the items in relation to a temporary suspension were very limited. Only two of the respondents felt that items #1, 8 and 17 were sufficient to support a temporary suspension: writing anti-Catholic material for publication; publically supporting abortion on demand organizations; refusing to answer questions from school authorities regarding one's own alleged acts of denominational nonconformity. Only one respondent felt that items 16, 19, 20 and 25 were sufficient to support a temporary suspension: lying to school authorities about one's lifestyle in order to hide the true facts; refusal to participate in school sponsored spiritual retreats or religious inservices; repeated verbal criticism, in the school, of the Church's official position on a matter of faith and/or morals; regular attendance at non-Catholic church services to the exclusion of attending Catholic church services.

### Warning

The largest number of correlations among the respondents was found in the warning section of the NCQ. All six of the respondents agreed that items #4, 9 and 13 were sufficient grounds to warn the alleged nonconformist that his or her position was in jeopardy: engaging in premarital sexual intercourse; privately supporting abortion on demand organizations; supporting publically the position that premarital sexual activity is acceptable if hygienically safe sexual practices are used. Five of the respondents felt that items #2 and 21 warranted a warning: living in a common law relationship; repeated verbal criticism, outside of school hours, of the Church's official position on a matter of faith and/or morals. Four of the respondents expressed the belief that items #1, 8, 18, 19, 20 and 24 were sufficient to warn a nonconformist that sanctioning would follow if conformity was not forthcoming: writing anti-Catholic material for publication; publically supporting abortion on demand organizations; refusing to participate in religious activities in the school due to personal convictions; refusal to participate in school sponsored spiritual retreats or religious inservices; repeated verbal criticism, in the school, of the Church's official position on a matter of faith and/or morals; advocating to other adults in the school the use of triple X, pornographic, video tapes as sexual aids for use by married couples. Three of the six respondents believed that items #3, 5, 10, 11, 14 and 25 gave grounds for a warning: engaging in premarital sexual intercourse; not regularly attending

Sunday mass; marrying a non Catholic without the presence of a Catholic priest, in a civil or Protestant ceremony; living in a homosexual or lesbian relationship; publically supporting the drinking of alcohol by students under the age of 19 years; regular attendance at non-Catholic church services to the exclusion of attending Catholic church services. Two respondents felt that items #12 and 17 warranted a warning: being a homosexual or lesbian; refusing to answer questions from school authorities regarding one's own alleged acts of denominational nonconformity. One respondent reported that with regard to item #26, conviction of an indictable offence contained in the Criminal Code, a warning should be given.

In three cases where not all of the six respondents chose to respond the following was shown: three of five respondents felt that items #22 and 23 were sufficient to warrant a warning: regularly attending a male or female strip club; irregularly attending a male or female strip club. One of five respondents reporting felt that not regularly receiving the sacraments was sufficient cause to warn a nonconformist.

#### Not Nonconformity

Three of five responding directors felt that item #7 was not an example of denominational nonconformity: not participating in parish activities. Two of six respondents felt that item #14 was not an example of denominational nonconformity: publically supporting the drinking of alcohol by students under the age of 19 years. One of six respondents felt that item #5 was not nonconformist: not regularly



attending Sunday mass. One of five respondents felt that items #6, 22, 23 and 26 were not examples of denominational nonconformity: not regularly receiving the sacraments; regularly attending a male or female strip club; irregularly attending a male or female strip club; conviction of an indictable offence contained in the Criminal Code of Canada.

#### Nonconformity Not Actionable

One respondent in six stated that items #3, 11, 16 and 21 were examples of denominational nonconformity but that no action should be taken: posing nude for a magazine; living in a homosexual relationship; lying to school authorities about one's lifestyle in order to hide the true facts; repeated verbal criticism, outside of school hours, of the Church's official position on a matter of faith and/or morals.