

**TEACHER DISCIPLINE IN BRITISH COLUMBIA:
IMPLICATIONS OF BILL 20**

by

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ABSTRACT

The purpose of the study is to determine how the teacher discipline system in British Columbia changed as a result of Bill 20, the Teaching Profession Act and Revised School Act of 1987. The nature of the discipline system both before and after Bill 20 was described and the significance of changes to the education community indicated.

Before 1987, teacher discipline was governed by a statutory model, pursuant to provisions of the School Act. The current system, a collective bargaining model, is governed by the Industrial Relations Act, 75 collective agreements, and arbitral jurisprudence. The study reviews differences in those two systems both generally, and specifically. An analysis of legislative frameworks governing teacher discipline across Canada, as well as a brief overview of the American system, allows the conclusion that the B.C. teacher discipline system is one of a kind in North America and not likely modeled after any other on the continent.

To compare the two teacher discipline systems and also to describe them in relation to theoretical concepts, the following were analyzed: (1) legal frameworks governing employer-employee relationships in general, theoretical concepts used to describe employee discipline systems, and studies of employee discipline, especially in the unionized environment and in the case of teachers, (2) decisions of all boards of reference and review commissions prior to 1988, (3) all reported B.C. teacher grievances, specifically discipline-related grievances, and arbitration awards between 1988 and 1991, (4) collective agreement provisions in effect in 1991 related to matters of teacher discipline, (5) critical arbitral jurisprudence on employee (and teacher) discipline, and (6) B.C. teacher discipline cases before 1988 which fell outside the regulated system but resulted in court decisions.

The study concluded that the previous teacher discipline system in B.C. was an inferior system, unfair and patronizing at best, but biased against teachers, and open to political manipulation at worst. Only limited teacher discipline decisions prior to changes in legislation were appealed, and even then, often to inexperienced and non-objective bodies. The current system promises to provide more regulated, predictable, and fair treatment, although more knowledge, skills, training and personnel are required to manage the system.

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ML

CHAPTER 1

INTRODUCTION

In May of 1987, Bill 20, The Teaching Profession Act and revised School Act, was forced through final, third reading in the province's legislature and became law. In overall terms Bill 20 could be said to have had five major effects: (1) It created a College of Teachers which all teachers and administrative officers were required to join and financially support; (2) It removed all reference to the British Columbia Teachers' Federation from the School Act resulting in loss of compulsory membership in that organization and removal of any formal recognition that the BCTF was the organization that represented teachers in all professional and economic matters; (3) It created a new optional bargaining structure for teachers (the 'union model' or the 'association model') and removed all bargaining rights from administrative officers; (4) It excluded principals and vice principals from membership in local bargaining units, essentially forcing them out of the BCTF; and (5) It removed from the Act many conditions of employment, forcing teachers to negotiate into local collective agreements, provisions providing for those repealed conditions.

The scope of this paper does not permit study of all five major effects of Bill 20. It examines only, in part, the last item--conditions of

employment removed from the Act. Bill 20 created a new labour relations structure for teachers, including profound changes in teacher discipline provisions. The 1987 revised School Act, under the provisions of Bill 20, provided that teacher discipline was no longer governed by School Act procedures once teacher associations became unionized. By February of 1988, all 75 teacher associations in the province had certified under the terms of the Industrial Relations Act making all forms of teacher discipline subject to collective agreements and grievance arbitration.

Prior to first collective agreements being in place in 1988, teacher suspensions, dismissals, and other forms of discipline were governed by legal frameworks set out in the School Act or Bill 20. Appeals of disciplinary actions taken against teachers were very limited as only dismissals or a suspension for "a period exceeding 10 days" could be appealed to a board of reference in the case of misconduct, or to a review commission in the case of dismissal for poor performance. Lesser forms of discipline such as reprimands, warning letters, or even a one week suspension could not be appealed, by law, beyond the level of the school board, the body which made the disciplinary decision in the first place. In fact, in 1984, even the basic and fundamental process of grievance arbitration, required in all non-teacher collective agreements in B.C., was held by the Supreme Court of B.C. (Justice Josiah Wood) to be outside "salaries and bonuses" and therefore not within the jurisdiction of interest arbitrators to award in teacher contracts. The B.C. Teachers' Federation became involved in political actions of various kinds on numerous occasions--as a later chapter will outline--in attempts to seek redress for aggrieved teachers who had no legal appeal rights under the School Act.

When first teacher agreements were ratified in 1988, discipline

became subject to the procedures of a collective bargaining regime. Currently, under labour legislation, even an evaluation report written by the principal, and believed by the teacher to have disciplinary implications, may be subject to a grievance procedure.

But the new system is also different because Bill 20 had the effect of removing administrative officers (principals and vice principals) from union ranks. These people, for the first time, find themselves involved in discipline grievance actions in a way not experienced in the past. Administrative officers (AOs) in B.C. schools are in a unique situation in Canada in this respect since in all other provinces, except Quebec, administrators (principals) are members of the teachers' union and not, therefore, official management representatives who become a focus of teacher grievance actions.

For those in the education system dealing on the front lines with teacher discipline cases, it became apparent very quickly that a new era had arrived. New procedures were immediately put in place, practitioners handling teacher discipline cases required a great deal of new information and training, and teachers had to be informed to respond in a world of labour relations with which they were unfamiliar. Collective agreements, labour law, and arbitral jurisprudence now govern the manner in which teachers can be disciplined in the province. Administrative officers in the B.C. school system and BCTF staff scrambled to equip themselves to cope in an unfamiliar labour relations culture.

Purpose of the Study

The central purpose of this study is to describe the changes in the B.C. system of teacher discipline which have occurred as a result of Bill 20 and show how that one aspect of Bill 20 has created significant

and profound change in the educational community in this province. The study provides a clear picture of what rules govern and what processes are used to deal with teacher discipline within today's labour relations regime in the public schools, as well as how such rules and processes differ from those of the past. The study also examines the B.C. teacher discipline system as it fits within a context of employee discipline systems in general, including within the context of other teacher discipline systems in North America.

The B.C. system within a context of employee discipline systems. Before the examination of the B.C. teacher discipline system is undertaken, concepts related to employee discipline in general are reviewed in order that the B.C. system can be described within an understood context. A literature review in Chapter II examines various features of employee discipline systems in general and sets out a foundation of theories, concepts, and definitions, as well as various employee discipline system models, within which teacher discipline systems might be viewed and described. The B.C. system, both as it was before Bill 20, and as it exists now, is described and analyzed in relation to these conceptual frameworks.

Chapter III examines in more depth the features of the collective bargaining regime in terms of disciplinary rules and practices in a unionized setting. For the most part, the B.C. education community has entered the industrial relations environment without notice, training, or experience. Some of the most basic rules accepted by those familiar with industrial relations management are new to this community.

To fully understand the changes that have occurred in the B.C. teacher discipline system it is also necessary to examine other teacher discipline systems. Chapter IV reviews the literature and legislation on

teacher discipline in order to answer such questions as: (1) Is the new B.C. system modeled after that found in any other province in Canada? If so, can we turn to another province for help in understanding how the B.C. system will operate? (2) What kinds of systems are used in North America in general to deal with teacher discipline? Are teachers treated in discipline matters like other employee groups? (3) What literature is available dealing with studies of teacher discipline in Canada, with categories of teacher discipline, and with results of teacher discipline appeals? How often are teacher appeals of disciplinary actions upheld or overturned? The "cross Canada" literature review undertaken in Chapter IV demonstrates the uniqueness of the B.C. teacher discipline system. That review also indicates that little has been written on the topic of teacher discipline in Canada and no major work was found dealing with the subject of the B.C. teacher discipline system in the last decade.

Examination of the B.C. teacher discipline system. This study examines the teacher discipline system in this province as it existed before Bill 20 under the School Act, and as it now exists under the Industrial Relations Act and collective agreement provisions. Relevant laws, boards of reference, review commissions, and appeal court decisions which provided the legal framework of the past, as well as laws, arbitral jurisprudence, labour relations principles, and collective agreement language which provide the legal framework at the current time are examined.

Chapter V reviews the province's legislative framework of the past and present, including the interim legislation of 1987-88. The legislation governing teacher discipline matters is contained in Appendices. There were also disciplinary actions taken against teachers

in the past that, in law, did not warrant formal appeal to a neutral third party. Teachers took various political and job actions in response to such disciplinary actions by school boards when board of reference or review commission appeal processes were not available as appeal mechanisms. Some of these "protest action" cases, described in Chapter V, further clarify the nature of the teacher "informal" discipline system which operated under the School Act before Bill 20.

Chapter VI reviews board of reference and review commission decisions to achieve four purposes: (1) A clear picture of how teacher discipline was handled in the past (before 1988) is set out and can be compared to the current system; (2) Critical precedents set out in board of reference or review commission cases which arbitrators may rely on in making future decisions are pointed out; and (3) The types of offenses which resulted in past disciplinary actions, the nature of disciplinary actions taken against teachers, and the nature of appeal decisions can all be described and categorized; and (4) A statistical record of teacher appeals provide such data as how many were successful, the male/female ratio of disciplined teachers, and characteristics of personnel involved in past appeal boards. The analysis of actual decisions provides a helpful synthesis of the formal teacher discipline system existing for three decades before Bill 20.

To examine the current teacher discipline system the actual clauses found in the 75 teacher collective agreements related to matters of teacher discipline are studied. Chapter VII examines many contract clauses outlining their typical features and describing the differences found in provisions from one district to the next. These clauses are also examined to determine how different they may be from those provisions found in the old School Act. That chapter demonstrates that there has been a fundamental change from one discipline system for all

teachers in B.C. to 75 different discipline systems based on varied collective agreement language.

Finally, Chapter VIII looks at the new teacher discipline system in B.C. in terms of the nature of the teacher grievance system, and the nature of disciplinary grievances in particular. Teachers and school boards are now dealing with grievances on a regular basis. The chapter examines these grievances to determine how these cases compare to those pre-Bill 20 teacher discipline cases reviewed by appeal bodies of the past. The chapter demonstrates that a new and more complex era of teacher discipline is in operation and that the system has changed in a significant manner. School boards are now handling on a routine basis teacher grievances concerning alleged unfair reprimands, unsatisfactory evaluation reports, and short suspensions with which they did not deal in the past. Some discipline cases now being sent to arbitration could not have been appealed before 1988.

CONCLUSION

This study examines the B.C. teacher discipline system within a relevant context and provides findings of interest to teachers, school district administrators, and labour relations practitioners. The study provides the only existing comprehensive analysis of the B.C. teacher discipline system, and how it has changed, and includes a summary of all employer-initiated teacher discipline cases appealed over a thirty year period to the end of 1991.

Findings in this study are compared to results of other studies of employee discipline to demonstrate the questionable nature of the pre-Bill 20 system for teachers. The past system is shown to have provided an inferior appeal mechanism for B.C. teachers. It is demonstrated

from the data produced that teachers did not get fair treatment under the previous discipline system.

The teacher discipline system in the new unionized environment is too new to allow firm conclusions to be drawn concerning its fairness to teachers. However, there is sufficient data provided in Chapter VIII after three years under the new regime to indicate trends. It is clear that teachers are now subject to the same processes other workers are subject to. Such a situation promises to improve considerably the ability of teachers to appeal allegations of unfair treatment and to get fair hearings and receive objective decisions.

This thesis answers these questions: (1) How can the B.C. teacher discipline system be compared to other discipline systems, including other teacher discipline systems? (2) What is, and what has been, the legal framework governing the discipline and dismissal of B.C. teachers both before and after Bill 20? (3) What discipline processes were followed before 1989 and what were the results of these processes? (4) What discipline processes are required under collective agreements, labour law, and arbitral jurisprudence today, and what have been the results of arbitration cases reported? (5) What is the statistical record of past disciplinary actions against teachers in this province? and (6) What teacher discipline cases have been reported under the industrial relations system since 1989?

CHAPTER II

FEATURES OF EMPLOYEE DISCIPLINE SYSTEMS: A LITERATURE REVIEW

This chapter establishes a foundation of theoretical concepts which define employee discipline issues and views employee discipline within the wider labour relations context. The chapter is divided into four sections: The first looks at the more general definitions underpinning concepts of employee discipline; the second deals with theories of employee discipline; the third sets out four systems within which employee discipline takes place; and the fourth reviews critical features of a discipline system.

SECTION 1: WHAT IS EMPLOYEE DISCIPLINE?

In this first section, the central questions examined are: What is the definition of employee discipline? How can disciplinary action be defined? and How can employee discipline be viewed, understood, or described? It is useful to examine central concepts typically understood by practitioners in the field of employee discipline and to determine those

definitions most useful to this study.

A. A Definition of Employee Discipline

Three different ways of looking at the concept of employee discipline, with a view to giving the term definition, can be found in the literature. Employee discipline can be described in terms of providing a definition of the employer-employee relationship, as self-regulation by the employees, or as one element within the broader industrial relations institutional framework.

Discipline in terms of the employer-employee relationship. One labour relations practitioner believes that how employee discipline is handled becomes the critical factor in determining the nature of the employer-employee relationship in the workplace:

Nowhere is the nature of the relationship between an employer and an employee so dependent on clear understandings than in matters having to do with discipline. It is through discipline that the employer forcefully establishes the limits of its expectations and reacts to what it believes are failures of the employees to conduct themselves in accordance with those expectations. By the same token, the employee's response to discipline gives the employer certain knowledge of the employees' beliefs as to the extent and nature of their rights and responsibilities and of their willingness to fulfill the employer's expectations. It is in this atmosphere of action and reaction that employers and employees define for each other the nature of their relationship... . The primary action tool for an employer is discipline. How it is used may determine whether the employment relationship will be positive or negative (Redecker,1989:3).

In this context then, employee discipline can be defined as one of the fundamental tools in establishing a workplace environment.

Discipline as self regulation. Employee discipline in this second context, is defined as the extent to which employees are self-disciplined or self-regulated due to their high level of commitment and motivation

within a workplace. When viewing employee discipline in this manner "the external imposition of disciplinary action need only occur where discipline, in this former sense, has broken down" (Adams,G.,1979:5). In this context, disciplinary action constitutes steps taken to enforce conformity to established rules in the workplace to which "disciplined workers" adhere. Looking at discipline in this fashion then, dictates that the terms "discipline" and "disciplinary action" be given quite different and distinct meanings. In workplaces where the workforce is especially productive, the word "discipline" can be used as "an adjective to describe the state-of-being of the workforce, or the character of the work environment" as in a disciplined workforce (Redeker,1989:4). Redecker discusses the difference in concept between philosophies of "I will discipline you" and "I expect you to be disciplined".

Discipline as one element within the industrial relations institutional framework. Another way to look at employee discipline is to see where it fits within the wider context or within "the institutional framework of industrial relations" (Kochan, Katz, and McKersie, 1986:17). These authors claim their three level, three-tiered framework is based on "the key premise that industrial relations' processes and outcomes are determined by a continuously evolving interaction of environmental pressures and organizational responses" and that "choice and discretion on the part of labor, management, and government affect the course and structure of industrial relations systems"(13). They claim their three level, three-tiered framework, included below, provides the broad conception desired and illustrates how effects of higher level activities or decisions can explain behaviour and outcomes at a lower level or tier. For example, to take the issue of teacher discipline in B.C., the model allows one to see how government policy changes at the top

level (giving teachers full collective bargaining rights), led to further

Three Levels of Industrial Relations Activity

Level	Employers	Unions	Government
Long-term strategy and Policy Making	Business strategies Investment strategies Human Resource strategies	Political strategies representation strategies Organizing strategies	Macroeconomic and political policies
Collective Barg. and Personnel Policy	Personnel Policies Negotiations Strategies	Collective Bargaining strategies	Labor Law and Administration
Workplace and Individual Organization Relationships	Supervisory Style Worker Participation Job Design and Work organization	Contract Administration Worker participation Job design and work Organization	Labor Standards Worker participation and individual rights

(Kochan, Katz, McKersie:17)

changes in the second tier at the government level in terms of adopting new School Act provisions, which in turn had an impact on employers (school boards) and the union (BCTF and local associations) in other levels and tiers of action. The revised system of dealing with teacher discipline is manifested at all three levels and in the three tiers of the model. The model could be used, the authors claim, to identify "apparent inconsistencies and internal contradictions in strategies and practices occurring at different levels". They believe their framework "encourages analysis of the roles that labor, management, and government play in each other's domain and activities" (19).

B. A Definition of Disciplinary Action

A disciplinary action may be defined both in terms of what it is and what it is not. Because employee terminations arise in non-disciplinary

contexts, it is necessary to determine which terminations constitute disciplinary action and which do not. Different rules will apply in either case (Zack and Bloch,1983:138). Of the three objective reasons for terminating the services of an employee, only one can legitimately be defined as grounds for taking disciplinary action. Termination of employees can occur "where the services of the employee are no longer required; where the employee quits or does not return to work; or where the employer is justified in discharge due to conduct" (Willes,1976:4). Several authors emphasize that a reduction in workforce (layoff) is not discipline, and that only the third reason given above constitutes disciplinary action (Willes,1976:4; Zack and Bloch,1983:138; and Paterson and Deblieux,1988:78).

Brown and Beatty state that traditionally "the essence of a disciplinary sanction lay in its potentially negative impact on the employee's work record" (1988:7-155). Disciplinary action then, as distinct from employee discipline, is an action taken by the employer against the employee to enforce conformity with employer expectations. This action may be a termination or any lesser form of action which reflects negatively on the employee's record. A layoff, however, is not a disciplinary action.

SECTION 2: THEORIES OF DISCIPLINE

Theories of employee discipline found in the literature can be categorized under two general headings: (1) theories based on the relative weight given to the rights of individuals versus the rights of management or the organization, and (2) theories based on the style of application of disciplinary actions. The four theories discussed below have been categorized in this manner.

A. Theories Based on the Relative Weight of the Rights of Individuals v. Rights of Management

Two theories found in the literature, Phelps' theory and the Coye and Belohav theory, are similar in that each describes employee discipline models in terms of philosophies or viewpoints, and each sees three ways to view or evaluate discipline based on models developed in relation to various management theories. Each sees three "viewpoints" in terms of the relative weight given to the rights of employees versus the rights of management or the organization.

Phelps' theory. In Phelps (1959) view, employee discipline can be described as adhering to one of "basically three philosophies... depending on one's view of the relative weight to be given the rights of individuals versus the needs of the organization"--authoritarian, anarchic, or discipline by due process. The authoritarian philosophy of discipline occurs in its pure form when "both judgment and execution are by the responsible authority, with no provision for appeal--or at most only personal and exceptional arrangements are made for review" (1). The prime requirement of the employee in this view is to be obedient. In the "anarchic", or second philosophy of discipline, the rights of the individual are supreme. This means the conduct of the subordinate is self-determined, "...the responsible authority in such circumstances either permits free choice by subordinates as a matter of policy or has insufficient power to enforce his rulings, with the result that they are challenged at will" (2). The third and intermediate position, 'discipline by due process', "is based on a body of recognized rules and is administered under some form of juridical procedure". The key factor in this due process model is "formality and publicity" (3). He goes on to outline the concepts of due process which he advocates.

Phelps' theoretical framework of three discipline systems--authoritarian, anarchic, and due process--is perhaps overly simplified if the pure forms only are imagined. Put on a continuum, however, his concepts are useful in providing a measuring device in discipline system evaluation. To what extent are the rights of the individual employee given consideration? Where on such a continuum would the system under study fit? Where on such a continuum would two systems fit in relation to each other?

The Coye and Belohav theory. The theory by Coye and Belohav, hypothesizes that discipline can be linked with ethics and that "three viewpoints" will then be identified which describe discipline in organizations (1989:156-61). The first viewpoint, "disciplinary perspective", is based on the Frederick Taylor model of scientifically selected, developed, and managed workers. If employees cannot perform, it is due to a lack of self-discipline, and they are fired. The organization as a whole is seen as more important than the cost represented by the exit of one worker. In this model the rights of employees are given little or no weight. The second viewpoint, the "adjustment approach", based on the Lillian Gilbreth psychological school, proposes that management look for causes and motives behind worker infractions. Identified abuses of human rights are said to be the force behind this movement. The authors claim the theory of "progressive discipline" is an outgrowth of this line of thinking. A great deal of weight is given to individual rights in this second model. The third viewpoint, the "integrative focus", grew out of the work of Chester Barnard and Mary Parker Follet and is a broader perspective whereby the individual worker is thought to be in need of internal and external adjustment to the organization. The individual's goals should not necessarily be seen as being in

conflict with the goals of the organization. This third "viewpoint" attempts to find a middle ground in terms of weight given either to the individual employee or to management and the organization.

B. Theories Based On Style of Application of Disciplinary Actions

The theories of employee discipline described by both Redecker and by Zack and Bloch involve descriptions based on the type of processes used in a workplace to apply disciplinary sanctions.

The Redecker theory. Redecker's theory says there are two possible types of employee discipline found in the workplace: punitive and nonpunitive. "The traditional or punitive approach to discipline is a system of ever-increasing penalties"... the goal being "to force employees to comply with the employer's rules and policies" (1989:73-80). He is highly critical of the punitive approach which he claims "does not stimulate a desire to achieve",... spotlights problem employees", and is "destructive to employee's feelings of self-worth". He denigrates progressive discipline, the "primary tool of all punitive systems" as being "adversarial", and claims the only reward for an employee in such a system lies in "not being subject to more discipline". The system does not work, he claims, because "supervisors don't like it and resist doing it". He believes white-collar employees are "too sophisticated or responsible to be threatened with punishment", and that supervisors, feeling demeaned in such an environment, simply give up and do not discipline at all.

Redecker is an ardent advocate of "nonpunitive" discipline which he describes as that in operation at Union Carbide, Shell Oil, Exxon, AT&T, General Electric, and Amoco (81-84). In such systems the "emphasis is

placed on employer-employee responsibilities." Attention is focussed on problems, not on employees, and on the future, not on the past. Key features of the system are encouragement, positive reinforcement, job retention, and cooperation. "The direction of the employer-employee relationship is horizontal--adult-to-adult--not downward as in a parent and child relationship." He provides a comprehensive outline as to how such a system should work in practice, the key feature being supervisor-employee "conferences", where together they outline the problem and plan a solution they are both responsible for implementing. Employees, with problems, may face the ultimate "decision day" however, when they must consider whether they wish to continue present employment. The employee must either commit himself or his employment is terminated. "The choice is his. The employer is not doing anything to him"(90).

The Zack and Bloch theory. Finally, in the work by Zack and Bloch (1983: 145-58), the authors look at discipline in terms of three types of management response, "immediate discharge", "progressive discipline", or "some other action", each occasioned by one of three categories of disciplinary offences. The first category of offences include acts defined as being "seriously offensive" or "destructive of the employment relationship", and are referred to as the "cardinal violations" which give grounds for immediate discharge. Theft, fighting with a supervisor, or falsification of employment information, are listed in this category.

The second category of offences, such as insubordination, arise because employees are "wrong solely because of prescriptive rules". The authors claim the precepts of "progressive discipline", whether explicitly set forth in a labour agreement or not, are readily applied in this area (155).

A third category, referred to as "other offenses," includes events which, do not readily fit into the normal disciplinary context and may not be categorized as reflecting "fault" on the part of the employee. Excessive absenteeism for bona fide reasons, or poor workmanship, for example, raise problems for employers to deal with in various creative ways. "Absenteeism because of bona fide illness,...alcohol and drug addiction, may not be readily classified among the general run-of-the-mill disciplinary events; ...suspending a person or imposing discipline of one type or another will hardly cure a disability or illness (158)."

Summary of theories. The four theoretical frameworks which clarify concepts concerning employee discipline then, fall into two categories outlined above. The theory either looks at employee discipline in terms of categories of philosophies concerning the relative weight of rights given to individual employees versus rights of the employer in the workplace, or the theory looks at how specific disciplinary actions by employers can be categorized.

SECTION 3: LEGAL FRAMEWORKS GOVERNING EMPLOYEE DISCIPLINE

Employee discipline can occur within any one of three general legal frameworks governing the employer-employee relationship: [1] a relationship governed by the common law of master and servant, [2] a relationship bound by statute, or [3] a collective bargaining relationship. Willes (1976), Adams (1979), Harris (1980), Paterson and Deblieu (1988), and Adams, Adell, and Wheeler (1990), all focus their discussions of employee discipline system concepts in relation to the particular legal framework governing the employer-employee relationship in effect. The critical issue for them becomes whether or

not the relationship is a master-servant one, subject to common law principles; whether it is governed by some employment statute, or whether it is a collective bargaining relationship. Different rules will apply in disciplinary cases, they point out, depending on the legal framework. A brief description of each of the three legal frameworks follows. The collective bargaining relationship is dealt with in more detail in Chapter III.

A. Discipline Within the Relationship Governed By The Common Law of Master and Servant

George Adams (1979) provides the best summary of features of the employer-employee relationship under the Canadian law of master and servant. He states that within this legal framework is found "inadequate protection accorded to employee interests". The courts allow dismissal, without notice, for a broad spectrum of employee actions including misconduct with "distinctions not made between different types" and without a requirement for cause. Intermediate steps--reprimand or suspension--are seen to be not relevant. There is "a single minded pursuit of the employer's interest", with employers not required to provide an employee with reasons or justification for a dismissal. There is "no protection against arbitrary dismissal". Reasonable notice, however, is required and employees dismissed without cause and without notice are entitled to compensation for the proper period of notice only. An employee under master and servant law has no contractual right to a job and there is a "complete failure to tailor solutions to both the nature of the misconduct and the individual employee involved" (8-11).

The court (Justice Monnin) in Aitken v Frontier School Division, 1983-85, a Manitoba teacher dismissal decision, explained employee discipline procedures under common law:

Under the common law an employer can dismiss an employee for any reason the employer thinks proper--or indeed, for no reason at all. The sole issues which arise are the extent of the notice to which the employee is entitled, or the amount of payment in lieu of notice. The common law of the employer is often circumscribed by collective agreements, individual employment contracts, human rights legislation...or other statutory restrictions. The exercise of the common law right to terminate an employee's services is not a judicial or quasi-judicial function, and it does not normally involve concepts of procedural fairness or natural justice (cited in Czuboka, 1985:188).

Within the common law then, there is an unrestricted right of employers to discipline (Baer, 1972: 6), employees have no access to an internal appeal process, cannot expect to have a disciplinary penalty reduced, and cannot expect to get his/her job back. Harris (1980) points out that "traditionally, [under Canadian common law] the finding of cause in favour of the employer within an action alleging wrongful dismissal has led to the single conclusion that the employee has failed to prove his entitlement to reasonable notice of the termination, thus depriving him of any damage claim" (63).

The key difference between American and Canadian common law principles is that in the United States, the employer may terminate "employment-at-will" or common law contracts without notice or reason, whereas, in Canada, there must be "reasonable notice" unless the other party's conduct gives cause for termination (Adams, Adell and Wheeler,1990:597). But changes have taken place in the American common law concept of employee discipline. "Two events have significantly eroded an employer's ability to fire an employee: a dramatic increase in protective legislation", and employees' wrongful dismissal actions which have won large awards from employers (Paterson and Deblieux,1988:77).

Another American author explains how "dissatisfaction with management's inequitable treatment of employees" under common law principles, resulted in unjust discipline becoming one of the "prime

stimuli for unionization" (Zack,1989:19-02). Zack claims that under a collective bargaining regime "protection against unjust discipline or discharge was given to unionized employees with little effect upon unorganized employees".

B. Discipline Within a Relationship Bound by Statute Law

It is this context of an employment relationship governed by a specific statute, that this paper will look more closely at in Chapter VI. The discipline system for B.C. teachers under provisions of the pre-Bill 20 School Act falls within this second model of employment relationship. In a "statute law" legal framework, the employment relationship depends on the interpretation of the Act in question. A statute such as the School Act creates administrative bodies (school boards) to which are delegated the authority, by the provincial government, to make administrative decisions. School boards then, are characterized as having a "judicial" or a "quasi-judicial" function and required to follow the rules of natural justice or due process in terms of dealing with employees in disciplinary matters (G. Gall, 1977:261).

Under statute law only the courts may enforce an authoritative interpretation, and therefore, any appeals from decisions of such administrative bodies as school boards are heard by the courts. In an employment relationship then, where a statute law governs, the common law may apply in a particular instance when the statute law does not happen to cover (Nicholls, 1981:26). A problem of jurisdictional uncertainty may occur which can only be resolved by the courts. In some instances, disciplinary decisions and decision-making processes of a school board may reflect those found in common law, and in others, more like those found in a collective bargaining regime.

The relationship created by a particular statute can only be defined by examining various aspects of the statute itself and any court rulings concerning decisions made by administrative bodies under the statute. When the rights of an individual are affected by the decisions of such an administrative tribunal, the tribunal's decision may be reviewed or even quashed by the courts. Later in this paper some teacher discipline cases that were quashed by the courts, under the Judicial Review Procedure Act, because school boards did not adhere to the principles of natural justice in dealing with teachers, are reviewed.

C. Discipline Within the Collective Bargaining Relationship

Chapter III of this paper examines in a more detailed fashion the nature of the collective bargaining relationship, or industrial relations environment. In this section only a brief overview is given to illustrate the essential distinction between the employee discipline system in a collective bargaining relationship as compared with the two systems outlined above.

Phelps (1959) introduces his book, Discipline and Discharge in the Unionized Firm, with this opening statement: "In no aspect of personnel relations has the impact of unionization been more pronounced than in matters relating to the discipline and discharge of employees." In the same vein Willes (1976) states "the rules or laws that apply to union and non-union settings often differ substantially, and perhaps in no area is this more evident than in the area of discharge and discipline" (1).

Unlike in the two legal systems outlined above, three parties are involved in the collective bargaining relationship--the union, the employer, and the employee. The employment relationship, in terms of how employee discipline must be handled, is outlined in a labour statute,

which in B.C. is the Industrial Relations Act R.S.B.C., 1979 c. 212. In addition, negotiated terms and conditions, which must be in writing and must be signed by both parties, also apply. This negotiated collective agreement is required to provide a third party arbitration mechanism rather than the courts as a means of resolving differences (section 93). Management in B.C. may discipline or discharge only for "just cause", in accordance with section 93 of the Industrial Relations Act, and any arbitrator reviewing a disciplinary decision will get to "the real substance of the matters" (section 92) in determining if the employer acted properly in dealing with the employee.

Arbitrators have extensive powers, such as the power to reinstate or vary the penalty (section 98), and their decisions are final and binding (section 104). Brown and Beatty (1988) suggest that a collective bargaining regime also gives options to employers in that "prior to ...collective bargaining, and the wide-spread inclusion of 'just cause for discipline', the right of an employer to discipline its employees was governed by common law principles; ...the employer's disciplinary sanctions were limited to severing the employment relationship either for cause or, in the absence of cause, upon proper and reasonable notice" (p. 7-1).

One of the basic purposes of a collective bargaining agreement is to modify the employer's disciplinary power under the common law, and require the employer to deal justly with all employees when taking disciplinary action (Baer,1972:6). The standard under collective bargaining in both the U.S. and Canada is that employers are forbidden to dismiss without 'just cause' (Adams, Adel, and Wheeler,1990:598). The collective bargaining relationship introduces the notion of a continuing relationship, or of an expectation of tenure, and penalties other than dismissal are preferred in order to "rehabilitate" the employee

and thus the continuing nature of the employment relationship.

An excellent summary of this issue was written by Nancy Morrison, Vice-Chair of the Labour Relations Board in the 1976 Hiram Walker decision:

The recent decision of the Labour Relations Board in Simon Fraser University and the Association of University and College Employees, Local 2, 16/76, explored the mandate and guidance now given to a Board under this section of the Code. Such a Board need not be "diverted" by "legal rules drawn from the common law of contracts or the relationship of master and servant" (page 10).

Thus, it should be clear now that the historical and common law position has been altered radically. We are no longer talking in terms of traditional master-servant relationships, where an employee had no expectation of tenure, let alone fringe benefits of employment such as health and welfare plans, seniority, grievance and arbitration procedures available, etc. The reasoning of Mr. Justice Laskin in the Court of Appeal decision in the Port Arthur Shipbuilding case has now been translated into statute law under the B.C. Labour Code. Now, an employee does have tenure, and rights, and in the event of discharge, each case must be looked at in relation to the particular collective agreement in existence between the parties, and all the other factors having to do with that person's employment.

Under collective agreements today, a different environment exists; there is a continuing relationship, where an employee has an expectation of continued employment. The old common law position no longer applies to situations where collective agreements are in existence (cited in Bird: 1977:73).

SECTION 4: SOME CENTRAL FEATURES OF DISCIPLINE SYSTEMS

In this last section of this chapter, four central features of a discipline system are examined. The first three relate to a fundamental procedural question in terms of employee discipline. What is the process? A fair process for individual employees involves the application of (1) principles of natural justice, (2) just cause requirements before disciplinary action is taken, and (3) discipline applied in a progressive manner. The extent to which such fair procedures are absent will situate the discipline system under study on the theoretical continuum toward the authoritarian model. The extent to which principles of natural justice, just cause, and

progressive discipline are upheld, provide an evaluation yardstick of a discipline system. The categories of discipline used to explain or describe a discipline system, is a fourth fundamental feature discussed in this section. A number of categorization systems are outlined which assist in viewing B.C. teacher discipline cases.

A. The Concept of Natural Justice or Due Process

Natural justice is said to be founded on natural law which "represents what the law would be if equality for all men, and justice between them, were the prime considerations of society" (Nicholls, 1981:26). A body of principles known as natural justice, or 'due process' in the United States, has developed which apply in at least two of the discipline systems outlined above. In either a collective bargaining relationship, or in many circumstances within a system governed by statute law, these principles are applicable. The extent to which natural justice is legally required to be provided to employees in a disciplinary system by the employer, becomes a major feature of that discipline system and one critical way of evaluating it.

Rules of natural justice. There are two fundamental rules of natural justice or due process, under which there are many sub-rules (G. Gall,1977:265). The first rule (*audi alteram partem*) is a requirement that there be a fair hearing, including such sub-rules as the requirement of notice, time to prepare a case, the right to be represented, the right to rebut the other side's evidence, and the right to cross-examine witnesses. The second rule (*nemo iudex in sua causa*) requires that there be an absence of bias.

Black's Law Dictionary (1990) states "due process of law implies the

right of the person affected thereby to be present before the tribunal which pronounces judgment upon..[one, and to]..have the right of controverting, by proof, every material fact which bears on the question of right in the matter...". Six requisites of any system of due process have been identified: "The first requisite of due process is notice of the standards set by the employer and the effects of violating them"; the second is that "the charge be factually accurate"; the third requires that "the employee be allowed to know all of the facts of the charge against him or her"; the fourth involves an employee's ability to raise a defense at a hearing; the fifth is that "a credible grievance or dispute resolution procedure" be provided; and finally, "due process requires that employees have the right to appeal disciplinary actions to an impartial decision maker or body" (Redeker,1989:61-69).

Natural justice in the collective bargaining regime. Within the context of a collective bargaining relationship arbitrators are "committed to due process" but "demonstrate their desire for a procedure that meets the dictates of fair play without slavish adherence to the legalisms that bedevil judicial proceedings" (Zack,1989:19-6). Munroe (1978), Chairman of the B.C. Labour Relations Board, presented a paper to a Continuing Legal Education Conference, in which he discusses the notion of natural justice within the B.C. context. He explains how the B.C. Labour Code amendments of 1975 had the effect of expelling the courts, judges, and such legal concepts of the common law as the "parol evidence rule" allowing arbitrators to dispense natural justice without being "tied up in legal knots". For example, they can determine when extrinsic evidence will be admitted and considered. However, collective agreement language may have the effect of 'giving away' certain rights to natural justice the employee might otherwise have.

What elements of natural justice are present in an arbitration within the industrial relations framework? Five can be listed: First, the arbitrator must "determine the reasonableness of the [employer's] rules"; second, s/he must see to it that "notice has been provided to the employee of the charges leveled against him or her"; third, a "fair hearing must be conducted", where the grievor is given a right to "confront and cross-examine the accuser"; fourth, hearsay evidence must not form the basis of critical decisions; and fifth, the "burden of proof in discipline cases requires the employer to prove "its action was for just cause (Zack, 1989:19-7). Arbitrators may also be concerned with whether there has been administrative natural justice or due process in the handling of the discipline and the processing of the grievance.

B. The Concept of Just Cause

'Just cause' refers to the substantive nature of the actual grounds cited by the employer for taking disciplinary action against an employee. The employer must have 'just cause' for taking disciplinary action against an employee in accordance with the law in the collective bargaining setting in B.C. In the other discipline systems described above that same type of requirement does not exist. In a common law of master and servant relationship the employer may dismiss without cause. As long as notice has been provided in that system, the employee has no recourse. In a relationship under statute law there may, or may not, be a requirement for just cause, or the requirement may apply in some disciplinary actions but not in others. Until the particular relationship and law in question is examined, the question is open. Chapter VI will examine the extent to which the School Act provisions of the pre-Bill 20 era provided a system of just cause procedures for B.C. teachers.

Adams (1979) claims the original purpose of a just cause requirement was to "provide the kind of job security employees lacked at common law"(12). Brown and Beatty (1988) state:

...most collective agreements fetter an employer's right to discipline its employees by expressly requiring it to prove that it had just or reasonable cause for the discipline it imposed. Arbitrators are agreed that to satisfy this standard in instances of dismissal an employer must affirmatively establish that as a result of some misconduct or disability the grievor has demonstrated his incompatibility or has seriously prejudiced or injured the reputation or some other legitimate interest of the employer (7-23).

Brown and Beatty also point out that there may be a statutory 'just cause' requirement, as indeed there is in the B.C. Industrial Relations Act, (section 93), and that such a requirement forces an arbitrator to evaluate not only the basis for discipline, but also the justness and reasonableness of the penalty applied (p.7-5).

A highly respected American arbitrator, Harry H. Platt is often quoted as saying that the best way for arbitrators to determine what 'just cause' means is to

"...decide what reasonable men, mindful of the habits and customs of industrial life and of the standards of justice and fair dealing prevalent in the community, ought to have done under similar circumstances and in that light to decide whether the conduct of the discharged employee was defensible and the disciplinary penalty just" (cited in Baer, 1972:28).

Zack claims one component of just cause requires an examination of the relationship between the infraction and the employee's job performance and that another "extends to the determination of what remedy is appropriate to return the employee to the position that he or she would have occupied but for the penalty improperly imposed by the employer" (1989:19-13).

C. The Concept Of Progressive or Corrective Discipline

A third critical feature of a discipline system which can serve as a measure to evaluate that system is the extent to which the principles of progressive or corrective discipline are upheld or applied. A system which places value on employee tenure will give employees a second chance in the event of some transgression. In the common law relationship, the concept of progressive discipline is absent. In a relationship established under a specific statute the concept may, or may not be implemented. Within the collective bargaining regime the principle is firmly adhered to. Krashinsky and Sack explain the doctrine of progressive discipline:

...disciplinary penalties ought to be progressive in nature, since the purpose of industrial discipline is to correct misconduct and restore a viable employment relationship. While there are no hard and fast rules, many employers begin with a verbal warning and, if there is further misconduct, proceed to a written warning; if the employee's misconduct continues, a one-day suspension may be issued, followed by a three-day suspension, and then a longer period of suspension. A final warning is usually given before discharge. This does not mean that, in a serious case, discharge cannot be immediately imposed, but ordinarily discharge is regarded by arbitrators as a measure of last resort (1989:5).

Rehabilitation and corrective discipline. A number of authors associate the concepts of rehabilitation and correction with the concept of progressive discipline. Zack appears to use the terms corrective discipline and progressive discipline as though they are synonymous. With regard to corrective discipline he says

...through escalated penalties, [corrective discipline] opens the door to rehabilitation and the opportunity to restore [the employee's] standing and continue his employment. For the employer, providing the opportunity for an employee to profit from discipline by reforming his behavior also brings benefits (1989:19-12).

Redecker does not approve of progressive discipline, which he calls a punitive system, and instead advocates rehabilitation which he regards as a positive aspect of the non-punitive discipline system (1989:56).

Bruce Young says there are three themes of modern punishment in industrial jurisprudence: rehabilitation, correction, and individualization, and that of these three themes "the corrective aspect is the paramount one" (1978:36). While some would claim rehabilitation has no place at all in industrial discipline, he says, recent efforts to deal with alcoholism in the work force would attest to the fact that "close parallels can be drawn between such correctional themes and industrial discipline".

George Adams (1979:27) talks of the concept of corrective discipline as being punishment that is "tailored to allow the offender to learn from his mistake". It is also sensitive to the fact that "an employer usually has to spend money in recruiting employees, and, following recruitment, must bear training costs". He makes much of a leading decision by Prof. Arthurs in Canadian Carborundum Co. Ltd., (1973) 5 L.A.C. (2d) 29.

He quotes Arthurs:

In light of all of these circumstances, we must ask ourselves whether the imposition of the penalty of discharge upon the grievor serves any useful purpose. Modern correctional theory provides us with at least three bases for evaluating the appropriateness of the penalty imposed: reformation, deterrence, or punishment.

As to reformation, it can hardly be said that the grievor is being "reformed" if his relationship with the company is severed. So far as the company is concerned, he has ceased to exist.

As a deterrent to other employees, we do not believe that the discharge of the grievor was either necessary or effective. Employees would equally have been put on notice of their probable fate for the use of physical or verbal abuse if the grievor had been merely subjected to significant suspension. More importantly, we do not believe that isolated and unmediated outbursts of this kind are likely to be discouraged by the imposition of penalties. Almost by definition, an employee will not engage in this kind of conduct unless he loses his head. If an employee is so angry that he does this, he is unlikely to ponder plant rules, to address himself to the example represented by the fate of the grievor. For employees who might be so minded, it will suffice if we announce in this award that any future outbreak of violence may be dealt with much more severely, and that employees are now deemed to be put on notice that they must not have

recourse to such methods as were used by the grievor in order to assert what they claim to be their legitimate interests. And, finally, to place this matter in perspective, it must be remembered that even in the absence of a precedent, or specific rule outlawing violence, employees have managed to conduct their daily dealings with supervision without recourse to physical abuse (1979:31-2).

The progressive discipline process. Adams' discussion, along with the other sources, indicates that arbitrators may take any one of several approaches to the concept of progressive discipline, but makes it clear that under a collective bargaining regime and industrial relations law, there is to be no element of surprise in terms of disciplinary action. An employee should normally be warned (first verbally and then in writing), and then suspended (first for a short period and then a longer one), before a discharge will be upheld--except in unusual cases. Some arbitrators may take a rehabilitative approach and others will not. But as Adams states, any one of these approaches, corrective or rehabilitative, "is more sensitive to employee interests than was the law of master and servant and each is based on the premise that employees can be made to correct their ways through incremental doses of punishment" (1979:36).

D. Categories of Discipline

A central feature of a discipline system is the nature of discipline described in that system in terms of grounds for action taken against an employee. Such grounds for action become the categories of discipline which are used within that disciplinary system to describe, record, or to make applicable rules concerning. These grounds are categorized in numerous works, often as chapter titles in labour relations books dealing with the broad subject of employee discipline.

Brown and Beatty categories. Brown and Beatty, the leading

authority in labour relations in English-speaking Canada, has categorized the numerous grounds for employee discipline in their Chapter 7, "Discipline" (1988:7:3000) under seven major headings, some with numerous sub-headings:

- (1) Off duty behaviour [7:3010],
- (2) Attendance at Work (Culpable Absenteeism) [7:3100]
 - failure to explain absence
 - unauthorized absence
 - failure to apply for a leave
 - leaving work without permission
 - lateness
- (3) Employee Disability (Non-culpable or Innocent Absenteeism) [7:3200]
- (4) Theft and Dishonesty [7:3300]
 - falsification of records (employment, production, attendance, medical forms, application forms, etc.)
 - failure to explain
 - infidelity, untrustworthiness, and conflict of interest
- (5) Deviant Behaviour [7:3400]
 - sabotage
 - criminal conduct
 - criminal charges
 - fighting and assault
- (6) Poor Work Performance [7:3500]
 - incompetence (culpable and non-culpable)
 - insufficient and/or careless work
 - unsuitability
 - unacceptable personal appearance
 - use of intoxicants at work
 - detrimental activities
 - failure to co-operate
- (7) Insubordination [7:3600]
 - refusal to follow instructions
 - refusal to work overtime
 - refusal to cross a picket line
 - concerted refusals
 - insolent, unco-operative behaviour, obscene language

Categories used by Young, Redecker, and Baer. Bruce

Young (1978), in his book dealing with how Canadian arbitrators view employee discharge, organizes his discussion under 24 chapters--the first an introduction and the following 23 chapters, discipline categories.

While many of his categories are similar to those of Brown and Beatty, a

few are different: "Illegal Strikes", "Union Activity", "Quit or Discharge?", "Company Rules", "Safety", "Sleeping on the Job", "Horseplay", and "Moonlighting", for example, each warrant separate chapters in Young's book. American, James Redeker, uses 16 discipline categories in his book (1989, Part III). One of his categories not already listed above is "gambling". Baer (1972) uses a number of unusual categories in his book: "loafing", "feuding", and "garnishments".

Discipline categories for nurses. Marilyn Steven, who studied disciplinary actions taken against Canadian nurses, categorized grounds for action first in terms of the venue of the charges and then the grounds. As in the case of teachers, nurses are subject to grievance arbitration resulting from employer discipline, criminal lawsuits, discipline procedures of the profession, and civil lawsuits (1988:63). Steven categorized types of cases under the "arbitration" category as follows:

Arbitration cases: (40 cases in Canada between 1973-87)

1. suspension cases
 - insubordination
 - neglect of duty
 - absenteeism.

2. dismissals:
 - incompetence (general and medication errors)
 - insubordination
 - neglect of duty
 - professional misconduct
 - absenteeism
 - use of Alcohol or drugs
 - for religious reasons
 - Miscellaneous

Steven tried to link categories of discipline uncovered in her study to several industrial relations and labour relations models, but failed because there were clear distinctions as to what is expected of professionals, and because the different types of penalties imposed on nurses and not clearly taken into account in those other models (78).

Categories of Discipline for Teachers

In both American works and in one Canadian study categories of discipline for teachers are discussed. It seems clear that the relevant statute governing teacher discipline will determine the categories used.

Discipline categories for American teachers. Floyd Delon claims 25 legal grounds for dismissing a teacher are contained in various U.S. statutes. Those most frequently listed are immorality (found in statutes in 34 states), incompetency (31 states), neglect of duty (28 states) cause or just cause (26 states), insubordination (22 states), and inefficiency (18 states). He claims there are such unusual grounds for teacher dismissal or suspension contained in statute as "profanity", "for teaching sex education", "failure to display the flag", "failure to take a loyalty oath", or for "failure to teach Texas history" (1977:11-13, 17). Another, and separate body of law, deals with powers given to various professional practices commissioners to revoke teacher certificates. Delon discusses six reasons provided in case law in this category under the headings "contract violation", "fraud", "immorality", "criminal conviction", "Un-American activities", and "failure to meet academic requirements" (20-8).

Discipline categories for Manitoba teachers. Czuboka's analysis (1985) of what he claims to be all 18 teacher terminations occurring in Manitoba between 1969 and 1985 are discussed in sufficient detail allowing them to be categorized as follows: incompetence (7 cases), layoffs (3 cases), insubordination (2 cases), immoral conduct (2 cases), refusal to teach in the French language (1 case), conduct unbecoming a teacher (1 case), inappropriate student discipline (1 case), and

absenteeism/off-duty conduct combined (1 case).

It is clear that categories of discipline may differ for teachers depending on the nature of laws governing grounds for dismissal, or on whether or not the disciplinary action in question is subject to a collective bargaining regime, a specific education statute, a professional certification review panel, civil or criminal law. It is also evident that a study of the actual employee discipline cases, the nature of the employee work, and/or the applicable law, must be undertaken before categorization can be done meaningfully and a particular classification scheme designed for a specific group of employees such as B.C. teachers.

CONCLUSION

In this second chapter, critical issues related to the general notion of employee discipline were canvassed with a view to establishing a foundation of concepts to guide the rest of this study concerning B.C. teacher discipline. In the first section, a search for a general definition of "employee discipline" found three ways to look at the term. Discipline can be seen as a tool to create the workplace environment or culture, it can be seen as a form of self-motivation by the employee, or it can be viewed as only one element within the broader industrial relations institutional framework. The first section of the chapter also looked at the definition of "disciplinary action" as a distinct term referring to an action by the employer against the employee which has a negative impact on the employee's work record. A layoff is not a disciplinary action. These definitions confirm that a study of teacher discipline in B.C. need not review teacher layoffs, but that all actions against teachers that have created, or may establish, negative work records must be reviewed.

It is interesting to combine the concepts of discipline contained in the

second section dealing with theories of discipline with those in the third section outlining the three legal frameworks. Those systems of discipline described under the statute law relationship and under the collective bargaining relationship would fit into Phelps' theoretical framework as "the due process models". Yet the two systems will differ and can be placed on a continuum in relation to each other in some fashion. Further analysis of those two systems and the particular School Act system in question, will determine where they fit on this continuum in relation to each other. The common law of master and servant legal framework describes an employee discipline system which could be situated on Phelps' continuum at the authoritative end of his theoretical model or could serve as an example of Coye and Belohav's "disciplinary perspective" model. So it is evident that the legal frameworks governing employee discipline can be matched against the theoretical models and located on a Phelps' type of continuum to describe their distinctive characteristics in relation to each other.

In the last section of the chapter, four central features of discipline systems were discussed. The concept of natural justice or due process is critical in an evaluation of any discipline system. The extent to which a "statute law relationship" system, for example, fits on Phelps' theoretical continuum, will depend on the extent to which natural justice for employees is legally enforceable. This concept as a key yardstick then, may be applied to measure the B.C. teacher discipline systems examined in this thesis. In the same way, the 'just cause' and 'progressive discipline' principles also can be used as yardsticks to measure B.C. teacher discipline systems in terms of the extent of fair processes provided teachers.

Categories of discipline have become fundamental descriptors in much of the literature dealing with employee discipline. Those

categories selected as appropriate to describe a particular employee groups' discipline system, however, depend on the nature of the employees and the work they do, specific legislation which may exist governing employee discipline in that sector, and the types of employee offences which normally attract discipline within that employee group. A study is required of both the actual discipline cases relevant to the employee group and the governing legislation, before a discipline category system can be selected or designed to help describe the system for that group. Discipline categories are appropriately set out after a study, then, and not before.

CHAPTER III

DISCIPLINE IN AN INDUSTRIAL RELATIONS SETTING

This chapter reviews relevant literature for the purpose of describing critical features of the industrial relations system governing disciplinary matters in a unionized workplace which now apply to teachers for the first time in the province's history. The collective bargaining regime as it applies to employee discipline is outlined below in three sections. The first provides an overview of the central features of an employee discipline system within a collective bargaining relationship and enlarges on the cursory discussion of the previous chapter which described, in general terms, this discipline system in relation to others. The second section examines some critical arbitral jurisprudence, and the third section reviews some studies of relevant arbitration decisions.

SECTION 1: CENTRAL FEATURES OF EMPLOYEE DISCIPLINE WITHIN A COLLECTIVE BARGAINING RELATIONSHIP

This section will not examine B.C. labour law, as that is done in detail in Chapter V. The objective of this section is to examine those unique

and distinct features of an employee discipline system within a collective bargaining relationship which clearly differentiate that system from other employee discipline systems.

A. Five Critical Features: An Overview

The concepts of 'natural justice' and 'just cause' while having different meanings, often come together as the intertwined procedural and substantive features of the labour relations grievance system. The concepts refer to the process used and the grounds for discipline. Natural justice procedures within a collective bargaining relationship are based on those specific and critical features of the system which have developed. At least five critical features of an employee discipline system within the collective bargaining relationship make that system distinct in relation to other systems and relate to the unique concepts of natural justice or due process. First, a separate and distinct labour statute governs; second, a grievance arbitration system is the mechanism of appeal; third, a significant role is played by arbitrators; fourth, a body of arbitral law or jurisprudence has developed and is highly influential in decision making; and finally, negotiated collective agreements play a central role in the process.

Labour law. In B.C. the Industrial Relations Act, examined in Chapter V, must be observed by employers and employees alike in matters of employee discipline. This body of law applies to B.C. teachers for the first time, with disciplinary decisions now subject to review in accordance with labour law rather than general administrative law and the courts. Provisions in the Industrial Relations Act governing employee discipline are substantively different from those contained in

the School Act which applied to teacher discipline matters before 1988.

The grievance arbitration system. A second critical feature of the collective bargaining relationship is the grievance arbitration system, the unique appeal mechanism which allows decisions of the employer to be reviewed by an independent body. The inclusion in labour statutes of a mandated system of binding grievance arbitration has been described as "the *quid pro quo* for the prohibition on strike action during the term of a collective agreement" (Weiler, 1980:91). The grievance arbitration system also means that employees may not go to the courts to contest a disciplinary decision of the employer. Weiler claims "the institution of private labour arbitration may be the most telling illustration of the spirit of autonomy and self-government which pervades collective bargaining relationships in North America" (1980:94). In B.C. all unionized workers in a bargaining unit have access to compulsory third party arbitration in terms of appealing any discipline decision of the employer.

The role of arbitrators. A third critical feature of the discipline system in a collective bargaining regime involves the central role played by arbitrators. Independent, neutral arbitrators review employer decisions based not only on whether a fair process was followed in disciplining an employee, but on whether the correct decision was made by management in taking the disciplinary action. Arbitrators have the power of the courts to issue decisions, to force compliance with their decisions, and as well, additional power to order reinstatement or vary a disciplinary penalty. Arbitrators are neutral in the sense that both parties to the dispute must agree on the single arbitrator, or in the case of a three member arbitration board, on the chairperson. Arbitrators are selected because of their reputations as fair, unbiased, knowledgeable members of

the labour relations community. Both parties understand in selecting an arbitration chairperson that thorough understanding and knowledge of arbitral jurisprudence and labour law is required. To those in the B.C. education community, this means the involvement of people in teacher discipline appeals who have not been involved in the past.

Arbitral jurisprudence. The thousands of arbitration decisions over the past few decades have developed into an impressive and distinct body of precedent, or arbitral jurisprudence, now looked to for guidance in arriving at decisions on grievance matters, including employee discipline cases. This extensive body of law has come to require such specialized expertise to interpret and apply that the system of grievance arbitration, once designed to be applied by lay persons from the two parties involved in a dispute, now relies on an army of labour lawyers and industrial relations experts (Weiler J.,1984:160-161). Gandz states:

The rulings of arbitrators, labour boards, and the courts who have reviewed arbitration cases comprise a 'common law of arbitration'. As Brown and Beatty state it "These awards have come to shape and direct not only the drafting of clauses in new collective agreements by providing a point of reference as to how certain problems have been determined by arbitrators in the past, but also they bear upon the resolution of future grievances" (cited in Anderson and Gunderson,1982:296).

Young claims arbitrators "are not as judges, bound by precedents but, because so many arbitrators have a legal background, they do set considerable store by precedent" (1978:4). While arbitral jurisprudence may not be as binding to arbitrators as high court decisions are in judicial proceedings, the jurisprudence is so influential, those administering collective agreements or dealing with employee grievances would ignore it at their peril.

Arbitral jurisprudence provides guidance to arbitrators as they implement 'just cause' principles in the industrial relations setting. For

example, arbitrators generally will be critical of discharge cases in which an employee is unable to perform satisfactorily in a new position resulting from a transfer. "It just isn't cricket to fire a guy who worked well in one department but could not cope with his assignment in another" (Young,1978:201). Another aspect of the 'just cause' principle in industrial jurisprudence is that the same rules may not apply in all cases. Palmer makes this point in quoting from a 1956 Carrothers decision:

"...It has been said that an individual ought not to be judged as if he were a crowd, that legal rights of parties ought not to be dictated by apprehension induced by imaginative speculation as to possible implications a decision may have for future relations" (1978:189).

In other words, it can be expected that each arbitrator will apply the principles of 'just cause' as deemed fit in the *individual* circumstances before him/her and in accordance with his/her selection of, or reading of, the relevant arbitral jurisprudence.

Collective agreements. Finally, the employee discipline system within a collective bargaining relationship is distinct and unique because disciplinary matters are critically dependent on the nature of a collective agreement negotiated freely between the two parties, union and employer. "Only in cases of collective agreements, may a binding agreement exclude the jurisdiction of the courts" (Harris, 1980:184). In B.C., as in other provinces, all collective agreements, by law, must contain a grievance provision ending in arbitration or some similar dispute resolution method and this provision will be the appeal mechanism in employee disciplinary matters. However, these grievance arbitration procedures may differ in many ways as Chapter VII will show in terms of teachers' grievance provisions.

In B.C. as well, the law requires an employer to have just cause for discipline and such a provision is required in the collective agreement. An arbitrator reviewing a discipline case, will review all relevant provisions of the collective agreement and make a decision not only in accordance with the law and relevant jurisprudence but also in accordance with all those relevant collective agreement provisions.

SECTION 2: CRITICAL JURISPRUDENCE: THE APPLICATION OF EMPLOYEE DISCIPLINE

Critical arbitral jurisprudence which has come to be accepted as guiding principles in dealing with employee discipline matters within a collective bargaining relationship comes from "leading decisions", some issued by labour relations boards after reviewing arbitration awards which have been appealed, while others are arbitration decisions themselves. Leading decisions are typically decisions of well known and highly respected labour relations experts which contain clear, well reasoned rulings, incorporating interpretation and review of the law and related precedent-setting decisions.

This section of this chapter outlines some of that critical jurisprudence as it defines employee discipline issues and sets out guiding principles. Because arbitral jurisprudence dealing with discipline is so extensive, only a flavour of it can be given in this paper. The section is in two parts; the first dealing with critical jurisprudence relating to culpable discipline, and the second dealing with non-culpable discipline jurisprudence.

A. Culpable Discipline

McPhillips and Knight define culpable behaviour as "actions which are blameworthy or have occurred through the intentional actions of the employees" (1990:1). Types of offenses categorized as culpable behaviour

would be such offenses as theft, insubordination, or criminal conduct. In the language of the pre-Bill 20 School Act of B.C. such cases were defined as teacher misconduct. In such cases, the employee's actions are seen to be deliberate, could have been avoided, and could be alleviated by progressive discipline. It is not always readily apparent that an employee action is culpable in nature and this aspect of a case, defining the offense, may be the subject of some debate. For example, in the case of employee absenteeism, such a case is culpable in nature if the employee was not ill and did not have a valid reason to be away from work. Where the employee was found to be ill, the absenteeism case is non-culpable. The exact reason for absenteeism may be argued and its definition in terms of being culpable or not, uncertain.

The William Scott Case. The principles guiding arbitral review of culpable discipline cases are contained in the leading William Scott decision [(1976) 1 Can LRBR 1]. Perhaps no other case has had more impact on employee discipline in B.C. than this leading 1976 case, a B.C. Labour Relations Board decision by Chairman Paul Weiler. The William Scott case is more frequently cited than any other B.C. discipline decision and is recognized across Canada as providing the correct model for reviewing the justness of disciplinary decisions within a collective bargaining relationship. Within this leading decision can be found the three questions arbitrators must pose in reviewing discipline cases, an outline of all the factors which must be canvassed in determining an appropriate penalty, an explanation of the principle of corrective or progressive discipline, reference to the philosophy of the culminating incident, and an outline of the purpose and philosophy of B.C. labour legislation as it deals with employee discipline in contrast to a common law legal framework.

Adams states "arbitrators are almost unanimous that three distinct questions should be asked "in accordance with those included in William Scott" (1979:22-3). Krashinsky and Sack (1989:14) review the three William Scott questions which have guided the central examination in culpable discharge and discipline cases:

Arbitrators should pose three distinct questions in the typical discharge grievance. First, has the employee given just and reasonable cause for some form of discipline by the employer? If so, was the employer's decision to dismiss the employee an excessive response in all of the circumstances of the case? Finally, if the arbitrator does consider discharge excessive, what alternative measure should be substituted as just and equitable? (also see Wm.Scott & Co., [1977] 1 Can LRBR 1 [Weiler], 5).

Weiler claims in relation to his question two, "that the arbitrator's evaluation of management's decision must be especially searching" and these questions should be posed:

- (i) How serious is the immediate offence of the employee which precipitated the discharge (for example, the contrast between theft and absenteeism)?
- (ii) Was the employee's conduct premeditated, or repetitive; or instead, was it a momentary and emotional aberration, perhaps provoked by someone else (for example, in a fight between two employees)?
- (iii) Does the employee have a record of long service with the employer in which he proved an able worker and enjoyed a relatively free disciplinary history?
- (iv) Has the employer attempted earlier and more moderate forms of corrective discipline of this employee which did not prove successful in solving the problem (for example, of persistent lateness or absenteeism)?
- (v) Is the discharge of this individual employee in accord with the consistent policies of the employer or does it appear to single out this person for arbitrary and harsh treatment (an issue which seems to arise particularly in cases of discipline for wildcat strikes)? Wm.Scott, supra, 5-6)

This decision outlines what Weiler states are the "oft-quoted, but still not exhaustive, canvass of the factors" taken from "Steel Equipment Co Ltd. (1964), 14 L.A.C. 356" (Reville). This list of factors, like those questions above are commonly used by arbitrators to evaluate the employer's disciplinary action and determine the appropriate penalty:

1. The previous good record of the grievor.
2. The long service of the grievor.

3. Whether or not the offence was an isolated incident in the employment history of the grievor.
4. Provocation.
5. Whether the offence was committed on the spur of the moment as a result of a momentary aberration, due to strong emotional impulses, or whether the offence was premeditated.
6. Whether the penalty imposed has created a special economic hardship for the grievor in the light of his particular circumstances.
7. Evidence that the company rules of conduct, either unwritten or posted, have not been uniformly enforced, thus constituting a form of discrimination.
8. Circumstances negating intent, e.g., likelihood that the grievor misunderstood the nature or intent of an order given to him, and as a result disobeyed it.
9. The seriousness of the offence in terms of company policy and company obligations.
10. Any other circumstances which the board should properly take into consideration, e.g., (a) failure of the grievor to apologize and settle the matter after being given an opportunity to do so; (b)....(Wm. Scott, supra, 4).

The principle of progressive or corrective discipline is set out in this decision, both in the list of factors above (item iv) and when Weiler states "because the employer is now entitled to escalate progressively its response to employee misconduct, there is a natural inclination to require that these lesser measures be tried out before the employer takes the ultimate step of dismissing the employee..." (Wm.Scott,3).

Krashinsky and Sack point out that Weiler's principles force a closer examination of the disciplinary penalty meted out by the employer than ever before. They quote what they claim is a key statement in Wm. Scott:

Arbitrators no longer assume that certain conduct taken in the abstract, even quite serious employee offences, are automatically legal cause for discharge...Instead, it is the statutory responsibility of the arbitrator, having found just cause for some employer action, to probe beneath the surface of the immediate events and reach a broad judgment about whether this employee, especially one with a significant investment of service with that employer, should actually lose his job for the offence in question (Krashinsky and Sack,1989:14).

Allan Black, then Vice-Chair of the B.C. LRB, sums up the connection between the William Scott case and the review of culpable conduct in his review of the 1982 Canadian Liquid Air decision:

The Labour Relations Board has, through the decision of *Wm. Scott, supra*, attempted to establish a framework in which arbitrators should view dismissals which are alleged to have been based on an act or acts deserving reproachment or punishment. Such acts may include, but are not limited to, the elements of omission, negligence, and malfeasance. However, all such acts contain the essential element of culpability or blameworthy behaviour [(1982)1 Can LRBR, 360].

The doctrine of the culminating incident. One principle of arbitral jurisprudence that provides guidance to arbitrators in reviewing culpable discipline cases, also referred to in Wm. Scott, is the doctrine of the culminating incident. Krashinsky and Sack explain this doctrine:

An employer is not permitted to discipline or discharge an employee simply on the basis of a review of the past disciplinary record. An employee may be disciplined or discharged only when he or she has committed an act which itself warrants discipline. Once such a "culminating incident" is established, the employer is entitled to consider the entire record of the grievor in determining the penalty. Thus, although an employee may have committed a relatively minor act of misconduct when seen in isolation, the employer is entitled to rely on the entire disciplinary record of the employee in assessing the appropriate penalty, unless the collective agreement provides for the cleansing of the employee's record after a specified period of time. If the discharge is for non-culpable conduct, such as absenteeism due to illness, a specific incident must occur which warrants a review of the employee's record before discharge action can be taken (1989:5).

Adams defines the culminating incident as being a subsidiary doctrine to that of corrective or progressive discipline. He states, "corrective discipline is premised on providing employees with an opportunity to learn from their mistakes; the culminating incident concept identifies those employees who are unlikely to profit from another opportunity" (1979:28). Palmer (1978:223) concludes, "...once an employee commits an act which would expose him to any discipline, however slight, such an act opens his total record for consideration by an employer". The culminating incident has been described as the "last straw" which enables the employer to invoke the employee's past record as the basis for

discharge (Young, 1978:255-6). Owen Shime says in Re: North York General Hospital and CUPE, 5 L.A.C. (2d) 45:

"The culminating incident need not be major--it may only be of minor significance but it permits the employer to say he has had enough of the particular employee and need not tolerate him in the work force any longer, because of the combination of past misdeeds, together with the final incident..."

The KVP rules. In reviewing a case of culpable conduct, such as insubordination, discussed above, another arbitral rule developed from more than 25 years of jurisprudence, outlines the principles arbitrators universally adopt in reviewing the employer's workplace rules. An employee may be determined to be insubordinate because a workplace rule was not followed. In the precedent setting decision involving the KVP Co. Ltd. and Local Union 2537, (1965) 16 L.A.C. 73, Arbitrator Robinson spelled out the criteria for dismissal on the basis of unilateral company rules:

I--Characteristics of Such Rule:

A rule unilaterally introduced by the company, and not subsequently agreed to by the union, must satisfy the following requisites:

1. It must not be inconsistent with the collective agreement.
2. It must not be unreasonable.
3. It must be clear and unequivocal.
4. It must be brought to the attention of the employee affected before the company can act on it.
5. The employee concerned must have been notified that a breach of such rule could result in his discharge if the rule is used as a foundation for discharge.
6. Such rule should have been consistently enforced by the company from the time it was introduced (cited in Young, 1978:221).

Bruce Young concluded, "Judge Robinson's observations,... had a profound impact on arbitral thinking thereafter" (1978:222). Employers in a collective bargaining relationship must be aware that disciplinary action based on 'breaking the rules' will inevitably result in arbitral review based on the KVP jurisprudence.

B. Non-culpable Conduct

Two elements of non-culpable employee conduct are looked at in this section. The definition of non-culpable conduct is examined, and the principles of arbitral jurisprudence which are applied in a review of the employer's disciplinary actions in non-culpable cases are outlined.

What is non-culpable conduct? Arbitral jurisprudence would dictate that in the case of an employee who is unable to meet employment requirements because of some physical or mental capacity, such failings on the part of the employee are non-culpable in nature, and therefore, action taken against such an employee may not be considered to be "discipline" (Gall, 76:87). An employee's conduct may be defined as non-culpable when absenteeism related to alcoholism is involved, for example, or when poor work performance is related to an inability to do the work for some reason beyond the employee's control. Punishment or progressive discipline may not be seen to be appropriate in such cases. While non-culpable behaviour does not result from a fault on the part of the employee, it does refer to behaviour which is, however, not acceptable from the point of view of the employer (McPhillips, Knight, and Shetzer 1990:1). Employers are within their rights to deal with employees who are incompetent or unable to perform. However, the standard of arbitral review differs, Black states in Canadian Liquid Air:

...it is obvious that the direction to arbitrators found in *Wm. Scott, supra*, cannot logically and properly be applied to the action of an employee and the reaction of an employer to conduct which can truly be termed "non-culpable". ...Where employee conduct has been assessed as "non-culpable" or not blameworthy, different considerations apply when examining the reactions of an employer. It is difficult to apply the concept of fault to an employee who, through some physical or mental impairment, or simply through genuine inability or lack of competence, fails to attend the work place, or, once he or she is there, inadequately performs the work which is expected of him or her

(1982,1 Can. LRBR:361-2)

McPhillips, Knight and Shetzer point out that in cases of employee suspension or discharge for non-culpable conduct the standard of review is now seen to be something other than the application of the William Scott 'rules'. They claim the most frequently cited case involving non-culpable incompetence is Edith Cavell Private Hospital (1982) 6 L.A.C. (3d) 229 (Hope). Because this is a fairly recent B.C. case, not yet a decade old, the evolutionary or shifting nature of arbitral jurisprudence is indicated.

Arbitral review of non-culpable cases. McPhillips and Shetzer (1990), in their recent study, "Culpable and Non-Culpable Incompetence: A Canadian Arbitral Perspective", point out that in cases of "incompetence", or "non-culpable, inability to perform the tasks", and where there is also present an inability to respond to disciplinary action, the Edith Cavell and/or the National Harbours Board cases (both Allan Hope awards) have become accepted tests in arbitral review. The "eight conditions" set out in National Harbours Board are referred to in several recent B.C. teacher cases and are included here:

- (a) Has the employer identified in objective terms the nature of the work to be performed and the standard expected?
- (b) Has the employer established that the employee was aware of the standard?
- (c) Has the employer established that the work performance of the grievor was below that standard?
- (d) Did the employer provide supervisory direction to the employees to assist him in achieving the standard?
- (e) Did the employer take reasonable steps to move the employee into other work within the bargaining unit that was or might have been within his qualifications and competence?
- (f) Did the employer bring home to the grievor the fact that his performance was unsatisfactory and that dismissal might result from a continued failure or

inability to meet the standard?

- (g) Did the employer afford the grievor a proper opportunity to challenge its assessment of his work or file a grievance?
- (h) Does the evidence support the inference of a continuing inability on the part of the employee to meet the standard? [cited in McPhillips/Shetzer and in McPhillips and Knight (1990), 196-7]. [Also see five criteria in Edith Cavell Private Hospital and HEU (1982) 6 L.A.C. (3d) 229 (Hope)].

McPhillips and Shetzer claim the employer must also have "a 'proper and appropriate occasion' for determining that the employee should be discharged" as in the analogous doctrine of the culminating incident for cases of culpable discipline.

These authors also suggest the employer should demonstrate it has already tried such solutions as:

- (1) Transferring the employee to a job which he is able to perform if one is available and if that can be done consistent with other provisions of the collective agreement;
- (2) Demoting him to a job which he is able to perform if one is available and if that can be done consistent with other provisions of the collective agreement, or
- (3) Placing him on layoff if no such job is available. (1990:197-8)

The critical principles in the arbitral jurisprudence which give guidance in non-culpable incompetence discipline cases then, can be summarized as follows: The employer must demonstrate that the level of job performance required, or the standards against which the grievor was measured, were clearly defined, were established in a fair and reasonable manner, relate to the actual duties of the job, and were communicated clearly to the employee. The employee must have had a reasonable opportunity to meet those standards and must have been told of the consequences of not meeting the standards or job performance required. And finally, the employer must exhaust other ways of assisting the employee to maintain his/her job at some minimal level. These arbitral principles will be relevant after 1989 in dealing with all B.C. teacher

dismissals for poor performance. Such principles were not applied under School Act dismissals as Chapter VI will demonstrate.

SECTION 3: STUDIES OF ARBITRATION DECISIONS IN EMPLOYEE DISCIPLINE CASES

The last section of this chapter reports results of a number of studies regarding employee discipline, indicating both the nature of arbitration decisions and the type of studies that have been, or can be, carried out in the area of employee discipline. Studies reported answer one or more of the following questions: (1) What percentage of all employee grievances involve disciplinary matters?; (2) What types of offenses attract discipline?; (3) How often is the management decision overruled, and how often is the employer's action upheld?; (4) What conditions are more likely to ensure reinstatement of an employee?; and (5) Are some types of offenses likely to generate more "wins" for the union than others?

A. Krashinsky and Sack Study

Krashinsky and Sack found that over 7,500 grievance arbitrations are conducted in Canada each year and of these about one-third involve discipline and discharge (1989:15). They report findings of a 1974 study of 1,661 arbitration awards in which 38% involved discipline (suspension or discharge cases). Their findings showed the union was successful in over 50% of all cases in having the employer's disciplinary penalty either rescinded or reduced.

A second study reported by the same authors found an employee's record had a significant impact on whether reinstatement was ordered:

"94% of employees with a clean record were reinstated, compared with only 60% of employees with a warning, and only 40% of those with a previous suspension" (Krashinsky and Sack, 1989:18). Seniority was found to be a major factor in arbitrator's decisions, in that arbitrators tend to reinstate more senior employees. (Another reported study also found a strong relationship between seniority and successful reinstatement after discharge [McDermott and Newhams, 1971: 526]). Based on a survey of several Canadian studies in addition to their own, Krashinsky and Sack conclude:

In 82% of all disciplinary discharges that went to arbitration, the employee was found responsible for some wrong doing. On the other hand, in over 50% of discharge cases, the arbitrators disagreed with the employers, either with their determination that the grievor was at fault or, more often, with their assessment of the appropriate penalty, and reinstated the employees (19).

B. Crombie and Webb Study

Crombie and Webb studied discipline decisions in Ontario and reported their results in a 1988 report, "Discharge and Discipline Arbitrations in Ontario: 1982-86". They found that discharge and discipline grievances account for 32.7% of all arbitrations. Their research showed management's actions were reversed by arbitrators in 52% of all cases. The most frequent employee offenses cited were, in order, poor attendance, dishonesty, insubordination, and inadequate work performance (cited in Krashinsky and Sack, 1989:18).

C. Discipline Case Studies in Alberta and in Nova Scotia

Ponak reviewed 159 discharge awards issued in Alberta between 1982-84 and found that management decisions were upheld in 46.2% of

cases, in 19% the employee was completely exonerated, and in 34.8% of cases a lesser penalty was substituted by the arbitrator (cited in Krashinsky and Sack, 1989:18). A Nova Scotia study by Gilson and Gillis, "Grievance Arbitration in Nova Scotia" looked at 730 of that province's awards between 1980-86 and found unions won in over 61% of discharge and discipline cases (cited in Krashinsky and Sack, 1989:19).

D. George Adams' Studies

George Adams (1979:40-52) studied 645 disciplinary discharges in Ontario between 1970 and 1974 and categorized the type of cases and the percentages falling into each category. He found the largest number of cases involved charges of insubordination (24% of cases); 19% were based on attendance matters, 16% on dishonesty, another 16% on work performance, 9% involved alcohol related matters, 7% 'failure to get along', 6% involved discipline for 'union activity', and 2% for 'other'.

Employer discharges were upheld in 46.5% of the 645 cases. His results also show management has a higher success rate in disciplinary cases not involving discharge. Suspensions or other less severe forms of disciplinary actions are more likely to be upheld.

Adams found grievors were judged completely innocent in 115 of the total 645 cases (17.8%) and awarded full back pay. (Of these, 26% fell into the work performance category, 26% absenteeism, 20% dishonesty, and 12% insubordination.) A lesser penalty was substituted for discharge in 230 cases (or 35.7%). "The principle reason for reinstatement", he states, centers on "an arbitral belief that the penalty of discharge was excessive" (p.52). The highest rate of reinstatement was found in the category of 'union activity' (58% of cases), in 'alcohol' cases (55% reinstatement), and then in 'failure to get along' (50% reinstatement).

Least likely to be reinstated are those charged with absenteeism (38%), dishonesty, or work performance (39% each). Employers most often resort to discharge in cases of insubordination yet these cases have a higher than average rate of reinstatement (49%).

E. McPhillips and Shetzer Study

McPhillips and Shetzer (1990), analyzed 72 B.C. discipline cases (between 1985-89) to see how arbitrators have treated cases of employer discipline. They found that different arbitral rules are applied depending on whether the case is found to be of a 'culpable' or of a 'non-culpable nature'. They placed discipline cases in two categories: (1) "culpable non-performance" or (2) "non-culpable incompetence" (198).

Their findings show that in culpable cases, arbitrators adhere to the William Scott principles and the Steel Equipment ten points cited above as the test of whether the disciplinary action was properly carried out. Employers were found to be successful in 87% of such cases. However, in the case of non-culpable incompetence, the Edith Cavell and/or the National Harbours Board cases have become the accepted test. In non-culpable cases employers were found to be successful in having their actions upheld by arbitrators in only 38% of cases. In other words, the union is successful (completely or partially) in B.C. in only 13% of culpable cases, but in 62% of non-culpable cases.

McPhillips and Shetzer found similar results in a study of Alberta cases. The union was successful in that province in 63% of non-culpable cases, but in only 9% of culpable cases. The authors conclude:

...management has not been as successful in non-culpable cases as it has in cases where there is a culpable work performance problem. ... this is due to a failure to understand that there are considerable differences in the nature of the two problems, and hence, a requirement for different approaches.

In our opinion, the distinction between culpable work performance and non-culpable incompetence must be maintained and clearly understood by management, unions and arbitrators. Only in that way will consistency and fairness be developed in dealing with problems of non-culpable incompetence and inadequate work performance in the workplace (203).

F. Discipline Cases and Nurses

Marilyn Steven's study of disciplinary actions taken against nurses in Canada, looked at the results of 39 Canadian arbitration cases between 1973 and 1987. She categorized them first as "suspensions", where she found four were upheld by arbitrators and one where a nurse was reinstated, and as "dismissals", where seven were upheld by arbitrators and 27 overturned and the nurses involved reinstated. Of the suspension cases, she found three were for insubordination, one for neglect of duty, and one for absenteeism. The dismissals were categorized as follows:

Incompetence	
-general	5
-medication errors	7
Insubordination	1
Neglect of duty	1
Professional misconduct	7
Absenteeism	9
Use of Alcohol or drugs	1
For religious reasons	1
Miscellaneous	2
(1988: 74 and 311).	

G. Summary of Discipline Studies

The combined results of these studies allow several general conclusions to be made:

- (1) At least one third of all grievance arbitrations relate to employee discipline.
- (2) The largest categories of discipline cases appear to be insubordination and poor attendance, although in the case of nurses, incompetence and professional misconduct rank high. Only one insubordination was recorded involving a nurse.

- (3) Unions are successful in having employer discipline actions overturned, in whole or in part, in 50% or more of all discipline cases in general. However, when discipline cases are broken down and looked at in the two general categories of 'culpable' or 'non-culpable' offenses, unions are more successful in having employer actions overturned by arbitrators when the offense is 'non-culpable'.
- (4) Employees with seniority and a good work record stand the best chance of being reinstated and of being successful after reinstatement.
- (5) It has been found that employer actions in incompetence cases, defined as a non-culpable offences, are overturned to a greater degree than in other types of cases.
- (6) Employers in B.C. may have problems in having their discipline actions for incompetence upheld because they are not familiar with the arbitral test required.

CONCLUSION

This chapter examined the literature in order to determine critical features of an employee discipline system within a collective bargaining regime. The system of labour arbitration governed by the parties themselves, with limited interference from the courts, was found to be the most notable element of the employee discipline system in the unionized workplace. All disputes arising out of the agreement, including all disputes relating to disciplinary action taken against employees, are subject to the grievance arbitration process outlined in the collective agreement and applicable labour law, and are only in rare instances subject to decisions of the courts. A body of arbitral law or jurisprudence has grown up and guides not only arbitrators in reviewing employer actions, but guides management and union practice in the workplace as well. The role of arbitrators is significant. Arbitrators both write new decisions and adhere to previous decisions and principles set by other arbitrators, creating the jurisprudence which to a great extent governs the system. The evolutionary nature of the jurisprudence was also noted.

Such principles of 'just cause' and 'natural justice' are critically important to the system of discipline under labour law. Disciplinary actions are reviewed to determine whether there was 'just cause' or proper grounds for the action, and whether the disciplinary penalty is appropriate. Natural justice requires arbitrators to individualize any review and permits selection of precedents based on the arbitrator's own view of the individual nature of each case.

Several leading decisions were reviewed which provide critical guidance to arbitrators, especially in the B.C. context. William Scott contains the essential 'rules' governing culpable employee discipline cases, especially in terms of the three questions arbitrators must ask in reviewing any discipline action. The Steel Equipment ten points, also contained in Wm. Scott are key considerations in assessing the appropriateness of any penalty. Specific labour doctrines such as those relating to "the culminating incident" or the "KVP rules" were included to indicate two examples of the nature of arbitral jurisprudence. Such doctrines have become accepted as 'laws' within the industrial relations community but came from other leading decisions like William Scott and not from legislation. The eight conditions outlined in The National Harbours Board were also reviewed in terms of the test now applied in B.C. to non-culpable discipline cases.

The principle of progressive or corrective discipline, which arbitrators expect employers to abide by, was found to be another critical feature of the discipline system in a collective bargaining relationship. As with so many other principles accepted by arbitrators, progressive discipline can be traced to leading decisions which have come to form critical arbitral jurisprudence. Employee discharges will normally not be upheld unless lesser forms of discipline were applied earlier in an attempt to correct undesirable behaviour. The concept of corrective

discipline may require an element of rehabilitation. It can be expected that arbitrators will be sensitive to the issue of rehabilitation unlike practitioners from the common law context. It can also be expected then, that employee work records will be kept in a collective bargaining system and that unions will have some interest in these work records.

This review does not by any means form an exhaustive canvass of arbitral jurisprudence related to employee discipline, or even an overview of the most critical decisions. What was intended, was to give a flavour of the nature of key concepts involved, and some of the terminology that will become familiar to the B.C. education community emerging into the world of labour arbitration.

The last section looked at some studies which review arbitration awards dealing with discipline. From that review it is apparent that many employer discipline actions are overturned by arbitrators. The studies cited also indicate the nature of possible research questions for this study of B.C. teacher discipline. For example, what percentage of teacher grievances are based on discipline matters? What kinds of offenses are the basis of teacher discipline? How often have teachers been reinstated after dismissals? On what basis have employer actions taken against teachers been overturned? Later chapters of this paper will examine these questions based on available data.

CHAPTER IV

TEACHER DISCIPLINE SYSTEMS

This chapter examines teacher discipline systems in particular, in relation to the conceptual frameworks of employee discipline described in previous chapters. The system of teacher discipline in this province changed as a result of Bill 20. The question arises, is the B.C. teacher discipline system now similar to that found in other provinces? Can a system found in another province be looked to as a model to help us understand how the new system in B.C. will operate? Before a detailed study is undertaken of legislation governing teacher discipline in B.C. (Chapter V), this chapter reviews, in a general manner, teacher discipline systems in Canada. A brief look at teacher discipline systems in the United States is also included. Such an analysis allows the new B.C. teacher discipline system to be viewed within a North American context.

The chapter contains four major sections. The first reviews legislative frameworks governing teacher discipline across Canada by categorizing them in terms of three models. Concepts unique to teacher discipline are also examined here. The second section reports the results of a search for teacher discipline arbitration decisions issued under labour legislation. (Such material will now be sought out by those in the

B.C. education community interested in precedents set elsewhere in teacher discipline rulings.) The third section reviews other studies of teacher discipline systems in Canada, and the last section briefly examines literature dealing with American teacher discipline systems.

SECTION 1: TEACHER DISCIPLINE SYSTEMS ACROSS CANADA

A number of concepts related to teacher discipline are unique to the profession. This section examines briefly two such matters: teacher tenure, and discipline by the professional certification body. Disciplinary action taken against teachers by their employers can be categorized in terms of three distinct models found across Canada based on the type of appeal mechanism provided within the governing legal framework. The third part of this section reviews those three models in reference to legal frameworks governing teacher discipline in other provinces and as outlined in Appendix A at the end of this chapter.

A. Teacher Tenure

Before tenure laws were adopted, it was commonly assumed that teachers were essentially "on probation" indefinitely in accordance with education statutes. In the absence of either a right or the ability to obtain tenure provisions in collective agreements, teachers in both the U.S. and Canada sought legislated tenure and as short a period of probation as possible. "After teachers are said to 'have tenure', they are able to contest any cases of dismissal before arbitration boards and the courts" (Czuboka,1985:9).

A teacher tenure provision is contained in education legislation in all provinces except B.C. The Saskatchewan legislation, for example, states

that upon termination a teacher has 20 days to appeal *"providing the teacher has at least two years of consecutive service"* (section 212, Education Act). A Canadian study found B.C. to be in a unique position in the country in having "instant tenure" for teachers in statute (Czuboka, 1985:288). However, since Czuboka's study, this tenure provision was removed from the B.C. School Act in 1989 making tenure a subject of local school board/teacher negotiations. Czuboka reports teacher tenure in the remaining provinces is one year in Alberta and Manitoba; two years in Saskatchewan, Ontario, Nova Scotia, and Newfoundland; and three years in New Brunswick and Prince Edward Island. Teachers have tenure in Quebec after three periods of eight months or more of service. Only in Manitoba and Quebec, is tenure transferable to another school district, although in some other provinces, the repeated period of probation in a new district for an experienced teacher may be shortened or waived at the discretion of a school board.

While six arbitration decisions involving discipline of probationary teachers in Ontario can be found in the records, with half of them won by teachers, the extent to which teachers on probation across Canada are dismissed or disciplined today without recourse to appeal, or with recourse to a lesser standard, is a subject requiring further study.

The right to natural justice or to be disciplined only for just cause is closely related to the concept of tenure in the case of teachers both in the U.S. and in Canada. In a collective bargaining regime, typically both a statute and collective agreement will permit a lesser standard of just cause to be applied to teachers on probation. Teachers without tenure are on probation in a legal sense, and do not have equal rights in terms of just cause requirements or appeal rights in a disciplinary situation. An examination in Chapter VII of collective agreement language currently existing in B.C. sheds further light on this issue.

B. Teacher Decertification

This paper deals with employer-initiated discipline only. A broad examination of the teacher decertification process, or legislation, is outside the scope of this paper. But because decertification is another aspect of teacher discipline, it is touched on here. All provinces have legislation outlining the basis for granting and removing teacher certificates. Often such legislation is included in an Act other than the School Act. In B.C., decertification decisions are made by the College of Teachers pursuant to the terms of sections 24 and 27 of the Teaching Profession Act, 1987 (Bill 20). The B.C. College of Teachers reported in May, 1991 that since 1988, 21 teachers had had their certificates cancelled by the college for such reasons as conduct unbecoming a member, and professional misconduct (Annual Report, 1991:20-21). Since education statutes across the country require certification in order to teach, teachers are effectively discharged upon decertification by the professional body.

In Alberta, the Teaching Profession Act, R.S.A. 1980, Vol. 7, c. T-3, gives the Alberta Teachers' Association the right to "expel a person from the association" for unprofessional or unethical conduct (section 19), with recourse to an appeal board of three members, two appointed by the Lieutenant Governor in Council. In Saskatchewan, the Teachers' Federation Act, R.S.S. 1978, Vol. VIII, c. T-7, gives the teacher's organization the power to recommend discipline of teachers to the Minister. The Teachers' Society Act of Manitoba R.S.M. 1987, c. T 30, serves the same purpose. Because this paper is focussed on discipline taken against teachers by the employer, any analysis of teacher discipline by the profession must await further study.

C. Three Legislative Models of Teacher Discipline

Three models of teacher discipline systems are outlined below based on the legislative frameworks governing appeals of employer-initiated discipline. Several statutes for each province require examination in order to determine the detailed nature of the legislative framework governing all aspects of teacher discipline. To clearly understand the legal frameworks governing teacher discipline in all 10 provinces would be a major study of its own, and well beyond the parameters of this thesis. The Ontario Secondary School Teachers' Federation (OSSTF), for example, lists 41 different statutes in their teachers' Collective Bargaining Handbook (1989-90) as "affecting educators", and reminds teacher leaders that critical legislation also exists in numerous Regulations under many of these Act. This overview of three types of legislative frameworks governing teacher discipline in Canada allows for a generalized comparison with the old and new B.C. systems.

Appendix A at the end of this chapter provides a brief overview of legal frameworks in 1991, by province, in terms of employer-initiated teacher discipline systems. Teacher layoff, not considered to be discipline, is treated in a different manner in legislation and in teacher contracts across the country and such matters are not discussed here.

Model 1: Discipline in a collective bargaining system.

When teachers appeal employer's disciplinary actions they face arbitrators, under provincial labour legislation, in Newfoundland, New Brunswick, Quebec, and now in B.C. These four provinces provide teacher discipline legislation which allows for the negotiation of 'just cause' processes in collective agreements and access to those grievance arbitration appeal procedures provided other workers pursuant to the

labour legislation of the province. Teacher discipline in Quebec is governed by the Labour Code and by their Bill 37, in Newfoundland by their Labour Relations Act, and in New Brunswick by the Public Service Labour Relations Act.

However, in two of these provinces centralized bargaining structures result in master agreements for the province. In both Quebec and B.C., local collective agreements, each with the potential to have a somewhat different combination of provisions governing teacher discipline, form aspects of the provincial system. Only in B.C., however, will the matter of teacher tenure, or time required on probationary contract, be a negotiable item on 75 local bargaining tables.

Another unique feature concerning both Quebec and B.C., involves the status of administrators. In Newfoundland and New Brunswick, school based administrators (principals and vice principals), are members of the teacher's union. Terms and conditions of the provincial teachers' collective agreement, including those relating to discipline, apply to teachers and administrators alike. Administrators are not members of teacher bargaining units in B.C., in accordance with the provisions of Bill 20. As in Quebec, B.C. school administrators are now management, charged with assisting to negotiate and administer collective agreements, including implementing provisions dealing with teacher discipline.

Due to the French language factor, it is not likely Quebec will serve as a realistic model for B.C. practitioners, although that province appears to have more in common with B.C. than any other province in terms of its legislative framework governing teacher discipline. Teacher contracts and arbitration awards from Quebec are, for the most part, written in French, and not applied on a regular basis by labour lawyers or practitioners in English-speaking Canada. It remains to be seen,

then, to what extent we can learn about handling teacher discipline matters from models established in either Quebec, New Brunswick or Newfoundland. The prospects appear bleak. While the collective bargaining model in B.C. then, is structured somewhat like those in at least three other provinces, the differences, and the distance from those three provinces, make them unlikely to serve as role models.

Model 2: The Board of reference process within the statute law relationship. The analysis of legislative frameworks governing teacher discipline reveals that teachers in five provinces appeal disciplinary actions through a process equivalent to a board of reference system as it existed in B.C. before 1988. That is, a board of reference, established pursuant to education law, is the first avenue of appeal from employer actions and any further appeal is to the courts. In Alberta, Saskatchewan, Manitoba, Prince Edward Island, and Nova Scotia, teacher discipline is governed by procedures found in education statutes even where teachers have full collective bargaining rights under the province's labour statute. Adjudication panels established to hear teacher discipline cases are described in education statutes, not in labour legislation. Critical discipline jurisprudence relevant in these provinces then, is not labour jurisprudence discussed in the previous chapter, but rather decisions of Supreme Court judges.

Several elements of their systems are in common in these provinces. All statutes outline grounds for employer discipline, ensuring that just cause for discipline must be shown to be in accordance with the education statute. In all cases, these statutes make no reference to disciplinary actions by school boards that are not suspensions or dismissals. There is no provision in these provinces, for example, with the exception of Manitoba, for independent third party review of a

reprimand, a transfer deemed to be disciplinary, or an unsatisfactory report alleged to be disciplinary in nature. Some Manitoba contracts contain clauses allowing for written warnings or suspensions to be reviewed in accordance with the grievance procedures in collective agreements. Legislation in Saskatchewan and Prince Edward Island does not even provide for third party review of suspensions; only dismissals can be reviewed by boards of reference in accordance with the statute.

Teachers bargain under the same labour legislation as other workers in Alberta, but provisions dealing with employee discipline are not included in collective agreements. In Nova Scotia, those few provisions found in collective agreements are simply restated sections of the Education Act. Contract clauses, in any case, may not conflict with the governing legislation, and the education statutes in these five provinces govern in disciplinary matters. In Alberta the School Act governs teacher discipline, in Saskatchewan it is the Education Act, in Manitoba, the Public Schools Act, in Prince Edward Island, the School Act, and in Nova Scotia, the Education Act.

The education statutes in these provinces raise questions concerning the matter of substitution of penalties by the appeal body, although the Manitoba statute is clear that the employer's action is to be upheld or the teacher reinstated. The minister plays a central role in teacher discipline in Alberta, Saskatchewan and in Nova Scotia where s/he constitutes the appeal tribunal upon request. In Alberta the minister appoints one or more persons as a "board of reference" to review the case; in Saskatchewan the minister appoints persons nominated by the parties as a "board of reference", and in Nova Scotia the minister appoints a single person as a "board of appeal". The minister plays a lesser role in Manitoba and in PEI where three person panels (an "arbitration board" in Manitoba, and a "board of reference" in P.E.I.) are selected by the

parties with the minister only involved in the event the parties are unable to agree on a chairperson.

The B.C. system, before Bill 20, was based on School Act provisions which provided for a board of reference in the case of reviews of teacher misconduct and a review commission in the case of reviews of alleged incompetence or poor performance. That system fit best in this model, yet was unlike any other province in some ways. The previous B.C. system is examined in detail in Chapter VI.

Model 3: The mixed approach model. It could be said that both Ontario and New Brunswick provide a mixed approach to dealing with teacher discipline. Both have legislation which allows a choice as to whether the appeal mechanism in teacher discipline will be an education statute board of reference process, or an arbitration review pursuant to labour legislation. However, in New Brunswick, the single provincial teachers' agreement has opted for the labour arbitration approach so this province was included in the first model above. This model then, includes only Ontario.

In Ontario the method of dealing with teacher discipline appeals is based on "a complex overlay of provisions" contained in collective agreements pursuant to the School Boards and Teachers Collective Negotiations Act, (Bill 100) 1975 and the Education Act, 1974 (Education Relations Commission, 1980:10). Because of the nature of the legislation and because there are more than 250 sets of teacher negotiations in the province, collective agreement provisions vary a great deal as to how disciplinary matters will be handled.

In some cases collective agreements are silent on this matter. In those instances the board of reference procedure outlined in the Education Act becomes the legal appeal mechanism, with some limited

exceptions. In other cases, collective agreements state that a teacher may seek redress by way of the grievance/arbitration procedure and a board of reference. A third group of collective agreements provides that either appeal mechanism may be selected. Some agreements state that if the board of reference route is selected the teacher must give up his/her right to an arbitration appeal. If the Minister then refuses to establish a board of reference, the teacher is left with no appeal right. Still another large group of collective agreements makes the board of reference option mandatory with no appeal through grievance/arbitration in any discipline case. Where such a board cannot be constituted based on the minister's discretion, there is no right of appeal. Finally, some collective agreements contain provisions such as a "management rights" clause allowing specific types of disciplinary cases to be appealed to arbitration in spite of other clauses which suggest the board of reference is mandatory for discipline matters (Education Relations Commission, 1980:14).

McElroy, of the Ontario Education Relations Commission reports that her organization has collected 48 teacher discipline arbitration awards since the 1975 legislation which allowed for arbitration of teacher discipline matters. An examination of summaries of those awards (1975-1989) indicate that only 39 relate to *teacher* discipline when those dealing with principals are removed. Of those 39 teacher discipline awards in Ontario issued between 1975 and 1989, 19 upheld the school board, and 20 were "won" in whole or in part by the teacher grievor. The categories of cases were:

-transfers or demotions	10
-probationary dismissals	7
-refusal to cooperate	5
-criminal activity	4
-poor performance	2
-absent without leave	2
-unprofessional conduct	2

-gross indecency	2
-unsatisfactory evaluation report	2
-innappropriate discipline of a student	2
-alcoholism	1

An interesting aspect of many of these awards was the presence of repeated jurisdictional arguments indicating problems involved in interpreting the confusing array of legislation combined with collective agreement language. Objections were raised by one side or the other as to whether the arbitration board had jurisdiction to rule or whether the matter should be heard before a board of reference. For example, in Stormont, Dundas and Glengarry Roman Catholic Separate School Board and L'Association Des Enseignants Franco-Ontariens 1982, (Weatherhill), the school board argued that "a conflict exists between the agreement and Sections 232-242 of *The Education Act* and therefore, according to Section 51. (1) of *School Boards and Teachers Collective Negotiations Act*, conflict must be resolved in favour of *The Education Act*". Weatherhill ruled in that case against the school board's jurisdictional argument but found in favour of the school board on the teacher grievance.

The 39 arbitration decisions dealing with teacher discipline matters are written by such well known labour arbitrators as J. F.W. Weatherhill, G.J. Brandt, K. Swan, R. Kennedy, and K. Burkett and some may serve as a source of precedent in future B.C. teacher cases. Those cited in Brown and Beatty and contained in whole, or in part, in the Labour Arbitration Cases (LACs) are reviewed below.

SECTION 2: REPORTED TEACHER DISCIPLINE CASES

Brown and Beatty, leading Canadian authorities in labour relations,

produce a reference text, Canadian Labor Arbitration, widely used by Canadian arbitrators and labour relations practitioners. That text, an open entry, now in its third edition (1988), outlines arbitral jurisprudence on any possible grievance arbitration topic or related legal issue, and makes reference to arbitration case(s) in the numerous volumes of Labour Arbitration Cases (the LAC's) where the actual full award(s), or excerpt(s), deals with the particular issue referred to.

Brown and Beatty's discipline section, Chapter 7, pages 7-1 to 7-220 makes references to only 8 cases involving teachers. This section of this chapter determines what can be learned about those teacher arbitration decisions. The cases are reviewed with those reviews recorded chronologically in Appendix B.

What Can Be Learned About Teacher Discipline Jurisprudence From Leading Cases Cited in the LACs

In spite of the fact that approximately 300,000 teachers are working today in Canada, only eight cases involving discipline of teachers are referred to in Brown and Beatty. This may have been expected when teacher discipline cases are arbitrated under labour legislation only in Quebec, Newfoundland, New Brunswick, and sometimes in Ontario. Quebec's cases, written in French, are not reported by Brown and Beatty, leaving only three provinces to produce arbitration decisions. It is understandable then, that only three provinces are represented. It is evident that practitioners in B.C., engaged in researching teacher discipline grievances, will not find arbitral precedents concerning other teacher cases by looking to Brown and Beatty.

Of the eight cases cited, none could be described as a 'regular' or 'mainstream' discipline case. The issues dealt with are peripheral in terms of employee discipline. There is no reported case, for example,

of a tenured teacher dismissal. Only one case, Jones, is cited more than three times. While this case involves a dismissal, it is distinguished in that it involves a principal who is also a probationary employee, an unusual situation which will not arise in a B.C. arbitration where principals are not unionized.

Of the eight cases, four appeals upheld the employer and four were "won" by the union. Five of the eight cases are from Ontario, three of them focussing considerable argument on the issue of arbitrability as discussed above. These cases confirm that regular disagreement over whether arbitration is the correct process for discipline matters occurs in Ontario. Because of the confusing nature of Ontario's legislation, time is spent not only debating whether the arbitration board has a right to hear the case, but also arguing whether the arbitrator has the right to vary a penalty. Decisions on such matters serve no precedential value in B.C. teacher arbitrations where such questions are clearly answered in legislation.

A Summary of the Eight Teacher Cases Found in the LAC's

A review of the eight teacher discipline arbitration cases found in the LAC's, indicate they can be categorized and summarized as follows: (see Appendix B.)

1. Half of the cases, (City of Windsor, Carleton Board, Borough of Scarborough, and Jones) deal with the issue of probationary teachers, teachers without tenure. Probationary teachers were treated by arbitrators as other unionized probationary workers in these cases. There is no indication that the teacher tenure system creates any unique form of probation. In two cases the union "won" when the issue was over the process used to dismiss (or fail to renew the contract), or to evaluate a probationary teacher. When the issue concerned the right of the school board to terminate the probationary

teacher, the employer was upheld. In two cases, Porcupine Area Ambulance Service, a 1974 decision by Beatty is cited as the authority. Porcupine states that in the case of a probationary employee, just cause for discipline means that "any decision as to suitability must be grounded in legitimate expectations of the employer and not standards that are unreasonable or extraneous to the requirements of the job". Where an evaluation of a probationary teacher is considered to be "unreasonable" then, the employer's action will likely be rescinded pending a fair evaluation.

2. The issue of arbitrability is argued in City of Windsor, Wellington County, and City of London. The question is whether the arbitrator has jurisdiction when the collective agreement contains no provision governing discipline, or when there is no "just cause" provision. In all three cases, arbitration boards ruled they had jurisdiction. Such situations or arguments will not occur under legislation governing B.C. teachers.
3. The Newfoundland case (Notre Dame Integrated), is relevant to B.C. and to the definition of discipline under labour law. The question it answers is 'When is a negative sounding letter from the employer discipline?' The answer based on this case is, "Such a letter is discipline if it has a negative impact on a teacher's work record and if it is to be kept in the teacher's file".
4. In Wellington County the arbitrator considered a teacher transfer to be a disciplinary demotion and stated that it did not seem proper that such "discipline" be indefinite. While the arbitrator upheld the employer, he did so only because there was no law in Ontario allowing the penalty to be varied, and no clause in the collective agreement which might have been breached by such action, other than a management's rights clause. This case may be cited in teacher transfer arbitrations in B.C. but in a context where there is a law allowing for a variation in penalty (section 98 of the Industrial Relations Act).
5. The decision in Durham Board, indicates that pay deductions may not be made to teachers for being away from school for a few hours when students are not in attendance and when someone in authority has given permission for the teacher's absence.

6. Jones deals with the matter of an employee who is an alcoholic but who goes to great lengths to rehabilitate himself. The question became, "should this teacher (principal) get a second chance?". The case was never resolved by the courts or the arbitrators. The original arbitration found for the teacher; that decision was overturned by the lower courts and in the end the highest court sent the case back to the arbitrator because of the process but not the decision. However, a rehabilitated Jones went back to work and the matter was dropped. The case does establish alcoholism as an illness and rehabilitation as a correct approach to take, but the case is complicated because Jones is a probationary employee and substantial argument is given to the standard of arbitral review for probationary employees.
7. City of London, involving suspensions for theft, contains an interesting argument regarding the kind of fair processes available to teachers when the collective agreement is silent. The arbitrator ruled on the basis of a Supreme Court decision in LaCarte, that procedural protection is determined by the language of the collective agreement, and that if there is no such language, fair procedures may not be guaranteed. He described such a relationship, where no fair procedures were included in the collective agreement, as one of master and servant.

C. Summary

The analysis in the first two sections of this chapter found that teachers in B.C. are entering a collective bargaining system which offers few precedents from other teacher jurisdictions in Canada in terms of dealing with teacher discipline arbitrations under labour law. Teacher discipline in this province is now governed by collective agreements, the Industrial Relations Act, the School Act, and arbitral jurisprudence as set out in Brown and Beatty, the LAC's, and other relevant arbitration awards. This appears to put B.C. teachers in a different category from that of most other teachers in the country. For arbitration precedents, those provinces we can turn to, Newfoundland, New Brunswick, Quebec, and Ontario, all prove to be problematic models. In Quebec,

the problem is one of language; Newfoundland and New Brunswick are distant; they have provincial master agreements and their arbitration cases are few and not easily obtained. In Ontario, the legislation complicates matters to the extent that even those few arbitration awards available are filled with questions of arbitrability not relevant here. Ontario's legislation is quite different than that faced by B.C. teachers; principals are part of Ontario bargaining units; many discipline cases are heard by boards of reference under education law; and many collective agreements do not contain clauses dealing with discipline.

SECTION 3: CANADIAN STUDIES OF TEACHER DISCIPLINE

One becomes disappointed very quickly when attempting to locate literature which analyzes Canadian teacher discipline systems. This author was able to locate only two works, one prepared by the Canadian Teachers' Federation (CTF) and a book originally written as a Masters thesis by Michael Czuboka, a Manitoba school superintendent. The CTF document is designed as a catalogue of teacher court cases for use by their provincial bodies. Citations and brief extracts of each case are not limited to discipline, however, and deal with such matters as judicial reviews of both interest and rights arbitration awards, cases related to sick leave, income tax, criminal acts, conflict of interest, and sexual harassment, to name a few. CTF is currently attempting to collect discipline arbitration decisions issued pursuant to labour legislation.

A. Czuboka Research on Manitoba Teacher Discipline

The Czuboka study (1985) provides a helpful assessment and analysis of the system of teacher discipline in Manitoba, with one major flaw; the

review of the legislation governing teacher discipline in that province is inadequate and leaves the impression that because teachers "go to arbitration" in Manitoba, as they do in Newfoundland and Quebec, the systems in those three provinces are the same. As noted above, such is not the case. Arbitration of teacher dismissals in Manitoba is not governed by labour legislation. In fact, the arbitration system in Manitoba is more closely related to the board of reference system in Alberta or Saskatchewan. However, the analysis provides a record of every teacher dismissal case occurring in Manitoba between 1969 and 1985--or at least of every *appealed* dismissal case.

Czuboka's detailed outline of these 18 Manitoba teacher dismissal appeals permits a summary of the due process requirements judges, or in some cases--arbitration boards, have mandated school boards provide teachers in that province:

1. "...only detailed and documented written evidence would be acceptable,...and reasons for release must be very specific". The teacher must be present at the school board meeting when his contract is terminated and have an opportunity to refute the evidence (68). (cited in Jenkins v St. James-Assiniboia, 1969).
2. There is no equality of justice if one teacher is fired and another is not when both were involved in the same incident cited as the reason for the termination. "Vague complaints by parents are hearsay evidence" and are of little use in a dismissal case (83-4). (cited in Skublen v Lakeshore, 1970).
3. There must be valid "cause" for terminating an agreement and school boards cannot add additional reasons for dismissal after the official reasons have already been given in writing (76-78). (cited in Weir v St. Boniface, 1971).
4. A school board is not free to give one reason for a teacher's termination and later on at a hearing before the arbitrators shift its ground to another reason (141). (cited in Lowery v Beautiful Plains, 1975).
5. The correct school board hearing procedure must be carried out. The teacher must have an opportunity to prepare and present his case (149). (cited in Husain v Portage la Prairie, 1980).
6. When a tenured teacher who had been satisfactorily employed for seven years was "sorely provoked", and the incident leading to dismissal an "isolated incident", and the teacher is now "contrite", and has "apologized", "such a draconian decision [as dismissal] which might have the effect of terminating a

professional career" will not be allowed to stand (167). (cited in Kitsch v Morris-MacDonald, 1981).

7. The doctrine of the "culminating incident" was invoked for the first time (181). (cited in Nash v Seine River, 1984).

Czuboka's case material indicates that in 85% of Manitoba teacher dismissal cases the teacher won in appeal (194). However, the author fails to adequately categorize and summarize his cases. He offers recommendations and advice (intended for school administrators and not all agreed to by this author) throughout, in reference to the teacher dismissal process. A list (incomplete) of his recommendations follows:

1. Teachers with tenure must be given due process, which means "having the right to attend a school board meeting at which his possible dismissal is being considered", having the opportunity to "refute the evidence against him", having the right to bring witnesses, a lawyer, and any resources "as required to present his case in a fair manner" (263-4).
2. Arbitrations will be very expensive, and most will be appealed to the courts, adding to the expense. Be prepared to pay up to \$80,000 on a case plus staff time [in 1980] (137).
3. Because most arbitrations will be appealed to the courts, a court reporter should be present at all arbitration hearings. (This point was also made by judges in several cases (114 and 137). (also see Kaushal v Agassiz, 1973).
4. All witnesses for the school board should be well prepared for "the ordeal they will face on the stand". One principal and superintendent had their career's damaged when "the arbitrator went far beyond his mandate" (174-8) (Czuboka quotes from Nash v Seine River, 1977).
5. A dismissal letter must be very carefully drafted "as the reasons stated must later be proven by evidence" (117).
6. It will be very difficult to get an arbitrator to uphold the dismissal of a teacher proven to be "very competent" even though competence is not the issue (138).
7. Permanent tenure for teachers should be abolished. There should be instead "mandatory retraining for all teachers and administrators to renew their tenure and permanent certification at certain intervals, such as every five or ten years." (xxii).

The recommendations indicate some clear differences in the appeal process in Manitoba compared to that under labour law in B.C. In

particular note the references to court review of awards and the need for court reporters, which of course is not applicable here.

B. Limitations of the Czuboka Research

While Czuboka's analysis of the teacher discipline system or dismissal cases in Manitoba is useful, his review of the situation in other Canadian provinces is completely inadequate and even misleading. It is revealing, therefore, that Czuboka comments in his "introduction", on how extensively the first edition of this book is used by school administrators "throughout Canada" (xix). If that is the case, it can only indicate the dearth of material available on the topic. But also if such an assessment is correct, further comment is warranted in criticism of this work. The Canadian analysis is not helpful for at least four reasons:

- (1) The B.C. section discusses only one case, Caldwell v St. Thomas Aquinas School, and fails to explain that this is a private school case, a human rights issue, and unrelated to general case law on B.C. teacher dismissals.
- (2) The Alberta section discusses Keegstra only. That case is not yet resolved and is so unusual it sheds little light on teacher discipline in that province.
- (3) Other cases from various provinces deal with layoffs rather than discipline, and the author fails to differentiate between reduction in force and discipline.
- (4) No examination of legislation or collective agreements is included nor was there a suggestion that this might be relevant in terms of teacher discipline. In fact legal frameworks are rarely referred to and then only in an incidental fashion.

A few general points of interest in Czuboka's work can be summarized as follows:

1. "...almost all of the tenure cases in Manitoba over the past twenty years have involved either junior or senior high school male teachers. Kindergarten and Grades 1 to 6 teachers are rarely fired" (6).
2. During the year 1971-72 [the one year he had data for] there were twenty-one appeals to boards of reference in Alberta. Three were withdrawn by school boards before they were heard, eight were withdrawn by teachers; others were

settled by mutual compromise, and in the end eight cases went to a hearing. Of those eight cases, five were won by the school boards and 3 by teachers (34).

3. There were few cases of teacher dismissals before 1970 in Canada because: "In reality, what happened ...is that teachers usually resigned even when under a slight amount of pressure. After all, jobs were plentiful, and teachers could always go somewhere else" (43).

In summary, it must be concluded that comprehensive research on teacher discipline systems in Canada has not yet been conducted. Czuboka's work, which leaves many questions unanswered, appears to stand alone.

SECTION 4: AMERICAN RESEARCH ON TEACHER DISCIPLINE

The last section of this chapter looks briefly at teacher discipline systems in the United States. A review of the literature on the subject indicates a great deal has been written on specific teacher cases, especially those dealt with in the courts, or on teacher discipline concerns of specific states, but little research is found dealing with teacher discipline systems in general. However, it becomes apparent that legal frameworks vary a great deal from one state to the next.

James Gross claims that recent interest in the problems of the American education system has created new interest in teacher discipline in the 1980's because of the tendency to blame teachers. The popular press has created a theme that American schools fail due to deteriorating pupil discipline, declining scores on standardized tests, and tenure laws that make it difficult to dismiss incompetent teachers. He feels vigilance is needed to protect teacher's lives and careers against unjust disciplinary actions "based on unstated values and presumptions rather than facts" (1988:2). He claims teacher discipline, as a research topic, is just now beginning to interest academics.

This section reviews three areas of the American teacher discipline system: (1) teacher tenure in the American context, (2) the discipline system within the context of types of legal frameworks, and (3) some relevant studies of American teacher discipline.

A. Teacher Tenure in the United States

All fifty states have "tenure laws", 41 of them specifying dismissal or nonrenewal of teachers for such causes as incompetence, physical or mental disability, insubordination, neglect of duty, intoxication, or excessive use of a controlled substance (Gross, 1988:2). Bridges and Gumpert (1984) claim it was not until 1980 that the National Education Association (NEA) reported success in its century-long struggle to obtain tenure rights for teachers. Such rights meant teachers were no longer vulnerable to arbitrary dismissal. They could be dismissed only if school officials provided procedural due process and proved cause (3). Cresswell (1980) states that these tenure laws provide for a probationary period of typically three years, after which time teachers have a continuing contract (185). Fischer, Schimmel and Kelly (1981: 36-7) explain that for tenured teachers: Most state laws require specific notice of any charges against the teacher and a hearing before a tenured teacher can be dismissed. The teacher has a right to be present, to have counsel, to subpoena witnesses, to cross-examine witnesses, and to present a defense. In the case of probationary teachers, most states do not provide a right to a hearing but do require notice and written reasons for dismissal.

Cresswell and Kerchner (1980) explain that evaluation processes, academic freedom, and dismissal procedures have different meanings for teachers than for other professional employees in that tenure provisions in state codes govern, rather than by civil regulations that apply to non-

teaching employees (157). They also report that "certain items [related to hiring and discipline] may not be negotiated and are termed 'excluded' (or illegal)" (301).

B. Teacher Discipline Systems: Legal Frameworks

The question relevant to this study is: Are teacher discipline cases dealt with under labour law with arbitration as the appeal mechanism in any American states? or Are such cases handled by means of school board hearings and review panels appointed pursuant to education statutes, with final appeal to the courts? The literature is ambiguous on this matter.

The court review prevails. A number of researchers who have written about teacher discipline systems in the U.S., discuss, at length, the court system of appeal which governs in teacher dismissal cases (Delon,1977; Cresswell and Kerchner 1980; Fischer, Schimmel and Kelly,1981; Bridges and Gumport,1984; and Gross, 1988). Four of these works briefly mention the collective bargaining system as a means of dealing with teacher discipline, but imply the use of labour arbitration is not extensive. Fischer, Schimmel and Kelly (1981) use the word 'arbitration' only once in their book, "Teachers and the Law". That book provides the following clause as a "typical state law" outlining procedures for dismissing a tenured teacher in the U.S.:

No teacher who has become permanently employed under this section may be refused employment, dismissed, removed or discharged, except for inefficiency or immorality, for willful and persistent violation of reasonable regulations of the governing body of the school system or school or for other good cause, upon written charges based on fact preferred by the governing body or other proper officer of the school system or school in which the teacher is employed. Upon the teacher's written request and no less than 10 nor more than 30 days after receipt of notice by the teacher, the charges shall be heard and determined

by the governing body of the school system or school by which the teacher is employed. Hearings shall be public when requested by the teacher and all proceedings thereat shall be taken by a court reporter. All parties shall be entitled to be represented by counsel at the hearing. The action of the governing body is final (cited in Fischer, Schimmel, and Kelly, 1981:361).

Delon introduces his 1977 work with this statement: "More and more boards of education are entering into negotiated agreements with teachers' organizations. These agreements frequently contain grievance procedures that relate directly to situations involving teacher discipline" (1). However, he then goes on to devote his entire "monograph" to teacher discipline issues raised in the courts and does not touch on arbitration cases at all. His concluding remarks only raise more questions:

State legislatures, in increasing numbers, have adopted public sector collective bargaining laws and established professional practices commissions and/or licensure boards....In disputes arising from the discipline of teachers, the record reveals a more frequent use of grievance procedures, hearing panels, and arbitration, all of which are products of recent legislation... [However,] As the record clearly indicates, the courts are reviewing more and more personnel decisions involving the disciplining of teachers (80-81).

Delon talks of the "mass litigation on teacher discipline" during the decade (1977:80), and in his monograph briefly reviews hundreds of court decisions dealing with several categories of teacher discipline by school authorities in various states. He devotes one section to cases of teacher dismissals which resulted in penalty reduction by courts. He concludes that "the federal court is not the appropriate forum in which the multitude of personnel decisions that are made daily by public agencies" should be heard (82). It is clear that before 1980 most American teacher discipline cases were appealed to the courts and not heard by labour arbitrators.

Limited use of arbitration. Bridges and Gumport, in their 1984 work, imply that some teacher discipline cases in the U.S. (the cases of

probationary teachers) are appealed to arbitration boards under labour legislation and other cases to a "hearing officer" rather than to the courts:

The percentage of reversals of school board decisions to dismiss teachers for incompetence are even greater in hearing decisions rather than in court decisions--63% are overturned. ... When probationary teachers are terminated and the decisions are appealed under the provisions of a collective bargaining agreement, arbitrators, like hearing officers, tend to rule against school boards. More than half of the cases heard by arbitrators in the only study that examines this issue result in negative decisions for school districts (27).

Gross (1988:3) sheds some light on the "hearing officer". He claims six states provide that teacher dismissal decisions be made by a neutral body, and most put the power in the hands of a single hearing officer who is either employed by or chosen by the educational administration of the state. Only in Washington and New York do private arbitrators hold the power of decision in dismissal cases involving public school teachers. In Washington, this single hearing officer must be a member of the state bar association and is appointed by two members of the state bar association, one chosen by the teacher and the other by the board of education.

Gross then highlights the New York system because he claims it is the only state where the American Arbitration Association's arbitrators act as neutral third-party chairpersons of panels with final decision-making authority in teacher discipline cases. These panels, he believes, are the most neutral of all such decision-making bodies established by state statutes. It is in such arenas, he believes, that teachers will be most apt to receive fair treatment. This appears to indicate that only in New York does the teacher discipline system come within the sphere of the collective bargaining regime under labour legislation as we know it.

More recent works by Gross (1988), and Bridges and Gumport (1984) confirm that even in the 1980's teacher discipline cases were

reviewed, for the most part, in the final analysis, by the courts. Bridges and Gumport conclude, teacher dismissal appeals were "heard mainly in two legal forums: trial court and court of appeals; trial court and state supreme court" (10).

C. American Studies of Teacher Discipline

State laws commonly list specific reasons why teachers can be dismissed and such laws determine the categories of discipline reported in studies reviewing teacher discipline. One study reports those reasons most commonly listed in statute are reported to be insubordination, incompetence, and immoral conduct, and "the most common reasons for firing teachers include incompetency, immorality, insubordination, and unprofessional conduct" (Fischer, Schimmel and Kelly, 1981:26).

New York State law sets out general categories of offences for which tenured teachers may be disciplined: conduct unbecoming a teacher, insubordination, immoral character, incompetency and inefficiency, physical or mental disability, neglect of duty, and lack of proper certification (Gross, 1988:4). James Gross examined 383 teacher discipline cases in New York state from 1977-87 (a ten year period) and found the largest category (50% of all cases) was for "conduct unbecoming a teacher". (Forty of these cases were not proven.) Of 151 proven cases, he further broke down this main category into ten sub-categories as follows:

-physical abuse of students	49 cases
-sexual abuse of students	26
-dishonesty	23
-classroom control	16
-personal relations with administration	10
-criminal conviction	13
-fighting with other teachers	4

-bizarre behaviour	5
-causing upset in community	1
-miscellaneous	4
Total	151 cases

(Gross,1988: appendices)

Gross found the remaining 192 teacher discipline cases fell into four categories: neglect of duty (85 cases), incompetency and inefficiency (62 cases), insubordination, and lack of proper certification (numbers not included). He further broke down the incompetency and inefficiency category, his prime area of research, and found most fell into a group based on "lack of discipline".

Bridges and Gumport (1984) reviewed 86 teacher terminations for incompetence and compared their results to the few similar studies they could locate. Their key results are summarized:

1. Between 1939 and 1973 in California there were no reported cases of tenured teacher dismissals due to incompetence (10).
2. There were nine cases in California in 1982 involving the dismissal of tenured teachers for incompetence (10)
3. "The leading cause for dismissal in every study of teacher failure [incompetence] conducted since 1913 involved weakness in pupil discipline. Bureaucratic failure is also cited in 50% of teacher dismissals. This involved refusal to follow suggestions of the supervisor and violation of the district's policy of corporal punishment" (15).
4. "School officials rely most heavily on supervisory evaluations based on classroom observations, as evidence in court proceedings, and ordinarily "the courts accord great deference to these supervisory ratings ..." (16).
5. "Nearly two thirds of the district's dismissal cases included in this study are upheld by the courts" and the noteworthy exceptions are dismissals involving elementary teachers or teachers with less than 21 years teaching experience" (18-9).
6. The most common reasons for courts overturning school board dismissals were due to:
 - a. Procedural defects:
 1. failure to provide written notice
 2. failure to provide timely evaluations ("Dismissal decisions must be based on evaluations that are conducted after, not prior to or during, the period in which the teacher is trying to improve his or her performance."
 3. failure to particularize the charges against the teacher
 4. failure to furnish recommendations for improvement

5. failure to provide a sufficient period for the teacher to improve (20).

and b. Insufficient evidence:

1. school authorities fail to demonstrate that the causes are irremediate,
2. there are inconsistencies in the evidence presented by the district;
3. school authorities introduce irrelevant evidence;
4. school authorities fail to prove the deleterious effects asserted in cause-effect statements; and
5. the teacher introduces persuasive evidence that he obtains exceptional results with students (21-2).

7. "Research in progress indicates that the forced resignation rather than formal termination is a rather common occurrence (27).

8. "Existing empirical research suggests that the uncritical, even deferential, stance of the courts [toward supervisory ratings of teachers] may be unwarranted. Supervisory ratings are poor indicators of how much students are learning and appear to be ineffective in improving instruction" (23). Conclusions are cited from eight studies reported in educational journals to prove this point. (Medley & Mitzel, McCall & Krause, Anderson, LaDuke, Gotham, Jones, Brookover, and Jayne).

These authors conclude "the dismissal of tenured teachers for incompetence remains a relatively neglected area of study". They claim "there has been no comprehensive empirical investigation of the subject and as a consequence, little, if anything is known about the subject. (Bridges and Gumport, 1984:4)

D. Summary of American Teacher Discipline Systems

This last section of the chapter provided a brief review of American teacher discipline systems. Since 1980 teacher tenure laws have been adopted in all states. Such laws typically provide that after three years teachers have completed a probationary period and a higher standard of due process then applies in addition to requiring cause for discipline. Grounds for teacher discipline are normally found in tenure laws in an education statute. Teacher dismissals are reviewed in school board hearings, by hearing officers, in the courts, and by arbitrators in rare instances.

Teachers in New York State are in a collective bargaining regime and a discipline case review comes under collective agreements and labour arbitration procedures, although a state law outlines reasons for discipline of teachers. It would appear a similar collective bargaining legal framework exists in few states for dealing with teacher discipline. The literature indicates teacher discipline is a matter of statute law with cases reviewed in the courts in almost all states.

Two thirds of dismissal cases are upheld by the courts, whereas, in cases reviewed by arbitrators or by hearing officers, indications are that a higher percentage of school board actions are overturned. However, the literature indicates that comprehensive research on the general topic of teacher discipline in the U.S. has not been done and statistics reported in a few studies are inconclusive due to the small samples involved.

Studies looking at specific categories of discipline cases indicate that insubordination, incompetence, and immoral conduct are categories most often found in legislation and in studies of teacher discipline cases. In the case of incompetence, all cases have involved, among other issues, the inability of the teacher to control his or her pupils.

CONCLUSION

This chapter examined teacher discipline in terms of conceptual frameworks set out in the two previous chapters. Four key areas were examined: (1) Legal frameworks for dealing with matters of teacher discipline across Canada were described in terms of three models; (2) A review of teacher discipline arbitration cases noted key jurisprudence found within the collective bargaining regime; (3) A review of other Canadian studies of teacher discipline highlighted the work by Czuboka because it stands alone in terms of Canadian research in this field; and

(4) The American teacher discipline system was overviewed briefly in terms of both legislative frameworks and relevant studies.

Three models of legislative frameworks were described within which all Canadian teacher discipline systems were categorized. The B.C. system has moved from a "statute law" model to a "collective bargaining regime model" as a result of Bill 20. The previous system in B.C. was similar to that currently found in Alberta and Saskatchewan, but is now more like that found in Quebec.

A search for teacher discipline arbitration cases which may have some precedential value in terms of central issues facing B.C. teachers in critical disciplinary arbitrations, found that standard labour jurisprudence as applied to teachers has little to offer. This circumstance indicates that the B.C. education community must look to other than teacher arbitration decisions when searching for relevant precedents. A mere handful of Ontario cases may be helpful.

Czuboka's work was useful in providing a review of teacher discipline appeals in Manitoba and may be the only study in Canada that has attempted to research teacher discipline in such depth. However, although his study purports to provide a review of the Canadian teacher discipline scene, it fails.

The brief review of the American models indicates teacher discipline systems tend to fit primarily within the statute law legal frameworks rather than within collective bargaining regimes. All states have teacher tenure laws, and it is common practice to appeal teacher discipline cases to the courts. Studies of American teacher discipline focus on the categories of discipline and the numbers of cases upheld in appeal, normally by the courts. There is no distinction made between culpable and non-culpable cases, progressive discipline concepts do not appear to have been applied, and standard labour jurisprudence does not appear to

be considered relevant.

Literature reviewed in this chapter indicate that the world of teacher discipline is an isolated one and very different from that operating for other employees. Teachers are dealt with in a unique manner all over North America in terms of the employer-initiated discipline system used. The State of New York may be one of the few exceptions in the U.S. where teacher discipline is dealt with by labour arbitrators under labour law. Quebec is the system most like the B.C. model found in Canada. One is left with an overall sense, then, that the new teacher discipline system in B.C. which is to fit within a collective bargaining model, is to be one of a kind in North America.

CHAPTER V

ANALYSIS OF THE B.C. LEGISLATIVE FRAMEWORK

This chapter answers two critical questions "What was in the School Act dealing with teacher discipline in this province before Bill 20?" and "After Bill 20, what legislative provisions govern in matters of teacher discipline?" Chapter II noted that employee discipline occurs within any one of three legal frameworks governing the employer-employee relationship: the common law framework, the relationship bound by statute, or the collective bargaining relationship. A review of the specific teacher discipline legal frameworks in B.C. allows an analysis of the two applicable discipline systems, highlighting their differences, and showing how B.C. teachers have been shifted from a system governed by a specific statute to a collective bargaining relationship.

The chapter is organized into three sections. The first provides an overview of critical events, or a chronology of changes in the education system situating teacher discipline changes in a historical context. Section two analyzes B.C. teacher discipline legislation as it shifted from the statute model in 1986 to the collective bargaining regime in 1989. Three distinct periods are examined. Finally, a conclusion forms the third section of the chapter and highlights the changes in the legal framework and the differences in the systems regulating the discipline system for B.C.

teachers over the three year period of time.

SECTION 1: A CHRONOLOGY OF CHANGES

It is appropriate at the outset of this chapter, to briefly set out the calendar of events referred to in this thesis. The legal framework governing matters related to the teacher discipline system did not change all at once or on any one day. Between 1986 and 1990 several relevant changes occurred. The following outline of critical events explains the shift from the old legal framework to the new:

- 1. August 1986:** The Abridged Manual of School Law was revised and consolidated for convenience by the B.C. Ministry of Education. The sections of the School Act and Regulations described in this chapter as forming "the old system" are taken from that volume.
- 2. May 1987:** Bill 20 became law outlining, among other more radical changes, a comprehensive new set of provisions governing teacher discipline which became known as "interim" provisions pending the negotiation of first collective agreements.
- 3. January 1988:** Those provisions in Bill 20 related to teacher discipline and adopted in May of 1987, came into effect for the first time.
- 4. January and February 1988:** All 75 teacher associations became unions under the unprecedented dual certification requirements of first Bill 20 and then the Industrial Relations Act.
- 5. Spring of 1988:** Newly formed teacher unions in 75 school districts opened negotiations for the first time pursuant to the Industrial Relations Act.
- 6. June 1988:** At the end of this month, teacher contracts, negotiated under previous School Act legislation came to an end. Only one school district in the province, Fort Nelson, had a new "first agreement" in place. In Fort Nelson teacher discipline would now be subject to those new collective agreement provisions dealing with such matters, as well as the relevant terms of Bill 20 and the Industrial Relations Act. But in all other

districts, teacher discipline continued to be governed by those provisions contained in Bill 20 or were governed by any "bridging agreements" reached between teachers and school boards. (Most school boards and locals agreed to continue the old School Act provisions pending the outcome of first agreement negotiations.)

7. October 1988: The Lieutenant Governor in Council issued a new set of Regulations, and repealed others--many relating to teacher discipline.

8. Spring of 1989: All 75 "first agreements" were in place, effective July 1, 1988, making teacher discipline in all school districts now subject to provisions in collective agreements and the legal framework provided in Bill 20 and the Industrial Relations Act.

9. September 1989: A new School Act became law. Among other major changes, it contained new provisions relating to teacher discipline. All teacher discipline provisions contained in Bill 20, were repealed.

10. September 1989 to July 1990 and beyond: Teachers and school boards tested the new discipline provisions contained in first collective agreements negotiated pursuant to the Industrial Relations Act.

11. March 1990: A second round of teacher negotiations began. Both sides proposed changes to collective agreement provisions relating to teacher discipline. The 1989 changes to the School Act resulted in many new provisions being negotiated into collective agreements. This paper is written during and after the second set of negotiations. Collective agreements reviewed in Chapter VII are those resulting from "Round Two".

SECTION 2: AN ANALYSIS OF CRITICAL LEGISLATION

This section of the chapter contains three parts. The first outlines the nature of the legislative framework governing teacher discipline before Bill 20 by examining the actual provisions outlined in the 1986 "Manual of School Law". In addition, an interview with Des Grady, former BCTF legal counsel and executive staff member for 26 years until 1989, (now retired), sheds light on how the previous legislation actually worked in

practice. Ralph Sundby, a current BCTF bargaining administrative staff member, who worked with Grady in the teacher personnel division from 1982 to 1989 also provided information on how the various legislative frameworks have worked in practice over the three periods of time. (Grady and Sundby of the BCTF's teacher personnel division along with M. Shamsheer were the first line of contact for teachers in B.C. when disciplinary action was taken against teachers by school boards before 1989.) This first part also examines a number of discipline cases that could not be appealed under the 1986 legislative framework and reviews the types of BCTF actions taken to seek redress for teachers when formal School Act appeal procedures were not available.

Part two of this second section examines the legislation in place during the interim period between the old system and the current one. Sections of Bill 20 and regulations effective in 1988 are reviewed. The Bill 20 provisions, for the most part became irrelevant and were repealed or revised in the 1989 School Act.

The third part of this section examines the current legislative framework governing teacher discipline by reviewing the current School Act, and the relevant sections of the Industrial Relations Act. It might seem appropriate to also examine in this section the 75 district collective agreement provisions relevant in cases of teacher discipline as these provisions also contribute to forming the current legal framework. However, those provisions are extensive, vary a great deal from one district to the next, and require a major allocation of space. Chapter VII is devoted solely to that topic.

A. Teacher Discipline Provisions, 1986

This part of the chapter examines teacher discipline provisions relating to discipline of teachers by the employer (the school board), found in the

1986 School Act and Regulations. Those legislative provisions discussed here are contained in Appendix C at the end of the paper. Sections of the Judicial Review Procedure Act, also relevant to teacher discipline in this period, are contained in Appendix C.

Critical features of the 1986 legislation. What becomes evident at the outset, in reviewing the 1986 provisions (Appendix C), is that the appeal provisions of the School Act for disciplinary actions taken against teachers were limited. In the case of a forced teacher transfer (which often occurred for a disciplinary reason), the teacher had a right to meet with the superintendent and the board or could "request the minister review his transfer" (section 120 (3), (6) and (7)). A dissatisfied teacher had a further option of resigning (section 120 (9)). Grady (Interview, May 27, 1991) recalls that whether or not a teacher received a transfer appeal hearing, depended on which minister was in power. The Minister of Education, Hon. Dr. Patrick McGeer, who brought in the transfer hearing provision, set up tribunals to hear transfer cases and acted on their decisions for some time. Some teachers had transfers overturned through this early process. Grady claims the minister "soon tired of this process of hearing all transfer appeals" and later agreed to review only administrator transfers that were "punitive". A later Minister of Education, Hon. William Vander Zalm, would not hear transfer cases unless they involved administrators who had been "transferred" back to the classroom, effectively receiving a demotion in status and a reduction in salary. Grady reports the BCTF won most of these transfer review cases when a hearing could be obtained. He also recalls that the BCTF did manage to get one transfer hearing in recent times for a regular classroom teacher. "That teacher was (Social Credit MLA, and Speaker of the House) Walter Davidson's brother-in-law" (Grady, Interview, May 27, 1991).

In the case of dismissals and suspensions, section 129 (1) allowed the teacher to appeal to a board of reference if the suspension was "for a period exceeding 10 days or a dismissal". For any disciplinary action short of a 10 day suspension or discharge, then, there was no provision for appeal other than for a teacher to plead his/her case to the trustees and superintendent who had made the decision in the first place (see section 122 (2), section 123 (2) and regulation 62).

Tenure provisions. Section 119 (2) is what has been referred to in other provinces as B.C. teachers' "instant tenure" provision. Unless an appointment was a probationary or temporary appointment it was of a continuing status. This legislation was introduced in the early 1970s. The year of the adoption of the legislation there were 930 teachers in B.C. on probation, Grady reports (Interview, May 27, 1991). The following year under the new "instant tenure" provision only 12 teachers were put on probation. Regulation 59 permitted a school board to put a teacher on probation during the first 9 months of a new appointment to the district, but teachers did not automatically begin on probation as in other provinces. Regulations 59-62 dealing with probationary appointments were used by boards in the province as disciplinary provisions, for the most part. However, rarely were the provisions used.

Reasons for discipline and nature of due process provisions. Section 122 provided that teachers could be suspended or discharged for misconduct, neglect of duty or refusal or neglect to obey a lawful order of the board. A teacher could be suspended after being charged with a criminal offence and could be dismissed later if found guilty. Regulation 66 required a school board to notify a teacher in writing of such a suspension outlining grounds for the action. Section 122 required that a

suspended teacher have an opportunity to appear before the school board and the superintendent before a decision was made to discharge him/her. The provision did not specify the teacher could bring counsel to that school board meeting, nor was there a provision giving the teacher the right to call witnesses, to hear the case against him/her, or to cross examine witnesses. Unless the suspension exceeded 10 days, this appearance at a school board meeting was the end of the matter.

Grady reports (Interview, May 27, 1991) boards did not object to teachers being represented at hearings and in fact boards usually had legal representation themselves. Grady represented many teachers over two decades in such school board hearings. He claims cases often involved teachers who had been suspended for two or three days for such infractions as "having a beer on a field trip", or for "losing one's temper and belting a kid". While such teachers had already been suspended, the purpose of the hearing was to determine if they should be suspended longer or reinstated with full back pay. The legislation had an element of "prejudging the case in it". He claims school boards sometimes rescinded the suspensions after such hearings and teachers received full back pay. However, when the board upheld the suspension there was nothing the BCTF or the teacher could do, except by taking political or job actions.

Grady also highlighted the "massive variation" in numbers and types of cases he handled in his 26 years (Interview, May 27, 1991). In the 1960s the majority of cases of teacher discipline involved the issue of "corporal punishment" or of teachers "manhandling kids". In the 1970s field trips became the focus. Teachers were often charged with not properly supervising a field trip and students had perhaps been drinking, for example. In the 1980s sexual abuse of students became the major issue.

Section 123 dealt with poor performance and permitted a board to terminate a teacher's contract on 30 days notice with a further 30 days

notice of intent to give such a notice. In order to terminate under this provision, regulation 65 required the board had first received "at least 3 reports indicating that the learning situation in the class or classes of the teacher is less than satisfactory", such reports to have been written by at least two different people, and over a period of not less than 12 or more than 24 months. Regulations 93 and 94 gave further direction as to timing and content of reports. In the case of a section 123 termination, a teacher was given the opportunity of a hearing before the superintendent and school board, with counsel present, where an "interview" was held before the final termination notice was issued. Regulation 70 ensured the teacher would receive a copy of the school board's letter to the minister outlining the full reasons for the termination.

Board of reference procedure and powers. A board of reference was established by the minister under the terms of section 129 when a teacher appealed disciplinary action taken under section 122 outlined above--provided that the action was a suspension "exceeding 10 days or a dismissal". Teachers had 10 days to make application for such an appeal. A board of reference consisted of three people appointed by the minister of education, the chair from "among the Law Society" and one each appointed from lists supplied by the BCTF and the BCSTA. The chair was nominated by the Chief Justice. The board of reference, in accordance with regulations 72, was to permit the teacher representation, and to hear all presentations, and in accordance with regulations 73 and 74 had fixed timelines. Powers of the Inquiry Act applied (section 129 (8)), and the board was to "allow or disallow the appeal or vary the decision made by the [school] board"...or "make any order it considers appropriate" (section 129 (6)).

Review commission procedure and powers. Under section 130 a teacher, other than one on probation, had the right to appeal a decision taken pursuant to section 123 to terminate for poor performance. Each review commission consisted of three members appointed by the minister; one nominated by each organization, the BCTF and the BCSTA, with a chair appointed by the minister. All three were required to be from the education community. Grady claims (Interview, May 27, 1991) the minister typically appointed "recently retired superintendents as chairmen" of these panels. The Act provided that such review commissions were established upon the minister's directions and remained established to be called upon when a new case arose.

A review commission had powers under the Inquiry Act, its decision was final and binding, and it was required to "investigate and review matters" and "confirm or reverse the action" taken by the school board. Under the provisions of regulation 72 a teacher could be represented by counsel at the hearing.

Appeals from board of reference or review commission decisions. Pursuant to section 129 (7) an appeal of a board of reference decision could be made to the County or Supreme Court, with a further appeal possible to the Court of Appeal. There was no provision in the Act permitting a review commission decision to be appealed. However, they were appealed on occasion under the Judicial Review Procedures Act. The next chapter reviews such cases.

Some unique provisions. In addition to those already noted above, a number of unique or unusual provisions contained in the 1986 School Act legislation should be pointed out. Sections 129 (9) and 130 (11) provided that the expenses of a board of reference or review commission

could be paid by cabinet. In fact in the early days Grady reports the total cost of these tribunals were paid by government (Interview, May 27, 1991). That gradually changed to the point where each side covered its own costs as in labour arbitrations.

Sections 129 (2) and 130 (6) indicate the former involvement of the B.C. School Trustees Association in establishing board of references and review commissions. In accordance with the 1986 legislation, the minister played a key role in establishing appeal tribunals and appointing panels (sections 129 and 130), in receiving and filing documents related to discipline cases (regulations 70, 73, 74, and 75), in notifying those concerned about appeal requests (regulation 70), in approving the extension of temporary appointments (regulation 78), and in reviewing transfers (section 120).

Teacher discipline cases that could not be appealed pursuant to the 1986 School Act. Because only those disciplinary actions involving a discharge or a suspension exceeding 10 days could be formally appealed to a third party, the BCTF resorted to increasingly more ingenious methods of seeking redress for teachers in cases where disciplinary action was alleged to be unjust. Essentially two methods were used: (1) Teachers, through the BCTF, became politically active in various ways in attempts to put pressure on a school board or its officials; and (2) the BCTF challenged board's disciplinary actions against teachers through the avenue of the Judicial Review Procedure Act. (Relevant excerpts of the Judicial Review Procedure Act are contained in Appendix C.) In other cases, both methods were used concurrently.

The combined approach. The Steve Cardwell case was one in which both methods were used [(1985) Vancouver Registry, No. A

852035]. Cardwell was president of the Kitimat District Teachers' Association in 1985. In June of that year he was suspended for a week by the school board for misconduct and neglect of duty for refusing to discuss with the superintendent of schools, Mike Heron, his public statements concerning the operation of the school district. Cardwell contended that his statements were made in his capacity as local president and that the superintendent had no power to discipline in relation to such matters. Upon notification of his suspension, Cardwell was given the opportunity of a meeting with the school board pursuant to section 122 (2). After consultation with the BCTF the following course of action was taken: First, lawyer Harry Rankin was sent to Kitimat to represent Cardwell at the board hearing. Next, the BCTF organized a "fly-in" of BCTF executive officers and almost all local teachers' association presidents from around the province as a show of support for Cardwell and also to deliver a message of provincial concern to the school board and community. The provincial delegation met with the teachers of Kitimat and then rallied with them in front of the Kitimat board office while Cardwell and Rankin met with the board at the section 122 (2) meeting. During the hearing the board chair ruled that Rankin could not conduct a cross-examination of the superintendent. The board upheld the week long suspension.

The second step taken by the BCTF was to appeal the case to the Supreme Court under the provisions of the Judicial Review Procedure Act on two grounds: (1) "That the school board erred in restricting Mr. Cardwell's lawyer's cross-examination of the superintendent to matters raised by the superintendent in examination-in-chief; and (2) That the board had no power to discipline Mr. Cardwell in relation to his activities as President of the Kitimat District Teachers' Association" (McLaughlin decision, 1985). Madam Justice McLaughlin quashed the suspension and awarded the teacher full costs because "...Mr. Cardwell's right to put

relevant evidence before the board was breached by the board's refusal to let him ask questions of the superintendent ...it cannot be said that he was given a fair opportunity to present his case". She did not find it necessary to comment on the second grounds for the action.

Other Judicial Review Procedure Act cases. In an earlier case, Young and Board of School Trustees, Powell River [(1982) 138 D.L.R. 571], a teacher, Tom Young, was suspended for two days for misconduct after chastising a pupil in a manner the parent did not approve. After a section 122 (2) meeting with the board where the board refused to permit the teacher to call witnesses, the BCTF appealed to the courts under the Judicial Review Procedure Act. Justice McLaughlin later quoted from this Young decision in Cardwell (above) when she said the Young case established the following propositions:

- (1) The teacher is entitled to a hearing before the board to present his side of the case;
- (2) The hearing need not be conducted in accordance with the procedure used in the law courts;
- (3) The hearing must be a fair one;
- (4) The board may not refuse to allow the teacher to put before it relevant material, including the evidence of other witnesses.
- (5) The teacher has the right to present his evidence orally. The board may specify that other evidence be presented in other ways, as by written statements, provided that it does not deny the teacher an opportunity to present the evidence (Cardwell, 1985:4-5).

Cases like Cardwell and Young were based on yet an earlier decision of the Supreme Court in Johnston and Ferry and the Board of School Trustees, Langley [(1979) Vancouver Registry, No. 6787185]. In that Judicial Review Procedure Act appeal, the court ruled:

"...a school board, although it has many administrative functions, is, in deciding whether a teacher should be suspended or dismissed, not acting as a purely administrative tribunal but is exercising a judicial or quasi-judicial function and is bound to act in a judicial manner, which includes acting in accordance with the principles of natural justice" (Decision of Justice Fulton, 1979:12).

Fulton found in Johnston and Ferry that the board had denied natural justice to these two Langley teachers when it summoned them to a board meeting in August, 1978 to explain their involvement in problems at the school, and then suspended them for short periods when they did not attend. In that case both suspensions were quashed because the school board did not have the authority to summon teachers for questioning or investigation.

A fourth appeal to a Judicial Review occurred in Haight-Smith v Board of School Trustees, Kamloops [(1988) 6 W.W.R. 744], where a teacher had been suspended for less than 10 days for allegedly "hitting" a child. The Supreme Court ruled and the Court of Appeal upheld a decision to quash the suspension on the basis that the board's hearing under section 122 was not conducted fairly. The Court of Appeal held:

...the superintendent had become an accuser or prosecutor. He had emphatically expressed to the board his view that the teacher's denials of wrongdoing were untrue. The members of the board, who had not had the advantage of seeing or hearing the complainants, had to decide whether to accept the teacher's denials. It is reasonable to apprehend that the board member's ability to impartially consider that question would be adversely affected by the mere presence of the superintendent during deliberation. The board's case is not assisted by the statement of the superintendent that he saw his role as being present to "make sure the board kept on track". ...His presence during the deliberations of the board created, in the older terminology, a likelihood of bias. (Craig, Esson, and Locke Decision, 1988:753).

In all these cases, actions taken against teachers were overturned because the proper process was not used in taking the disciplinary action. The issue did not turn on whether or not there was just cause for some form of employer action. Therefore, while it might be said there was an avenue of appeal for teachers who felt unjust disciplinary action had been taken against them, even though the School Act provided no appeal route, the Judicial Review Procedure Act, was not a viable avenue of appeal where due process was not the issue. However, these Judicial Reviews did

signal to school boards that even though the School Act did not require due process procedures on the surface, the Courts would enforce them.

Protest actions as a BCTF response. In a number of teacher discipline cases, a legal avenue of appeal was seen to be non-existent by the BCTF. At times nothing was done; teachers were simply informed there was nothing the BCTF could do. At other times protest actions were undertaken. Such actions involved one or more of the following: (1) establishing a BCTF "commission of inquiry", (2) putting a specific position "in-dispute" and using newspaper ads to "enforce" the sanction, (3) reviewing cases during interest arbitrations, (4) involvement in school board election campaigns, (5) approaching the B.C. ombudsman, (6) teacher work-to-rule campaigns, and (7) writing official letters to school boards which contained the teacher's version of events for the files and possible later use.

Perhaps the BCTF action in establishing "commissions of inquiry" had the most profound impact on school boards. These commissions have been set up for reasons other than to look into teacher discipline cases but in a number of instances did look specifically at a school board's teacher discipline decisions or at such actions in conjunction with other issues of concern to the district's teachers. Sundby claims such commissions have had the effect of publicly exposing a school board's unjust practices or of embarrassing a school board into improving its practices (Interview, June 1, 1991). One such commission report, cited here as an example, (there are many) is the "Report of Smithers Review Commission", October, 1983. The BCTF appointed commissioners in this instance were Dr. Norman Robinson, Professor of Educational Administration, SFU, and Michael Suddaby, Assistant Superintendent of Schools, Maple Ridge. These two looked into the disciplinary actions taken against a teacher, Madeleine

Sauve, and her principal, Mr. Mardiste and found that the counter-productive actions of the school board in reprimanding the teacher and principal and in transferring the teacher were motivated by the "unnecessary and unfortunate" interference of then Minister of Education, Hon. William Vander Zalm. They claimed "...it is...distressing that the minister of education publicly tried, convicted and sentenced a teacher without the slightest hint of due process" (19).

The teacher had taught a sex education course which had concerned a number of parents who then invited the Minister to become involved. In addition to appointing this unilateral investigating commission, the BCTF also put Ms. Sauve's former counselling position "in-dispute". Sundby (Interview, June 1,1991) claims the eight recommendations of the commissioner's report had the effect of smoothing relations over a period of time, but also, as in other commission reports, served as a warning to other boards of what the BCTF might do if their personnel practices, or disciplinary actions were unfair.

In a more recent protest action, all teachers in B.C. became involved in a work to rule campaign in 1987 first in response to Bills 19 and 20 and then in response to school boards who put letters of reprimand in teachers' files because of their work to rule activities. Until all boards in all districts agreed to remove such disciplinary letters, the provincial work to rule remained in effect for all teachers in September of 1987.

B. Teacher Discipline Provisions under Bill 20, 1988

The legislative framework relating to teacher discipline, which turned out to be merely interim pending the outcome of negotiations and the adoption of first contracts under new labour legislation, were contained in regulations adopted by cabinet in the fall of 1988 as well as in Bill 20.

These provisions are contained in Appendix D. Because most teacher locals and school boards negotiated a "bridging agreement" in the spring of 1988, which had the effect of continuing the old School Act provisions, until first agreements under the Industrial Relations Act were ratified, those Bill 20 provisions dealing with teacher discipline were not implemented and became irrelevant. Therefore, comprehensive discussion of Bill 20 provisions is not warranted. A brief review only, follows.

Overriding features of Bill 20 discipline provisions. The main feature of the new legislation was to provide optional teacher discipline procedures; one process for unionized teachers where a collective agreement was in place pursuant to labour legislation, and another for "associations", or for locals that did not certify or did not have a grievance procedure. In the case of unionized teachers, appeal procedures for disciplinary actions were to be found in grievance clauses of collective agreements and the Industrial Relations Act. For non-union teachers the new legislation provided one avenue of appeal: to a board of reference only, reference to review commissions was gone. All references to the BCTF or the BCSTA were removed; disciplinary action could now be taken on the grounds of "just and reasonable cause"; appeal provisions were now for any disciplinary action, and there was no suggestion any longer that government would pay any appeal costs.

Appeal procedures for "associations". After any disciplinary action, a 'non-union' teacher could request review by a board of reference within 20 days. A board of reference was to be established upon application of the teacher to review any disciplinary action. Such a board was to be set up in a fashion similar to an arbitration panel with no ministry appointments. Decisions of boards of reference were to be final

and binding with no further avenue of appeal (section 122.7 (10) (11)). Each party was to pay the expenses of "a member of the board nominated by him or it" (section 122.7 (12)). The powers of this board of reference were spelled out in more detail than in previous legislation but the board was no longer given powers under the Inquiry Act.

Unsatisfactory performance. Section 122.1 permitted the dismissal of a teacher for unsatisfactory performance when the board considered the learning situation in the teacher's classes to be less than satisfactory (section 122.1). A key feature of this provision was that it was separate and apart from the "just cause" provisions and, in addition, regulation 65, which had required three unsatisfactory reports before such action was taken, was now repealed. What constituted "unsatisfactory performance" or how it would be determined became an open question. Regulation 65, then, became a key feature of those "bridging agreements" negotiated in the spring of 1988. The section 122.1 provision was not to be found in the new School Act of 1989.

Tenure and transfer provisions. The "instant tenure" feature of section 119 (2) was unchanged by Bill 20, leaving teachers with the impression that tenure did not need to be negotiated into first agreements. However, teachers were mistaken, as tenure provisions and those few rights teachers previously had with regard to transfers were removed in the 1989 amendments to the School Act. All such provisions had to be obtained through collective bargaining in "Round Two".

C. Current Teacher Discipline Provisions

In addition to the collective agreement, the Industrial Relations Act,

Part 6, forms the critical legal framework governing the teacher discipline system in B.C. in 1991. What remains applicable in the School Act is contained in four short sections (15, 16, and indirectly 27 and 28). There are no School Act Regulations whatsoever related to teacher discipline, although regulations dealing with "duties of teachers" may be indirectly related. This part of the section reviews the 1991 legal framework. Those legislative provisions governing B.C. teacher discipline in 1991 are contained in Appendix E.

School Act provisions. School Act section 15 (3) provides teachers with protection against disciplinary action except for just and reasonable cause, a protection teachers would have in any case under the Industrial Relations Act, section 93. But the same section also gives boards the right to suspend a teacher who has been charged with an offence making the teacher "unsuitable", or a teacher who, in the superintendent's opinion, may "threaten the welfare of the students". Section 16 ensures that the College of Teachers be informed of any disciplinary action taken against any teacher, or of any resignation of a teacher under questionable circumstances. Section 27 makes it clear that although the board has certain discretionary power, (such as the power to discipline teachers, for example), provisions respecting how such power or discretion will be exercised may be negotiated. Section 28 makes it clear the School Act overrides the Industrial Relations Act in the event of any conflict.

Key features of the Industrial Relations Act. Key features of the Industrial Relations Act related to employee discipline are contained in sections 92 and 93. Every collective agreement, by law, must have a grievance procedure that ends in arbitration, as well as a provision that requires the employer to have just and reasonable cause for dismissal or

discipline of an employee (section 93). Arbitrators looking into employee appeals of disciplinary actions, are required to "have regard to the real substance of the matters in dispute and the respective merit of the positions of the parties" without being bound by any strict legal interpretation (section 92). In other words, any disciplinary action whatsoever taken against a teacher may become the subject of a grievance where a neutral arbitrator or panel of arbitrators must attempt to get to the heart of the matter and arrive at a fair decision. Employers (school boards, superintendents, principals) can expect any disciplinary action they take against a teacher to be subject to this kind of arbitral scrutiny. A question of whether the action is "disciplinary" may also be arbitrated.

Powers and authority of arbitrators. Sections 92 and 98 set out specific powers of arbitrators to order a monetary payment, to reinstate an employee, to rescind and rectify an action, to substitute another penalty in place of the one given, to relieve on breaches of time limits in the grievance procedure, to dismiss a grievance, or to interpret other Acts, such as the School Act. Under the terms of section 101, an arbitrator may accept evidence "whether or not the evidence is admissible in a court of law" and can summon and compel witnesses to give evidence (section 102). An arbitration board's decision is final and binding on the parties (section 104) and can be reviewed by the Industrial Relations Council (IRC) on very limited grounds (section 108). Speakers from the law firm of Campney & Murphy (school board legal advisors) had this to say about the power of arbitrators at a recent seminar:

Arbitrators have developed a misguided penchant for referring to dismissal as the "capital punishment" of employment.... At common law, an employer was entitled to treat employee misconduct as a breach of the employment relationship. The only question for a judge was whether the employee had given cause for dismissal, not whether dismissal had been an excessive response. Modern labour legislation gave arbitrators the power to go that additional step and to substitute

less severe discipline for dismissal where appropriate. This power has been exercised with such enthusiasm that successful dismissal now requires planning, preparation and timing near to that of a NASA launch (1989:2-3).

Grievance resolution without arbitration. Sections 96, 97, and 112 provide ways other than by arbitration, for the parties to resolve disputes. In some cases, grievances may be mediated, or an investigation by a third party will be enough to force a settlement of a dispute. For example, under section 96, the union can request that the IRC send an officer to the school district to help settle a disciplinary dispute. Such a person would investigate the matter, attempt to mediate, possibly make recommendations to the parties, and then report back to the IRC. The IRC, at the end of this process, has the option of ordering a final and conclusive settlement or sending the dispute to arbitration. Under the terms of section 112, if a collective agreement contains the provision outlined in that section, a person named in the agreement can be called upon, at any time, to assist in settling grievances. In such cases, the Minister of Finance pays one third the cost of the process. Acceptance of third party neutrals for purposes of investigating teacher grievances is a new concept for teachers and for school boards.

Discipline grievances filed under current legislation. At the current time grievances are being filed on a regular basis by hundreds of teachers all over the province on a wide range of matters including disciplinary actions. Chapter VIII of this paper examines these grievances more closely. It must be pointed out in this part that discipline grievances are coming before school boards regarding issues not reviewable in the past. For example, grievances are now being filed regularly alleging unfair or invalid statements are contained in evaluation reports issued to teachers. In some cases teachers are claiming that principals' reports on

their teaching performance are either not correct in terms of content, or have not been written in accordance with the proper process. They ask in their grievances that such reports be removed from their files. Other grievances by teachers, for example, claim they have received unjust letters of reprimand (or critical letters) which they want removed from their files. Chapter VIII outlines the 'new world' of teacher grievances.

What is indicated by these discipline-related grievances is that large numbers of them are of the type not before treated as teacher-school board disputes. Letters of reprimand or less than satisfactory evaluations were not matters that could be appealed under the 1986 legislative framework. While some boards may have granted meetings to discuss such matters, they were under no obligation to do so. There was no threat that such issues, if unresolved, would be decided by an outside arbitrator. The nature of today's grievances indicate that disciplinary issues on superintendents' agendas have changed and that employer-employee resolution of new issues are now required in a collective bargaining environment.

CONCLUSION

This chapter examined the three legislative frameworks which governed in matters of teacher discipline in B.C. over the period 1986 to 1990. The timeline of critical events outlined the turmoil of changes beginning with the key event, adoption of Bill 20. While Bill 20 was responsible for the shift of teachers to a new legal framework for dealing with teacher discipline, few of the actual provisions of Bill 20 which touch on teacher discipline remain in effect. The current system of teacher discipline emerged when teachers unionized and is based on the Industrial Relations Act, arbitral jurisprudence, and 75 collective agreement provisions.

The legal framework governing under the previous School Act, was found to be lacking in certain fundamental due process provisions with teacher discipline often based on the whim of personalities. Teachers dismissed for poor performance faced a recently retired superintendent as ministry appointed chair of a review commission. Suspensions of less than 10 days could not be appealed to any neutral body on the merits of the case. A major role was played by the minister of education in making appointments, hearing transfer appeals, and with government even paying part of the costs of that early appeal process.

School board hearings were not a satisfactory appeal process and teachers on occasion took political or job actions, or court action, to protest unfair treatment in the absence of any objective legal appeal mechanism. School boards, if they agreed to hold a hearing were not objective parties. They heard an appeal from a decision they had made in the first place. Teachers could receive up to a nine day suspension without appeal beyond this school board hearing. Such school board penalties were challenged by the courts only in terms of the processes used. School boards were ruled to be quasi-judicial bodies, with a requirement to hold any disciplinary hearings in accordance with the principles of natural justice.

Bill 20 acknowledged the need to provide the right of appeal from any disciplinary action. Bill 20 provided an optional discipline system for teachers who elected not to unionize. However, at the same time, certain teacher process rights (such as those contained in regulation 65) were removed from the Act, generating aggressive teacher bargaining to obtain those same due process provisions in collective agreements. By 1989 when all teacher locals certified as unions, that legislation became irrelevant and was soon repealed.

Teachers currently have full collective bargaining rights under the

Industrial Relations Act and a system of grievance arbitration to replace boards of reference and review commissions. (It is ironic that at the time teachers came within the jurisdiction of the Industrial Relations Act, that Act was being revised by Bill 19 and the entire labour movement in B.C. was involved in protest job actions.)

At the current time teachers are filing hundreds of grievances, some of them unresolved until a full third party arbitration hearing is conducted. Arbitrators now appointed by the parties, not the minister, have the power to get at the "real substance of the matters". They may hear any discipline appeal and may substitute a different penalty in place of that meted out by a school board, superintendent or principal. School boards and their administrators must now provide processes to review all complaints and attempt to resolve disputes. Teacher grievances are now being dealt with relating to issues that before unionization could not be resolved short of political or job action. This analysis of the legislative frameworks shows clearly that a profound change in the teacher discipline system has taken place in this province over a three year period.

CHAPTER VI

A REVIEW OF B.C. TEACHER DISCIPLINE CASES BEFORE 1989: BOARD OF REFERENCE AND REVIEW COMMISSION DECISIONS

This chapter looks in greater detail at the B.C. teacher discipline system under the specific statute law system of the pre-Bill 20 era by examining the actual decisions of boards of reference and review commissions. A sharper focus on that particular statute law relationship governing the previous teacher discipline system is achieved by an analysis of the substance of those discipline appeal decisions issued by tribunals over a period of three decades.

Before teachers were unionized, discipline cases were appealed to boards of reference if the dismissals or suspensions were pursuant to section 122 of the Act for such grounds as misconduct, neglect of duty, refusal or neglect to obey a lawful order of the board, or because the teacher had been charged with a criminal offence. Appeals went to review commissions if the terminations were related to performance pursuant to section 123 of the Act. In such cases teachers had received three written reports on their work indicating a "less than satisfactory" learning situation.

Fifty-eight cases, involving 58 teachers, the entire files kept by the BCTF, are reviewed. The cases include 54 dismissals and four

suspensions reviewed by tribunals between 1961 and 1990. These cases occurred in 34 of the province's 75 school districts (45% of districts) with only three districts recording more than two cases: Kelowna, Powell River, and Victoria. There was never a reported case of a teacher dismissal or suspension in the Kootenays, for example, nor in the large urban districts of Coquitlam, Surrey or Prince George. The chapter is divided into two sections: section one reviews board of reference cases and section two review commission cases.

Limitations of the Study

A study of the previous teacher discipline system through examination of all board of reference and review commission appeal cases is limited in at least two ways. First, to review only these cases will necessarily leave out a small number of court decisions which may contribute to the complete picture. Secondly, to summarize the content of past decisions will necessarily require some judgement as to what is reported. One may be open to a charge of bias in terms of what this reporter finds to be significant aspects of those decisions. Every attempt was made to be objective.

Limited cases. The review of the 58 cases will not get at all discipline cases dealing with B.C. teachers during the past three decades. Some teachers were dismissed and did not elect to appeal. Other teachers were "bought out" (reported in Austin, see Appendix H) or forced to resign (John Gilchrist v Board of School Trustees, School District No.88 Terrace, (1984)). Two Judicial Review decisions examined school board decisions to "force transfer" teachers (Anne L. Nugent v Board of School Trustees, School District No.39 Vancouver (1980), and Margaret Hughes

and Steven Lister v Board of School Trustees, School District No.47 Powell River (1985)). One court decision reviews a school board decision to cancel a probationary appointment (I.B.E. Davenock v Board of School Trustees, School District No.71 Courtenay (1976)), while another reviews an alleged "invalid" principal's report on a teacher, (Ronald Daniel Hunter v Board of School Trustees, School District No. 59 Peace River South (1981)). Such discipline cases, appealed through a process other than a board of reference or a review commission, are extremely rare, however, and will not be included in this analysis. Four judicial reviews of suspensions for less than 10 days, however, were already discussed in Chapter V. This chapter will focus exclusively on board of reference and review commission cases as that is where the bulk of the record on the teacher discipline system of the past can be found.

Hierarchy of Precedent in B.C. School Law Before 1988

A board of reference decision that was appealed went first to the Supreme Court and any further appeal then went to the Court of Appeal. The Supreme Court has a Chief Justice and more than 50 puisne judges; one of whom sits to hear an appeal of a board of reference case. Nine board of reference cases were appealed to the Supreme Court of B.C. These are reviewed below. In accordance with the past School Act (section 129 (7)), a board of reference decision could be appealed to the County Court or the Supreme Court within 30 days. When the 30 days had elapsed then, with no appeal, the decision stood. (The Coyle case is an exception to this, perhaps because the legislation was different then.) An appeal from the County or Supreme Court required leave of a justice of the Court of Appeal pursuant to section 129 (7.1).

The highest court in B.C., the Court of Appeal, has a Chief Justice and

more than 20 Justices of Appeal (Court of Appeal Act, S.B.C. 1982, c. 7). Decisions of the Court of Appeal were rendered, in board of reference appeals, by a majority of three judges appointed to hear any appeal from a decision of a lower court. A decision of the B.C. Court of Appeal stands unless overturned by the Supreme Court of Canada. Three teacher dismissals were appealed beyond the B.C. Supreme Court to the B.C. Court of Appeal (Raison, Shewan, Peterson). None went as far as the Supreme Court of Canada.

Form of This Teacher Discipline Case Study

For purposes of this study each case was first summarized in Appendix G and H under the name of the teacher. Where a board of reference or review commission decision was appealed to the courts, the court decision was reviewed below in the same outline. Each decision is summarized under three headings: (1) the names and positions of those involved, (2) the facts of the case, and (3) the significance of the case. Boards of reference summaries are set out in chronological order and included in Appendix G of this paper while summaries of review commission decisions are found in Appendix H.

SECTION 1: AN ANALYSIS OF BOARD OF REFERENCE DECISIONS

This section analyzes all 44 boards of reference decisions by categorizing them in various ways and noting significant features of the decisions. The analysis examines (1) time frame, (2) type of discipline given by the school board and on what grounds, (3) outcomes in terms of which teachers were reinstated and which terminations upheld, or which cases ended in a reduced penalty, (4) a description of teachers appearing

before boards of reference, (5) a review of decisions appealed further to the courts, and ultimate decisions of the courts, (6) a description of the appeal process itself and its unique labour relations culture, and finally (7) reasons given in board of reference decisions for upholding or reversing a decision of the school board.

Time Frame of Board of Reference Decisions

Before 1980 a board of reference tribunal had no authority in law to vary a disciplinary decision of the school board. It was limited to a decision to allow or disallow the appeal of the teacher. After 1980, the school board's penalty could be varied. The table below lists boards of reference decisions in chronological order (see Appendix G), with the date of the decision in the second column, the type of penalty in the third column, the outcome in terms of whether the teacher was "reinstated", or the school board "upheld", or whether the penalty was "varied" (fourth column), whether the teacher was male or female (fifth column), and finally in the last column, the grade level taught by the teacher.

Table 1 indicates there were three board of reference decisions in the decade of the sixties, 19 during the seventies, and 22 during the eighties. Since 1971 there have been cases every year except for 1975 and 1986, with as many as four cases in each of the years 1978, 1979, 1981, and 1983. There were more than three times as many board of reference cases as there were review commission cases during the same period.

Type of Penalty and Grounds For Discipline

Table 1 indicates that all teachers but five appearing before board of reference tribunals had been dismissed (91% of cases). Only Malpass,

Table 1: Overview of Board of Reference Cases

<i>Cases</i>	<i>Dates</i>	<i>Penalty</i>	<i>Outcome</i>	<i>Gender</i>	<i>Grade Level</i>
<u>Sheward</u>	1961	D	Upheld	male	Jr.-Sec.
<u>Coyle</u>	1966	D	Upheld**	male	Sen.-Sec.
<u>Johnstone</u>	1969	D	Upheld	male	Sec.Engl.
<u>Kapelus</u>	1971	D	Upheld	male	_____
<u>Trappier</u>	1971	D	Upheld	male	Jr. Sec.
<u>Ball/Mac-</u>					
<u>Murchie</u>	1972	D	Reinstated	(2)females	_____
<u>Beattie</u>	1973	D	Upheld	male	Jr. Sec.
<u>Stockman</u>	1973	D	Upheld	male	_____
<u>Young</u>	1973	D	Upheld	male	Principal
<u>Basic</u>	1974	D	Upheld	female	elem.lib.
<u>Conboy*</u>	1976	D	Reinstated	female	see below
<u>Drinkwater</u>	1977	D	Upheld	male	_____
<u>Nordstrom</u>	1977	D	Upheld	male	_____
<u>Vaselenak</u>	1977	D	Reinstated	male	Jr. Sec.
<u>Caplene</u>	1978	D	Reinstated	female	Elem-Sec.
<u>Lange</u>	1978	D	Upheld	male	Jr. andSec.
<u>Hanna</u>	1978	D	Upheld	male	P.E.
<u>Hutton</u>	1978	D	Upheld	male	Jr. Sec.
<u>Basi*</u>	1979	D	Reinstated	male	Jr. Sec.
<u>Malpass</u>	1979	Susp.	Upheld	female	Jr. Sec.
<u>Rouane</u>	1979	D	Upheld	female	Jr. Sec.
<u>Van Bryce</u>	1979	D	Upheld	male	Sec.
<u>Basi*</u>	1980	D	Upheld	male	(see above)
<u>Jesterhoudt</u>	1980	D	Upheld	male	Learng.A
<u>Hall</u>	1981	Susp.	Upheld	female	Gr.4
<u>Mach.-Holsti</u>	1981	D	Varied	female	Sec.Lang
<u>Johnson</u>	1981	D	Reinstated	male	elem.
<u>Mackenzie</u>	1981	D	Upheld	female	elem.
<u>Chand</u>	1982	D	Upheld	male	Gr.4
<u>Storness-</u>					
<u>Kress</u>	1982	D	Upheld	male	Principal
<u>Olson</u>	1983	D	Upheld	female	Primary
<u>Smith</u>	1983	D	Varied	male	Sen.Sec.
<u>Tait</u>	1983	Susp.	Varied	male	Principal
<u>Toneatto</u>	1983	D	Varied	male	Gr.6
<u>Conboy*</u>	1984	D	Upheld	female	Gr. 5-6
<u>Patey</u>	1984	D	Varied	male	Jr. Sec.
<u>Shewans</u>	1985	Susp.	Varied	male and femal	Jr. Sec.
<u>Tifenback</u>	1985	D	Upheld	male	Sp.Ed.
<u>Abbot</u>	1987	D	Upheld	male	Principal
<u>Singh</u>	1987	D	Upheld	male	Jr. and Sec.
<u>Western</u>	1987	D	Reinstated	female	Primary
<u>Peterson</u>	1988	D	Varied	male	Jr. Sec.
<u>Ledinski</u>	1989	D	Upheld**	male	Elem.
<u>Ruffell</u>	1989	D	Upheld	male	Elem

* this teacher was dismissed a second time ** this case was unresolved, teacher remained terminated.

Hall, Tait, and Shewan & Shewan involved suspensions issued at the outset by the school board. Of those teacher discipline cases appealed, the record is clear and shows that the common practice of school boards in terms of taking disciplinary action against teachers during the past three decades from 1960 to 1990 was to dismiss.

"Grounds for discipline", based on requirements of section 122 of the School Act, included: (1) misconduct, (2) neglect of duty, (3) refusal or neglect to obey a lawful order of the board, and (4) where a teacher has been charged with a criminal offence. Table 2 assigns these categories, plus (5) for "other", to the list of board of reference cases with brief explanatory notes describing the grounds for discipline. The table indicates the majority of discipline cases (26 cases, or 59%) were based on charges of misconduct (two of them misconduct plus one other charge).

The 'misconduct' (category 1) cases could be further categorized into "physical misconduct", cases involving teachers striking, punching, or hitting students; "sexual misconduct", cases where teachers had relationships with students or were accused of sexual touching or handling of students; and "other misconduct" involving a variety of charges. Those coming under the heading of "physical misconduct" include Trapler, Lange, Hutton, Basi #1, Malpass, Basi #2, Johnson, Tait, Conboy #2, and Ruffell.

Those coming under the heading of "sexual misconduct" include Chand, Storness-Kress, Smith, Toneatto, Patey, and Peterson. It is of note that sexual misconduct was not reported as grounds for discipline until 1982. After 1982, 38% of discipline cases fell into this category. While sexual misconduct was obviously a factor in Stockman, that was not the reported charge. Stockman was ordered to end his relationship with a "young girl" and when he refused, he was dismissed for "refusal to obey an order". The remaining nine cases come under the heading of "other

Table 2: Grounds for Discipline

Case	Category of discipline	Grounds
<u>Sheward</u>	1	innappropriate public statements about admin., involved students
<u>Coyle**</u>	5	incompetence, using Group Dynamics Method
<u>Johnstone</u>	2	lack of administrative cooperation
<u>Kapelus</u>	2	late for class repeatedly, neglected to do supervision duty
<u>Trappier</u>	1	struck a teenage boy with a closed fist to the head and ear
<u>Ball/Mac-</u>		
<u>Murchie</u>	2	took eight month leave without permission, claimed to be sick
<u>Beattie</u>	3	failed to explain repeated absences after order to do so
<u>Stockman</u>	1-3	refused board order to end relationship with young girl
<u>Young</u>	1-2	grossly insubordinate, neglected to take attendance or follow orders
<u>Basic</u>	2	absent without leave, went on trip to Europe end of June
<u>Conboy</u>	2	details not provided
<u>Drinkwater</u>	2	failing to return to his classroom on time after trip to Hawaii
<u>Nordstrom</u>	2	accepting short term position at UVIC without leave from board
<u>Vaselenak</u>	4	possession of marijuana, plead guilty, conditional discharge
<u>Caplette</u>	1	wrote defamatory letter about her employers
<u>Lange</u>	1	struck a 14 year old in the ribs, past record of similar conduct
<u>Hanna</u>	2	did not adequately supervise during physical education classes
<u>Hutton</u>	1	struck a grade nine boy on the cheek, raised a bruise and swelling
<u>Basi</u>	1	hit two grade eight students, or administered corporal punishment
<u>Malpass</u>	1	handled or "scuffled" with two 14 year old girls
<u>Rouane</u>	2	excessive tardiness
<u>Van Bryce</u>	4	gross indecency charge, found guilty, conditional discharge, probation
<u>Basi*</u>	1	administered corporal punishment, struck grade eight boy in the face
<u>Jesterhoudt</u>	2	failing to give truthful information on resume
<u>Hall</u>	2	took trip to Hawaii, absent without leave
<u>Mach.-Holsti</u>	1	allowing students alcoholic drinks at dinner, lied about event
<u>Johnson</u>	1	five incidents of physical abuse of students
<u>Mackenzie</u>	2	failing to work while transfer appeal in process
<u>Chand</u>	1	touching young female students innappropriately
<u>Storness-</u>		
<u>Kress</u>	1	while on field trip: innappropriate touching, alcohol use, poor superv.
<u>Olson</u>	1	condoned unlawful conduct, stolen property in her home, poor model
<u>Smith</u>	1	sexual relationship with a 17 year old
<u>Tait</u>	1	manhandling of 15 year old student
<u>Toneatto</u>	1	improper touching of female grade six student
<u>Conboy*</u>	1	physically and verbally abused grades five and six students
<u>Patey</u>	1	sexual involvement with female student, marijuana use at a party
<u>Shewans</u>	1	nude photo taken, submitted to magazine, published, community anger
<u>Tifenback</u>	1	assaulting his own family
<u>Abbot</u>	2	falsifying enrolment data for his school to get more school resources
<u>Singh</u>	1	belligerent, insubordinate behaviour toward administrators
<u>Western</u>	1	chronic absenteeism due to alcoholism
<u>Peterson</u>	1	sexual contact with a female student in the district (not his school)
<u>Ledinski**</u>	4	convicted of gross indecency
<u>Ruffell</u>	1	struck a grade seven student, record of past similar behaviour

* this teacher was dismissed for a second time ** case was unresolved, teacher remained terminated.

misconduct": Sheward, Young, Caplette, Machado-Holsti, Olson, Shewan & Shewan, Tifenback, Singh, and Western. Of these nine cases, four involve insubordination: Sheward, Young, Caplette, and Singh; while the other five cannot be grouped together under any common category.

Fourteen cases are based on discipline for 'neglect of duty'. Three involve teachers who could not obtain leaves of up to five days for a planned holiday trip: Basic, Drinkwater, and Hall; and one, Nordstrom, for a teacher who was not granted a leave to take a short term educational position at a university. In three cases teachers lost their jobs for taking such leaves without approval (see Table 1). Of the remaining ten cases in the 'neglect of duty' category, the largest group involved teachers charged with not supervising properly and/or for being late to classes.

Only two cases cite grounds for dismissal as being in the third category of 'refusal or neglect to obey a lawful order of the board', and three other cases deal with teachers who had been charged with a criminal offence or what was really 'off duty conduct'. The Coyle case is in a category of its own. Grounds for dismissal in his case, "incompetence" would indicate the case should have been heard by a review commission. Because the teacher retired before receiving a second hearing or returning to work, it is not known what the outcome might have been and whether this jurisdictional issue would have been raised in a second hearing.

Board of Reference Outcomes

Table 1 indicates 30 of the 44 cases (68%) were "won" by school boards when boards of reference upheld the employer's decision to dismiss or suspend. In only seven cases (16%) teachers won reinstatement with full back pay ordered. However, in two of these seven cases, the teachers involved, Conboy and Basi, were successfully dismissed a

short time later by the same school boards, on new grounds, leaving only five cases where the teachers could really be said to have "won" and retained their jobs. In terms of 'teachers' rather than 'cases', of the total 44 teachers involved, only six were clearly reinstated and completed a career in the system: Ball, MacMurchie, Vaselenak, Caplette, Johnson, and Western, (14% of all teachers involved in the 44 cases). Of these, four were female and two male.

In seven cases of the 44 (16%), the school boards' penalty was varied by the board of reference or the court appeal process. The first reduction of penalty occurred in 1981 (Machado-Holsti) after legislation in 1980 which permitted substitution of another penalty by a review panel. Of these seven cases, two involved a reduction of a suspension to a lesser suspension: Tait and Shewan & Shewan; and in the other five, a suspension was imposed in place of a dismissal. Two cases remain unresolved in terms of formal appeal decisions: Coyle and Ledinski. In both cases a second board of reference hearing was ordered by the courts but the second hearing never occurred. The last decision in both cases upheld the school board's dismissal.

Teachers Appearing Before Boards of Reference

Under this heading four factors are reviewed to describe the teachers studied: (1) the male/female ratio, (2) the grade levels taught, (3) the seniority and age of teachers, and (4) the work record. Under 'work record' the analysis looks for evidence of qualifications as well as a record of teaching ability and a record of past incidents attracting discipline.

Gender. In 1980, 51% of the total teaching staff in the province was female. Table 1 shows that of the 44 teachers involved in appeals before a

board of reference, 31 were male and only 13 were female, an almost three to one ratio. Yet of the six teachers clearly reinstated, four were female. In other words, roughly three quarters of all teachers disciplined were male, yet two thirds of those clearly exonerated and reinstated, were female. Such a finding is consistent with the "chivalry/paternalism thesis" researched by Brian Bemmels. Bemmels found that "women were twice as likely as men to have their grievances sustained and 2.7 times more likely to receive a full reinstatement" (1988:259).

Of the eight teachers involved in a penalty reduction, however, six were males: Smith, Tait, Toneatto, Patey, (John) Shewan, and Peterson. All cases but two, Ball & MacMurchie, and Shewan & Shewan, involved individual teachers. Both 'couples' cases involved a pair who lived together, were involved in the same act attracting discipline and received the same penalty.

Grade level taught. Of the total teachers involved in the 44 cases, 38 can be categorized with respect to the grade level they taught. In 1980, 58% of B.C. teachers taught at the elementary level and 42% at the secondary level. Teachers from all grade levels, as well as principals, were involved in discipline cases. Of the 38 teachers, the largest number (14) taught at the junior secondary level. That is, 37% of teachers appearing before boards of reference taught young adolescents in the junior secondary system. The next largest group (nine, or 24%), taught "elementary", including those teaching grades four to six. Four, or more than 10%, were principals. Other categories include two or fewer teachers: primary, special education, physical education, or elementary/secondary together. It could be concluded then, that those teachers at most risk, in terms of attracting discipline, are males teaching in the junior secondary school.

Seniority and age. Table 3 is of note not only for the information provided but for the number of blanks indicating no information was available. It provides, in the second column, all information included in decisions concerning teachers' seniority and/or age. Of the 44 cases, only 13 have anything at all to say about the teacher's seniority, one of these giving only a vague reference (long service). Clearly, the issue of seniority, was not of any real interest to boards of reference until the mid eighties. When seniority or age was mentioned before the mid 1980's it was simply a passing comment and not meant to carry any weight in the decision.

The Machado-Holsti case is an exception to this as will be discussed later. Of the 12 cases where seniority is clearly known, seven had 10 or more years of service. It could be concluded then, that teachers who have been subject to discipline are long service teachers about 50% of the time. The age of the teacher is given in only six cases plus one that was reported as "near retirement". Qualifications of teachers are reported only rarely (three cases), and then only in very general terms: Smith, Tait, and Peterson. It is fair to say, then, that boards of reference did not find a teacher's age or qualifications of special significance. This may have been changing, however, since such matters are more likely to be canvassed (especially in regard to age) in the more recent cases.

Work record. It is significant that in 17 of the 44 cases (39%), nothing at all is written about the teacher's abilities or past employment record, including past disciplinary actions. Table 3 shows that of the 44 cases, only 16 report anything in this regard, most often that the teacher had a good or excellent record. One decision, Hanna, rejected as evidence, information concerning the teacher's good record. The statement demonstrates the work record was not relevant to many boards

Table 3: Seniority, Age and Work Record

Case	Seniority and or Age	Work Record
<u>Sheward</u>	—	—
<u>Coyle</u>	11 yrs	—
<u>Johnstone</u>	10 yrs	"excellent teacher"
<u>Kapelus</u>	—	—
<u>Trappier</u>	—	"excellent record" (contained in the dissent)
<u>Ball/Mac-</u>		
<u>Murchie</u>	—	—
<u>Beattie</u>	5 yrs-29yr old	"performance was good"
<u>Stockman</u>	—	"ability not in question"
<u>Young</u>	7 yrs.	—
<u>Basic</u>	—	—
<u>Conboy</u>	—	—
<u>Drinkwater</u>	—	"long experience", "excellent record"
<u>Nordstrom</u>	—	"dedicated", "obviously skilled"
<u>Vaselenak</u>	—	—
<u>Caplette</u>	—	—
<u>Lange</u>	—	"past incidents" reference intimates "poor" record
<u>Hanna</u>	—	past "good record" was refused as evidence
<u>Hutton</u>	—	—
<u>Basi</u>	—	—
<u>Malpass</u>	—	"had been previously warned"
<u>Rouane</u>	4 yrs	"medical and family problems"
<u>Van Bryce</u>	—	—
<u>Basi</u>	—	above case cited, shortcoming couldn't handle cheeky teens
<u>Jesterhoudt</u>	less than yr.	—
<u>Hall</u>	—	"good teaching record"
<u>Mach.-Holsti</u>	6+ yrs	"distinguished career"
<u>Johnson</u>	—	—
<u>Mackenzie</u>	—	—
<u>Chand</u>	—	"had been held in high regard"
<u>Storness-</u>		
<u>Kress</u>	—	—
<u>Olson</u>	—	"good teaching reports", "past suspension"
<u>Smith</u>	—	"excellent teaching record", "qual. and experience reviewed"
<u>Tait</u>	—	"reviewed qual., length of service, employment record"
<u>Toneatto</u>	—	—
<u>Conboy</u>	near retirem.	not all positive work record, health problems,
<u>Patey</u>	—	"was appropriate to review work record"
<u>Shewans</u>	—	"excellent teachers"
<u>Tifenback</u>	long service	"excellent record"
<u>Abbot</u>	30 yrs	"exemplary record as a leader in the field"
<u>Singh</u>	—	"history of incidents", "complimentary evidence re abilities"
<u>Western</u>	22 yrs 47yr old	"six years of incidents"
<u>Peterson</u>	15 yrs 37 yr old	"highly qualified, excellent record"
<u>Ledinski</u>	26 yrs 46 yr old	"excellent teacher"
<u>Ruffell</u>	13+ yrs	"13 year record of force or abuse", 10 yrs. poor comments in evaluation reports

of reference. Two decisions note that such matters as qualifications, work record, and seniority were reviewed, but fail to explain the impact of that record on their decisions: Tait, Patey. Until 1982, after the Machado-Holsti decision, and after a change in the legislation allowing tribunals to vary a penalty, work record was largely ignored.

In only eight decisions of the 44 (18%) is a negative record referred to: Lange, Malpass, Basi, Olson, Conboy, Singh, Western, and Ruffell. This appears significant when 68% of disciplinary actions by school boards were upheld. The one offence without a previous record of misconduct then, was enough to uphold the penalty in most cases. Such a finding demonstrates the absence of the concept of "progressive discipline" within this system. In fact that phrase is not used in any decision.

Circumstances or factors involved in the use of negative work records are also of interest. In Malpass, "past incidents" are said to have confirmed the board of reference's decision even though the school board did not rely on this unknown, and not discussed, past incident. One is left to wonder what this "incident" could have been, how the board of reference knew of it, and why it was used to confirm their decision. In Lange the court reversed the decision of the board of reference because of the school board's unjust use of the past record. However, the court ruling simply stated that if a past incident was to be used, the teacher should have been made aware of this in advance.

In Singh, incidents which occurred in another district many years before were cited to justify the penalty. The recent incident was not found to warrant discipline alone, but is lumped in with the past record. As well, a suspension of less than 10 days which Singh did not grieve was considered weighty by Supreme Court Justice Lander who failed to acknowledge that teachers had no right in law to grieve such discipline at

that time. The concept of the "culminating incident" is not discussed and only in one case, Malpass, is there any indication that perhaps past incidents should not be used to justify the discipline if the recent incident is not proven.

Decisions of Boards of Reference Reviewed by the Courts

Of the 44 cases, only nine were reviewed by the courts, two of those by the Court of Appeal. In Coyle, the Supreme Court ruled twice that the teacher had not been granted a fair hearing and that the board of reference must do so. After the first order, the minister refused to grant the hearing or establish a review panel in spite of the court decision. After the second order, this time to the minister, a hearing was still not granted, likely due to the age of the teacher, as Coyle had reached compulsory retirement age. The board of reference had erred, the court ruled, by stating that the onus was on the teacher to prove that he was not incompetent. Coyle was forced to call his witnesses first. The Coyle case is especially interesting as incompetence was alleged because the teacher used a particular teaching method not sanctioned by the administration.

The Ball/MacMurchie review by the County Court is of interest for its obvious lack of rigor. The board of reference decision, which does not provide facts, arguments, or reasons, is upheld because the court ruled the chairman was "an experienced member of the bar". The ruling appears to be based on deference to a colleague and little else. No precedents are cited. This is one of the more unusual cases in the files and the court appeal ruling only adds to its unique character.

Vaselenak was a well reasoned decision by both the board of reference and the Supreme Court in which a case is argued that a conditional discharge in a criminal action is not a conviction, and a teacher, therefore,

cannot be dismissed on the basis of it. Numerous cases are cited to support both sides of the argument; each side is weighed, and a decision supported by the evidence. This case should have been a major consideration in Van Bryce, which followed two years later. Yet Van Bryce includes no reference to Vaselenak and the outcomes of both cases are completely different. Vaselenak was reinstated while Van Bryce was dismissed on almost identical grounds two years later.

Caplette set a new standard and had a major impact on the teacher discipline system. This was the first case where a teacher was found guilty of misconduct but a dismissal was not upheld on the basis that the misconduct did not warrant dismissal. The Supreme Court upheld the ruling. Until this time boards appeared to automatically uphold the employer if any misconduct whatsoever could be proved. While many boards of reference, however, appeared oblivious to this court ruling in following years, the government moved to change the legislation giving review panels the right to vary a penalty in response to this decision (Grady, BCTF Internal Memo, 1988).

The Lange and Singh appeals to the courts have been discussed above. The remaining three appeals to the courts were Shewan, Peterson, and Ledinski, all recent cases. The Shewan decision is most critical, as a Court of Appeal confirmed the decision of a lower court which ruled teachers are to be judged on the basis of community standards in terms of moral conduct, and that teachers are to be exemplars in terms of modelling conduct not necessarily required of other members of the community.

The Peterson appeal court decision cites Shewan to support a finding that dismissal is too severe a penalty in the case of professionals such as Peterson, and such a penalty should only be imposed in "the most serious of cases". Ledinski, the last board of reference decision appealed to the

courts, is likely the most irrelevant in terms of its possible future precedential value. The substance of the case dealt with how to interpret Bill 20 legislation governing teacher discipline. Because that legislation is no longer in force, the issues dealt with no longer apply.

The Unique Nature of the Board of Reference Process

The board of reference process in overall terms can be described in terms of typical features of these decisions: their format, content, use of precedent, the way argument is presented or not, the method of review used, and the changes over time in these features. The process can also be examined in terms of the personalities involved in the process: panel members and lawyers acting for either side.

Overall nature of decisions. Most decisions were no more than a dozen pages in length and focussed on a review of the facts followed by a short decision. The lengthy cases tend to be the most recent ones with the exception of Young, Machado-Holsti, and Conboy#2. The deference to management, especially in regard to testimony of administrators is evident, especially in earlier cases: Sheward, Coyle, Beattie, Stockman, and Young, but also in some recent cases such as Singh. Testimony of administrators is found to be more credible or reliable than that of teachers, parents, janitors, students, or even "experts" from the University of B.C. (Coyle and Sheward). In other cases, the testimony of administrators was sufficient to uphold the school board's penalty, and very little other information was included in the decision (Beattie, Stockman, Young, and Singh).

The standard of behaviour required of teachers could best be defined as humiliating as presented in some cases. Drinkwater, a 1977 case, is

perhaps the best example. Here is a case of a teacher fired because he did not get back from his Christmas vacation on time. His illness during his absence was irrelevant because he based his "official" reason for absence on "a travel delay" and furthermore, his exceptional teaching record was simply "unfortunate". Even the Superintendent's statement that the children would be better served with this excellent teacher back in the classroom, was seen as irrelevant. The teacher had broken the "rule" and unfortunately had to be fired. Drinkwater never taught again (Grady, Interview, September 9, 1991). Basic and Nordstrom met similar fates for similar minor transgressions, while Hall, also disciplined because of absence due to a trip, received a two month suspension rather than dismissal with no mention made of these earlier cases.

Until legislation in 1980, review tribunals did not have legal authority to vary the penalty of the school board. The cases up to 1981 determine only whether any misconduct did occur. Evidence directed toward determining the appropriateness of the penalty is not considered relevant. Even discussion of an appropriate penalty is not in evidence. In Hanna such evidence was not allowed to be heard, the decision points out, because this was not a labour arbitration case. This is all the more ironic when the record of a past negative incident was accepted as evidence to uphold dismissal in Lange. Even after 1980 it is evident there was a lag before the culture of the board of reference was modified to accept the need to deal with argument which went to the matter of appropriate penalty. There is no evidence, for example, that this issue was dealt with at all in Mackenzie, Chand or in Hall, where "considerations of the LRB" were found to be not helpful.

In addition, there is no accepted method of review evident in board of reference decisions. Until the Machado-Holsti case of 1981, no board of reference decision indicates a clear rational review procedure whatsoever.

No tests are outlined and no questions addressed. The focus is on the facts in reference to testimony, sometimes to indicate the purpose of the board of reference in accordance with the Act. A brief conclusion simply "rules" whether the school board was upheld or not. Many cases did not include legal arguments or directed limited legal arguments at such questions as: "Was the school board required to give the teacher notice of the school board hearing called to hear the case before dismissal took place?" or "What does misconduct mean?"

Critical issues addressed by boards of reference focussed on whether the teacher had done something wrong. The approach was that "there must be reasonable grounds to warrant interference with the employer's decision" (Hutton). Even if all the charges against the teacher could not be proved, some proven charges were sufficient to uphold a dismissal (Coyle, Johnstone, Kapelus, Young, Basic, and others).

Personalities involved in the process. A total of 54 people served as members of boards of reference over the three decades. A variety of people, classroom teachers, lawyers, and superintendents served. Of the total, 33 (or more than 60%), served only once. Only eight served on four or more boards over the 30 years. Fifteen of the 54 served as a chairs.

Of those who served as chairs, G. S. Cumming Q.C., now a member of the Court of Appeal, served 16 times (on 36% of boards). He clearly had more influence on the board of reference process than any other single individual. The only others who served as a chairman four times or more were Kenneth S. Fawcus, a lawyer who later served on the Supreme Court (served six times), and W.P. Lightbody.

The only wingers who served four times or more for the teachers were Paterson (19 times), G. Eddy (four times) , and R. Cacchioni (four

times), all teachers; and for the school board P.D. Walsh (seven times), a lawyer, former Mayor of Fort St. John, and school trustee; and D.N. Patten (eight times) a former Chilliwack lawyer and school trustee. For the most part, board of reference panelists were not experienced in this work. They were selected by the minister, two from lists of nominees provided the B.C. Teachers' Federation and the B.C. School Trustees Association. For any particular hearing the parties to the dispute did not know which three panelists they might face.

A total of 56 lawyers represented clients before either these boards of reference or before further appeals to the courts. Thirty-four (61%) served only once. Thirty-one represented teachers and 25, school boards. On the teacher side, only five of the 31 lawyers appeared more than four times: A. Black (12 times), D. Grady (five times), R. McDonald (six times), and D. Tarnow and P. Ramsay (four times each). (Tarnow acted in all the Shewan cases only). On the school board's side only three of their total 25 lawyers appeared more than four times: J. S. Clyne (14 times), J. Kinzie (seven times), and W. Devine (nine times). For the most part, two law firms are represented, McTaggart Ellis for the teachers, and Campney & Murphy for the school boards.

How the process changed over time. Until the Machado-Holsti decision of 1981 chaired by Martin Gifford, the process was simple and informal in the extreme. That 1981 decision was critical, and the first case where a detailed method of review was set out before the evidence was examined. The William Scott case was accepted as the proper test and was modified to suit a teacher environment. The decision set out the three questions which would be answered in the review as found in Wm. Scott, and proceeded on that basis, including looking at nine mitigating circumstances in accordance with the ten factors from Steel Equipment as

set out in Wm. Scott. This decision, then, set out the first real standard as to how to review a case, including how to determine the appropriate penalty. While few cases which came after, set out this standard explicitly, many appeared to follow the principles in some form even when Machado-Holsti was not cited. The year 1981 appears to have been a year of ferment after 1980 legislation granting boards of reference the right to vary a school board's penalty. Hall and Johnson appear to have ignored the new rules, while in both Machado-Holsti and Mackenzie there is evidence of searching for a new way to deal with teacher discipline reviews. In these latter cases, the search extended to acceptance of guidance from labour jurisprudence. But it was not until 1983, however, that there is evidence of a generalized acceptance of the more rigorous process and the need to set out a framework of review, look to precedent, and set out reasons for a decision.

But even after Machado-Holsti, and a more general acceptance of a need for a review framework and the application of tests to determine the appropriate penalty, there was not general acceptance that cases from labour jurisprudence provided authoritative direction. There was more tendency after 1984 to seek direction through a wide variety of court decisions--both Canadian and American, past board of reference decisions, a few labour arbitrations and even through an analysis of the unique teacher culture and the BCTF code of ethics. The decisions after 1984, however, are set out in form more like one would expect to see in arbitration awards, including full argument and reasons.

Reasons Given For Board of Reference Decisions

Reasons, in legal terms, are difficult to make out in the early cases. Facts are reviewed and a decision results. The process or thinking leading

to the decision is unclear. In all but two cases, Conboy #1, and Vaselenak, the facts of the cases leading to the disciplinary actions are outlined, in some form. Those two cases are concerned with legal technicalities which become the focus of the written decisions. Up to 1981, there is a review of what the teacher has allegedly done and then a decision to uphold the discipline or not based on whether the teacher is viewed, in subjective terms by the panelists, to be guilty of some infraction. Reasons are, for the most part, not provided.

One way to review reasons behind the decisions is to review the case precedents cited and to examine how precedents were treated. Precedents were cited in an erratic and unpredictable fashion, if at all, at least up to 1985. When precedents are cited it is simply a passing comment and not an analysis of the case or why it is relevant. (Machado-Holsti is the exception.) Table 4 provides a brief analysis of case citations and demonstrates that in 25 out of the 44 board of reference decisions no case precedent is cited whatsoever. And in two of these 25 cases, Caplette and Singh, precedents were cited in later court appeal decisions but not in the board of reference decisions. In another one of these 25 cases (Rouane), the precedents cited were dismissed when the panel refused to deal with them. With 50% of board of reference panels giving no credence at all to past cases then, one must conclude that for the most part, precedent did not count in dealing with teacher discipline in this arena.

In regard to the use of precedent, there are some patterns evident in Table 4. The "Law of Master and Servant" was seen to be relevant before 1981 and was cited four times, quoting from an 1889 case almost 100 years old. It is also of note that case citations were not made when it might have been expected due to the similarities of circumstances in past teacher board of reference cases in the province.

Due to the similarities in cases, the Basic decision should have cited

Table 4: Precedents Cited in Decision

Case	Precedent Cited
<u>Sheward</u>	_____
<u>Coyle</u>	_____
<u>Johnstone</u>	_____
<u>Kapelus</u>	_____
<u>Trappier</u>	_____
<u>Ball/Mac-</u>	
<u>Murchie</u>	_____
<u>Beatue</u>	_____
<u>Stockman</u>	_____
<u>Young</u>	Ball on "Law of Master and Servant". <u>Lacarte v Brd. of Educ</u> 1954
<u>Basic</u>	_____
<u>Conboy</u>	Alberta Supreme Court decision, <u>Penner v Brd of Trustees</u> 1974
<u>Drinkwater</u>	_____
<u>Nordstrom</u>	MacMurchie/Ball cited but not discussed
<u>Vaselenak</u>	many court decisions on both sides related to conditional discharge
<u>Caplette</u>	none in Board of Ref., Court appeal cites court decisions of labor cases
<u>Lange</u>	Law of Master and Servant in <u>Smith</u> and <u>McIntyre v Hockin</u> (1889)
<u>Hanna</u>	_____
<u>Hutton</u>	_____
<u>Basi</u>	Law of Master and Servant in <u>McIntyre</u> and in <u>Lucas v Premier Motors</u>
<u>Malpass</u>	_____
<u>Rouane</u>	refused to review <u>Caplette</u> or <u>Port Arthur Shipbuilding v Arthurs</u> , 1969
<u>Van Bryce</u>	Law of Master and Servant, labour cases, and court decisions
<u>Basi</u>	<u>Hutton</u>
<u>Jesterhoudt</u>	<u>Vaselenak, Douglas Aircraft Co.</u> (1973) 2 L.A.C. (2d) 147.
<u>Hall</u>	_____
<u>Mach.-Holsti</u>	<u>William Scott</u>
<u>Johnson</u>	_____
<u>Mackenzie</u>	<u>Lake Ont. Steel Co.</u> (1968) 19L.A.C. 103, <u>Ford Motor Co.</u> 3 L.A.C.779, and <u>Black Diamond Cheese</u> (1973)
<u>Chand</u>	_____
<u>Storness-</u>	
<u>Kress</u>	_____
<u>Olson</u>	_____
<u>Smith</u>	_____
<u>Tait</u>	<u>Hutton</u> , BCTF Code of Ethics
<u>Toneatto</u>	_____
<u>Conboy</u>	_____
<u>Patey</u>	<u>Machado-Holsti</u>
<u>Shewans</u>	Many court decisions, 10 Board of Reference decisions, Code of Ethics
<u>Tifenback</u>	<u>Van Bryce</u>
<u>Abbot</u>	_____
<u>Singh</u>	<u>Shewan</u> (in Court appeal decision)
<u>Western</u>	_____
<u>Peterson</u>	<u>Smith</u> , <u>Patey</u> , court cases (US and Canada), <u>William Scott</u> , labour arbitr.
<u>Ledinski</u>	<u>Shewan</u> , <u>Peterson</u> , US court decision as cited in <u>Peterson</u> and <u>Shewan</u>
<u>Ruffell</u>	<u>William Scott</u>

MacMurchie/Ball and Basi should have cited Caplette. Van Bryce should have cited Vaselenak. One might have expected that Drinkwater would have come up in Hall and that the Caplette court decision, which set out a new test establishing that teachers need not be dismissed simply because some misconduct is found, would have been cited in nearly all cases after 1978. Yet Caplette, which was influential in causing new legislation shortly afterward because of its critical nature, was cited only once (Rouane) and dismissed therein, along with Port Arthur Shipbuilding Co. (1967), as not worthy of review. Previous B.C. teacher cases of a similar nature were largely ignored by boards of reference.

The Machado-Holsti case was a turning point. Table 4 indicates that this was the first time William Scott came up and is mentioned again in Ruffell. While Machado-Holsti is cited only in Patey, the form of review set out in that critical case is evident in Olson, Smith, and Tait. Table 1 shows that penalties were reduced after the lead shown in Machado-Holsti in 1981, and other cases which varied the penalty appeared to have reached such a decision based on the kind of thinking outlined in Machado-Holsti. It is significant, however, that this case was not cited more frequently than it was, and is more evidence of the lack of reverence for precedent as well as lack of a need to provide reasons found in the board of reference culture.

In reaching decisions concerning the appropriate penalty for the teacher, or in determining whether or not to uphold the penalty, a number of critical decisions may be cited in future in the unionized environment. Shewan established that teachers must be held to a higher standard of conduct than others and can be expected to be community exemplars or role models. This thinking is evident in a number of other cases as well: Olson and Tifenback, for example. Recent cases, Shewan and Peterson, take the position that a professional person such as a teacher should only

be dismissed for a very serious offence. In both those cases, the teachers received suspensions rather than dismissals in spite of numerous precedents where teachers were dismissed for less serious offences.

Since the law prohibiting corporal punishment, review panels have treated physical abuse of students by teachers as a very serious matter and such an offence was seen as worthy of dismissal (Conboy, Tifenback). In recent times numerous cases dealing with sexual relationships or encounters between teachers and students have been judged based on whether the student attended the teacher's school at the time of the incident and the age of the student. It is of note that in three of these more recent cases the teachers received suspensions when boards of reference reduced the dismissal penalties based on these factors (Smith, Patey, and Peterson). The repeated insistence on high standards of moral conduct from teachers, however, has not changed over the years.

Summary of Findings: Board of Reference Cases

This first section of the chapter provides an analysis of the 44 boards of reference decisions on teacher discipline appeals issued over the past three decades. The findings are reviewed and listed in this summary under eight headings:

1. Type of discipline. Of the 44 cases studied, only four involved suspensions. In 91% of cases, school boards disciplined teachers by terminating them. In 26 of the 44 cases (59%), misconduct was cited as the grounds for discipline, with the next most cited reason 'neglect of duty' at 32% of cases.

2. Primary reasons for discipline/dismissal. Misconduct or culpable discipline cases were further broken down in this study into three

categories: ten cases were physical misconduct involving teachers charged with "manhandling" students, seven were classified as sexual misconduct, and nine involved a variety of alleged misconduct from the most common, insubordination, to such grounds as sending a nude photo to a magazine. Cases involving sexual misconduct were found only after 1982 but constituted 38% of all cases after that date.

Neglect of duty was the second most frequently cited grounds for discipline. Of the 44 cases studied, 14 (32%) involved teachers disciplined for such actions as being absent from school without an approved leave. Two cases were based on refusal or neglect to obey a lawful order of the board, three involved teachers who had been charged with criminal offences, and one involved a dismissal for "incompetence".

3. Outcomes of cases. Of all 44 cases reviewed, 30 (68%) were upheld in appeal. In only seven cases were teachers reinstated and in two of those, the same teacher was successfully terminated by the employer a short time later on new grounds. Only 14% of teachers were clearly exonerated and reinstated. Seven other teachers had the school board's penalty reduced through the appeal process.

4. Gender of disciplined teachers. Of the 44 teachers involved in these actions, 31 were male and only 13 female, in a teacher population where 51% were female. While nearly three quarters of disciplined teachers were male, two thirds of those reinstated were female.

5. Treatment of junior secondary teachers. The largest group of teachers (37%) taught at the junior secondary grade level. Yet teachers from all grade levels were represented in the cases studied, with principals representing 10% of the 44 teachers. Primary teachers were least likely to be disciplined. Male junior secondary teachers were found to be most

at risk in terms of attracting employer discipline.

6. Treatment of seniority, age, work record. Boards of reference decisions largely ignored seniority, age, qualifications and teaching abilities of teachers. Seniority was not seen as relevant until the Machado-Holsti case of 1981 and after legislation granting review panels the authority to vary penalties. Yet even after that, it was not universally accepted that consideration of the appropriate penalty should be an issue. In 18% of cases, a negative work record was discussed and was cited as a reason for upholding the school board. The concept of the culminating incident was not applied, nor discussed, and the most recent incident did not have to be proven to uphold a dismissal if the past record was negative. Progressive discipline was not applied and a dismissal could stand on the basis of one recent minor infraction. Ironically, before 1981 a "good" or "excellent" work record was seen to be irrelevant information.

7. Review by the courts. Of the 44 cases, nine were reviewed by the courts, two of those decisions resulting in important precedents. Caplette, a 1978 decision, established that a dismissal need not necessarily be upheld because there was misconduct. The misconduct had to be found serious enough to warrant dismissal. Shewan established that teachers must be judged on the basis of community standards and they must be exemplars of moral conduct within the community. The Coyle and Ball/MacMurchie decisions are highly unusual and highlight the extraordinary nature of the decisions overall.

8. The unique nature of the process. The board of reference process was unique in terms of many of its features. Sixty percent of the members of the review panels served only once as did 61% of the lawyers

and many were lay people with no legal background. The decisions themselves, until recent times, were simple in the extreme, spurning precedent, ignoring any need to provide reasons, and declining to set out any method or guidelines for review. No accepted tests were sought out until Machado-Holsti in 1981 and even after that, guidelines for review, when used, were not necessarily outlined but simply assumed. It is often difficult to determine what questions were being addressed by the panel. However, the record demonstrates that a change was occurring as the board of reference process came to an end in 1989. Decisions were becoming more detailed, legalistic, and complex; the William Scott model was becoming an accepted method of proceeding; and precedent, not necessarily arbitral jurisprudence, was beginning to be sought out.

The common language of labour relations was completely absent. The terms progressive discipline, culminating incident, culpable and non-culpable discipline, for example, do not appear in any one of the 44 cases. Concepts associated with those terms appear to be irrelevant, inappropriate, or unknown.

SECTION TWO: REVIEW COMMISSION CASES

Before 1988, a teacher could be dismissed for poor performance only in accordance with section 123 and regulation 65 of the School Act. A termination under this section resulted after three reports written by administrators indicated that the learning situation in the teacher's class (or classes) was "less than satisfactory". A teacher wishing to appeal from such a termination made a request to the minister under the provisions of section 130 for a review commission to hear the case and render a "final and binding" decision. Fourteen such review commission cases were heard between 1973 and 1989. The resulting decisions are summarized and set

out in chronological order in Appendix H. However, these 14 teachers terminated under section 123 were not the only teachers terminated in the province for "less than satisfactory" performance. Grady claims there were "a few but not many" who did not wish to appeal and "went quietly" after receiving three unsatisfactory reports (Interview, September 10, 1991). In addition, he believes there were other teachers terminated under section 123 that the BCTF were never informed about. The Austin decision discusses the school board practice of offering "buy outs" to teachers who were performing in a less than satisfactory manner. There was no requirement for teachers, school boards, the ministry, or anyone else to notify the BCTF or a local teachers' association of any cases of teacher terminations (or "buy outs"), nor was there a legal requirement for the BCTF or local teachers' associations to defend or represent terminated teachers who did not seek assistance. The 14 cases cited here, therefore, comprise the complete BCTF record of section 123 terminations.

These 14 decisions are categorized in accordance with various features of review commission decisions. The analysis reviews time frame, outcomes in terms of which teachers were reinstated and which terminations upheld, the description of teachers involved, the nature of the appeal process itself which had its own unique labour relations culture, the reasons given for termination, review commission reasons and decisions, and arguments put forth by counsel.

Time Frame of Review Commission Decisions

It is significant that so few review commissions were held. During a 17 year period, out of a total population of approximately 30,000 teachers, only 14 appealed terminations for less than satisfactory performance. Table 5 provides the record of all review commissions. The three in 1978

represent the highest number conducted in any single year. In the years before 1973, in 1975, 1977, and in the years 1980 to 1984, no teacher in B.C. appealed a termination for "less than satisfactory" performance.

Table 5: Review Commission Cases and Dates

Review Com.	Date	Case	Date
Case			
Pazitch	1973	Easton	1979
Dosanjh	1974	Jones	1985
Lefebvre	1974	Leitao	1985
Bezold	1976	Froleck	1986
Raison	1978	Geoghegan	1986
Desmoulin	1978	Parker	1987
Sederberg	1978	Austin	1989

Review Commission Outcomes

Of the 14 cases, eight terminations were upheld by review commissions as outlined below in Table 6. In six cases the teacher was ordered reinstated. In percentage terms this could be stated as 57% of cases "won" by the school boards and 43% "won" by teachers. However, Grady claims only three teachers of those six reinstated by review commissions could be said to have really "won": Sederberg, Easton, and Jones (Interview, September 16, 1991). In the case of Ms. Pazitch, the BCTF withdrew her membership the following year for conduct unbecoming a professional. (This was the only case where the BCTF took such action against a teacher and is too complex to review here.) In Geoghegan's case, he died shortly afterward and never returned to the classroom. Froleck as well, never returned to her job.

Table 6

Review	Commission	Outcomes	Description of Teachers		
R.C. Case	Outcome	Gender	Grade Level	Seniority	
<u>Pazitch</u>	reinstated	female	unknown	unknown	
<u>Dosanjh</u>	upheld	female	unknown	unknown	
<u>Lefebvre</u>	upheld	female	unknown	unknown	
<u>Bezold</u>	upheld	male	secondary	unknown	
<u>Raison</u>	upheld	male	secondary	unknown	
<u>Desmoulin</u>	upheld	male	junior sec.	unknown	
<u>Sederberg</u>	reinstated	female	elementary	16 years	
<u>Easton</u>	reinstated	female	elementary	20 years	
<u>Jones</u>	reinstated	female	special ed.	unknown	
<u>Leitao</u>	upheld	female	unknown	unknown	
<u>Froleck</u>	reinstated	female	unknown	unknown	
<u>Geoghegan</u>	reinstated	male	secondary	unknown	
<u>Parker</u>	upheld	female	unknown	unknown	
<u>Austin</u>	upheld	male	elem.&sec.	unknown	

A Description of Teachers Appearing Before Review Commissions

Not a great deal can be learned about these 14 teachers by studying review commission decisions. We know that nine were female and five male. Of those cases won by teachers, five were female and only one (Geoghegan) was male. Of those dismissals upheld, four teachers were female and three male. As far as grade level or subject content taught, the records are skimpy. In six cases the matter is not mentioned by the review commission. Surprisingly, this must be assumed not relevant even when dealing with charges of unsatisfactory performance. Of the eight cases where such information is provided, half taught at the secondary level, two were elementary teachers, one was a special education teacher (likely elementary), and one taught at both the elementary and secondary levels. The subject matter taught is mentioned only in Bezold (physical education

teacher), in Raison (social studies teacher), in Desmoulin (French teacher), in Geoghegan (business education teacher), and in Austin (teacher of English, math, French, and other subjects as well as elementary grades).

It is significant that a teacher's years of service is considered unimportant enough to be mentioned in only three decisions: Sederberg, 16 years of service in the district; Easton, 20 years in the district; and Austin, 13 years in the district. (In Sederberg it is not the review commission decision which provides this information but the later Supreme Court ruling of Justice Verchere.) In all other cases, the seniority of the teacher is not commented upon and remains unknown. It would appear this matter was largely considered irrelevant.

The Process: Appeals From Terminations Under Section 123

Several features of the review commission process must be reviewed in order to describe the appeal system teachers had access to after termination for less than satisfactory performance. The reports written by administrators were critical to the process and that "three report process" requires examination. The personalities who served on review tribunals are also reviewed here. The actual review commission process in terms of the accepted manner of presentation, the common technical arguments raised, the kind of precedents or lack of them found in the decisions, the nature of the decisions as they changed over time, are all matters requiring examination. Each of these features is examined in this section.

Three critical reports. Once a teacher had been terminated for "less than satisfactory" performance and wished to appeal that decision, a review commission was established. The three member tribunal appointed by the minister, in all cases, focussed its hearing on those three reports

required under the provisions of regulation 65 as a prerequisite to termination. Regulation 65 required, for example, that the reports were issued in a period of not less than 12 months and not more than 24 months and that each report writer had concluded with a judgement concerning the quality of the learning situation. Decisions indicate a significant focus was put on adherence to exact time limits regardless of what this might mean to either party.

In all cases, the termination hearing was preoccupied with the "less than satisfactory" reports and with the technicalities and precise wording deemed required by the School Act. Review commission decisions relate to whether or not the reports were written in the correct time frame in Pazitch, Raison, Desmoulin, Bezold, Froleck, and Austin, and on whether one or more reports were valid in light of specific wording that might conflict with the Act in Geoghegan, Jones, Easton, Desmoulin, Raison, Bezold, Lefebvre, Pazitch, and Froleck. "Can a report use the word 'unsatisfactory' when the Act requires 'less than satisfactory'?" was a critical question put in Bezold, for example.

Because of this overwhelming preoccupation with technicalities surrounding the three less than satisfactory reports and the wording of the School Act, there is no consideration of such issues found in a collective bargaining regime as "was the conduct culpable or non-culpable?", or "what tests must be followed in this review to establish that there was just and reasonable cause for termination?". (Austin is the one exception.)

The Austin case might indicate that the personalities involved and timing were critical factors. When a well known labour arbitrator (Chertkow) dealt with such a case, the common language and practices of a collective bargaining environment were introduced. In Austin, Chertkow used the factors in "National Harbours Board (Hope) No. C36/82, October 2, 1982", to guide his review and determined the case was a "non-culpable

dismissal" based on "incompetency". But in addition, Austin was a 1989 case occurring after Bill 20 when a new philosophy and direction concerning teacher discipline had taken hold.

In all other cases, the common language of labour relations was absent. The first issue was always "are the three reports in order?" If the answer to that question was "no", the termination was overturned and the matter ended. If the answer to that critical question was "yes", the termination was upheld. Early decisions considered the credibility of the report writers in determining whether or not the three reports were in order. Later tribunals examined the content of the reports and the record of the teacher's performance to determine if the teacher could legitimately be described as "less than satisfactory" as the three reports claimed. There was never a discussion of an appropriate penalty, even in Austin. The termination would be upheld or not. In such an environment, three "less than satisfactory" reports took on a significance not contemplated or understood in other typical labour relations environments.

Review commission personalities. Twenty seven people served on review commissions in the seventeen years between 1973 and 1989. In 1974 the same three person tribunal served twice in the cases of Dosanjih and Lefebvre. Several people served more than once: W.E. Lucas, a retired superintendent, served on four tribunals, always as a chairman; J. L. Doyle, also a retired superintendent, served four times, once as chairman; Dr. J. F. Ellis, S.F.U. professor, also served four times, always as a winger. Others who served more than once were John Ward and Francis Worledge, both teachers, S. J. Graham, a retired superintendent, and Shirley Fowler Brown. In addition to Worledge and Ward mentioned above, others panelists are recognizable as past or present practicing classroom teachers or were administrator members of the BCTF before

1988: Yee, Crowe, MacLatchy, and MacQueen. Divinsky and Holdom were once school trustees; Robinson was, and still is, a member of the faculty at SFU; Holmes, Marshall, Mutter, and Pullinger were all retired superintendents.

Only one, Chertkow, is a labour arbitrator. His role, however, was unusual as he technically chaired a board of reference pursuant to Bill 20, after the review commission process was removed from the Act. His decision (Austin) falls into the interim period between the School Act system and the collective agreement regime. While deliberations were going on in Austin a first collective agreement was signed in the district concerned, Kettle Valley.

It was required by section 130 of the previous School Act that all three members of a review commission be "actively engaged in education in the Province, as proven by appointment to the staff of a board, college, provincial institute, university or some other educational institution or organization established under this Act, the College and Institute Act or the University Act;" and could not be a member of the staff of the BCTF or the BCSTA. The three members were all appointed by the minister; the two wingers from lists of nominees provided by the two respective organizations, the BCTF and the BCSTA. In today's labour relations environment in the public school system, that process of selection would translate into the appointment of two management representatives and only one teacher representative, an unfair situation not likely to provide natural justice. Counsel for either side were, for the most part, the same lawyers appearing on a repeated basis: Des Grady, Allan Black and Terry Mullen for teachers, with Stuart Clyne, John Kinzie or Wendy Devine representing school boards.

The nature of hearings. It is evident that review commission

hearings were conducted in an informal, non-legalistic manner with a structure that did not follow those accepted or expected set of guidelines found in a collective bargaining regime. The Geoghegan decision states that the members of the tribunal ended the hearing when they felt they had heard enough. The impression left is that there was more evidence or argument to be heard. Since the tribunals were composed of people from the education community and not lawyers, it can be expected that these hearings were not conducted like arbitrations or like a court of law. The first decisions appeared to have suggested a model which others followed. The brevity of most of the decisions leaves few clues as to exactly what did transpire in the hearings, what evidence was brought forth, and what arguments were made by counsel. Further appeals to the courts involved full fledged reviews of all the facts as well as of points of law.

There were few witnesses. In some cases, particularly the early ones, only the writers of less than satisfactory reports and the terminated teachers gave testimony. Some of the decisions underscore administrators' educational credentials and experiences in order to explain why the writers of the three reports were credible and their reports, therefore, reliable and valid. In most cases the reader is informed that the review commission hearing involved extensive testimony and cross examination of the teacher who had been dismissed--in some cases for several days. The decisions do not tell us much about that testimony. Grady claimed this was an especially grueling experience for teachers and that lengthy cross examination was a central feature of the later hearings (Interview, May 27, 1991).

The behind-the-scenes involvement of the ministry is hinted at in the minority report of Ward, attached to the Raison decision. Ward states that the commission's chairperson was advised early in the proceeding by "a representative of the Attorney-General" that the commission report should consist of a single page ruling. Such interference in a labour arbitration

would be questionable. There is no record of questions being raised in this instance however, even by Ward. The ministry obviously had an interest in these cases, as the ministry made the appointments and also paid some or all of the costs. (The Austin case is an exception to this, coming as it did under new legislation.)

The written decisions themselves indicate a unique review commission culture. They were so brief in some cases as to be almost meaningless. The absence of legal argument or reasons is surprising. (Again, Austin is the exception.) Several written decisions feature little else than several pages of lists of exhibits or lists of witnesses examined by the tribunal, with witnesses described in terms of their educational credentials and background. Yet educational qualifications of terminated teachers are not discussed. The early cases focussed on the question, "Are the three unsatisfactory reports in order?". Yet that question is never explicitly stated in any decision.

After Sederberg there is more attention to the merits of the teacher's case, although not universally. The penultimate decision, Parker, reads like it could have occurred in 1974. Even though Sederberg was obviously a precedent which changed the course of how review commissions approached a case, no decision after that time explicitly outlines the "Sederberg principles", nor in fact indicates that Sederberg is a precedent and contains principles worth considering. Some of the Sederberg principles appeared to have been ignored in later cases. Sederberg rules, for example, that a teacher's seniority is critical to the case. This point is followed up in Easton but is not mentioned in any of the next four decisions. In fact the next four decisions do not mention the teachers' length of service at all (see Table 6).

The absence of precedents cited in these decisions is significant. Only four review commission decisions indicate that any other case (of any kind)

was looked at during the hearing or during deliberations. Pazitch was cited in Bezold but it is not known what arguments were made. Sederberg (or the "Verchere Decision") is referred to very briefly in Easton but is not given the treatment one might expect of a recent critical precedent. The Jones decision lists Sederberg, Hutton and Lefebvre in the ever present list of exhibits but does not outline what these cases meant to the review commission, what arguments were introduced by counsel concerning them, or what weight, if any, was given to them. Austin is the exception as Chertkow reviews many cases extensively.

Reasons Given By School Boards For Termination

In four decisions, the reasons for termination are not given, other than that three unsatisfactory reports had been received: Pazitch, Dosanji, Desmoulin, Froleck. Reasons outlined in three other decisions are too brief to be of any assistance in answering the question "Why were teachers terminated pursuant to section 123?": Lefebvre was notified of the need to improve and the improvement was said not to have occurred; Sederberg exhibited "poor pupil control"; and Easton demonstrated a deterioration in control or class management.

There remain then, seven review commission decisions which allow any detailed determination of what teacher conduct led to termination for "less than satisfactory performance": Bezold, Raison, Jones, Leitao, Geoghegan, Parker and Austin.

1. Bezold was terminated for: (1) not planning lessons properly, (2) not following the direction of the principal, (3) not using correct methodology in teaching physical education, (4) allowing students to wear improper dress for physical education classes, (5) being poorly organized, and (6) demonstrating little evidence of instruction and teaching.

2. Raison was terminated because: (1) classroom management was a problem, (2) an essay assignment was questionable, (3) inappropriate mannerisms were used in class, (4) coarse and lewd words were used, and (5) the teacher was loath to accept criticism from the administrative staff. (The later court decisions determined that the second reason "a questionable essay assignment" was not a legitimate and proper criticism of Raison's performance. This court decision also throws the fifth reason into question.)

3. Jones was terminated because she was found to be unable or unwilling to change three aspects of her teaching: (1) planning and implementation of 'Individual Educational Programs'. (2) application of instructional skills, and (3) utilization of teaching aids/aides to maximize learning.

4. Leitao was terminated because (1) the learning situation was less than satisfactory; (2) classroom management was poor; (3) she refused to change or improve and blamed her disciplinary problems and lack of respect from students on the administration; (4) there was no evidence of effective planning; (5) offers of assistance ended in confrontation; (6) relationships with parents were poor; and (7) alternative assignments for the teacher were not feasible.

5. Geoghegan was terminated for (1) not practicing standard techniques of teaching, (2) planning lessons in a confusing manner, (3) narrow course coverage, (4) rejecting the advice of his superordinates, (5) not keeping adequate students' marks, (6) using unsuccessful methodologies, and (7) not adequately monitoring student notebooks.

6. Parker was terminated for (1) lack of "depth" in planning, (2) poor instructional strategies, (3) inadequate and inconsistent classroom management, (4) poor relations with parents, and (5) an inability or unwillingness to improve after suggestions were given by superiors.

7. Finally, Austin was terminated because he (1) demonstrated poor classroom management, (2) did not plan properly, (3) clarity of instruction was absent, and (4) relationships with parents and administration were poor.

What is not known or explored is the extent to which the teacher in each case was either not able, or alternately, not willing, to improve or follow directions. Such reasons as "refusal to follow the directions of the principal" or "can't take criticism from the principal", for example, hint at culpable insubordination rather than at non-culpable incompetence. No differentiation was ever explicitly made in regard to culpable versus non-culpable conduct nor was this seen to be relevant.

Reasons For Decisions of Review Commissions

In eight of the 14 decisions, reasons given by review commissions for their decisions were brief technical ones. Simply put, the three reports were either in order, or not in order, and the termination was upheld or not on that basis: Pazitch and Froleck-not upheld; Dosanjh, Lefebvre, Bezold, Raison, Desmoulin, and Parker-upheld. These rulings reasoned that the reports were in accordance with the Regulations or not, and that the process was judged to be in order or not. In the remaining six decisions, and in the appeal decisions of Raison by the courts, other comments in addition to discussion of process and the three reports can be found.

The Raison Decisions. Raison's appeal took an unusual turn. He did not appeal under the Judicial Review Procedure Act which in fact was suggested by the Supreme Court Justice who heard his first appeal. Justice McKenzie suggested Raison might pursue a case based on his allegations

that the review commission was not a tribunal of competent jurisdiction and that equity and natural justice had been denied. But Raison was preoccupied with pursuit of the writers of the three unsatisfactory reports and challenged them in a defamation action. He represented himself in his challenge of the report writers, one of whom was a fellow member of the BCTF and his local association: Bernard G. Holt. The decisions resulting from court appeals do not shed much light on the review commission process itself, but clarified some matters concerning report writing.

It is apparent that a critical legal precedent was set when one Raison decision, issued by the B.C. Court of Appeal, established that teaching reports were actionable if their content was not directly related to the learning situation, and/or if the reports were not ruled by a review commission to properly establish a learning situation as less than satisfactory. However, this Raison precedent did not come up again in any later case and it remains to be seen whether that ruling will be cited or given weight in future cases brought before arbitration boards in a new labour relations environment. In any case, the reasons given in a final Raison appeal decision to the Supreme Court, state that the principal's report did not constitute defamation in this instance, in spite of proven inaccuracies, because no malice was intended. The defense of qualified privilege prevailed.

Sederberg. This was a leading case in terms of review commission precedents. Justice Verchere of the B.C. Supreme Court in upholding the earlier review commission decision to reinstate this teacher, gave approval to a wider review than had previously been given by review commissions. Seven reasons given by the Court upheld the review commission's full scope review of a section 123 termination: (1) The full merits of the teacher's case could be unquestionably reviewed. The review commission

was to satisfy itself that the learning situation in the teacher's class or classes was in fact less than satisfactory. The Act did not prescribe a simple review of the process only. (2) Supervisor's could not be called upon to testify against a teacher at review commission hearings. Supervisors, according to the School Act, were to assist teachers, and that ability could be compromised if an evaluation was taking place concurrently. (3) Pupil assessment data were found to be admissible evidence to help determine whether the learning situation was less than satisfactory. (4) A teacher's seniority was relevant and admissible. (5) Evidence that one pupil caused any reported discipline problems was relevant and admissible evidence. (6) The validity of a teaching report could be cast in doubt when it did not include suggestions for improvement. (7) A review commission could take into account that a transfer had been requested by the teacher but denied by the employer. The Verchere decision cites Bezold, Raison, and Desmoulin which it claims did not contradict this position and also cites numerous non-teacher court decisions.

Easton. This decision refers to a need for a broader review than in past cases and makes an offhand reference to Sederberg without reference to the Sederberg principles. The reasons for reinstatement are (1) that the teacher had considerable seniority and (2) that her medical condition had not been given sufficient weight in the school board's decision to terminate. While the three reports were found to be in order, this was ruled not sufficient reason for termination.

Jones. The principles outlined in Sederberg clearly forms the basis of this review commission's six reasons to reinstate: (1) the teacher had not received the assistance required and requested in order to improve; (2) the teacher's health problems had not been adequately considered by the school

board; (3) the pupils were very difficult to deal with and the parents were not unhappy with the teacher; (4) the teacher had made some progress in improving; (5) the expectations of the school board were somewhat unreasonable; and (6) there was no evidence of pupil discipline or attitudinal problems. While the decision does not review Sederberg or even suggest the decision is relevant, the case is cited in the list of exhibits. While the three reports were determined to be in order, the decision was for reinstatement of the teacher.

Leitao. The Nishga school board was upheld in this case because, as the review commission stated, the process had been correctly implemented but also the teacher had been proven to be incompetent. This is the only case, other than Austin, where the word "incompetent" appears. Allan Black was reported in the decision to have argued that school board counsel used the term but did not sufficiently establish "incompetence". It is not known from a reading of the decision what the basis for this argument was. This decision states that the review commission regretted the school board had not set out clear expectations for staff in policy, and that so little time was given the teacher to respond to suggestions for improvement.

Geoghegan. Reasons outlined in this decision for reinstatement of the teacher are a serious condemnation of the Keremeos district's administrative practices. The board did not understand that natural justice requires a program of rehabilitation; the board was insensitive; teaching reports were written in a confusing and careless manner; and the poor relationships which had developed between the teacher and administration were largely blamed on the administration. But once again, the reasons cited by this commission do not refer to any other case. The decision finds that although the "three report" process could technically be considered to be in

order, and all actions were taken in accordance with the Act, the termination cannot be upheld.

Austin. This case, which arguably may not fit in this section because it was subject to a different legislative framework than the other 13 cases, gives more extensive and carefully presented reasons than any other case. The decision reviews all the facts as presented in the evidentiary part of the hearing and all the arguments presented by counsel before presenting a decision. Numerous precedents are cited and discussed at length with relative weight of each assessed. If a case is persuasive, Chertkow explains why. If a case can be distinguished in some way from the one before him, that too is outlined. Reasons for upholding the termination are said to be those found after reviewing all the charges "proven" against the teacher, on the basis of the evidence, and weighed within the guidelines provided by the National Harbours Board decision. Sufficient cause for termination was found in spite of mitigating factors.

Summary of Findings: Review Commission Cases

The analysis of the 14 review commission decisions is surprising in the first instance because there were so few of them. In eight of 17 years covered by this study, no review commission cases were heard. Only three appeals went to the courts and only two took longer than one year to settle with a final and binding solution. The analysis of the 14 decisions results in numerous findings which can be summarized under four headings.

1. Overall critical findings. Nine of the teachers involved were female, five male. However, of those cases won by teachers, all were female but one. Eight dismissals were upheld and six teachers ordered

reinstated. Grade levels, subjects taught, teacher qualifications, and years of service were largely ignored by review commissions in writing decisions. Those persons serving on review commissions were people from the education community with no legal background or training and with no experience in arbitration work, with the one exception (Chertkow). Chairs were retired superintendents and the other panelists were teachers, administrators, professors, or school trustees.

2. Reasons for termination. Teachers were terminated for poor relationships with others--especially administrators, for poor planning, poor pupil control, for not following instructions, poor organization, and unusual mannerisms, among others. But the assessment that the learning situation in the teacher's classroom was "less than satisfactory" was the critical overall reason for termination. That assessment could result due to any combination of reasons. Therefore, some decisions did not go into any more detail concerning reasons for termination other than to state that this critical assessment of "less than satisfactory" had been made by those in authority to do so. Indications are it was considered more relevant to cite the educational credentials of the principals and superintendents who wrote unsatisfactory reports than it was to outline a precedent which would guide a full and fair review of the merits of the case.

3. Nature of decisions. Review commission decisions (with the exception of Austin) are very brief and show little attention to providing reasons. The decisions give brief facts, outline the structure of the hearings, provide lists of exhibits, and conclude with short decisions. It is the Supreme Court decision which resulted from the appeal of Sederberg which reviews precedent, gives reasons, and provides enough impetus to change the process. Thereafter, more attention to merits of the case are

evident, yet Sederberg is not given credit for the change in direction by writers of later decisions.

Austin, a case which might be said to bridge the gap between the old system of review commissions and the new labour arbitration system, provides elements of both systems. In reflecting the arbitration system, a review process based on accepted arbitral principles is outlined, the critical role of precedent is demonstrated, and the more formal, legalistic nature of the procedure is evident. The School Act process is evident in the educational wingers found on the tribunal, the adherence to "the three less than satisfactory reports", the lack of any discussion of appropriate penalty, and the fact that an appeal goes to the court rather than to a labour board.

4. The process. The review commission process might be praised as being a system owned and operated by the parties without outside interference or unnecessary legality. The process was informal, quick, inexpensive, and run by the system's practitioners. However, numerous questionable practices might lead one to charge that natural justice was denied: precedent often ignored, leaving the parties without clear expectations and the outcomes unpredictable or "off the mark"; the management side was overly represented on review tribunals; ministry interference was hinted at; court appeals were necessarily full fledged reviews of all the facts as well as of points of law; and slavish adherence to time limits may have created undue harm to both parties.

ANALYSIS AND CONCLUSION

This chapter analyzed all 58 B.C. teacher discipline appeal cases--board of reference and review commission decisions--in order to bring into sharper focus the nature of the system of teacher discipline existing in

B.C. prior to the 1989 unionization of teachers under the terms of Bill 20. This last part of the chapter draws the two sets of findings together summarizing and analyzing them in relation to the framework of discipline concepts set out and described in the first four chapters. This conclusion also compares statistical findings found in this study with those reported in Chapters III and IV by others who have researched employee discipline. The features of the employer-employee relationship created by the specific statute and its discipline process are manifested in those 58 decisions reviewed above.

An Analysis of the Pre-1989 System based on discipline decisions

If the system of discipline can be seen as one of the fundamental tools in establishing a workplace environment, the system as applied to B.C. teachers might be described as enfeebling. Many of the pre-1981 cases (Drinkwater, Caplette, Coyle, Young, or Hutton) demonstrate how a teacher's livelihood came under the absolute control and direction of administration with little avenue of appeal. A small infraction of the rules could result in the end of a long career.

Such a situation might suggest an environment of fear and intimidation, where risk-taking was discouraged and the hierarchical structure rigidly upheld. However, the statistical overview may in fact indicate that this was not the case. In a thirty year period, only 58 discipline cases were appealed out of a total teacher population of about 30,000. This may demonstrate that to a great extent, in the school's professional environment, discipline was seen as largely not needed where high levels of commitment to the job meant employees were self-regulated or self-disciplined. In 41 out of 75 school districts there never was a teacher discipline case reviewed by a board of reference or review commission. It might be said then, that

to make much of the "enfeebling" nature of the system, based on its rules, would be to exaggerate the findings. While the discipline system itself might have been oppressive in terms of its rules, the system may have been largely ignored. Redecker's position, discussed in Chapter II that certain discipline systems are unworkable because supervisor's resist going along with a system which demeans white-collar employees may be supported in this instance. But also during many of those 30 years, the supply of teachers was a problem for school boards and the issue may have been more one of how to attract and keep teachers than how to discipline them.

Phelps' theory of discipline which looks at a continuum with the authoritarian philosophy at one extreme, the anarchic philosophy at the other, and with discipline by due process in the middle, is helpful. The teacher system examined here must be set close to the authoritarian end of the continuum, at least before 1981, when it then moved closer toward the middle after legislation allowed boards of reference to vary penalties. The prime requirement was to be obedient to authority. The Coyle case indicates that even the teaching method used by the classroom teacher could be dictated by authority figures. As well there was no appeal of a short suspension for less than 10 days until 1989 when first collective agreements were in place. There was even a Supreme Court judge who did not appear to understand that this situation existed for teachers as late as 1987 (Singh), perhaps because the concept was so authoritarian in a modern world it was not even contemplated by the courts.

Coye's "disciplinary perspective" was evident within the system in that the organization was seen as more important than the exit of any one teacher. This was highlighted in the Drinkwater case. Weight was not placed on mitigating circumstances or on rehabilitation of teachers before the Machado-Holsti or Sederberg cases and was applied in an erratic fashion even after that.

The teacher discipline system was governed by statute but was subject to the common law of master and servant in many aspects. Review panels were selected in a manner open to charges of management bias. Review commissions had two management representatives. While notice requirements for discipline and cause were required by the School Act, interim steps to full dismissal were not seen to be relevant until 1981. Even after that, only three teachers received suspensions as penalties from school boards--with the exception of possible short penalties for which there is no record. School boards did not perceive that teachers had any contractual rights to a job. There was a lag in the method of dealing with teacher discipline on the part of employers after the law changed and the appeal mechanism was limited in comparison to what is found in a collective bargaining regime.

Before William Scott was introduced in the Machado-Holsti case of 1981, no thought was given to rehabilitating an employee, or to providing a second chance. The concept of progressive discipline was accepted in that case but not followed up by consistent adherence to the principle afterward. Cases which appeared to follow the Machado-Holsti model did not articulate rules or any system of review and the concept of precedent was only loosely accepted. It was not until the last case, Ruffell, of 1989, that the William Scott case is again pointed to as the model form of review. Yet that case is an exception as it occurred under the Bill 20 legislation during the interim period.

Just as Machado-Holsti was the key case in the board of reference culture, Sederberg was the watershed case in the review commission culture. Yet, while it established for the first time that the full merits of a teacher's case could be looked at, other review commissions did not cite that critical decision or its principles in reviewing subsequent similar cases. There is a common figure involved in both these significant cases. Des

Grady, teacher counsel in both Sederberg and Machado-Holsti, was also the union winger on the original William Scott arbitration panel.

Other commonly accepted concepts in labour relations are absent in the teacher decisions examined: the culminating incident is not discussed nor applied; culpable or non-culpable offences as definitions do not arise; the concept of reviewing a case based on a model, and including reasons for the decision was absent until the most recent cases. Other Canadian teacher board of reference decisions were never cited, and even other B.C. teacher cases were cited infrequently and not used to assist in examining a case or in justifying a decision. An American court decision was as likely to be cited as any other case. Use of precedent was unpredictable.

Categories of discipline used in B.C. before 1989 came under five headings as set out in the School Act. There were four under section 122: misconduct, neglect of duty, refusal to follow orders, and criminal charges; and one under section 123: less than satisfactory performance. These categories did not follow those found in the U.S. and in Manitoba where "immorality", "insubordination", "incompetency", and "inefficiency" were commonly used. In fact such terms were not used by B.C. school boards to dismiss and these terms came up only once or twice in a passing reference in the decisions examined. Coyle is the exception as he was dismissed for "incompetence" in 1966.

Studies of Employee Discipline Compared

Of the 58 B.C. teacher cases examined, teachers were successful in having the penalty rescinded or varied in 20 cases, for a "union" success rate of 34.5%. Of these 20 cases where the teacher was reinstated or the penalty varied, eleven were female and nine male. Yet more males than females were disciplined--36 to 22. This finding supports the "chivalry/

paternalism" thesis of an Alberta researcher, Bemmels, who found that arbitrators (mainly males) extend preferential treatment to women (1988:251).

It is not entirely proper to categorize the 58 cases into "culpable" and "non-culpable" discipline cases. While board of reference decisions could be defined as culpable cases and showed only a 32% success rate for the teachers, the review commission decisions are not that clearly defined. For the most part they appear to be non-culpable incompetence discipline cases, but some may be questionably placed in that category. With that reservation in mind, if the review commission cases were categorized as non-culpable discipline for purposes of comparison with other studies, there was a 43% success rate for the teachers within this category, a higher success rate for the union than in culpable cases, a finding also found by McPhillips and Shetzer (1990).

The findings in this study then, can be compared to those reported by other researchers in Chapter III and IV of this paper. Table 7 below provides "success rates" for the union as measured by the percentage of total disciplinary cases where penalties given by the employer were rescinded or varied on appeal.

It is interesting to find in this summary table that the union success rate is higher in all other studies than that found for B.C. teachers under the old School Act legislation with the one exception. McPhillips and Shetzer found a lower union success rate in culpable cases. In fact it could be said that the B.C. teacher success rate is quite out of line with the unionized standard, indicating an inferior appeal mechanism. The only rate close is that for Alberta boards of reference cases (only 8 cases reported).

Adams reported "insubordination" as the largest discipline category and also that 49% of such cases were not upheld. Only four B.C. teacher discipline cases of the 58 (7%) could be categorized as "insubordination"

and of those, one teacher was reinstated. Czuboka reported that almost all of Manitoba's teacher dismissal cases involved male junior secondary and secondary teachers. He also noted that it was rare for a primary teacher to be fired. This study supports both those findings. Overall, it could be concluded that the kind of results found in board of reference and review commission cases with regard to the outcome of teacher discipline appeals, do not follow a pattern established in the labour arbitration environment

Outcomes of Employee Discipline Appeals

Table 7

Researcher	Date of Report	Union Success Rate
Krashinsky and Sack	1989	over 50% of cases
Crombie and Webb	1988	52% of cases
Ponak	1989	54% of cases
Gilson and Gillis	1989	61% of cases
Adams	1979	53% of cases
Steven	1988	72% of cases
Lowry (This Study)	1991	35% of board of reference and review commission cases
Czuboka (Manitoba teachers)	1985	85% of arbitration cases under Education Statute
Czuboka (Alberta teachers)	1985	38% of board of reference cases
Ontario Education Relations Commission (39 awards)	1989	51% of awards
Bridges and Gumport (American teachers)	1984	63% of incompetence cases
McPhillips and Shetzer	1990	13% of culpable cases
Lowry (This study)	1991	32% of culpable cases
McPhillips and Shetzer	1990	62% of non-culpable cases
Lowry (This study)	1991	43% of non-culpable cases

or those found in other teacher studies. In general, teachers in B.C. were not as successful as other reported groups in having disciplinary penalties rescinded or varied. It remains to be seen whether that pattern will change for teachers under the union rules established in 1989.

CHAPTER VII

B.C. TEACHER DISCIPLINE SINCE 1989: AN ANALYSIS OF COLLECTIVE AGREEMENT PROVISIONS

The legislative framework together with collective agreement provisions creates the current teacher discipline system. This chapter reviews that second aspect of the teacher discipline system put in place as a result of Bill 20: collective agreement provisions relating to matters of teacher discipline. The examination determines how provisions differ from one school district to another and how these new discipline provisions differ from conditions in place under the 1986 School Act. The next chapter examines the nature of teacher discipline grievances and arbitration decisions since 1989, resulting from the actual operation of the new system. This chapter together with the one that follows then, brings into focus a clear picture of the current teacher discipline system in the province.

FORM OF ANALYSIS OF COLLECTIVE AGREEMENT PROVISIONS

By fall of 1991, all first collective agreements had been modified by a subsequent round of teacher bargaining. This analysis of these second collective agreements ratified during 1991 and specific collective agree-

ment clause language found therein answers three questions: (1) What clauses in a typical teacher's collective agreement relate to teacher discipline or may be significant in a typical discipline-related grievance? (2) What are the features of those clauses typically found in teacher collective agreements? and (3) How does the clause language differ from one district to the next, resulting in different forms of disciplinary procedures in districts?

For this study, three of the 75 B.C. teacher collective agreements, Creston, Grand Forks, and Kimberley, have not been included. Those three agreements all have different terms and are under negotiation with the relevant clauses discussed here currently undergoing modification. Of the 72 collective agreements selected for study, a representative sample of agreements is used to analyze each particular provision found relevant to this study.

This analysis is set out in two sections. Section one summarizes teacher collective agreements and selects clauses for analysis. Section two outlines typical features found in each selected provision and indicates the extent of the variation in collective agreement language from one district to the next. Section two also compares collective agreement provisions with the previous School Act discipline provisions.

SECTION 1: AN OVERVIEW OF TEACHER COLLECTIVE AGREEMENTS: SELECTION OF CLAUSES FOR ANALYSIS

This section answers the first question raised above: "What clauses in a typical teacher's collective agreement relate to teacher discipline or may be significant in a typical discipline-related grievance?" The 72 collective agreements used in this study range in length from 50 pages in North Thompson to 158 pages in Langley. All agreements were ratified during the 1991 year and are two year agreements for the term July 1, 1990 to

June 30, 1992. Eleven clauses are identified for examination in the next section as those likely to be critical in teacher discipline grievances. These provisions, when compared, indicate how numerous teacher discipline cases are likely to be viewed or handled in various districts.

Clauses Selected For Study

The BCTF has a system for coding collective agreement clauses so that similar provisions can be pulled from the computer for analysis. In 1991, 226 codes are used for this analysis, indicating that overall in the province, collective agreement clauses are described under 226 different headings. In fact it takes 23 pages to simply describe briefly, the 226 clause headings. For purposes of this paper, only eleven of the 226 clauses are reviewed, although others may be relevant in any specific teacher discipline grievance in any one district. The eleven clauses, found in most collective agreements, are included here as described in the BCTF's clause coding system:

1. **Grievance procedures:** Includes all provisions for dealing with disputes about collective agreement enforcement and interpretation, including policy grievances, time limits, etc.
2. **Troubleshooter:** Provides for a third party to investigate a grievance and make non-binding recommendation prior to arbitration, as provided by section 112 of the Industrial Relations Act.
3. **Arbitration:** Provision requiring that disputes not resolved through the grievance procedure will be decided by a neutral third party or board. Includes provision for how the arbitrator or board will be chosen.
4. **Dismissal/discipline for misconduct:** The whole section on discipline for misconduct.
5. **Procedures where dismissal/discipline based on performance:** Sets out the conditions required before action can be taken against a teacher for unsatisfactory performance.
Clauses which require that the employee should be given alternatives to discipline, such as leave of absence, training, transfer, assessment by an

independent evaluator or evaluation panel.

Includes clauses specifying that dismissal for performance will be effective at the end of a term.

Special procedures for resolving disputes regarding discipline or dismissal for performance.

6. Remediation plan/plan of assistance: Clauses requiring the employer to provide a plan of remediation or assistance before dismissing a teacher for unsatisfactory performance.

7. Probationary appointments: Defines conditions under which teachers can be placed on probation, what conditions apply to a probationary employee, and conditions under which a probationary contract may be terminated.

8. Transfers initiated by the board: Restrictions on the board's right to transfer teachers, including notice provisions, etc.

9. Evaluation of teaching (Process and/or Criteria): Provisions for evaluating teachers' work, how, when, by whom, disputes, etc. The standards by which teachers are to be judged, or how those standards are determined.

10. Right to Representation: A general right of employees to be represented in dealings with the employer or supervisors, including the right to be represented in disciplinary proceedings.

11. Personnel Files: Restrictions on employer's right to keep files on employees, including those related to matters of discipline. Provisions allowing employees to examine and dispute what is in the file (BCTF, Internal Bargaining Division document, 1991).

Appendix I of this paper contains an example of each of these clauses numbered as above. The examples were randomly selected and have not been judged as the best, the poorest, the longest, or the most unusual. No two school districts are likely to have the same provision. A clause found in the Appendix then, is unlikely to be found with identical wording in another collective agreement.

SECTION 2: ELEVEN CLAUSES ANALYZED AND DIFFERENCES NOTED

In this part, clauses from a selection of collective agreements are examined to determine the central features of each of the eleven clauses

identified above, as well as the critical variations in that clause language from one district to the next. The eleven clauses identified above form the headings for this analysis.

1. Grievance Procedures

Teacher collective agreements all contain grievance procedures ending in third party arbitration. These provisions all begin with a statement of purpose--namely, that the procedure is to resolve disputes respecting the interpretation, application, operation or violation of the agreement. All outline several steps in the process where generally the grievance is heard first by the school's administrative officer or the board official responsible, then the superintendent, then a joint committee made up of equal numbers from each side--the union and the school board--and finally by an arbitration board where there is a final and conclusive settlement. Most procedures give clearly defined time limits between steps and include a time limit requiring the grievor to bring forth the grievance within a limited number of days of an alleged violation. The procedures normally state that a teacher will not be subject to discipline or discrimination as a result of involvement in the procedure and also that no grievance will be defeated because of a technical error.

There are variations in the provisions, however. Table 8 below looks at differences found in grievance provisions in 23 collective agreements. District agreements selected for analysis were chosen first at random from three groups created by categorizing the 72 agreements in accordance with the size of the district. (The BCTF regularly categorizes school districts based on the number of teachers into 'small', 'medium' and 'large' for various federation programs and activities.) In this case, additional collective agreements were added to the sample after the

random selection to ensure that all geographical regions of the province were represented. For purposes of this analysis, it was not deemed necessary that sample size be exactly the same. Some tables that follow examine fewer than 23 districts.

Steps in the grievance procedure. The second column in Table 8 indicates how many steps are found in the grievance procedure in that district's collective agreement. While most districts (13) have four steps, Castlegar, Surrey and Terrace have only three steps. There is no joint committee in Castlegar or Terrace, the typical third step in most districts, while Surrey's procedure has no meeting with the superintendent--the typical step two. Another six districts have five steps in the grievance procedure. In five of these (Nelson, Revelstoke, Kamloops, Burnaby, and Kitimat) the fifth step is a troubleshooter step.

The steps are unique in Abbotsford. Step one is a meeting with a board official where nothing has yet been committed to writing; step two is simply the act of submitting the grievance in writing to the board official; step three is a meeting of the "Joint Grievance Committee"; step four is a further meeting of a second level 'joint' local committee composed of new participants, and finally, the last step is arbitration. North Vancouver's procedure is also unique in that the typical step two meeting with the superintendent is absent but a special local conciliation process is step three following the joint committee process.

Joint committees. Column five of Table 8 indicates the type of joint committee which forms part of each district's grievance procedure. All districts but three (Castlegar, Peace River South, and Kitimat) have some form of joint committee. Typically three members from the union and three employer representatives meet and attempt to resolve the grievance

at the third stage before it goes to arbitration for final resolution. Six districts in this sample however, have a joint committee of only four members (Cranbrook, Nelson, Kelowna, Kamloops, Abbotsford, and Burnaby). Joint committees have been given various names as indicated by the initials used in the table. Those called 'Joint Committees' are designated "J.C.", 'Joint Grievance Committees' are "J.G.C." and other names such as 'Union Grievance Committee', 'Grievance Committee', and 'Joint Dispute Resolution Committee' are also used. In both Abbotsford and Cariboo-Chilcotin a second internal committee, described in the collective

Table 8: Variations in Some Aspects of Grievance Procedures

District	Steps	Days to File	Time Limits	Joint Cttee	S.112
Fernie	Four	10	---	J.C.3+3	--
Cranbrook	Four	30	---	J.C.2+2	--
Nelson	Five	10	---	J.C.2+2	X
Castlegar	Three	7	---	-----	--
KettleValley	Four	30	Semi-Mand.	G.C.3+3	--
Princeton	Four	30	Semi-Mand.	U.G.G.3+3	--
Golden	Four	14	Mandatory	G.C.3+3	--
Revelstoke	Five	15	---	G.C.3+3	X
Vernon	Four	unlimited	---	J.C.3+3	--
Kelowna	Four	30	Semi-Mand.	G.C.2+2	--
Kamloops	Five	30	---	J.D.R.C.2+2	X
Cariboo-Chil.	Six*	20	---	J.G.C.3+3 & C.L.3+3	X
Abbotsford	Five	14	---	J.G.C.2+2 & "O".2+2	--
Surrey	Three	30	---	J.G.C.3+3	--
Burnaby	Five	20	Mandatory	G.C.2+2	X
Coquitlam	Six*	30	---	J.C.3+3	X
North Van.	Four	20	---	J.C.3+3 plus concil.	--
Nechako	Four	30	---	J.G.C.3+3	--
Peace River S.	Four	10	Mand. dated	-----	--
Victoria	Four	60	---	J.C.3+3	--
Nanaimo	Four	20-4 months	---	G.C.3+3	--
Kitimat	Five	10	---	G.C.3+3	X
Terrace	Three	30	---	-----	--

*These districts have the basic four grievance steps but also both state that section 112 applies and each has another step which may be added. Cariboo-Chil. has a second joint committee and Coquitlam requires that section 96 be used.

agreement, may hear and attempt to resolve the grievance in addition to the 'Joint Grievance Committee'. Abbotsford has a second level committee made up of the two highest officials from each side, while Cariboo-Chilcotin has a 'Consultative Liaison Committee' which meets monthly to discuss any union-management problem and may attempt to resolve outstanding grievances.

Time limits. Column three of Table 8 indicates the number of days the grievor has to file a grievance once a violation occurs or becomes known to the grievor or the union. While Section 98 (e) of the Industrial Relations Act gives arbitrators the power to waive time limits, they are not obliged to do so, and may be less inclined to do so based on particular wording of the time limits provision. In one district, Vernon, there is no time limit allowing a teacher to file a grievance no matter how much time has passed since the alleged violation. Castlegar has the shortest time limit, giving grievors only seven days to file, while Victoria allows 60 days.

The fourth column of Table 8 indicates which districts have mandatory time limits provisions. Following the exact time lines is particularly critical where a grievance is "deemed to be abandoned" when the time limits have not been adhered to. For example, Article 13.7 of the Golden agreement reads:

If a grievance has not been advanced to Step 1, 2, 3, or 4 within the time limits specified therein, then the grievance shall be deemed to be abandoned, and all rights of recourse to the grievance procedure shall be at an end.

In Peace River the mandatory nature of the time limits clause is further strengthened by requiring that all grievance documents be dated and/or sent by registered mail so that exact dates are known.

Forfeiting rights under the grievance procedure. Not indicated on Table 8 are "gag orders". Five of these collective agreements contain clauses which state the grievance is deemed abandoned, or that all rights under the grievance procedure are lost, if the union or the grievor attempts to resolve the grievance through means outside those provided in the procedure. Fernie, Princeton, Kelowna, Coquitlam, and Peace River South all have such a clause. The Peace River clause, for example, reads:

In the event that after having initiated a grievance, an employee endeavours to pursue the grievance through any other channel, the Union agrees that pursuant to this Article, the grievance shall be considered to have been abandoned.

It may require an arbitration to determine how this clause is to be interpreted. Some argue it means little more than that a grievance cannot be pursued in court while others claim it means the union cannot discuss grievances in the media or with individual trustees, and the union cannot take any type of job or political action in attempts to resolve a dispute.

2. Troubleshooter Provisions

The troubleshooter provisions typically provide for a mutually agreeable third party to investigate a grievance, define the issue, and make written recommendations to resolve the matter. It also suspends the time limits in the grievance procedure during this investigation and until recommendations are made. Table 8 indicates that collective agreements in seven of 23 districts contain such a "Section 112" provision. A typical Section 112 provision (Revelstoke) is included in Appendix I. Burnaby and Revelstoke have named particular arbitrators (such as Vince Ready) in their provisions while the others have not. Cariboo-Chilcotin and Coquitlam have unusual troubleshooter clauses. One sentence in each

agreement states that "Section 112 applies" but the appropriate wording is not included. It may be debatable (arbitrable) as to whether or not a troubleshooter provision is actually contained in these agreements and whether government would pay a share of the cost.

3. Arbitration

While an arbitration procedure is contained in all teacher agreements as the final stage of the grievance procedure, not all provide for the same type of arbitration. Some provide for a single arbitrator and others a three person board. The provision also typically names a third party to make the appointment in the event there is no agreement on an arbitrator, although the Industrial Relations Act (Section 95) provides that the minister will do this when necessary. All provide for equal sharing of the costs of arbitration and most allow the arbitrator to clarify the award within a short time in the event it is deemed unclear to the parties.

A few districts have included an expedited arbitration procedure in the agreement, in addition to the conventional arbitration provision, which provides an alternate faster process for dealing with grievances. Such provisions include speedy time frames, normally a list of arbitrators to be used, a requirement that a decision be issued within days of the hearing, and that it will have no precedential value. Table 9 below indicates how various arbitration procedures differ. The same group of 23 districts are included in this sample as in Table 8.

Type of arbitration board. The second column of Table 9 indicates that in 15 of the 23 districts a single arbitrator is required. However, in four districts (Golden, Victoria, Nanaimo, and Terrace), a three person board can be required by either side. In all other districts where a single arbitrator

Table 9: Variations in Some Aspects of Arbitration Procedures

District	Type	Who Appoints	Days To Decide	Exp.Arb.	S. 96
Fernie	Single	Min. Labour	30		exclude
Cranbrook	Single	Min. Labour	14		---
Nelson	Single	Min. Labour	60		exclude
Castlegar	Single	---	60		---
Kettle Valley	Three	Min. Labour	60	X	---
Princeton	Three	Min. Labour	---	X	---
Golden	Single*	Min. Labour	60		---
Revelstoke	Three	Min. Labour	---		---
Vernon	Single	---	60		---
Kelowna	Three	Min. Labour	60		---
Kamloops	Single	Min. Labour	60		---
Cariboo-Chil.	Combination	Min. Labour	60		---
Abbotsford	Single	Dean/Law UBC	60		---
Surrey	Three	Min. Labour	---	X	---
Burnaby	Three	List	---	X	---
Coquitlam	Single	Min. Labour	14		will apply
North Van.	Combination	---	30	X	---
Nechako	Single	Dean/Law UBC	60		---
Peace River S.	Single	Min. Labour	---		---
Victoria	Single*	Min. Labour	---		---
Nanaimo	Single*	Min. Labour	---		---
Kitimat	Single	Min. Labour	---		---
Terrace	Single*	Dean/Law UVIC	30		---

*In these districts if either party wishes, a three person board is required.

is the required contractual type, a three person board can be arranged where there is mutual agreement by the parties. Five districts require a three person arbitration board unless there is mutual agreement to use a single arbitrator. Cariboo-Chilcotin and North Vancouver, have a combination arrangement whereby specific types of grievances are heard before a three member board and all others before a single arbitrator.

Who appoints the arbitrator? A typical arbitration provision

indicates who appoints the arbitrator in the event the parties cannot agree on a name. Table 9, column three, indicates that in most districts the Minister of Labour appoints. However, three agreements are silent on this matter and would need to rely on the Act, and three look to a Dean of Law to make the selection.

Time for decision. The fourth column of Table 9 indicates the days given in the collective agreement for an arbitration board to issue its decision after the hearing. Eight of 23 districts do not constrain the arbitrator while the others do, with time limits of 14 to 60 days.

Expedited arbitration. Five of the agreements provide for expedited arbitration. Such provisions were negotiated during the second round of bargaining and were not contained in first agreements. North Vancouver and Burnaby have a standard provision described above. The expedited arbitration provision in Surrey is shorter, giving less direction, while provisions in Princeton and Kettle Valley limit expedited arbitration to specific types of grievances such as class size.

Section 96 provisions. The Industrial Relations Act, section 96, permits the parties to seek the assistance of the Industrial Relations Council in resolving a grievance before it proceeds to arbitration (see Appendix E). Section 96 also allows, in part two, for parties to contractually agree not to use the provision to resolve grievances. Table 9 indicates that two districts have agreed not to use the provisions of section 96 to resolve grievances. Coquitlam, on the other hand, requires section 96 be used before grievances proceed to the final two steps.

4. Dismissal/Discipline For Misconduct

This provision, found in all teacher collective agreements, contains the basic requirement of section 93 of the Act, "no discipline or dismissal without just and reasonable cause". However, all clauses are more extensive and typically include other provisions, including procedures in the event of School Act suspensions under section 15 (4) and 15 (5) (see Appendix E). Typically the misconduct provision will outline what process is required by the employer during an investigation of a teacher: Who must be notified that a teacher is being investigated? or Will details be provided in writing? The right to representation during any disciplinary process is also typically included. The question of control on publicity to prevent prejudice to the teacher during the disciplinary process is also often dealt with contractually.

Typically provisions dealing with misconduct set out a requirement for a pre-dismissal or pre-suspension hearing where the full case against the teacher is presented and the teacher, with representation, may respond in some fashion before a decision to discipline or dismiss is formally approved by the school board. The rights of the teacher at this hearing will be set out, along with the form of teacher response permitted. Not all discipline clauses are similar, however. Tables 10 and 11 below indicate some critical differences.

Variations in provisions. Table 10 "Misconduct Provisions, General Clauses", shows the variation which exists in the province in eight general aspects of teacher misconduct provisions. The table indicates that of 20 districts sampled, only eight have a clause which clearly states a teacher will be reinstated with full back pay if, after suspension because of a criminal charge, the teacher is not convicted (column 2). Column 3

Table 10: Misconduct Provisions, General Clauses

1	3	4	5	6	7	8	9
District	Investigation Reinstate Notice/Writg	Teachr +U.	Right to Rep.	Cont.Publicity	Written.Reas.	No.Surprise	Direct To Arb.
Trail	-- X	T + U	X	--	X	X	J.C.
Keremeos	-- X(unless)	T + U	X	--	X	X	Arb.
Armstrong	-- X(unless)	T + U	X	--?	X	X	Arb.
Quesnel	-- X(unless)	T + U	X	--	--	--	J.C.Dism.
Lillooet	-- --	--	--	X	X	X	J.C.
South Carib.	-- X(unless)	T	X	X	--	X	Arb.
Chilliwack	-- X(unless)	T + U	X	X	X	--	Arb.
Langley	-- X	T + U	X	X	X	X	Arb.Susp.Dism.
Delta	X X(unless)	T + U	X	X	X	X	Arb.
Richmond	X X(unless)	T + U	X	X	X	--	Arb.Dism.
Vancouver	-- X	T + U	X	--	X	--	Arb.Susp.Dism.
West Van.	-- --	--	X	X	X	--	J.C. Susp.Dism.
Sunshine Co.	-- X	T + U	X	--	X	X	J.C.
Howe.So.	-- --	--	X	--?	X	--	J.C.
Bulkley Val.	X X(unless)	T + U	X	X	X	X	Arb.
Saanich	X X(unless)	T + U	X	X	X	X	Arb.Dism.
Lake Cowich.	X X(unless)	T + U	X?	--?	--	--	--
Qualicum	X X(unless)	T + U	X	X	X	X	Arb.Dism.
Mission	X X(unless)	T + U	X	X	X	X	Arb.Dism.
Stikine	X X(unless)	T + U	X	--?	X	--	Arb.Dism.

Column 1: The 20 districts selected for this clause analysis

Column 2: Does the misconduct provision require that a teacher be reinstated after when no conviction results after a criminal charge?

Column 3: Will there be notice in writing that an investigation of the teacher is taking place?

Column 4: Who will be notified? The teacher? The Union?

Column 5: Does the teacher have a right to be represented during disciplinary meetings?

Column 6: Does the union have an ability to control the publicity which could result from the discipline action?

Column 7: Will the teacher receive full written reasons for any disciplinary action by the employer?

Column 8: Is there a prohibition against the employer's later introduction of surprise evidence?

Column 9: Can the disciplinary grievance proceed directly to arbitration?

(An "X" in a column indicates the collective agreement does have such a provision.)

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indicates which agreements require the employer to notify the teacher (and also the union, Column 4) that an investigation is taking place. No such notification is required in three districts (Lillooet, West Vancouver, and Howe Sound). The majority of districts require notification of the teacher and the union "unless substantial grounds exist for concluding that such notification would prejudice the investigation".

The right to representation is clearly provided in all agreements but one, (Lillooet), while in Lake Cowichan that right is guaranteed only during a meeting between the Union and the Superintendent. Column 6 indicates that in eleven of the 20 districts only joint press releases concerning a disciplinary action will be issued. In another four districts (indicated by "--?") the board may release information to the press after notifying the union, making it questionable as to whether publicity has been "controlled".

Column 7 indicates that in three districts there is no contractual obligation for the employer to provide full written reasons for disciplinary action. Column 8 indicates that in eight districts there is no contractual prohibition against the employer introducing stale or surprise evidence during arbitration. Column 9 indicates a discipline case may go directly to arbitration in six districts (Keremeos, Armstrong, South Cariboo, Chilliwack, Delta, or Bulkley Valley) while in five districts, only dismissals may proceed directly to arbitration (Richmond, Saanich, Qualicum, Mission, and Stikine). Two districts allow suspensions as well to go directly to arbitration (Langley and Vancouver). In the other districts discipline grievances proceed directly to the joint committee, except for Lake Cowichan which is silent on the matter.

Pre-discipline hearings. Table 11 more closely examines school board hearing rights in the same 20 districts. Such a hearing process was

common practice for teachers in the case of dismissals and suspensions of more than 10 days under the previous School Act. In a new unionized regime there is no guarantee of a school board hearing unless such requirements are contained in the collective agreement. School boards in the past often objected to certain processes being used at these hearings. For example, in Cardwell, discussed in Chapter V, the school board refused to allow the teacher's lawyer to cross-examine the superintendent. The language on pre-discipline hearings found in collective agreements determines the nature of such hearings in the new system and appears to recreate the old School Act model.

Column 2 of this table indicates that in three districts, no such right to a pre-discipline hearing exists in the collective agreement. Trail provides for such a meeting only after a teacher has been suspended under section 15 (5) of the School Act. Half of the districts have agreed that this hearing is at the call of the teachers (Column 3).

The teacher has the right to receive all documents and full details of the allegations against him or her before going into the school board's hearing in all districts but five (Trail, Quesnel, Lillooet, Lake Cowichan, and Stikine). In 13 districts, the teacher has a right to file a written reply to the allegations (column 5). The type of hearing participation guaranteed the teacher varies considerably. Six districts do not provide the right to even minimal participation should a hearing be held. In some districts "questions" may be asked by the teacher or teacher's counsel. In only five districts (South Cariboo, Langley, West Vancouver, Bulkley Valley, and Saanich), is a teacher guaranteed the right to call witnesses.

Column 7 indicates which districts have included a clear process for School Act discipline cases. Those districts marked "X" provide the same process for School Act cases as for all others. Seven districts provide a pre-arbitration process for discipline under section 15 (5) only. Sunshine

Table 11: Misconduct Provisions, Pre-Discipline Hearing Rights, Section 15 Coverage

1	2	3	4	5	6	7
District	Is Required Before Discipline	At Union Option	Teacher Receives Full Allegations All Documents	Right to File Written Reply	Right to Full Participation in Hearing	S. 15 covered
Trail	After s.15(5) susp.	--	Re: s.15(5) susp.	for s.15(5) susp.	---	15(5)only
Keremeos	Before dismissal	--	X	X	Questions	X
Armstrong	Before susp.or disp.	for s.15	X	X	Respond to allegat.	X
Quesnel	Before susp.or disp.	--	--	--	---	X
Lillooet	--	--	--	--	---	X?
South Carib.	Before dismissal	--	X	X	Question,call witness'	15(5)only
Chilliwack	Before susp.or disp.	for s.15(4)	X	X	Questions	X
Langley	Before susp.or disp.	X	X	X	Question,call witness'	15(5)only
Delta	Before disc.or disp.	X	X	X	Question	X
Richmond	Before disc.or disp.	X	X	X	Meet the case	X
Vancouver	Before disc.or disp.	X	X	--	---	15(5)only
West Van.	Before susp.or disp.	X	X	X	Question,call witness'	X
Sunshine Co.	Before susp.or disp.	--	X	X	Questions	15(4)only
Howe.So.	Before disc.or disp.	--	X	--	Questions,submission	15(5)only
Bulkley Val.	Before disc.or disp.	X	X	X	Question,call witness'	15(5)only
Saanich	Before susp.or disp.	X	X	X	Question,call witness'	15(5)only
Lake Cowich.	Before susp.*	X	--	--	---	X?
Qualicum	Before susp.or disp.	X	X	X	Questions	X
Mission	Before disc.or disp.	X	X	X	Question	X
Stikine	--	--	--	--	---	X?

*This hearing is held with the Superintendent, rather than the school board.

Column 1: The 20 districts selected for this clause analysis

Column 2: When is a pre-discipline hearing held with the school board or with a committee of the board?

Column 3: Is the holding of this hearing optional at the call of the union?

Column 4: Will the teacher receive the full allegations and all documents which can be reviewed at the hearing?

Column 5: Does the teacher have a right to file a written reply to the allegations based on the full documentation?

Column 6: Does the teacher have the right to full participation in the hearing--to call witnesses, cross-examine, hear the full case?

Column 7: Are disciplinary actions under School Act sections 15 (4) and 15 (5) covered by the provisions?

(An "X" in a column indicates the collective agreement does have such a provision.)

Coast has a pre-arbitration process for section 15 (4) cases only. Those districts indicated as "X?" provide the same hearing process for School Act cases as for all other situations, but limited rights to a pre-discipline hearing are provided.

5. Procedures Where Discipline or Dismissal is Based on Performance

Competence-based dismissal clauses, contained in some form in all teacher collective agreements, attempt to retain the preconditions for termination contained in the pre-1988 School Act regulation 65. That is, the school board may not dismiss a teacher for unsatisfactory performance unless it has received at least three "less than satisfactory" reports. But the provisions now found in teachers' collective agreements do not always make such reports a precondition to dismissal for poor performance. In a sample of 18 collective agreements, Table 12 below, three districts (Cranbrook, Cowichan and Agassiz) do not set out the three reports as a precondition to termination.

This performance provision however, typically provides that three reports must be written within a period of twelve to twenty-four months as in the previous legislation, with the period extended where a plan of assistance is put in place during the reporting process. The three report process is typically tied in some manner to the evaluation procedures outlined in the collective agreement and includes notice procedures before termination becomes effective: notice of intent to terminate, provision for a board hearing, followed by notice to terminate. Some clauses permit such terminations only at the end of a school term as in previous legislation. The clause will generally require different evaluators, not just the school principal, and will stipulate that there be no bias on the part of the evaluator.

Variation in provisions. Table 12 shows that not all collective agreements provide what was found in the old School Act. Of the 18 districts sampled, only four (Abbotsford, Surrey, New Westminster, and Maple Ridge) require terminations for performance to take place only at the end of a school term. Column 2 of Table 12 indicates that in some districts the "three report provision" does not apply to teachers in their first year of teaching (Cranbrook, Castlegar, and Kamloops), to teachers who do not have a continuing contract (Prince Rupert, Nechako), or to teachers who are not members of the bargaining unit (Castlegar). Column 3 indicates that not all districts have retained the 12-24 month procedure of the old School Act. Central Coast, Prince Rupert, and Nisga'a now have a lesser standard. However, the majority of districts sampled require these unsatisfactory reports to be "consecutive", a provision not found in the old School Act.

Evaluators and remediation. Column 4 indicates the required number of evaluators. Four districts state that vice principals may not be authors of unsatisfactory reports used to terminate, a School Act provision before 1988. The majority of districts have a provision to prevent biased evaluators writing such reports. In this sample of 18 districts, only five have no such provision, although three of the existing provisions are marked as questionable (X?) when they allow the superintendent, who may be the report writer, to make the final determination on whether or not the report writer is biased.

Column 6 indicates that all districts but four provide a plan of assistance to a teacher having difficulties in the classroom, or to consider a request for a leave or a transfer, or to grant a leave if requested. In most of these districts, the time stops while the teacher is on a leave, in terms of the 12-24 month reporting time provision. Column 7 also indicates that in 10 districts, when the teacher returns to the classroom, a period of

Table 12: Discipline/Dismissal Based on Performance, Variations in Provisions

1	2	3	4	5	6	7	8
District	Limitations	Three Report Cond.	Evaluators	Bias	Leave/Transfer	Time Stops	Notice Provisions
Cranbrook	after 1 yr.	12-24 mon. ---	3 req.	X	May request 1yr.	X-3 mon.	intent, mtg, notice ??
Castlegar	barg. unit teach. after 1 yr.	12-24 mon. consecutive	3 req.	X	Remediation, May request 1 yr. lv.	X-3 mon.	intent, ---
Vernon	---	12-24 mon. consecutive	3 req. no VP	X	May request trans. lv.	X-3 mon.	intent, mtg, notice ??
Kamloops	after 1 yr.	12-24 mon consecutive	2 req. no VP	--	---	X--	--, mtg, ??
Hope	---	12-24 mon.---	2 req.	X	Granted lv 1yr.	X-2 mon.	intent, mtg, dism. mtg, 30
Abbotsford*	---	12-24 mon. consecutive	2 req.	X?	Plan of assist.	--	intent, mtg, 30
Surrey*	---	12-24 mon.---	2 req.	X	---	up to 1 mon.	30 days, mtg.
New West.*	---	12-24 mon.---	2 req. no VP	X	May recom. lv.	X-3 mon.	60 days intent, mtg. 1mon.
Burnaby	temps. cont.	12-36 mon. consecutive	2 req.	--	May request 1 yr lv. transf. + remedial plan	X-2 mon.	---
Maple Rid.*	---	12-24 mon. consecutive	2 req.	X	May request lv. trans.	X-3 mon.	2 mon. intent, mtg. 1 mon.
Central Co.	---	10-24 mon. consecutive	2 req.	--	Plan of assist.	--	---
Prince Rup.	continuing	9-24 mon. consecutive	3 req.	X	Plan of assist. no tm.	--	30 days
Nechako	continuing	12-24 mon.---	2 req.	--	Plan of assist. no tm.	--	30 days intent, mtg, dism.?
Cowichan	---	--- consecutive	2 req. no VP	X?	Plan of assist., remed.	---3 mon.	dismissed forthwith
Alberni	---	12 + consecutive	2 req.	X	Brd. consider trans. lv.	X-2 mon.	intent, mtg in 14 days, ???
Agassiz	---	12-24 mon.---	1 req.	X?	---	--	intent, mtg in 7 d., 30 days
Van. Isl. West	---	12-24 mon.---	2 req.	X	---	--	intent, mtg in 14 d., 30 days
Nisga'a	---	8-24 mon. consecutive	2 req.	--	Plan of assist, lv may	X --	intent, mtg. 14 d., 1mo.

*Terminations for performance in these districts are effective at the end of the school term only.

In all districts sampled above the discipline provision is tied to the evaluation clause in the collective agreement. Those provisions are reviewed below.

Column 1 includes 18 districts.

Column 2 indicates if the discipline for performance clause has been limited in any way to exclude any group of teachers.

Column 3 outlines the conditions concerning the three reports. They must be consecutive or not, and they must be issued within a specific time period.

Column 4 indicates how many evaluators could write the three unsatisfactory reports and also if any officials or administrators are not to write reports.

Column 5 indicates if there is a provision which prevents or controls biased reports being written on a teacher's performance.

Column 6 indicates what provisions there may be which gives the teacher time out to improve teaching skills before dismissal takes place.

Column 7 indicates whether the time stops in terms of the 12-24 month time period while the teacher is on a professional improvement leave. This column also indicates whether there is a time limit which prevents a report being written on the teacher immediately upon his/her return to the classroom.

Column 8 notes any notice provisions. Is there a notice of intent to dismiss given? How many days before dismissal is this given? Is there a meeting or hearing before the board before dismissal, and is there a notice period between the meeting and the effective date of dismissal?

adjustment time of one to three months is required before another report may be written on the teacher's performance.

Notice. The last column in Table 12 indicates that of 18 districts, eight require a teacher be given 30 days or one month notice of termination for poor performance. Only two provide notice provisions equal to that found in the old School Act (New Westminster and Maple Ridge). Eight districts do not require notice. One, Cowichan, even states the teacher can be dismissed "forthwith" after three written unsatisfactory reports. The majority of districts, 13 out of 18, provide that a meeting or board hearing will be held with the teacher, after the employer has indicated an intent to terminate but before the actual termination notice is given or takes effect.

6. Remediation Plan/Plan of Assistance

A number of collective agreements outline what kind of assistance must be provided to a teacher having difficulties in the classroom. The majority of agreements require that this plan is developed after the teacher receives a less than satisfactory report. In some cases, termination for poor performance may not take place while the teacher is engaged in this remediation plan. Table 13 indicates the nature of provisions found in 15 collective agreements. In agreements containing such a provision, the plan of implementation is not always compulsory for the teacher. Where such plans do exist and where teachers must follow the plan, the next evaluation report cannot be written until remediation is completed. No plan had time lines attached. The time frame for the plan would be developed along with other aspects of it by those directed to do so. In only eight of the 15 districts is the plan of assistance developed jointly

Table 13: Plan of Assistance Provisions

District	Required	Features of the Plan
Fernie	Yes	After 1st or 2nd unsatisf. report, plan developed with local, Leave up to 1 yr. for prof. or academic instruction is granted upon request
Trail	Yes*	After unsatisf. report, developed in consultation with teacher
Vernon	Yes	After unsatisf. report, developed by brd. after consultation with teacher
Kelowna	No	Teacher may request and be granted leave for prof. or academic instructn. after 1st or 2nd unsatisf. report
South Carib.	Yes	After unsatisf. report, plan described as "supervisory direction"
Surrey	No	---
Quesnel	Yes	After 1st unsatisf. report, Supt. evaluator, union rep. develops plan Leave up to 1 yr. will be granted if requested for prof. or academic instr'n
Langley	Yes*	After unsatisf. report, jointly developed by teacher and evaluator.
New West.	No	Teacher may accept plan after unsatisf. report, principal develop with tea.
Maple Ridge	Yes*	After unsatisf. report, ----
North Van.	Yes*	After unsatisf. report, brd. shall develop plan, if accepted no report until it is completed, or teacher may request unpaid leave for prof. improvent.
Prince Rup.	Yes	After the 1st unsatisf. report,
Victoria	Yes	After the 1st unsatisf. report, developed jointly by administr., district office and GVTA in consultation with teacher
Van. Isl. West	Yes	----. evaluator develops in consultation with teacher
Terrace	Yes	After unsatisf. report, developed jointly with teacher

*In these districts a plan shall be developed and shall be available, although there is no requirement for the teacher to participate even after helping to develop the plan.

with the teacher or union. In the other districts the plan of assistance is something 'done to the teacher' by management. It is likely that any non-culpable dismissal would involve evidence concerning the nature of this plan and its implementation.

7. Probation Provisions

It was pointed out in Chapter IV that B.C. is the only province in Canada where teacher tenure provisions are not legislated. In B.C. teacher tenure is negotiable. Probation provisions found in teacher agreements indicate how tenure and discipline have become intertwined and even confused. Some of the probation provisions relate directly to

discipline, some to tenure, and others are blurred. A sample probation clause found in the Qualicum collective agreement is included in Appendix I. A second one can also be found there within the Surrey evaluation provision.

Features of probation clauses. Under the provisions of the old School Act (regulations 59-62) a teacher could be put on probation only during the first nine months of his/her contract in a district and could then be dismissed through cancellation of that probationary appointment. Such an event (placing a teacher on probation) was usually, but not always, disciplinary in nature resulting from alleged unsatisfactory performance. The cancellation of a probationary appointment could not be appealed.

In many districts, collective agreements permit probationary appointments. Some of these probationary provisions accept the notion that probation will be used as a form of discipline for poor performance, and others provide that a probationary or trial period will exist for new teachers before they achieve tenure or "continuing appointment" status in the district. In either case, whether for tenure reasons or for disciplinary reasons, teachers assigned to a probationary status have access to a lesser standard in terms of review of disciplinary action taken against them. Table 14 examines a number of probationary provisions in 20 B.C. teacher collective agreements.

Variations in provisions. Of the 20 districts in the sample, eight have been grouped together in "Category 1" because these districts' collective agreements all contain a probationary provision specifically intended to be used as a disciplinary provision. In these districts, the employer may place a teacher on probation in the event poor performance is demonstrated or alleged. In six districts, this may happen only during

Table 14: Variations in Probation Provisions Found in Teacher Collective Agreements

District	Category 1	Category 2	Category 3	Category 4
Fernie	X			
Nelson			X	
KettleValley				X
Revelstoke	X			
Quesnel		X		
Lillooet	X			
Merritt			X	
Langley				X
Burnaby				X
Powell River	X			
Queen Charl.			X	
Burns Lake			X	
Prince George			*	X
Victoria			X	
Nanaimo			X	
Courtenay	X			
Kitimat	X			
Fort Nelson	X	*		
Terrace	X			
Shuswap				X

Category 1: Districts that have a specific clause in the collective agreement concerning probationary appointments and in all cases that probationary status occurs when a teacher is placed on probation as a form of discipline for poor performance.

Category 2: Districts where a specific probation provision is found in the collective agreement but the probationary appointment is a tenure provision only. Once teachers have successfully completed a specific number of months of teaching the probationary status ends.

Category 3: Districts where no specific provision on probationary appointments can be found in the collective agreement, but where a group of teachers is assigned "probationary status" in terms of a lesser standard being applied to them in a disciplinary situation.

Category 4: Districts where no probationary clause exists, where no teacher can be placed on probation and where no probationary status can occur.

*There is no clear provision to prevent this situation although it is not a requirement in the collective agreement.

the first few months of a teacher's appointment--the first four months in Kitimat and the first year in Fort Nelson or Revelstoke. In Terrace and Powell River however, any teacher may be placed on probation at any time during his/her career if poor performance is found. Only one

district is in Category 2. Quesnel's agreement describes a probationary appointment as a teacher who has not yet obtained tenure, or one who has not successfully completed one year of teaching. A probationary appointment here does not involve discipline.

No probation provision? Those districts in Categories 3 and 4 on Table 14 have no provision in the collective agreement explicitly called probation. But while Category 3 districts do not use the word "probation" in the agreement, a special probationary status is assigned to certain teachers. For example, in Nelson, teachers may have their appointments cancelled "should they fail to maintain an acceptable teacher evaluation, or for any other bona fide work related reason" during their first ten months of employment in the district. This group of beginning teachers in Nelson therefore, like those in Merritt, Queen Charlottes, Burns Lake, and Victoria have a "probationary status". Nanaimo assigns this probationary status to temporary teachers in that a lesser standard of discipline applies to that group. It is clear then, that provisions vary in the province and the standard of discipline applied by an arbitrator may not be the same from one district to the next for teachers in a similar teaching situation with the same years of experience.

Category 4 districts, with the exception of Prince George which does not have a clearly worded provision, prohibits teachers being placed on probation because every teacher has either continuing or temporary status and all have equal rights in terms of disciplinary standards.

8. Forced Teacher Transfers For Disciplinary Reasons

In the past, a transfer of a teacher from one assignment to another without the agreement of the teacher was often viewed as a disciplinary

transfer. Reviews of such alleged "discipline" were limited, as discussed in a previous chapter. On occasion employer-initiated transfers have involved a forced geographical move from one community to another with considerable expense to the teacher and his/her family. The analysis of collective agreement provisions, in the area of employer-initiated teacher transfers, is focused on the extent to which teachers have eliminated through collective bargaining, the employer's right to force transfer teachers for disciplinary reasons. All types of transfer clauses are not examined. Teacher agreements contain a number of provisions which govern in the event teachers request transfer. Only "forced transfers" are relevant to this study.

Features of the forced transfer provision. For this analysis 15 provisions were examined. The typical provision contains a prohibition against employer-initiated transfer of teachers for arbitrary or capricious reasons. Such clauses also typically require the employer to give adequate notice of transfer, provide written reasons for it and hold a meeting where the teacher, accompanied by a union representative, may hear and discuss these reasons and indicate what assistance is required before the transfer can take place. The clauses examined contain various provisions.

Variations found. For purposes of this study, it was helpful to categorize the 15 clauses in two ways: first, to indicate whether or not teacher transfers could be made in the district for disciplinary reasons, and then to categorize on the basis of whether seniority is a required consideration when forcing a teacher to transfer. Table 15 below looks at the first categorization scheme and indicates that four of the 15 districts are in the first category. Forced transfer clause language in those four collective agreements appear to contemplate transfer as a means of

discipline. The North Vancouver transfer article, for example, contains this clause under the heading "involuntary transfers":

An involuntary transfer shall be completed only on just and reasonable grounds and without discrimination. If the employee feels there are substantial grounds to believe the decision to proceed with an involuntary transfer is unreasonable, the employee may request a review by the superintendent, and may be accompanied at such a review by a representative of the association.

The North Vancouver teacher has the option of filing a grievance over a transfer pursuant to this clause when the process outlined is complete.

Table 15: Can School Boards Use Forced Transfer as a Means of Discipline?

Category I	Category II	Category III
Penticton	Kamloops	Windermere
Kelowna	Hope	Abbotsford
North Vancouver	New Westminster	Sunshine Coast
Saanich	Peace River South	Prince Rupert
	Coquitlam	Gulf Islands
		Vanc. Island North

Category 1: Board could transfer as a disciplinary measure. The language clearly contemplates this situation.

Category 2: Board may not transfer as a form of discipline. The language clearly prevents this.

Category 3: Board could transfer as a disciplinary measure but it would be difficult because required considerations must be met.

Those districts listed in Category 2 have clear language preventing employer-initiated transfers for disciplinary reasons. The New Westminster article contains this clause for example:

Transfers shall not be initiated by the board as a disciplinary measure.

The Peace River South provision states:

Transfers shall not be initiated by the Board as a disciplinary measure, for

administrative preference or convenience, for arbitrary or capricious reasons or for the sake of change or rotation only.A board initiated transfer may be grieved by a teacher ...on the basis that the transfer is unjust or unreasonable in the circumstances.

Those districts in Category III have not clearly prevented forced teacher transfers as a form of discipline, but the language of the clause makes such a transfer difficult for the employer to carry out. Districts in this category could be further categorized in terms of the extent of the blocks put in the way of a school board wishing to transfer for disciplinary reasons. There are more such blocks in Abbotsford or Vancouver Island North, for example, than are found in Windermere or in Gulf Islands. In Abbotsford the board must demonstrate that the transfer had nothing to do with enrolment fluctuation, nor was it a transfer to a different grade or subject level, since seniority must govern in those instances. The transfer would also need to pass the test of being for "fair and reasonable educational reasons". However, in Gulf Islands, the board would be required to prove only that the transfer had not been handled in an arbitrary or capricious fashion and that consideration had been given to the teacher's preferences, professional qualifications and experience. These blocks to forced transfer, found in various agreements are (1) the provision of moving allowances, (2) release time for in-service, (3) teacher retraining paid by the board, (4) future priority for any vacancy, (5) provisions of various support services, and (6) right to return to the same job if the expected enrolment decline does not materialize.

Seniority based transfers. The introduction of a seniority test forces objective criteria into the transfer procedure and further decreases the likelihood of transfer for disciplinary reasons. Therefore, it is useful to categorize clauses based on the extent to which seniority must be considered in forced transfers. Table 16 below categorizes the 15 districts

on this basis.

Those districts in Category 1 have transfer provisions requiring seniority as the test in several types of transfer situations. When the staff must be reduced in a school due to enrolment decline, the most junior person is transferred. When a teacher must be moved to another community involving a change of residence, only the most junior teacher in the district may be transferred. Or when the transfer will involve a significant change in assignment, this may occur only where the teacher has the least seniority among teachers in that grade level or subject area.

Table 16: Seniority As A Factor in Board-Initiated Teacher Transfers

Category 1	Category II	Category III
Hope	Windermere	Kelowna
Abbotsford	Penticton	Kamloops
Peace River South	New Westminster	Gulf Islands
Vancouver Island North	North Vancouver	Coquitlam
	Sunshine Coast	Prince Rupert
	Saanich	

Category 1: Seniority must be considered in most transfer situations.

Category 2: Seniority must be considered only when a transfer is required because of declining enrolment in the school.

Category 3: Seniority is not a consideration at all.

Those districts listed in Category II consider seniority for only one reason: in the event of enrolment decline in a school. Category III includes five districts where seniority is not a required factor at all in a forced transfer situation. This situation makes employer use of transfer for reasons of discipline more likely. Although in both Kamloops and Coquitlam, clause language prevents forced transfers for disciplinary or "punitive" reasons.

Transfers: discipline-related. From the teachers' point of view, those clauses found in districts listed both in Category II on Table 15 and also in Category I in Table 16 (Hope and Peace River South) provide the best

assurance that teachers will not be transferred as a form of discipline. From an arbitrator's point of view, when faced with an alleged disciplinary transfer case, such collective agreement language will be critical and will vary from one district in B.C. to the next as this examination has shown.

9. Teacher Evaluation Provisions

B.C. teacher evaluation clauses are perhaps the most extensive and complex provisions found in teacher collective agreements. The teaching report, which results from an evaluation by management of a teacher's performance, becomes the critical document used by the employer in any discipline for poor performance. However, teachers, as a matter of BCTF policy, believe in evaluation and like to receive these teaching reports as a way of gathering feedback on the job they are doing. Perhaps it is an indication of the confidence teachers have in their work that they hold to this policy position. Negotiated provisions attempt to resolve the conflict between teachers wanting evaluation reports, in anticipation of positive comments about their work, and employers wishing to use the evaluation process in an unregulated manner to obtain necessary data for possible disciplinary actions. Such collective agreement procedures are also designed to prevent harassment, intimidation, or discrimination against teachers through unjust use of the evaluation process.

Features of the evaluation provision. The typical evaluation clause is likely to contain more than 20 features. The clause may be divided into two sections: evaluation process and evaluation criteria. Not all collective agreements contain the criteria but when such criteria are included, the provision varies from a paragraph to numerous pages in

length. The Surrey evaluation provision found in Appendix I includes more extensive evaluation criteria than most agreements. This study of evaluation clauses involved provisions in the following 15 collective agreements, in order of district number:

2.Cranbrook	39.Vancouver	62.Sooke
10.Arrow Lakes	49.Central Coast	65.Cowichan
14.South Okanagan	54.Bulkley Valley	72.Campbell River
26.North Thompson	56.Nechako	75.Mission
36.Surrey	60.Peace River North	77.Summerland

Variations in provisions. Various features of evaluation procedures are outlined below based on what is contained in collective agreements in the above 15 districts:

1. Six of the 15 clauses contain a statement about the purpose of teacher evaluation (Central Coast, Bulkley Valley, Sooke, Campbell River, and Mission). Evaluation of teachers is said to promote excellence of instruction, determine and improve quality of instruction, reinforce good teaching, or measure and provide a record of performance. No two agreements have the same language in this regard.
2. In nine districts the provisions state in very specific terms that any or all teacher evaluations or teaching reports are to be in writing. In these districts it is clear there may not be any informal, ad hoc, or undisclosed reports made on teachers. (Arrow Lakes, South Okanagan, Bulkley Valley, Peace River North, Sooke, Cowichan, Campbell River, Mission, Summerland).
3. In all 15 districts there is a requirement that the evaluator meet with the teacher before the evaluation process begins for a "pre-observation conference" where the process and the criteria to be used in the evaluation will be discussed.
4. All 15 clauses contain some statement concerning the number of evaluator observations required in order to gather data to prepare

the formal written report. In the majority of clauses (seven), the requirement is for a minimum of three and a maximum of six observations. However, in five districts there is no upper limit given (Arrow Lakes, Surrey, Vancouver, Sooke, Cowichan). The Campbell River agreement allows for eight observations or a maximum of eight hours of observation, while the North Thompson agreement calls for a "reasonable number" of observations. In all districts but Vancouver and Sooke the teacher may determine when some of these observations will occur.

5. All but three collective agreements specify how often or when a teacher may be subject to evaluation. Three are silent on this matter (South Okanagan, North Thompson, Summerland). Nine of the clauses set out the expectation that such evaluation will be carried out on all teachers on a cyclical basis once every four or five years (Cranbrook, Arrow Lakes, Central Coast, Bulkley Valley, Nechako, Peace River North, Cowichan, Campbell River, Mission). Vancouver's clause indicates there may be cyclical reporting on teachers although no time frame is given. Surrey's clause is the only one of the 15 that does not set out such an expectation for regular evaluation. The Surrey provision sets out specific "occasions for reporting and evaluation" including "when competence is questioned", but does not include a cyclical system of reporting on all teachers (see Appendix I).
6. The matter of who may evaluate or write reports on teachers is limited in five districts (Cranbrook, Central Coast, Sooke, Campbell River, Mission). The School Act provides in section 20 (3) that an administrator may consult with a resource person who has relevant specialized knowledge, and may use information obtained from that consultation in the evaluation. In these five districts, the parties have agreed that discretion will not be exercised.
7. In all but three of the districts (South Okanagan, Central Coast, Summerland) the teacher must be given some notice that an evaluation is about to take place. That notice varies from what could be a day in North Thompson or Mission to 21 days in Arrow Lakes and 30 days in Peace River North and in Cowichan.
8. In all cases the teaching report is to be based on a set of evaluation criteria. The criteria are contained in collective agreements in seven of the districts examined (Cranbrook, Surrey, Vancouver, Nechako, Peace River North, Campbell River, Mission). In two districts the criteria

are said to be in board policy and will not be changed without the agreement of the teachers (South Okanagan, Sooke). Criteria in North Thompson will be "jointly developed". In five districts the employer retains the right to develop or determine the criteria (Arrow Lakes, Central Coast, Bulkley Valley, Cowichan, Summerland).

9. Only six of the clauses provide a process in case the teacher believes the evaluator to be biased (Cranbrook, Surrey, Central Coast, Bulkley Valley, Peace River North, Mission). The strongest language for teachers is in the Mission agreement where a concern involving bias is taken to the Superintendent and if not resolved to the teacher's satisfaction, becomes a grievance under the collective agreement.
10. In regard to what may be contained in an evaluation report, seven clauses state that any comment about a teacher's involvement or non-involvement in extra-curricular activities is beyond the scope of the evaluation and shall not be included (Arrow Lakes, Surrey, Nechako, Peace River North, Cowichan, Campbell River, Mission). The Bulkley Valley agreement states only that comments about "non-involvement" in extra-curricular activities are to be excluded from reports. Summerland and North Thompson will permit such statements with the agreement of the teacher. The other five districts are silent on this matter and therefore such comments may be included in teaching reports.
11. Also in regard to what may be contained in an evaluation report, eight clauses do not permit any comment about a teacher's involvement in union activities (Arrow Lakes, Central Coast, Bulkley Valley, Nechako, Peace River North, Cowichan, Campbell River, Mission). Such comments may be included in a teacher's report in North Thompson only with the agreement of the teacher.
12. In all districts but five (North Thompson, Vancouver, Nechako, Sooke, Summerland), there is language to prevent a written report from being based on unsubstantiated judgements of the evaluator. Such statements as "the report shall be based solely on objective descriptions of the teaching performance based on the personal observations of the evaluator", and "judgements shall be adequately substantiated" are found in the other ten clauses.
13. Evaluators are not to observe during "inappropriate times", or may only observe during "appropriate" or "normal" times in six

districts (Cranbrook, South Okanagan, Central Coast, Campbell River, Mission, Summerland). Evaluators may not report on situations or conditions that the teacher has no responsibility for, or control over, in seven districts (Arrow Lakes, South Okanagan, Bulkley Valley, Nechako, Cowichan, Campbell River, Mission).

14. In regard to what must be contained in a teaching report, ten of the 15 districts require that the evaluator outline any discrepancy that might exist between the teacher's experience and training and the assignment (Arrow Lakes, South Okanagan, Central Coast, Bulkley Valley, Nechako, Peace River North, Sooke, Cowichan, Campbell River, Mission).
15. Seven districts' clauses require that evaluators only report on a teacher's performance as it pertains to the teacher's prime area of assignment (Cranbrook, Arrow Lakes, Surrey, Nechako, Sooke, Mission, Summerland).
16. In the event of a less than satisfactory report, a plan of assistance must be made available to the teacher in all districts but North Thompson. In nine of the districts this plan is either developed jointly with the teacher, must have the agreement of the teacher before implementation, or is developed by the union (Cranbrook, Arrow Lakes, Vancouver, Nechako, Peace River North, Sooke, Campbell River, Mission, Summerland). In the other districts the plan may be a supervisor's directions or recommendations.
17. Post conferences are required in ten districts after every observation. The teacher and evaluator will review what was observed during that particular observation and may discuss recommendations for improvement (Cranbrook, South Okanagan, North Thompson, Vancouver, Nechako, Peace River North, Sooke, Cowichan, Mission, Summerland). In 14 districts, another such meeting or conference is held after the draft evaluation report is prepared and before it is filed with the Superintendent. At these meetings, required in all districts but Central Coast, the teacher, in eight districts, is specifically given the right to bring along a third party, or representative of the union (Cranbrook, Arrow Lakes, South Okanagan, Vancouver, Nechako, Peace River North, Mission, Summerland).
18. In all 15 districts, the teacher is given the right in the evaluation provision to submit a counter report, or to file comments concerning the report which will be attached to it. In all districts

but four of those studied (North Thompson, Surrey, Bulkley Valley, Campbell River), it is clear that there is to be one report kept in the teacher's personnel file at the district office and no secret or multiple copies given out or kept by various people.

The above analysis is based on the process features of evaluation provisions only and does not examine the evaluation criteria, also contained in some agreements. But this analysis is sufficient to indicate clearly that specific teacher performance which may lead to discipline in one district, as a result of a less than satisfactory evaluation report, may be considered outside the scope of a teaching report in the next. An administrator's report on a teacher may be valid in one district and used in a disciplinary action when the same report would be struck down as invalid in accordance with the collective agreement in another district.

10. Right to Representation

Collective agreement provisions relating to the right of teachers to have a union representative with them will be relevant when the employer takes any action against a teacher which is, or might be considered to be, or to become, discipline. Such clauses are typically found in several provisions in the collective agreement, or may be found in a separate clause headed "Right to Representation" as in the sample Langley clause contained in Appendix I. The Terrace grievance provision in Appendix I, for example, provides for the right of representation in step one of the grievance procedure. The Kelowna discipline procedures also found in Appendix I provide for the right to representation at any meeting with the board or representatives of the board. The Princeton transfer clause also in Appendix I provides for the right of representation when a teacher is involved in forced transfer proceedings.

In any discipline action then, the kind of union representation required varies in accordance with provisions in the collective agreement. The provisions may guarantee representation in any particular situation or may stipulate the type of representation in terms of how many may be present. The Langley clause, for example, more specific than most, provides for four representatives. To determine the extent of representation clauses in collective agreements, one collective agreement, Richmond, was examined. While the Richmond collective agreement has no specific provision entitled "right to representation", the right to representation is found in ten provisions in that agreement as follows:

1. Article A.4 provides for a representative at no cost to the association to participate in grievance meetings with the board or in joint grievance committee meetings.
2. Article A.6 provides for a designated staff representative in the school to be present upon request at any meeting between a teacher and an administrative officer or at an arbitration.
3. Article A.11 provides that a teacher may be accompanied by a representative named by the association in any step one meeting. The association president represents the teacher at step two.
4. Article C.1.6 provides that a teacher who is about to be placed on probation may be accompanied by a representative of the association in a meeting with the superintendent.
5. Article C.2 provides that the teacher has a right to be accompanied by a representative of the association at any meeting in connection with any allegation that could reasonably result in disciplinary action or dismissal, and teachers are to be informed of this right. The teacher may have a representative or advocate at any board hearing or meeting called to review a discipline case.
6. Article C.2.6 provides for representation in regard to a suspension after a medical examination (School Act section 110).
7. Article E.2 provides representation in any meeting called to

discuss reassignment.

8. A representative of the local is required in any meeting concerning sexual harassment allegations (Article E.5).
9. Article E.7 provides representation for a teacher when viewing his/her personnel file at the school board office.
10. Finally, Article E.10 provides representation for a teacher called to attend any meeting pursuant to School Act section 11 involving an appeal by a pupil or parent of a teacher's decision.

For the most part, collective agreement provisions guarantee that a union representative will be in attendance at any meeting where the teacher deems it advisable because disciplinary action could result. In some, but not all cases, the representative will have release time available to attend such meetings.

11. Personnel Files

Personnel files provisions generally protect teachers against secret files or multiple files being kept which could be used in disciplinary hearings much to the surprise of the teacher. Such provisions typically ensure that teachers may review their own files to assess the validity, relevancy or truthfulness of material being kept. All clauses will typically require that a teacher be notified in some manner that critical material has been added to his/her file. Some process will then be provided to deal with a disagreement over what material shall be retained in the files. That process too, differs from one district to the next. Some collective agreements provide that all critical material be removed after a specific period of time. The Delta provision contained in Appendix I is such a clause. The time period and nature of the material to be removed varies from one district to the next. The relevance to a discipline case of such a

clause is discussed in the next chapter when the Roberts arbitration award is examined.

Table 17 indicates the nature of provisions relating to whether critical material can be kept in a teacher's personnel file and used in a future discipline case. Critical material is removed after two years if no further negative material has been added to the file in seven districts of those 23 sampled (Cranbrook, Cariboo-Chilcotin, Abbotsford, North Vancouver, Nanaimo, Nechako, and Kitimat). In several others there is a provision allowing a

Table 17: Variations in Personnel Files Provision

District	Provision For Removing Critical Material
Fernie	May request removal in two years. If denied, reasons are provided
Cranbrook	Critical material removed after two years, if no further negative material, except evaluation reports retained, and criminal offence reports kept five years
Nelson	Irrelevant material must be removed or teacher can grieve
Castlegar	May request removal of material, will not be unreasonably denied
KettleValley	Factual errors will be corrected, may request remove critical material, except evaluation reports
Princeton	Critical material may be removed, or teacher's statement added
Golden	May request removal of critical material after two years, AO or Supt. will decide
Revelstoke	May request removal in two years, will not be unreasonably denied
Vernon	May request removal in two years, will not be unreasonably denied
Kelowna	Upon request reprimands may be removed, except evaluation reports, or teacher attach statement
Kamloops	May apply to have critical material removed, written reasons if not removed
Cariboo-Chil.	Critical material removed in two years provided no further negative material
Abbotsford	Critical material removed in two years provided no further negative material
Surrey	Material will be removed if found to be not factual or relevant
Burnaby	May request removal of critical material after reasonable time period
Coquitlam	May review material after two years, May list items not correct
North Van.	Critical material removed after two years, except gross misconduct reports
Nechako	Critical material removed in two years, provided no new negative material
Peace River S.	May request reprimands removed after two years if no new negative material
Victoria	May apply to remove critical material after four years
Nanaimo	Teacher may elect to have reprimands removed in two years if no new neg. mat.
Kitimat	Critical material removed in two years if no new critical material added
Terrace	May request removal of material which is incorrect, not relevant, or not timely, if no agreement, teacher may grieve

teacher to attempt to have critical material removed in two years but no guarantee that it will be done. Several provisions state that evaluation reports may not be removed (Cranbrook, Kettle Valley, Kelowna). In those districts negative evaluations could remain in the files indefinitely. However, in six of the 23 collective agreements sampled, the process ends after the teacher requests removal of the critical material and either (1) reasons are provided as to why the material will not be removed, (2) the teacher is given an opportunity to list incorrect material, (3) the teacher attaches a statement to offensive material, or (4) the superintendent decides the material will not be removed, as in the case of the Golden provision.

CONCLUSION

This chapter answered three questions: (1) What clauses in a typical teacher's collective agreement relate to teacher discipline? (2) What are the features of those clauses? and (3) How does the clause language differ from one district to the next? Collective agreement provisions examined here were assessed by comparison with other districts and by comparing the provisions with those of the previous School Act governing discipline. It is clear from the analysis that no one set of rules govern any longer in terms of how teacher discipline will be handled in B.C. school districts. The various permutations and combinations of provisions examined illustrate that each district has created its own unique rules.

This chapter demonstrated that grievance procedures vary considerably from one district to the next. For example, troubleshooter provisions are found in 30% of agreements examined, single arbitrators are required in 65% of districts, and expedited arbitration provisions are found in 22% of agreements. The process used to deal with a teacher

discipline case, then, cannot be expected to be the same in any two B.C. school districts.

In examining 'dismissal or discipline for misconduct' provisions it was found that a pre-discipline hearing before the school board is required by 85% of agreements, although procedures contractually required at these hearings vary. Some districts do not require a hearing after a suspension, unlike under the previous School Act process when a hearing was mandated for all suspensions of more than 10 days.

In 17% of districts studied, the 'three less than satisfactory reports' requirement is no longer a precondition to termination for poor performance as was the case under the School Act. In only 22% of districts is there a requirement for such terminations to be at the end of the school term. In only 11% of districts is there still a requirement to give equal notice to a teacher being dismissed for poor performance (60 days). However, in 61% of districts the three reports must be consecutive, a requirement not found in the old School Act.

Collective agreement provisions dealing with probation were found to contain two very different notions. Some provide a way of disciplining teachers and others are used as a tenure process. In 10% of the districts studied, any teacher at any time may be placed on probation for poor performance. This was not permitted under the old School Act.

In 27% of the forced transfer clauses studied, an employer-initiated transfer is clearly viewed as one method of teacher discipline while in another third of districts examined, transfer was not permitted as a disciplinary measure. The strongest provisions, in terms of providing protection to teachers from disciplinary transfers, were those which included both a requirement to transfer on the basis of seniority, and a prohibition against transfer for disciplinary reasons.

Evaluation provisions, not contained in the old School Act, have

created a new and unfamiliar system for all. Great variation was found in approximately 20 features contained in such provisions. For example, in 47% of agreements, no comment about the teacher's role in extra-curricular activities may be made in a teaching report. In 53% of districts, no comment concerning the teacher's union activities may be made. In 67% of clauses studied, unsubstantiated judgements by the evaluator are invalid, while 47% of clauses require a report to focus only on the teacher's prime area of assignment.

A teacher's contractual right to be represented also varies from one district to the next and details concerning such rights were found in various clauses in one collective agreement. Finally, 'personnel files' provisions were examined and compared. In 30% of those studied, critical material must be removed from the teacher's file after two years.

This chapter has demonstrated that the teacher discipline system created by collective agreements negotiated pursuant to the Industrial Relations Act, is very different from that which existed under the School Act. The various provisions have created 75 unique processes for dealing with any one specific teacher discipline case. While some have said the BCTF controls and manipulates the collective bargaining system for teachers, and that such tight coordination results in everyone getting the same agreement, this analysis has demonstrated that such a charge is unfounded. If the BCTF has such control why would 75 different grievance procedures exist, for example? The extent of local control and autonomy in the bargaining process is demonstrated in this analysis.

While some have also said B.C. teachers won many rights never enjoyed in the past through collective bargaining, this analysis has shown that teachers also lost some rights in the area of teacher discipline they once had in legislation. While it is true that administrators must now adhere to evaluation processes found in collective agreements and deal

with related grievances, teachers in some districts have lost rights to a pre-discipline hearing, for example, or to be terminated for poor performance only at the end of the term. While some school boards may lament that they have lost the right to transfer teachers for disciplinary reasons, teachers may, at the same time, find they no longer have the right to “instant tenure” provided under the terms of the old School Act.

In order to describe features of the discipline system which applied to teachers before Bill 20, this paper examined twenty-six School Act sections or regulations in Chapter V. But this chapter has had to examine eleven clauses in 72 agreements, each with up to 20 different features, in order to capture a picture of the present system. This overview then, provided by examining well over a thousand clauses, does not even include the present legislative framework, also critical to the current system. It must be concluded then, that the present teacher discipline system in this province has become demonstrably more complex.

CHAPTER VIII

THE 1991 B.C. TEACHER DISCIPLINE SYSTEM IN OPERATION AFTER BILL 20

The penultimate chapter of this study reviews the actual operation of the teacher discipline system in B.C. after Bill 20 and after collective agreements were in place. Discipline grievances and grievance arbitration awards available for study cover a period of approximately three years, from the spring of 1989 when first collective agreements were ratified through 1991. This examination of the new teacher discipline system, then, serves as a predictor of the future. Additional research in several years time is needed to derive a complete picture of the new teacher discipline system in B.C.

The number of teacher grievances is growing in the province as teachers become familiar with both their collective agreements and with the new union environment which makes it acceptable practice for the first time to file grievances. A BCTF bargaining division "Grievance Overview" of November 1991 states

"...there were twice the number of grievances in this four month period [July 1, 1991 to Nov. 8, 1991] than in the corresponding four months of the 1989-90 school year, and almost four times the number in the corresponding months of 1990-91" (BCTF, Internal Memo, November, 13, 1991).

All local teacher grievances are not necessarily reported to the BCTF. Therefore, numbers reported in the "Grievance Overview" may not constitute the complete record of all teacher grievances filed in B.C. in the period examined. Some local associations are developing processes to handle their own grievances, at least in the early stages, without assistance from BCTF staff. Some grievances may be resolved without the BCTF even being informed. In all cases, however, the BCTF is informed about and assists in handling more complex or difficult grievances that are referred to arbitration. However, grievances referred to arbitration are not necessarily arbitrated. Many are settled through last minute negotiation between the parties before the hearing actually takes place. This chapter examines, in the first section, teacher grievances reported by the BCTF to determine (1) the nature of and numbers of discipline grievances, and (2) what percentage of total grievances are related to discipline matters. The second section of the chapter examines all grievance arbitration awards related to discipline.

SECTION 1: TEACHER GRIEVANCES AFTER FIRST AGREEMENTS IN 1989

This section analyzes all written grievance reports prepared by the BCTF's bargaining division administrative staff over the past three years. The staff are each assigned to a number of local associations (school districts) and circulate written reports to their staff colleagues concerning grievances reported to them by local associations they are responsible for. Several staff members of the bargaining division, however, said they did not always have time to write up reports on every grievance they were either informed about or were actively working on. Therefore, written reports examined in this study do not represent all grievances reported to the BCTF.

For this study all written reports completed over nearly three years to the end of 1991 were reviewed (about 2,000), keeping in mind that many more could be added to the collection if the staff had the time or inclination to write them up. Appendix J is a sample copy of one of these approximately 2,000 grievance reports. Tables 18 and 19 below review the results of the analysis.

A few additional points concerning the BCTF reports should be made at the outset. In the case of some of them it was difficult to determine, due to lack of detail, if the report concerned a new grievance being reported for the first time or was providing an update on a grievance already in progress and reported earlier. In some cases up to a dozen reports concerned the same grievance, simply giving a revised status of the grievance on different dates. While attempts were made to record such multiple reports as one grievance, errors may have been made. In other cases, one teacher's situation appeared to create more than one grievance and was recorded as such. For example, a teacher received three less-than-satisfactory evaluation reports over a period of time and filed grievances after one or more of these evaluations were received. At a later date a dismissal resulted in a further grievance. Such a teacher's situation shows up on the following tables as more than one grievance. Again, errors may have been made in assigning too many or too few grievances to one teacher in such cases.

Teacher Grievances in General

Table 18 below shows that over the three year period since collective agreements have been in place, BCTF staff have prepared written reports on 942 grievances. It is of note that one (but only one) of these was filed by management. Column 1 lists the 75 districts with the school district

Table 18: Total Teacher Grievances and Percentage Related to Discipline 1989-91

1 District	2 Total	3 Discipline	4 Disc. as % of Total
1. Fernie	27	1	4 %
2. Cranbrook	15	4	27
3. Kimberley	4	0	0
4. Windermere	3	1	33
7. Nelson	6	3	50
9. Castlegar	8	1	13
10. Arrow Lakes	3	1	33
11. Trail	10	1	10
12. Grand Forks	4	1	25
13. Kettle Valley	7	2	29
14. South Okan.	13	1	8
15. Penticton	7	1	14
16. Keremeos	2	0	0
17. Princeton	3	1	33
18. Golden	11	4	36
19. Revelstoke	2	0	0
21. Armstrong	6	0	0
22. Vernon	6	2	33
23. Kelowna	33	3	9
24. Kamloops	85	17	20
26. North Thomp.	0	0	0
27. Cariboo-Chil.	24	2	8
28. Quesnel	30	7	23
29. Lillooet	9	4	44
30. South Cariboo	5	3	60
31. Merritt	2	1	50
32. Hope	15	3	20
33. Chilliwack	14	6	43
34. Abbotsford	18	6	33
35. Langley	44	15	34
36. Surrey	95	23	24
37. Delta	21	6	29
38. Richmond	4	3	75
39. Vancouver	29	19	66
40. New West.	8	4	50
41. Burnaby	5	5	100
42. Maple Ridge	10	3	30
43. Coquitlam	20	12	60
44. North Van.	39	4	10
45. West Van.	6	1	17
46. Sunshine Co.	9	2	22
47. Powell River	10	2	20
48. Howe Sound	5	1	20
49. Central Co.	21	4	19
50. Queen Charl.	4	1	25
52. Prince Rupert	4	0	0
54. Bulkley Val.	5	3	60
55. Burns Lake	5	3	60
56. Nechako	5	1	20
57. Prince George	11	5	45
59. Peace River S.	3	2	67
60. Peace River N.	6	1	17
61. Victoria	34	15	44

62. Sooke	3	1	33
63. Saanich	15	3	20
64. Gulf Islands	5	1	20
65. Cowichan	11	1	9
66. Lake Cowichan	1	1	100
68. Nanaimo	8	1	13
69. Qualicum	9	1	11
70. Alberni	22	4	18
71. Courtenay	7	1	14
72. Campbell River	7	2	29
75. Mission	11	5	45
76. Agassiz	5	0	0
77. Summerland	0	0	0
80. Kitimat	4	0	0
81. Fort Nelson	0	0	0
84. Van. Isl. West	16	3	19
85. Van. Isl. North	3	0	0
86. Creston	3	0	0
87. Stikine	2	0	0
88. Terrace	15	3	20
89. Shuswap	6	3	50
92. Nisga'a	14	2	14
Total	942	243	25.8%

number; column 2 indicates the total BCTF reported teacher grievances; column 3 indicates how many of the total grievances were related in any way to discipline; and the last column gives the discipline grievances as a percentage of the total. Grievances were reported in all but three of the 75 school districts over the three year time period (North Thompson, Summerland, and Fort Nelson). Another ten districts in addition to these three have not yet reported a discipline grievance.

Classification of grievances. The type of grievances vary a great deal from one district to the next and few are exactly alike. The written reports indicate the critical nature of individual collective agreement language, both in determining that a particular situation is in fact a grievance and in determining whether the situation reported is a "strong" grievance, one that may potentially go to arbitration. To provide an indication of the general nature of teacher grievances reported, as well as those classified for purposes of this study as discipline grievances, the 16

grievances reported in the Cranbrook file for 1991 are listed below as described in those 16 BCTF grievance reports:

1. Non-certificated substitute is called in when a certificated one was available
2. Job filled, was not properly posted, was tailor made for "X"
3. Mileage should have been paid and was not
4. Should have been pay or release time for the extra-curricular work required
5. Disciplinary letter was placed on file related to incidents on a field trip*
6. Unfair negative statements are contained in an evaluation report*
7. An appointment should have been made from the recall list
8. Teacher disciplined for misconduct*
9. Must receive preparation time in addition to extra curricular block and lunch
hour
10. Class size
11. Teacher assistant is doing teacher work
12. LOP (letter of permission certificated teacher) is hired to teach drama when 6
properly qualified teachers can do the job
13. AO sent threatening letter to each teacher on staff re lunch hour supervision*
14. Workload of secondary teachers
15. Teacher forced to transfer to make room for a teacher promised the job if he
wasn't made an AO
16. AO tried to "bargain" a deal with the staff violating the collective agreement

Of these 16 Cranbrook grievances reported in 1991, four were categorized as discipline for purposes of this study (items 5, 6, 8, and 13 marked *). The threatening letter (item 13), was classified as "harassment" in Table 19 below.

In 1991 the following 20 grievances were filed in Victoria as reported by BCTF staff:

1. Job postings make reference to extra curricular activities
2. More than 100 TOC's (teachers on call) have been removed from the list
3. An AO verbally reprimanded the staff rep for speaking out on behalf of the
staff*

4. The staff rep was force transferred for non-cooperation with the AO*
5. A teacher 'layoff' was denied severance pay
6. A "less than satisfactory" report was unfairly based on material from a peer coaching file*
7. Denial of recall rights after layoff
8. Improper deductions from payroll
9. Teaching report contains negative comments unrelated to teaching performance*
10. A TOC was removed from the list for not working 40 days the previous year*
11. Teachers with service to the district were not hired when outsiders got the jobs
12. Pupil contact time is excessive
13. Secondary class sizes
14. Failure to post a vacancy of more than 20 days
15. Seniority is not properly calculated
16. 80 layoff notices were issued without the required information
17. Another TOC has been removed from the list
18. Teacher was denied a transfer request
19. Teacher received unsatisfactory report*
20. Consultation process and seniority were not used to properly fill positions at the school

In the case of Victoria's 20 reported 1991 grievances items 3, 4, 6, 9, 10, and 19 were categorized as discipline-related. Details of each grievance report were examined to determine whether or not the grievance was discipline-related. Items 3 and 4 involved the same teacher but are counted as two grievances. Note that the forced transfer situation in Cranbrook (item 15) was not categorized as discipline whereas the forced transfer in Victoria (item 4) was, due to specific details of the case.

Teachers on call (TOC's), formerly called substitute teachers, are sometimes removed from the district's call out list, effectively dismissing them. Such "dismissals" may be for disciplinary reasons and at other times may be for such reasons as inadequate certification or perhaps because of a clerical error when printing out the list. In some situations it

is difficult to determine a reason based on the written report. In the Victoria reports above, item 10 appeared to be disciplinary in nature and was reported as such in this study but the other reports (items 2 and 17) did not provide sufficient information to allow these to be classified as discipline grievances. The grievance reported in the Victoria item 2 above, involving more than 100 teachers, is categorized as one grievance in this study.

Grievance numbers. The total number of grievances varies a great deal from one district to the next. Districts with the most reported grievances are Surrey, Kamloops, Langley, North Vancouver, and Victoria. There is great variation among districts of similar size, or among districts in any one geographical area. For example, the small similar-sized rural isolated districts of Central Coast (#49) and Stikine (#87) reported 21 and 2 grievances respectively. The large urban interior districts of Kamloops (#24) and Prince George (#57) reported 85 and 11 grievances respectively. The large metro districts of Surrey (#36) and Burnaby (#41) reported 95 and 5 grievances respectively. The reasons for such variation are worthy of a complete study of its own. Such factors as management style in operation, characteristics of the union, the particular collective agreement provisions and language in place, the nature of the grievance procedure and pre-grievance processes, past practices and relationships in the district, the reporting style of the BCTF staff person responsible for the local association, all require examination before any conclusions can be attempted. Such an analysis is beyond the scope of this study.

The percentage of total grievances related to teacher discipline also varies a great deal. For example, only 9% of grievances in Kelowna were related to disciplinary matters while all grievances in Burnaby (a similar

sized district) were discipline grievances. Overall in the province 26% of the total 942 teacher grievances were related to matters of teacher discipline. Other researchers quoted earlier found that generally at least one third of all employee grievances are discipline-related.

It is clear that the labour relations practice of employees filing grievances when they have complaints has been established in the public school system effective 1989. Administrators, school boards, and teacher associations are dealing in the new labour relations environment for the first time in this respect. In the pre-Bill 20 era, teacher grievances, when filed, (these were rare) were largely ignored by school boards and administrators. Now grievances are pursued through to a resolution. While in the past, only the most serious discipline cases involving dismissals or suspensions of more than 10 days could be appealed by teachers, these types of cases now constitute fewer than 5% of all teacher grievances (see Table 19 below).

Discipline Grievance Numbers

Table 19 below further categorizes by type of disciplinary action the 243 discipline-related teacher grievances identified in Table 18. Overall the largest single category of discipline since 1989 is suspensions with 22% of all disciplinary action taken against teachers being of this type. Unlike the pre-Bill 20 period, dismissals are not the main type of disciplinary action taken, although 11 per cent of discipline grievances are still of that category. Grievances concerning negative evaluation reports and letters of reprimand are more common than are grievances concerning dismissals. In fact 38% of all discipline grievances concern one or the other of these kind of negative reports being placed in a teacher's personnel file.

Teachers filing grievances concerning an investigation which is taking place concerning them may or may not be disciplined after the completion of the investigation. Grievances included in this category involve cases where disciplinary action is threatened depending on the outcome of an investigation of a teacher. Teachers grieve because of the alleged unfair investigation process or because the investigation itself is alleged to be unjustified. Those harassment grievances included in this table result from situations where teachers perceive disciplinary action is being unfairly threatened against them by management personnel, usually the school's administrative officer (principal).

Types Of Discipline Grievances

The 243 discipline grievances cover a large variety of situations. While no two grievances appear to be exactly alike many are similar and can be categorized based on reasons for discipline.

Dismissals. The 26 dismissals have been categorized into three subgroups in Table 19. The majority of dismissals were for misconduct with the largest group within this category being dismissals for sexual misconduct. Another large group of dismissals in this category resulted after criminal charges were laid against teachers for off-duty conduct. Fewer numbers of teachers were dismissed for such reasons as theft or for failing to divulge critical information concerning the teacher's past record on an application form.

The second category of dismissals results from allegations of incompetence or poor teaching performance. These cases usually involved teachers who had received three less-than-satisfactory teaching reports. In one case, however, a first year teacher was dismissed without these standard three reports being issued. The employer claimed the collective

**Table 19: Types of Teacher Discipline Grievances
in B.C. 1989-91 (Three Years)**

Type of Discipline	Number	Reported
Dismissals:		
-for Misconduct	19	
-for Poor Performance	5	
-for Other Reasons	2	
Total Dismissals:	26	(10.7%)
Suspensions:		
-for Misconduct	52	
-Other	1	
Total Suspensions:	53	(21.8%)
Negative Evaluation Reports	47	(19.3%)
Letters of Reprimand	45	(18.5%)
Notice of Investigation	16	(6.6%)
Harassment (Discipline)	15	(6.2%)
Removal of T.O.C.'s From List	10	(4.1%)
Forced Transfer	7	(2.9%)
Verbal Reprimand	7	(2.9%)
Probation	6	(2.5%)
Personnel Files	6	(2.5%)
Demotion	1	(.4%)
Forced to Pay Substitute Costs	1	(.4%)
Refusal to Evaluate	1	(.4%)
Other	2	(.8%)
Total	243	

agreement allowed this process. In the third or "Other" category of dismissals such reasons were given as "not providing a valid teaching certificate", or "for being on sick leave since 1986".

It is noteworthy to find that most dismissal cases were resolved to the satisfaction of both parties during the local grievance resolution process and only two dismissal cases required arbitrated solutions before December 31, 1991. (In both cases the dismissals were upheld.) A small number are still in process, however, with outcomes unknown. The largest group were resolved by such methods as negotiated suspensions rather than dismissals, or "buy-outs" rather than dismissals. In at least one case the union dropped the grievance and the teacher remained

dismissed. It appears that in the end approximately 15 teachers left the system over the three year period as a result of buy-outs, dismissals or "forced retirements". Out of 42,000 teachers that is a very small percentage (.035% in three years or .012% per year).

Suspensions. The suspensions were given for two major reasons-- use of physical force on students and for sexual touching or sexual advances involving students. Suspensions given by school boards varied from a few days to several months. For example, one teacher was suspended for seven months for alleged voyeurism while another received a two week suspension for sending an inappropriate letter to a student, both cases with sexual overtones.

Suspensions were given for numerous other offences of which only two were found more than once: (1) being absent without a leave and (2) alcohol-related incidents on field trips. Other suspensions were given for such alleged offences as "doing a poor job", unprofessional conduct, theft under \$200, telephoning students to obtain information about a dismissed teacher, for committing a criminal offence, for swearing, for showing an off-colour movie in class, for giving an exam which only one student could pass, for removing files from the office, or for not properly completing and IEP (Individual Educational Program).

Negative reports. A large group of discipline-related grievances (92) involve two types of negative reports placed in teachers' files. The first type is the unsatisfactory evaluation written by an administrative officer and which can lead to a dismissal if three such negative evaluations are written within a specified time frame. Teachers file grievances when they do not agree with negative comments written. They ask that the report either be removed from the file or the offensive section be

removed. Often a teacher also alleges bias on the part of the administrator who conducted the evaluation.

The second kind of negative report is the letter of reprimand written by an administrative officer after a teacher has committed some type of misconduct. Teachers are concerned about the consequences of leaving such negative reports in the work record in the new unionized system of "progressive discipline". What might appear to be a trivial letter therefore, is often the subject of a full-fledged grievance when the teacher feels the reprimand was unjustified.

Letters of reprimand have been placed in teachers' files because of involvement in local union bargaining and missing too much school as a result, for having a "poor vocabulary", for physical abuse of students, for marking papers during a school assembly, for late arrival at a professional day event, for doing union business during school hours, for alleged lying, for swearing, for lack of judgement in preparing a daybook, for refusal to teach a class during a preparation period, for inappropriate classroom management, for misplacing student files, for saluting the AO and stating "Yes Sir" in a sarcastic manner, for yelling at an AO, for tardiness, for using a casino night to raise funds for the PE department, for insubordination, and for refusal to supervise a school dance. The only reason that shows up on a more regular basis than in one or two instances is the reprimand to teachers for becoming involved in some way in "union activities". It appears that some administrators believe involvement in teacher union activities is beyond the scope of proper teacher behaviour.

Other types of discipline-related actions. Teachers have been notified that they were being investigated for a number of reasons such as reported sexual misconduct prior to employment, off-duty sexual misconduct, or because criminal charges have been or may be laid. In one case

the teacher was alleged to be obtaining certain favours from a school supply company in return for ordering curriculum materials.

Teachers have alleged that they were harassed or threatened with disciplinary action by their AOs in a number of instances and have filed grievances over administrators' actions. For example, in one case the teachers of a staff claimed they had each received a threatening letter from their administrator who wanted them to accept a revised lunch break and new supervision duties schedule or perhaps receive a letter in their files if they refused. Other cases of alleged verbal intimidation and threats of disciplinary action involved teachers being challenged by administrators for allegedly doing union business in the school--for example, a staff representative who spoke out at meetings about the collective agreement, or bargaining team members who advised fellow teachers during staff meetings about collective agreement clauses. In some cases administrators have advised such union representatives in an alleged threatening manner that "the evaluation process will start tomorrow!", or "I'll get you with evaluation!" In one case a teacher filed a harassment grievance after being observed 40 times by the administrator who was writing an evaluation report. One teacher was threatened with having a department head position removed, another was trying out new "Year 2000" methods much to her administrator's distress and was ordered to file detailed bi-weekly reports on her work.

Teachers on call filed grievances when they were removed from the list in discipline-related instances for lack of availability, because of poor English, for not being called enough the previous year, because false information was given on an application, for poor classroom management, and because of alleged off-duty conduct.

Teachers grieved discipline-related forced transfers when teachers were "transferred to the substitute list", when incompetence in the position

occupied was alleged, because of a personality conflict, and for non-cooperation with the AO. Six teachers filed grievances when they were put on probation for alleged unsatisfactory job performance. Verbal reprimands by AOs were grieved in seven cases. Such reprimands occurred when an administrator ordered a teacher not to wear jeans and threatened the evaluation process along with this verbal reprimand, or where local association staff representatives were reprimanded by AOs (and felt threatened by disciplinary action) after union notices or announcements appeared in written memos to teachers in their schools.

Grievances concerning personnel files involved teachers objecting to negative material, such as letters from parents, being placed in their files, or because alleged libelous and incorrect material already in a teacher's file was not removed after a request to remove it was made. A demotion grievance involved a teacher losing a department head position, while another teacher grieved when forced to pay substitute costs after being absent for what she alleged was a legitimate reason. In one case a teacher who required an evaluation report for certification purposes and to remain in the position, was refused one. An unusual case involved a teacher who had his exam-marking contract with the government cancelled by his school board because he had allegedly been absent too often while negotiating as a member of the union's bargaining team.

Summary of B.C. Teacher Discipline Grievances

In a period of less than three years, from the spring of 1989 to December 31, 1991 the new system of teacher discipline has been tested. Teachers now respond to disciplinary actions by filing grievances. BCTF staff have written reports on a total of 942 grievances and of those, 243 (26%) could be described as disciplinary in nature. Many types of

disciplinary actions have been recorded including suspensions, negative evaluations, letters of reprimands, and dismissals which in all make up 71% of all cases. Out of 75 districts, only three have not yet reported a grievance and 13 have not yet reported a discipline grievance.

Of the 243 disciplinary grievances examined, the most common action taken in 22% of cases was a suspension, followed by negative evaluation reports (19%), and letters of reprimand (18.5%). Dismissals constituted 11% of all disciplinary actions. More dismissals resulted from allegations of sexual misconduct involving students than from any other single charge. Many dismissals were resolved with negotiated suspensions, "buy-outs", or "retirements" in place of the dismissals. Only two were resolved by arbitration during the period under study.

Threats of discipline, categorized as "investigations" or "harassment" made up nearly 13% of all discipline-related grievances. It is interesting that 4% of discipline grievances involved teachers on call, substitute teachers. These teachers, members of local associations and the BCTF, are receiving attention from the union when actions are taken against them in a way not experienced in the past.

Many types of employer actions are now appealed, not just dismissals or serious suspensions, and arbitrations may be resorted to to resolve any dispute when the two parties cannot do so. A BCTF staff member who dealt with teacher personnel matters both before and after 1989 claims that the numbers of disciplinary actions appealed now and handled by the BCTF and local associations have multiplied by an incredible degree (Interview, Sundby, January 21, 1991). Discipline cases that could not be heard by boards of reference or review commissions were largely treated as being outside the scope of BCTF programs in the past. Statistics produced in this study indicate the difference in numbers of teacher complaints or discipline-related grievances which could, by law, be

appealed before 1989 and those which are reviewable after 1989 are the difference between about 52 (all dismissals and about half the suspensions) and 243, or more than a 367% increase in cases.

SECTION 2: ARBITRATION AWARDS RELATED TO TEACHER DISCIPLINE MATTERS

Over the three year period examined, twenty-five B.C. teacher disputes ended in third party arbitration when the parties were unable to achieve a resolution through discussion and negotiation at earlier stages of the grievance procedure. Of the 25 arbitration awards decided prior to the end of 1991, 5 (20%) were discipline-related cases. Table 20 below outlines all teacher grievance arbitration awards filed at the BCTF during the period under study. Column 1 indicates the school district involved, column 2 the subject of the grievance, column 3 the date of the award, and the last column names the arbitrator.

Teacher Arbitration Awards: An Overview

Of 75 school districts, only 17 (23%) have resorted to third party arbitration over the three year period to resolve grievances. Five districts have had two arbitrations but only one, Langley, has had more than two during the three year period. Table 20 indicates that only three arbitrations were held in the province in 1989, 15 in 1990 and seven in 1991. The arbitrators are all well known and frequently sought out arbitrators in the labour community, with two exceptions. It is apparent that teacher disputes are now being decided by members of the industrial relations community. None of the chairpersons is a retired superintendent, college

or university representative, or judge, for example, and as well few nominees of the parties on three person boards come from outside the labour relations community. This also indicates a new arena of work for B.C. labour arbitrators and advocates.

The subjects of the arbitrations indicate few would have received an independent review by any outside neutral body before 1989. In fact only four of the 25 cases would have been heard by review commissions or boards of reference, the only appeal panels guaranteed teachers under previous legislation. Four dismissals or suspension appeals over a three year time period, then, are not out of line with the numbers heard by appeal boards in the pre-Bill 20 era. What is different now of course is that so many other types of cases, in addition to these, are being discussed and negotiated by the parties and some finally heard and resolved by independent review panels.

Of the 25 awards, the largest group could be categorized under compensation or money matters. Six awards fall into this group. Five deal with class size, five with supervision or other extra curricula duties, five with teacher discipline, two with the process used in conducting disciplinary hearings, one a posting and hiring matter and the last one a board-initiated transfer.

Three of the awards are quite closely related to the issue of teacher discipline but not directly enough to be categorized with the other five discipline cases. The McPhillips award in the Townsend case deals with a dispute over a board-initiated transfer that was alleged by the teacher to be capricious and arbitrary but was never considered by either side to be a disciplinary matter. The Ladner award in the Vancouver case dealing with the production of documents, involved a teacher who had been dismissed for alleged sexual activity with a female student. The arbitration, however, only resolved the matter of whether or not the school

1	2	3	4
District	Subject	Date	Arbitrator
Langley	Evaluation-(<u>McWhinney</u>)*#	06/25/89	Vickers
Stikine	Isolation/travel allowance	08/25/89	Hope
Shuswap	Transfer-Townsend	11/29/89	McPhillips
North Van.	Canyon Heights Noon Hr. Duty	02/08/90	Morrison
Terrace	Outdoor Ed, class size	03/16/90	Kelleher
Victoria	Grid increase interpretation	03/19/90	Hope
Cowichan	Library/noon hr. supervision	04/23/90	Ladner
Vancouver	K-1 class size	05/08/90	Chertkow
Vancouver	Production of documents	05/16/90	Ladner
Chilliwack	Discipline (change room)*	06/20/90	Hope
Kelowna	BCTF dues-non-members	06/21/90	Dorsey
Kelowna	BCTF dues-SIP supplemental	06/21/90	Dorsey
Terrace	Art class size	06/28/90	Fraser
Maple Rid.	Extra curricular duties	08/21/90	Ladner
Abbotsford	Professional devel. funds	09/17/90	Kay
Kitimat	Teachers on call pay	12/05/90	Fraser
Powell R.	Posting/Hiring	12/07/90	L. Smith
Fernie	Hours of supervision	12/13/90	Chertkow
North Van.	Noon hour supervision	12/14/90	Chertkow
Langley	Right to representation	03/28/91	McPhillips
Powell R.	Dismissal-(<u>Aspden</u>)*	05/27/91	B. Williams
Langley	Class size	07/12/91	Munroe
Langley	Class size	07/19/91	Ready
Cranbrook	Suspension (<u>Roberts</u>)*	09/24/91	Munroe
Bulkley Val.	Dismissal (<u>Allen</u>)*	05/12/91	Kelleher

* these awards resolve a discipline case

this discipline matter was not reviewable before 1989

board was required to produce all documents for the union at the board hearing prior to the decision to dismiss. The arbitrator ordered the documents be made available to the union and in the end the two parties resolved the discipline case by agreeing to a four month suspension in

place of the dismissal. The arbitration award then, did not resolve the discipline issue.

The McPhillips award in the Langley case of 03/28/91 also dealt indirectly with a discipline matter. The issue of the disciplinary penalty itself, however, was resolved by the two parties in negotiation. The arbitration award dealt only with the side issue of who, or how many, could be present at the board's hearing when the disciplinary case was discussed.

Arbitration Awards Resolving Discipline Disputes

Appendix K provides a brief summary of each arbitration award that is categorized for purposes of this study as a discipline case. There are five such awards: the Vickers award in the Langley McWhinnie evaluation case of 06/25/89, the Hope award in the Chilliwack suspension case of 06/20/90 (no grievor name given), the Bryan Williams award in the Powell River dismissal of Aspden 05/27/91, the Munroe award in the Cranbrook suspension of Roberts 09/24/91, and the Kelleher award in the Bulkley Valley dismissal of Allen, 05/12/91. McWhinnie did not involve a dismissal or suspension and would not have been heard before an independent review panel before collective agreements were in place. One discipline arbitration case was heard in each of the years 1989 and 1990 and three cases in 1991.

Arbitration Personnel. Of the five arbitration boards, three were single arbitrators and two were three person panels. The five chairs were well known labour relations specialists with vast experience in the industrial relations community and in chairing arbitrations in the unionized sector of the province. In both the Aspden and the Allen cases

members of the education community were involved as nominees of the parties to three person boards, carrying on the tradition of the review commission era: Tom Hutchison is a retired member of the BCTF staff and former president of the BCTF, Ed Carlin a retired superintendent of West Vancouver, and James Foster a retired Burnaby administrator. The advocates for the parties in all cases except for Lyndon Best, a Cranbrook criminal lawyer, were labour lawyers who have handled teacher cases in the past.

Types of cases: Two of the awards dealt with non-culpable discipline situations. McWhinnie had received a third less-than-satisfactory report which was alleged to be improperly written, while Aspden had been dismissed after three less-than-satisfactory reports. In both cases the school board was upheld. The three other cases, one a dismissal and two suspensions, were culpable cases based on alleged misconduct by teachers. Chilliwack, (grievor name not given) involved allegations of voyeurism with sexual overtones while the other two involved teachers striking students, one of these also involving a charge of failure to disclose information on an application. The school board was upheld in the dismissal case, the teacher completely exonerated in the voyeurism case, and the suspension for striking a student was reduced. The school board, then, was upheld in the majority of cases (three of the five).

Teachers involved. The five teachers involved in these arbitration cases were all males, one a grade five teacher, two junior secondary teachers and two senior secondary teachers. No female teacher has yet been the subject of a discipline arbitration in the new unionized environment although 60% of the current teaching force in B.C. is female (1991). With regard to the seniority of the teachers involved, the Chilliwack

teacher was said to have been at the high school for three years and "had an excellent reputation," McWhinnie had nine years seniority in his district of Langley, Aspden had been in the district of Powell River for 15 years and had taught for 24 years in all. Roberts had 17 years seniority in Cranbrook and was head of the English department of a school he had been teaching in for eleven years. Allen was a temporary teacher with only three months seniority in the district of Bulkley Valley. In four cases the issue of years of seniority is discussed and considered relevant to the decision by the arbitrators.

Case precedents. In all cases the arbitrator outlines and analyzes the facts, and then reviews in an extensive and careful manner the argument and case precedents applicable. In Aspden, a non-culpable dismissal, the National Harbours Board test is used and outlined. In the three culpable cases where misconduct is alleged, the William Scott principles are applied. In addition, numerous labour arbitration cases are cited in all but Aspden, but few previous teacher cases are mentioned.

A 1987 teacher arbitration case is discussed in McWhinnie (Parker, unreported), and found to be useful. Such an award would have resulted from a dispute mechanism found in one of the few locally negotiated "working and learning conditions agreements" existing in the province at that time. That award by arbitrator Vickers deals with the independence of an evaluation report writer. In Allen, the Haight-Smith decision is introduced but rejected by Kelleher as not being applicable in the new legal environment. Hope's award in the Chilliwack case quickly dismisses as irrelevant, or poorly argued, the Hutton board of reference discussion on standard of proof.

Some critical decisions. Two decisions by arbitrators in these five

cases will have significant precedential value in future cases. The Hope statement in Chilliwack, cited again by Kelleher in Allen, to require "proof to a high degree of probability of any allegations made against the professional reputation of a teacher..." is a critical precedent. Hope cites numerous cases in discussing the standard of proof appropriate in such a teacher case and explains that while there is a single standard involved in the civil balance of probabilities test, "the application of that standard must respond to the nature of the facts asserted" (33). He talks of the importance of considering the "gravity of the results" and the "consequences for the grievor". Hope's analysis of the jurisprudence on the issue is that

"allegations amounting to criminal or sexual misconduct which impact upon the issue of employability generally and allegations made against a person's professional reputation which may affect that person's career have been viewed by arbitrators as constituting consequences that require proof of disputed facts to a high degree of probability" (35).

It is clear this standard of proof as described by Hope and Kelleher in two of the five awards, but not found in previous board of reference decisions such as Hutton, will become the applicable test for B.C. teachers in misconduct cases.

In Roberts, Munroe states that where a collective agreement clause exists allowing a teacher to request negative material be removed from his/her file after a specified time but the teacher does not make such a request, that negative material should be "accorded only marginal weight" (21). This statement is likely to be cited in future since a number of teachers' collective agreements have similar clause language allowing material used in progressive discipline cases to be called into question based on this principle.

Overall style of the awards. All the awards were lengthy, well reasoned and carefully written. The contrast in this respect with most of

the boards of reference or review commission decisions is striking. No award comes to a conclusion without extensive reasons as to why that conclusion was reached. Also of note is the critical nature of collective agreement language to arbitrators. The School Act is mentioned in some awards but no longer commands the kind of respect or influence over appeal boards as in the past. Decisions about teacher disputes will depend on what is in the collective agreement to a much greater degree than what is in the School Act. At least two of the awards rely on the BCTF code of ethics to determine a standard of acceptable teacher behaviour.

CONCLUSION

This chapter has examined the teacher discipline system in operation in the province after the implementation of collective agreements in 1989. Twenty-five arbitration awards and 942 grievances written up by BCTF staff were examined to derive data. While this new system has been in operation for less than three years a trend is evident and certain conclusions can be reached based on the data.

Teacher Grievances

The 942 recorded grievances filed in the province since 1989, indicate teachers are already using the new labour relations system in an unprecedented fashion to register dissatisfaction with employer actions. Alleged unfair treatment by the employer will not likely be suffered in silence in future. In only three districts out of the total 75 is there no record yet of a grievance being filed.

Of those 942 grievances reported, 26% or 243 were related to teacher discipline. Of the total 942 grievances only 5% were reviewable by a

third party (board of reference or review commission) in the past. Therefore, school boards, their administrators and teacher unions are dealing with up to 95% more cases than they handled before 1989. However, as noted in an earlier chapter, the BCTF did take a few previous cases to court and as well became involved in political actions of various kinds to resolve certain high profile disputes, failing any legal avenue of appeal.

Of the 243 teacher discipline cases 38% involved a less-than-satisfactory report or a letter of reprimand, 22% of cases were suspensions and 11% dismissals. A variety of other disciplinary actions such as threats of disciplinary action, forced transfers and demotions constituted 29% of cases. The largest number of dismissals in any single category were issued for allegations of sexual misconduct. Yet only two dismissals were resolved by arbitration and neither involved allegations of sexual misconduct.

The largest number of suspensions were given for use of physical force on students and secondly for sexual touching or advances. Letters of reprimand were issued for a great variety of reasons, the only one appearing several times being reprimands for involvement in union activities. Verbal reprimands and threats of discipline by administrative officers were often the result of teachers being allegedly improperly involved in union activities. Such cases may also indicate the unwillingness of administrators in the school system to accept the new labour relations environment they must now work in. In the past three decades only 45% of school districts ever experienced a teacher discipline appeal in the form of a board of reference or a review commission. By the end of 1991, in a three year time period, 83% of districts had already experienced a discipline grievance requiring resolution under the new system.

Arbitration Awards

By the end of 1991 twenty-five grievance arbitration awards were available for study. Five of those (20%), dealt with teacher discipline matters. This number indicates that fewer teacher grievance arbitrations deal with discipline than is the case in other employee groups. Studies by Krashinsky and Sack and by Crombie and Webb, reported in Chapter III, indicate that approximately one third of all employee grievance arbitrations are discipline cases.

One of the five teacher cases would not have been heard by a board of reference or review commission in the past. One case dealt with a non-culpable dismissal, three with culpable misconduct matters and one with a negative evaluation report. In the culpable cases the arbitrators relied on the William Scott model to guide the review whereas in the non-culpable dismissal the National Harbours Board principles were outlined. It is apparent that the principles and process of general labour relations law and precedent will apply in the new world of teacher discipline. Arbitrators will rely on other labour arbitration cases rather than on past boards of reference and review commissions decisions which in many cases will be found to be obsolete under the new legislative framework.

The type of arbitration boards varied from a single arbitrator in three cases to a three person board in two cases. All five arbitration chairs were well respected labour relations neutrals within the B.C. industrial relations community. School boards were upheld in three of the five cases. One teacher was exonerated and one received a reduced penalty. All five of the teachers involved were males, although the 1991 teaching force was 60% female. Seniority is discussed in all cases and considered relevant to the appropriateness of the penalty in the four cases involving a suspension or dismissal.

The complexity of teacher agreements is an issue that arises in each award with each clause at issue outlined, reviewed, and questioned in great detail. It is apparent that decisions will vary a great deal from one district to the next on a similar discipline matter depending on the way the district's unique collective agreement language is interpreted by the arbitrator deciding the particular case. Extrinsic evidence in the form of bargaining history is used to clarify language on a regular basis. That is, arbitrators permit the parties to bring forth as evidence both testimony of witnesses and documents used during negotiations to demonstrate that a particular interpretation was intended of the clause in question during the bargaining process. These cases demonstrate the principle found in B.C. labour jurisprudence that the parol evidence rule is not applicable here and that arbitrators can and will determine when extrinsic evidence will be admitted to get at the meaning of clause language.

The New World of Labour Relations in B.C. Schools

Many questions remain concerning the teacher discipline system existing in the new collective bargaining regime. This chapter did not examine the variation in systems in operation from one district to the next in terms of how grievances are handled, processed, and resolved at the local level, for example. The process of negotiating resolution to disciplinary matters involves people with certain skills and attitudes. What are these skills? What kind of people are doing this job now? What kind of training do they have? Why are there so many grievances in some districts and none in others? Why is it that 13 districts have not yet experienced a discipline grievance? If discipline matters represent only a minority of grievances what are the other grievances all about? Which are most critical to teachers? Which kinds of issues pose the greatest

concern to administrators? These and other questions could be examined.

However, it is clear that the new collective bargaining regime has brought to the public school system new precedents, new personnel, and new processes. Teachers, school boards, and administrators have entered this new system and are operating within it whether they are ready for it or not and whether they are willing to live with it or not. There is evidence that the challenge of dealing with personnel matters in a unionized environment is aggravating for some administrators. Certainly a great deal of new information and skills are required by those involved in administration, grievance handling and advocacy. However, it is apparent that the two parties are coming to grips with the new labour relations environment, are developing processes that work, and are successfully resolving the large majority of their local grievances without the assistance of outside arbitrators.

CHAPTER IX

SUMMARY, CONCLUSIONS, AND IMPLICATIONS

Bill 20, The Teaching Profession Act and revised School Act of 1987, created profound and far reaching changes in the B.C. public school system. This thesis examined one aspect of those Bill 20 changes and demonstrated that changes in the teacher discipline system alone have been dramatic and significant. Yet those changes as described in this paper were so overshadowed by the upheaval wrought by the even more radical changes in the system created by Bill 20 as to be hardly noticed or discussed by the education community at the time. Four years later, in reflection, this study describes those changes to the teacher discipline system and the implications for the B.C. education community.

In describing the teacher discipline system which existed in B.C. before Bill 20 and that in operation in 1991, this thesis demonstrated that the two systems are very different in basic and fundamental ways. The concepts, theories, and models central to any employee discipline system, examined at the outset, were used to place the two B.C. teacher discipline systems within an understood context. Theory discussed in chapter II suggests an employee discipline system is a fundamental tool in shaping the workplace

environment, with the type of discipline system in operation determining the nature of the employment relationship. That notion is fundamental to the conclusions of this study. As the discipline system changed, the nature of the employment relationship changed. Results of other studies of employee and teacher discipline reviewed in the literature were compared with the results of this study to assist in drawing conclusions about both B.C. teacher discipline systems.

This concluding chapter is set out in three sections: (1) Summary of Findings, (2) Conclusions, and (3) Implications. The first section summarizes, in two parts, what has been learned about the previous School Act teacher discipline system before Bill 20, and then what is known about the current system. Legislative frameworks governing each system, as well as legal frameworks governing other teacher discipline systems in North America were examined and compared. All B.C. teacher discipline cases ever recorded, recent teacher grievances, new collective agreement provisions, and recent arbitration awards were also examined to derive data. In addition, BCTF reports of teacher discipline cases handled in informal or unusual ways, due to the lack of legal avenues of appeal in the past, were reviewed. Interviews conducted with BCTF staff and legal counsel who handled teacher discipline cases before 1988 clarified some issues. Findings of this extensive analysis of data are summarized in section one.

Section two draws conclusions about the two systems in response to the research questions set out in the introduction to this study, by highlighting critical differences between those two discipline systems in operation before and after Bill 20, and by making some judgements concerning the appropriateness, efficacy, and desirability of the changes introduced by government in 1987. Finally, section three of the chapter suggests implications for practice and suggestions for further research.

SECTION 1: SUMMARY OF FINDINGS

The first part of this section summarizes critical aspects of the pre-Bill 20 teacher discipline system based on data collected from an examination of all boards of reference and review commission decisions in the province along with the review of legislative frameworks in B.C. and elsewhere. The second part of this section summarizes critical findings concerning the post Bill 20 era based on an analysis of the legislation, grievances, collective agreements, and arbitration awards.

A. The Previous Teacher Discipline System: Critical Findings

Critical findings which describe the previous teacher discipline system are outlined under four headings: (1) Processes, (2) Personnel, (3) Decisions, and (4) The legal context. Processes used in the teacher discipline system in B.C. were either set out in the School Act before 1988 or were informal and unregulated, and based on management's rights. Personnel involved in the formal discipline system were drawn from the education community or were lawyers without a background in labour law. Boards of reference and review commission decisions were critical in explaining how the system operated. The legal context framed by the School Act, can be described in terms of other teacher discipline legal frameworks or in terms of general employee discipline legal frameworks.

Processes (informal). Actions taken against teachers were essentially not considered worthy of established, regulated review processes in the pre-Bill 20 era unless those actions were dismissals or suspensions exceeding 10 days. Suspensions of up to 10 days in length, letters of reprimand, forced transfers, demotions, or negative evaluations could not be effectively appealed as a general rule. School boards were

required to hold hearings to review dismissals and suspensions and might agree to hold hearings in other cases. If such a hearing was granted, the school board, a quasi-judicial body, was required to provide a fair hearing based on principles of natural justice. However, the school board, after granting "a fair hearing", retained the right to make a final and binding decision and to uphold its original decision without further recourse by the teacher. Teachers could challenge in court a board decision on the basis of an alleged unfair hearing but not on the basis of the substance of the decision itself.

Teachers also had a legal right to request the minister review a forced transfer. The minister was not obliged to agree to such a request, however, and as this study found, rarely reviewed transfers except in the case of administrators. Processes used by teachers in response to their lack of appeal rights for many kinds of disciplinary actions contribute to the history of the "informal discipline system" often characterized by political and even job actions.

Processes (formal, legal). Legislative processes guiding the previous teacher discipline system and found in the School Act, governed several aspects of that system: reasons for disciplining teachers, specific discipline processes, appeal rights, and tenure. Each is discussed below.

1. Reasons for disciplining teachers: The previous legislation set out reasons which had to be present before a teacher could be suspended or dismissed. These reasons were divided into two general categories--misconduct and poor performance--with different disciplinary approaches possible and different appeal mechanisms for each. However, these provisions did not prevent other kinds of reasons being given for other kinds of disciplinary

actions. The Act was silent, for example, with regard to such disciplinary actions as reprimands, demotions, or transfers for either misconduct reasons or for possible other reasons.

Within the broad category of misconduct, teachers could be suspended and/or dismissed for misconduct, neglect of duty, for refusal or neglect to obey a lawful order of the board, or for being involved in criminal conduct. A teacher disciplined for poor performance was dismissed only after proof in the form of three less-than-satisfactory evaluation reports. This provision did not permit discipline short of dismissal for poor performance, nor did it allow evidence other than three less-than-satisfactory reports as proof of poor performance. The Act then, was very prescriptive in certain respects yet was silent in other areas. While school boards had a great deal of unregulated authority in certain instances such as in transfers, reprimands or demotions, they were bound by very specific legal rules in poor performance cases.

2. Specific discipline processes: The School Act set out specific processes school boards were required to follow in suspending or dismissing teachers. Timelines, notice requirements, school board hearing requirements, type of evidence required for poor performance dismissals, were all established by the statute. Court decisions pursuant to the Judicial Review Procedure Act enforced the correct processes to be used in any school board hearings: Johnston and Ferry, Haight-Smith, Young, and Cardwell.

3. Appeal rights: Two appeal avenues were provided under the previous teacher discipline system: boards of reference and review commissions. This study found two major problems with

these processes: (1) Teachers had limited access to them, and (2) the panels provided an inferior review of those teacher discipline cases they did hear. Limited types of disciplinary actions against teachers were heard by the appeal panels. Review commissions heard appeals from dismissal for poor performance, while boards of reference heard appeals from dismissals or suspensions exceeding 10 days for actions coming under the broad misconduct category. Appeals from decisions of either of these two bodies were heard by the courts. Court appeal decisions reviewed all of the facts, the merits of the case on both sides, the arguments, and the process. A complete re-hearing was seen to be necessary.

Boards of reference and review commission panels were found to have provided inferior reviews of teacher cases in several respects: the legislation before 1980 did not provide a mechanism for substituting a reduced penalty; the decisions were poorly argued; critical precedents were ignored; there was a preoccupation with technicalities rather than with the merits of the case; deference was given to the reports and testimony of administrators; the specter of ministry interference was present; and no standard of review was required and usually none was present. However, lack of a legislative right to substitute a lesser penalty does not excuse the panels from reasoning, as they did, that any teacher offense, however minor, if proven, was sufficient to uphold a dismissal. The Caplette decision, ignored by many cases which followed until the legislation was amended, made that point. As well, there was no evidence of an accepted test being used to review a case until Machado-Holsti in 1981.

4. Tenure: This study found the matter of teacher tenure tied

closely to teacher discipline. The process of obtaining tenure, or a continuing position, under the previous system was set out in the School Act. Teachers were presumed in law to be competent from the date of appointment based upon certification standards.

Teachers were generally hired on continuing appointments from the first day of work and could be put on probation during the first nine months only if their performance was found questionable.

Personnel. This study found that the personnel who sat on previous discipline appeal panels were critical in determining the nature of the previous teacher discipline system. Out of a total of 58 discipline cases examined, only one review panel was chaired by a well known labour arbitrator (Chertkow in Austin). Yet that case can be distinguished in that it followed Bill 20 and was heard during the interim period after 1987 but before the first collective agreements were ratified. In all, 71 people served on these two types of appeal panels, 53 of them (75%) only once. In the case of all 71 people, appointments were made by the minister of education. Of those 27 who served on review commissions, the law required that they be from the education community. The minister appointed two people for each panel from lists prepared by the BCTF and the BCSTA, and a chairperson, normally a lawyer in the case of a board of reference, and typically a retired superintendent in the case of a review commission. The parties held no veto rights after appointments.

In total, 70 lawyers acted for the parties in the 58 cases, with 42 (60%) of them serving only once. With 75% of review panelists serving for the first and only time, then, and 60% of lawyers presenting their first and only case, it is fair to say the majority of those personnel playing critical roles were inexperienced in these unique School Act processes.

A few people did have wide experience in the process, however.

More boards of reference (36%) were chaired by G. S. Cumming Q.C., (recently appointed to the B.C. Court of Appeal), than by any other individual. While his field is not labour law, he can be said to have had the most significant impact on that "labour relations" process. No single individual had the same kind of impact on review commissions, as no individual chaired more than four panels. A number of lawyers presented more than ten cases each: J. S. Clyne, John Kinzie, and Wendy Devine, for school boards, with Des Grady and Allan Black acting for the teachers. A very small group of people in the province, then, became intimately aware of the teacher discipline system. Overall, the overwhelming majority of these review panelists and lawyers were male.

Decisions. The nature of the previous teacher discipline system can be gleaned by examining the decisions of those two appeal panels discussed above. This examination also provides a statistical record of teacher discipline matters before 1988:

1. Only 58 discipline cases were heard by review panels over the three decades before Bill 20 created a new system in 1988. These 58 decisions came from only 34 of 75 school districts. Fifty-five per cent of school districts, then, never experienced an appeal case under the previous teacher discipline system.
2. Ninety-one per cent of boards of reference and all review commissions dealt with teacher dismissals. Of the 58 cases, only four involved suspensions.
3. The main reasons given for discipline of teachers were poor performance (14 cases), neglect of duty (14 cases), physical force

used on students (10 cases), and sexual abuse of students (six cases). (No sexual misconduct case arose before 1982. It appears that cases obviously involving sexual misconduct were not treated as such or given that designation. After 1982, 38% of all board of reference cases were for sexual misconduct.) Seventy-six per cent of all discipline cases against teachers fell into these four categories. Of the remaining nine cases, four were for insubordination, and the others for various reasons such as criminal charges having been laid against the teacher. Reasons given more often than others for dismissing teachers for poor performance were (1) poor classroom control, (2) poor planning, and (3) poor relations with others--namely with administrators. These findings support the work of Czuboka of Manitoba (1985) and of American researchers, as reported in Chapter IV who found more teacher discipline cases were related to poor performance or incompetence than for any other single reason. Bridges and Gumport (1984) also found that all incompetence cases involved charges of poor pupil control.

4. In 20 cases (34.5%), the teacher was either exonerated or given a reduced penalty. School board decisions were upheld in 38 cases (65.5%). This was found to be an inferior appeal record for teachers when compared to the success rates of other employee groups where normally the union is successful in discipline appeals more than 50% of the time.
5. Forty-four males and 14 female teachers were involved in the total 58 cases. Of those 20 cases where the teacher was reinstated, 12 were female. In a teaching population which was 51% female in 1980, 76% of all discipline cases involved males, yet two thirds of all

reinstatements were female. This finding supports the earlier work of Brian Bemmels (1988) of Alberta.

6. Those teachers found to be most at risk in terms of attracting discipline are male junior secondary teachers, while it is rare that a primary teacher is involved in a discipline case. This finding supports the earlier work of Czuboka (1985) of Manitoba.
7. Appeal boards for the most part found the teacher's seniority, age, qualifications, experience, or work record irrelevant in terms of determining the appropriateness of a penalty, at least until the critical Machado-Holsti case of 1981. Yet negative work records were relied upon in a number of decisions to uphold dismissals even when the most recent incident was not found particularly serious.
8. The language of labour arbitration was completely absent. As well, precedents, if cited, were used in an unpredictable fashion.

The legal context. The legal context was examined in response to two questions: (1) To what extent did the legal framework governing the pre-Bill 20 teacher discipline system in this province reflect systems in operation for other teachers in North America? and (2) How can the previous system be described in terms of legal frameworks governing employee discipline systems in general?

1. Legal frameworks for teacher discipline. This study examined all legal frameworks governing teacher discipline across Canada and reviewed the literature to determine legal frameworks governing teacher discipline in the U.S. The pre-Bill 20 legal

framework governing teacher discipline in B.C. was found to be very similar to that in operation at the current time for most other teachers in North America.

Teacher discipline systems in place currently in all provinces but Quebec, Newfoundland, and New Brunswick, as well as in most American states, involves discipline systems set out in specific education or teacher statutes. Laws, like those set out in the previous B.C. School Act, establish tenure provisions, reasons for discipline or dismissal of teachers, and appeal processes including review panels not unlike B.C.'s boards of reference or review commissions. In all those jurisdictions, further appeals go to the courts.

Jurisprudence on teacher discipline in most of North America is found in court decisions and not in labour arbitration cases. This study found few arbitration cases dealing with teacher discipline matters. Even where teachers have full collective bargaining rights and the right to strike, it is common practice for matters of teacher discipline to be found in a specific statute other than in labour legislation and for matters of teacher discipline to be outside the scope of collective bargaining.

2. Legal frameworks for employee groups in general

Another way to understand the previous B.C. teacher discipline system is to view it within the context of the three legal frameworks governing the employer-employee relationship: a relationship governed by the common law of master and servant, a relationship bound by a specific statute, or a collective bargaining relationship. The teacher discipline system governed by the previous School Act is an example of the second model, the statute law model. But

frameworks set out in a statute can vary depending on the specific provisions of that statute.

This study analyzed the particular statute model found in B.C. before 1988 and found that in some instances that legal framework was similar to a collective bargaining model and in others more like a common law model. The inadequate protection accorded employee interests found in the common law relationship was manifested in the inadequate appeal processes granted teachers in B.C. before Bill 20. In fact for many types of disciplinary actions there was no appeal whatsoever under law. There appeared to be a presumption, as in common law, that any disciplinary action would be a dismissal. Lawyers cited the law of master and servant in arguing a teacher case before an appeal body as often as any other case law. On the other hand, the just cause provisions ensuring no dismissal without proof of misconduct or poor performance, along with notice provisions and an appeal to a neutral body, reflect aspects of a collective bargaining relationship.

B. The Current Teacher Discipline System: Critical Findings

Critical findings which describe the current teacher discipline system are outlined under the same four headings used above: (1) Processes, (2) Personnel, (3) Decisions, and (4) The legal context. Processes used now in the province's teacher discipline system are either set out in the Industrial Relations Act or are based on collective agreement provisions. Personnel critical to the system are now labour arbitrators. Critical decisions which explain how the system operates are now arbitration awards and arbitral jurisprudence. The legal context can be described as above in terms of legal frameworks for teachers in other jurisdictions or in terms of general

employee discipline legal frameworks.

Processes. Specific procedures outlined in the Industrial Relations Act and as well in principles of arbitral jurisprudence ensure critical processes prevail for all in the province. These processes must be in place in a unionized environment in order that disciplinary actions will be upheld by arbitrators who will review them.

But unlike in the previous teacher discipline system, discipline processes are also set out now in 75 different locally negotiated collective agreements. This study found that such local procedures vary a great deal from one district to the next creating much greater complexity through this linking together of those varied local processes with provincially mandated ones. The critical processes found in the new teacher discipline system can be described in two categories: (1) provincially required processes for all, and (2) locally determined processes based on collective agreements.

1. Provincially required processes for all. Processes required by the Industrial Relations Act and by arbitral jurisprudence fall within three main categories: appeal mechanism, just cause processes and standards of review, and processes for determining penalties.

All collective agreements are required by law to have a grievance procedure ending in arbitration and as well these agreements must ensure that just and reasonable cause is present before any discipline or dismissal action is taken against a teacher. All types of disciplinary actions are reviewable by arbitrators. Arbitrators have all the powers in law to get at the real substance of matters in dispute and to make final and binding decisions which both parties

must live up to. Any appeal of an arbitration award is heard by the Industrial Relations Council, on limited grounds, and not by the courts.

Although specific reasons for discipline of teachers are no longer contained in legislation, school boards must prove just and reasonable cause for any form of discipline. What constitutes just and reasonable cause is determined in the final analysis by arbitrators in accordance with arbitral jurisprudence. Arbitrators have established standards for testing whether or not "just cause" has been proven. The "law of jurisprudence" has divided discipline cases into two categories for purposes of setting standards of review or tests: culpable and non-culpable discipline cases. The standards or principles set out in leading decisions which guide arbitrators were found in two critical decisions: (1) William Scott & Co., [(1977) 1 Can LRBR 1] provides a test or method of review for culpable, or blameworthy, cases; and (2) National Harbours Board (No. C36/82, October 2, 1982, unreported) provides a test in non-culpable, or not blameworthy, cases. These two cases were cited by B.C. arbitrators as providing the standards of review in teacher arbitrations held after 1989. The processes used to review whether or not the employee has indeed given just cause for discipline, then, are set out in those cases.

Specific questions are asked in reviewing a case in accordance with the standard of review suggested in either William Scott or National Harbours Board. For example, the arbitrator will first determine in accordance with the William Scott principles whether or not there has been just cause for some form of discipline, whether or not the disciplinary action was excessive in all circumstances, and thirdly, what penalty is appropriate in the individual

case. A culminating incident may be examined to determine if there is sufficient reason to examine the work record, and mitigating circumstances are reviewed in accordance with accepted guidelines to get at the question, "was the disciplinary action excessive?"

Penalties are not set out in the Industrial Relations Act but like principles of just cause are suggested by arbitral jurisprudence. The process used by arbitrators to determine an appropriate penalty will influence processes school boards and administrators will use in future to determine correct penalties. The principle of progressive discipline requires that more moderate forms of discipline be used in attempts to correct offensive behaviour before more severe disciplinary actions are appropriate. Arbitrators have the power to rescind a disciplinary action or substitute some lesser form of discipline in place of that meted out by the employer.

2. Locally determined processes based on collective agreements. Collective agreement provisions, including grievance or arbitration procedures, were found in this study to create varied teacher discipline processes from one district to the next. The examination of eleven clauses found in most teacher agreements showed that each district had unique language requiring specific processes for the handling of various discipline matters. For example, teachers might be disciplined by receiving a forced transfer in one district while in the next such discipline is not permitted. A teacher may be disciplined by being put on probation in one district after demonstrating poor performance, but not in the next. To determine how any one new process in the discipline system actually works today, may necessarily involve interpretation of the language of 75 different collective agreements.

The new collective bargaining system requires that local associations be involved in responding to and handling teacher grievances. The collective agreement is enforced by the local teachers' association as a legal duty and grievances are filed by teachers with their local association. This means new labour relations processes are being created in districts and many more people are involved in current local discipline cases.

This study found that of a total of 942 local teacher grievances reported by the BCTF over nearly three years, 243 (26%) were discipline grievances reported from 62 of the 75 school districts. All of these grievances could have been appealed to arbitration if necessary. Yet only five were heard by arbitrators up to the end of 1991. This indicates that successful grievance negotiation processes have been established in school districts as a new feature of the teacher discipline system since 1989. Few discipline cases actually proceed all the way to arbitration because the vast majority are resolved through negotiations between local teachers' associations and school board administrators. Processes used by each district to engage in such negotiations vary in accordance with grievance procedures in collective agreements.

Personnel. Bill 20 removed administrative officers (AOs) from teacher bargaining units and made them management personnel. Principals and vice principals as well as school board office officials are involved in the day to day administration of collective agreements, including handling teacher grievances and negotiating disciplinary penalties.

Even more critical to the new teacher discipline system is the role played by arbitrators. These are labour relations experts, likely with little or no background in the education system or in the previous teacher

discipline system. This study found that those who act as arbitration chairpersons did not chair boards of reference or review commissions of the past. A whole new kind of background and expertise is being brought into the system. Teacher discipline cases are being judged by those who deal with other unionized workers on a regular basis and in accordance with labour law as it applies to those other unionized workers. Previous B.C. teacher discipline cases will largely be spurned as having little or no precedential value. The arbitrators of the five recent decisions examined in this paper are all high profile B.C. labour relations experts: Vickers, Hope, Bryan Williams, Munroe, and Kelleher. Their five decisions indicate B.C. arbitrators have clearly brought to the B.C. public school system the principles and processes of arbitral jurisprudence.

More labour lawyers are also involved on a day to day basis in the new teacher discipline system. Because of the increased complexity, the increased level of legal expertise required, and the increased numbers of cases, both teacher associations and school boards are hiring lawyers to handle the additional work load. Labour relations professionals are also involved in new training programs both for teacher leaders and for school board administrators.

Decisions. There have been only five arbitration decisions of teacher discipline cases issued since 1989. Those five are enough to clearly indicate critical elements of the new teacher discipline system as follows:

1. Few cases will actually proceed to arbitration. Five discipline arbitrations over a period of three years in a population of over 40,000 teachers indicates there will be an emphasis on resolving cases at the local level through negotiations. Negotiations will involve such actions as rescinding of penalties, reduced penalties,

buy-outs, agreed to early retirements, and sometimes agreement to the penalty imposed.

2. All five cases involved male teachers, four of them junior or senior secondary teachers.
3. Discipline cases proceeding to arbitration will no longer be only dismissals and long suspensions. A disputed negative evaluation report has already been taken to arbitration under the rules of the new system.
4. Arbitration boards dealing with teacher discipline matters may be single member boards or three person boards. Three of the five studied here were single arbitrators.
5. Arbitrators will use the William Scott test in reviewing culpable discipline cases and National Harbours Board to review non-culpable cases. However, because the parties have included the essential language of the old School Act on poor performance in collective agreements, there will be a tendency to focus the review and arguments around those three unsatisfactory reports and the process used to write them rather than on a typical non-culpable test. The Aspden decision by arbitrator Williams is likely to become a model used to examine dismissals for poor performance. That decision does refer to National Harbours Board but uses it in a supporting role.
6. Teacher board of reference cases were rejected as being not useful in the new legal environment. Advocates from both sides will likely

discontinue bringing them forward in future, except in rare cases.

7. Critical precedents have already been set in the first five decisions which can be expected to guide other arbitrators in teacher cases. Hope ruled in Chilliwack that "proof to a high degree of probability" is required in any allegations against the professional reputation of a teacher. This standard, already followed by Keheller in a later award, is likely to be followed by other arbitrators. Munroe ruled that only marginal weight should be given to stale negative material found in a teacher's file when there is a clause in the collective agreement giving the teacher a right to request such old material be removed.
8. Arbitration awards when compared to past board of reference decisions can be expected to be lengthy, legalistic, and filled with references to arbitral precedent.
9. Arbitrators can be expected to focus on interpretation of the critical language of discipline clauses in collective agreements and will allow extrinsic evidence to clarify ambiguous wording. This means both parties to the agreement will collect and store such material for possible later use in hearings.

The legal context. As in the discussion of the previous system, the legal context of the post-Bill 20 teacher discipline system can also be examined in response to two questions: (1) To what extent does the legal framework governing the new teacher discipline system in this province reflect systems in operation for other teachers in Canada or in North America in general? and (2) How can the new system be described in terms

of other legal frameworks governing employee discipline systems?

1. B.C.'s new legal framework in a teacher context. This study found that of all Canadian provinces, Quebec has a teacher discipline system most similar to that now found in B.C. Quebec's administrators are also managers, not in the union; the teachers bargain collectively under the province's labour legislation as do all other workers, and teacher discipline is subject to local negotiations with relevant clauses found in local agreements. However, even that province was found to differ in that teachers bargain provincially, although some issues, namely teacher discipline provisions, are bargained on a local or regional basis. While local agreements may contain discipline provisions, then, the bargaining dynamic is very different and the results not likely comparable.

The American teacher system is largely based on a statute law model with only New York State found to contain discipline clauses in collective agreements, to use labour arbitrators exclusively to rule on teacher disputes, to bargain locally, and to exclude administrators from the teachers' union. All fifty states have tenure laws with forty-one of them specifying in an education or teacher statute reasons for teacher discipline. Jurisprudence on teacher discipline is largely found in court decisions.

2. The new legal framework in a general context. The B.C. teacher discipline system's legal framework is a collective bargaining relationship governed by the Industrial Relations Act. Three parties are involved in discipline cases: the teacher, the union, and the employer school board. There must be just cause for discipline or dismissal and teachers are guaranteed natural justice processes in arbitration appeals. The notion of a continuing relationship, of a right to tenure and to rehabilitation is inherent in the legislation and the jurisprudence.

Although provisions in collective agreements may not guarantee fair processes for teachers up to arbitration, depending on what the parties negotiate, the ultimate resolution through guaranteed arbitration will be based on labour law and arbitral jurisprudence. That system was found in this study to offer a significant level of guaranteed due process. The system within a collective bargaining model is a dynamic process with ongoing negotiations contributing to a changing landscape in terms of processes, rights and responsibilities.

SECTION 2: CONCLUSIONS

This study set out to describe the two teacher discipline systems in operation in the province both before and after Bill 20 and to highlight the critical differences in those two systems. This section now reviews in brief what was found through the examination and draws some conclusions about the changes that took place as a result of Bill 20. The old and new B.C. teacher discipline systems are described here in conclusion in relation to theoretical concepts and models discussed in Chapters II, III and IV. The two systems are compared and contrasted within four general categories: (1) legislative frameworks, (2) processes, (3) personnel, and (4) theoretical models.

A. Difference in Legislative Frameworks

A critical difference in the two systems relates to their different legal frameworks. The legal framework governing the pre-Bill 20 teacher discipline model was found to be that most commonly in existence in other jurisdictions in North America. When the B.C. government created a new collective bargaining model of teacher discipline in 1987, it was not

looking to other jurisdictions for guidance, with the possible exceptions of Quebec or New York, both unlikely for obvious reasons. The new teacher discipline system in B.C. was found in this study to be one of a kind in North America. Few teacher arbitration decisions were located which might offer guidance to B.C. practitioners entering the new collective bargaining model now established in this province.

Employee discipline under a statute model and that found within a collective bargaining regime were found to have many different characteristics. This study found the collective bargaining model to be more likely to provide equitable processes for teachers than the statute model provided up to 1988 under the B.C. School Act. The previous statute model of employee discipline could be placed on a scale closer to a common law model than to a collective bargaining model. There was no concept of progressive discipline present, some types of teacher discipline were possible without proof of just cause, and the limited appeal mechanism was found to be inferior to arbitration under a collective bargaining system. As the Raison case illustrates, individuals pursued their own unresolved cases to the courts for final solution.

Informal or unregulated discipline processes operated under the School Act model, and were shown in this study to be paternalistic and demeaning to teachers, contributing to a "master-servant" workplace environment. Teachers were put in a legal position of either "begging" their employers on appeal, creating political confrontations, or accepting discipline without question, regardless of how unjust those actions taken against them were perceived. For example, a teacher given a ten day's suspension for being spokesperson of the local teachers' association was guaranteed only a fair hearing by the school board to plead his/her case. There was no avenue of appeal to test whether or not there had been just cause for such discipline. Such a finding is significant and indicates that

teachers stood to lose up to five percent of a year's salary as a form of discipline without a fair appeal. In the case of a teacher issued a written reprimand for the same reason, not only did just cause not have to be proven, no appeal even in the form of a school board hearing was required. Yet this study found teachers who were dismissed on the basis of past negative work records; records that could not be challenged under the legislative framework (see Singh, for example). Such a system can only be concluded to have been unfair in the extreme and in all likelihood most intimidating for teachers.

School boards were given enormous, unregulated powers over teachers in some disciplinary situations with the expectation that they could be counted on to carry out their duties in a judicious and neutral manner. There was likely considerable pressure on school boards to behave like responsible and objective review boards. Perhaps they lived up to such expectations in many cases. This study, however, found instances where they did not. Such a system, which relied on the good will of management, was open to political manipulation, to random, unchecked, and unpredictable decisions and actions of school boards and their administrative personnel, and to uncertainty for those teachers subject to the whims of unscrupulous employers.

This study did find that boards of reference and review commissions were adjusting over time to bring in elements of predictability and fairness found in the labour arbitration environment. However, without changes to the School Act requirements, even fair processes implemented voluntarily by appeal panelists would not have provided an avenue of appeal for all disciplinary actions taken against teachers.

Three parties, the teacher, the union acting on behalf of the teacher, and management, are now involved in any discipline dispute under the collective bargaining model. As well, unlike in the past, grievances can be

filed and pursued for *any* disciplinary action. Protection from unfair actions against teachers involved in grievance activity is now provided in law. No informal or unregulated discipline system exists any longer. Political actions are not taken by teachers, nor seen to be required, to draw attention to alleged unjust disciplinary actions. Teachers have a legal avenue of appeal for any and all alleged unfair actions. Their grievances are eventually resolved by third party arbitration if necessary. But as well, since each school district has a unique collective agreement with varied discipline-related provisions, 75 different discipline system processes are present.

B. Difference in Processes.

Processes overall in the new collective bargaining system were found to be more complex and legalistic, but fairer to teachers than the previous discipline system. The findings of this study illustrated how the previous teacher discipline system was open to bias in favour of management, relied on the good will of school boards, but was based on patriarchal-like principles and possibly outright intimidation of teachers. Elements of the system, such as the instant tenure provision and the requirements for just cause in specific disciplinary actions, belied the true nature of the employer-employee relationship. The presumption of competence from the outset inherent in the previous instant tenure system, appeared to support an environment of trust in teachers' professional abilities, yet contradicted elements of the discipline system which reinforced master-servant attitudes.

Under the statute model any *dismissal* was required to be for proven just cause and the principles of natural justice prevailed in any appeal sought by the teacher after a dismissal. However, other types of

disciplinary actions may not have been for just cause, and as long as the school board's hearing was conducted in a fair manner, the teacher had no recourse. Those processes used to either carry out or review many disciplinary actions, other than dismissal cases or long suspensions, remained unregulated and open to bias or political manipulation.

The previous system utilized an inferior appeal process for discipline cases and even then in a limited fashion. The formal system was focussed on dismissal as the primary disciplinary action requiring regulation. In the case of dismissal for poor performance, for example, the process set out in statute appeared in its prescriptive requirements, to offer teachers a fair and just process of evaluation and appeal. However, this study found that the process of appointment to appeal panels alone, negated any guarantee of fair and objective treatment in the final analysis.

Interestingly enough, the new collective bargaining model of teacher discipline has incorporated most of the more prescriptive elements of the previous statute. Collective agreements were found to contain language on disciplinary matters very similar to that contained in the previous School Act, although some agreements were found not to contain provisions as beneficial to teachers as those provided in the School Act before 1988. The parties have clung to the "three unsatisfactory report" process for poor performance terminations, for example, and have attempted (sometimes unsuccessfully) to replicate the school board hearing process before threatened disciplinary actions are finalized.

However, the new discipline system is an improvement, in any case, over the past model in that it brings with it, in addition to any collective agreement language dealing with processes found in the old School Act, the guarantee of fair arbitration appeal procedures for not only dismissals and long suspensions but for any and all disciplinary actions against teachers. Even if collective agreements, then, do not include all those desirable

processes found in previous legislation, there is still that guarantee in labour law that an arbitrator has the right to get to the real substance of the matter and to resolve any dispute on the basis of the merits of the case. What is critical now is that all grievances, unlike in the past, can proceed, if necessary, to arbitration. Less than 5% of the discipline grievances filed in the last three years by teachers were reviewable under the previous discipline system.

The new system requires that processes inherent in labour law and principles of arbitral jurisprudence are applied. This study found that the number of discipline cases brought to the attention of the BCTF in the form of grievances in the three years following unionization was more than four times greater than the total number of teacher discipline appeals in three decades previous to Bill 20. Grievance processes, including filing of grievances, grievance mediation and negotiation, are sanctioned in law and are occurring in school districts. Because progressive discipline principles are now applied, attention is being placed by management on keeping work records of teachers. Disciplinary actions other than dismissals are more likely to be issued by school boards at the present time.

Decisions of the formal appeal bodies--boards of reference and review commissions of the past and arbitration boards of the present--allow certain conclusions to be drawn concerning both teacher discipline systems. It may be fair to say, according to the records, that few school boards disciplined teachers in the past, but when they did, such action was normally a dismissal. Yet such a statement cannot be proven since records were not kept of disciplinary actions that were not appealed to boards of reference or review commissions.

The decisions of the 58 pre-Bill 20 appeal panels are like those found in other discipline appeal systems in that while more males were

disciplined, more females were reinstated, and as well junior secondary teachers were disciplined more than were primary teachers. Previous decisions were unlike appeal decisions found in other employee discipline systems in that mitigating circumstances were rarely considered, precedent was ignored, fewer cases were won by the teachers, and few cases have any precedential value in future due to the lack of argument and reasons provided.

Only about six of the 58 cases may possibly be held up as providing any precedential value in future teacher discipline cases, and even those can be distinguished because of the legal framework in effect. The Shewan case, appealed all the way to the Court of Appeal, determined that teachers must be exemplars of moral conduct within the community and that teacher conduct can be judged on the basis of community standards. That case also established that an offense must be very serious in the case of a professional teacher if dismissal is to be upheld. Smith, Patey, and Peterson may be cited when arguing that dismissal for sexual misconduct with female students is too severe a penalty under certain circumstances. Ruffell, and Conboy may be cited to support dismissal based on physical or emotional abuse of students.

Decisions issued by arbitrators under the new collective bargaining system demonstrate that the language of labour jurisprudence has entered the teacher discipline system, along with the principles, rules, and practices of accepted labour law. Arbitrators in B.C. are setting critical precedents now in the first teacher discipline cases before them. In the new environment where penalties are second-guessed by arbitrators based on arbitral precedent, appropriate penalties for specific teacher actions are now being determined. Those involved at the local level in both issuing penalties and in negotiating appropriate penalties in response to grievances will be influenced by these arbitral precedents.

What this study was not able to determine was the actual numbers of disciplinary penalties issued now compared to the past. All penalties now, however minor, are recorded due to the grievance process and the involvement of the union. What is known is that currently more districts are involved in formal discipline system processes and fewer than 5% of discipline grievances filed in the last three year period studied would have been reviewable under the rules of the previous discipline system.

C. Differences in Personnel

Three critical differences were found in this area. Labour arbitrators with vastly different backgrounds and expertise than those who reviewed teacher discipline cases in the past have now become involved in the teacher discipline system for the first time. Their arbitration awards, both past and present, are already proving to have a significant impact on employer-employee relationships in the school system.

Secondly, AOs now play a management role in the school system ensuring a manager in every school assigned to the task of teacher discipline, among other duties, unlike in the past. This role for AOs, found in only one other province, Quebec, has created a dramatic shift in the discipline system and in the public school environment. Principals and vice principals were teachers in the past and members of local teachers' associations and the BCTF. Such a change has introduced profound new dynamics into the employer-employee relationship.

Thirdly, a great many additional personnel are now involved in the teacher discipline system from both the union side and the school board side, dealing with such elements of the system as grievance administration, negotiation, and arbitration. Teachers and administrators are developing new skills, learning new information about the grievance-arbitration

system, and practicing new processes not required in the past.

In the pre-Bill 20 system, the experiences and backgrounds of board of reference and review commission panelists were questionable in terms of experience and neutrality, and as well the selection of review panelists was open to manipulation and bias. Teachers could rightfully interpret appointments of recently retired superintendents, for example, to mean two management representatives to one teacher representative on a panel, since a superintendent could not be seen by teachers as a neutral chairperson. The outcomes of the cases in upholding management decisions 65% of the time indicates a management bias when compared to other studies of employee discipline review panel outcomes.

D. Differences in Theoretical Models

Finally, in conclusion, the differences in the two teacher discipline system models in operation in B.C. over the past three decades can be described within a theoretical context using a continuum model inspired by the theory of Orme Phelps (1959). Phelps' framework used to describe employee discipline systems, as discussed in Chapter II, was found to be the most useful theoretical model for purposes of describing the B.C. teacher discipline system. Phelps described three discipline systems: the authoritarian, due process models, and the anarchic system. As did later theorists, Coye and Belohav (1989), Phelps viewed employee discipline models on the basis of the relative weight given to the rights of individuals versus the rights of management or the organization. His concepts can be used to create a continuum and to examine the B.C. teacher discipline systems in relation to each other and to Phelps' models.

On the Phelps' continuum, both the new collective bargaining model and the previous statute law model are systems which can be described as

due process models in the centre of the continuum. Yet they can be placed on that continuum in relation to each other. The B.C. statute law model in operation before 1988 can be placed in closer proximity to the authoritarian end of the continuum in terms of relative weight given to school board rights over teacher rights. The reliance on paternalistic practices, the reverence for testimony of authority figures, the lack of appeal rights, and the statistics indicating an inferior appeal process in relation to appeal processes for other unionized workers, all contribute to such a conclusion. While it may be argued that because there were so few appeals over the three decades, the previous system was ignored by management, it can also be argued that the environment created by the presence of the system alone, promoted fear and intimidation among teachers to the point where risk-taking was discouraged and a culture of submission to authority flourished. Even the tenure system, which appeared to promote a professional ethos, could not overcome other shortcomings.

The collective bargaining discipline system model created as a result of Bill 20 is closer in proximity to Phelps' "anarchic end" of the scale in that it grants more weight to the rights of individuals versus the rights of management or the organization. This thesis has illustrated how the current collective bargaining system reviews each case on its individual merits, applies penalties in accordance with mitigating circumstances in that individual's case, relies less on technicalities and legal rules, and includes fair and neutral review of perceived disputes by experienced neutrals. More emphasis on meeting the needs of individuals, including rehabilitation and correction with the intent of maintaining the tenure of the employee, situates the collective bargaining discipline system on the "individual rights" end of a Phelps' inspired continuum in relation to the School Act statute model.

SECTION 3: IMPLICATIONS

Because all the rules have changed in the teacher discipline system and the new complexity compared to that of the past is so profound, it is evident that those who work in the school system as administrators and as teacher leaders dealing with personnel and grievances require new information and skills. Local teacher leaders have new mandated legal roles in directly handling teacher discipline grievance cases, for example, among many other grievance cases. School boards and their administrators must become aware of critical arbitral tests and follow what has been determined to be proper and fair processes by the industrial relations community if their disciplinary actions are to be upheld.

This study points to the need for additional training programs for both administrators and teachers' associations representatives who must be involved in the daily administration of collective agreements and in grievance handling. Such training is now being done by school boards for their administrators and by the BCTF for teacher leaders. However, there is no reason why such training cannot be done at the university level in teacher training and educational administration programs. It is no longer acceptable for administrative officers to graduate from university programs in educational administration without even basic notions about a collective bargaining system. Administrators cannot function successfully in the current system when they are not even familiar with the language of a collective bargaining regime.

Administrators must understand the requirements of the Industrial Relations Act, the roles played by the parties to a collective agreement, and must have some respect for the new system within which they now work. Disciplining teachers because they are involved in required legal union activities, for example, can only lead to the eventual embarrassment of some administrative officer. Knowledge about the system will lead to new

understandings and attitudes which will promote a necessary healthy respect for the collective bargaining process and for those who make it work. From that foundation of respect can be forged new and improved employer-employee relationships in B.C.'s public school system.

Schools boards and teachers' unions must realize the increased workload involved for those who now handle the hundreds of grievances filed as part of the new discipline system. In addition, there is also a requirement for new skills not needed in the previous system. This study found grievance negotiation to be a major activity currently going on at the school district level. Those involved in this new area of work require time to do this job, as well as skills and information not needed in the past. While the BCTF and local teacher associations now budget for this additional new expense, there reason to believe such skill training for teacher leaders should be funded by school boards. A better understanding of the system would bring with it acceptance of new processes and a willingness on the part of employers to accept financial responsibility for making that new system work as effectively as possible.

This study also has implications for arbitrators. Teacher collective agreements were found to include many unique process requirements which to some extent will eliminate the standard analysis by arbitrators on such matters as whether the case is culpable or non-culpable, for example, and whether the employer followed the correct process in disciplining in accordance with standard tests found in other employee hearing decisions. Since there is a lack of teacher arbitration decisions in discipline matters, precedents will necessarily have to be found in the jurisprudence based on cases of other workers or perhaps other professionals such as nurses.

Further research in a number of areas is suggested by this thesis. The B.C. teacher grievance system offers a rich field of data for further study. The 75 school districts, all unionized at the same time, all trying out new

processes to handle grievances, and all dealing with common employees, provide a vital research data base.

This paper did not look into the reasons for the differences in the numbers of discipline grievances reported from one district to the next. The suggestion was made that such differences may be related to management styles in various districts, the type of union, past practices and relationships, the grievance processes contained in collective agreements, or even the reporting styles of individual BCTF staff. Those researchers interested in determining differences between high and low grievance districts could pursue this question based on the data already provided in this study.

The paper did not deal with the actual grievance processes operating in each school district and how these processes may differ from one district to the next. Who meets and how often? How are grievance meetings structured? What skills are brought to bear? What training is required? What works in resolving disputes and what does not? These and various similar questions if answered could establish new information which if utilized might improve relationships in all unionized environments.

This study, in its focus on employer-initiated discipline, did not deal with teacher discipline by the professional body, the College of Teachers. A number of teachers have lost their right to hold a teaching certificate and to teach, due to disciplinary action by the government before Bill 20 and by the College of Teachers after Bill 20. How many teachers have been affected? For what reasons? What changes have occurred in this aspect of the teacher discipline system as a result of Bill 20? Answers to such questions would further enlighten us on the broader question of teacher discipline in B.C. and would also provide more data about the significance of Bill 20 in changing aspects of the school system in this province.

Further research is required in later years to obtain more data on teacher discipline arbitration decisions. The five awards analyzed in this study provide a good indication of trends. However, ten years of arbitration decisions will allow more definitive comparisons of outcomes with those of past boards of reference and review commissions as reported in this study. Such a future study would also allow comparison of teacher arbitration outcomes with arbitration outcomes of other employee groups.

Finally, additional research might look into other effects of Bill 20 on the school system in B.C. Bill 20 was reviled by teachers at the time of its introduction in 1987. Teachers even conducted a province wide strike in protest. In reflection, this paper has found that the changes brought to the teacher discipline system as a result of that piece of legislation were beneficial to teachers. But teacher discipline system changes were only one small aspect of those changes implemented in the B.C. school system as a result of Bill 20. There remain many questions to be answered about Bill 20 and what that legislation meant to the public school system in this province.

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APPENDIX A

TEACHER DISCIPLINE: LEGISLATIVE FRAMEWORKS IN OTHER PROVINCES

Alberta

Re: School Act S.A. 1988, c. S-3.1.

Teacher collective agreements for each school district in Alberta acknowledge that they are made pursuant to the School Act and the Labour Relations Code. However, no teacher discipline provisions are found in these agreements. Teacher discipline remains a matter of school law in Alberta. Both suspensions, of any length, and dismissals may be appealed to a Board of Reference.

The Alberta School Act contains provisions for the school board (or superintendent), with reasonable grounds, to suspend or terminate the contract of a teacher for "gross misconduct, neglecting his duty or refusing or neglecting to obey a lawful order of the board...or if the welfare of the students is threatened..". The notice must provide written reasons (section 86). Appeals are made by the teacher to the Minister in writing, with reasons, along with a \$50 deposit, (section 114) and the Minister will then appoint a Board of Reference made up of one or more persons. The Board of Reference has the power to investigate, hold hearings, must allow the parties to be heard, to have counsel, and will then confirm, or rescind a suspension or a termination, will direct a payment to the teacher, or will order a reinstatement (sections 116-20). Any further appeal from this procedure is to the Alberta Court of Appeal which may quash, confirm, vary, refer back to the Board of Reference, or direct a trial in the Court of Queen's Bench (section 124.1).

Saskatchewan

Re: Schools Act R.S.S. 1978, Vol. VIII c. S-36. The Teacher Tenure Act R.S.S. 78. Vol. VIII c. T-6. An Act Respecting Elementary and Secondary Education in Saskatchewan, S.S., 1977-78, c. 17.

As in Alberta, teachers are subject to the disciplinary provisions of Education Statutes and not a collective agreement or labour legislation. The teachers bargain provincially and the provincial master contract between the "Boards of Education and the Government of Saskatchewan and the Teachers of Saskatchewan, 1987-89", states that it is "negotiated in accordance with The Education Act".

Section 206 of that Act provides that a board "may suspend or dismiss a teacher", without notice, for gross misconduct, neglect of duty or for

refusing or neglecting to obey any lawful order of the board. Written reasons must be provided within 5 days. The same section provides for termination with 30 days notice because the teaching position "is no longer considered by the board to be necessary". A teacher has 10 days to request an appeal to the school board and 20 days to appeal to the Minister of Education (section 212), providing the teacher has at least two years of consecutive service. Any termination--not suspensions--may be appealed. The Minister will appoint a Board of Reference consisting of one person nominated by the teacher, one nominated by the school board, and one agreed to by both sides to hear any appeal requests. The Board of Reference has the power to hold "an investigation" (section 215), require attendance of witnesses, take evidence under oath, and then "confirm the termination", or "order the continuation of the contract", or "make any additional order or recommendation" (section 221). A decision of this Board is final and binding with an appeal possible to the Court of Queen's Bench on the grounds of an "error in law", or that the board "lacked jurisdiction" or "exceeded its jurisdiction" (section 222).

There is only one clause in the teachers' "Provincial Bargaining Agreement" that has anything to do with teacher discipline. Article 2.10.1 states that "in the event that the contract of a teacher is terminated pursuant to Clause 206 of the Education Act, the teacher shall be entitled to receive a lump sum payment of an amount determined by..."(a formula is provided).

Manitoba

Re: Public Schools Act, R. S. of Manitoba 1987, c. P250.

Section 101(5) provides that a school board may suspend, transfer, or discharge a teacher for "proper and sufficient cause". Section 92 (3) provides a hearing before the school board before a teacher can be terminated, and section 92 (4) lays out the appeal process to be followed after a termination. A teacher with more than one year of service has the right to proceed to a three member arbitration board where the question will be: "Do the written reasons provided by the school board constitute cause for termination?" All details on such matters as arbitration selection, timeframe, and payment are contained in this section. There is no reference to Labour legislation.

A perusal of the numerous collective agreements between local teachers associations and their school boards indicate that a common collective agreement provision touching on discipline is one that deals with "written warnings and/or suspension", not dismissals. The provision gives boards the right to issue such warnings, or to suspend for just cause and then provides the right to appeal to arbitration under the terms of the agreement. The arbitrator has the power, according to the provision, to uphold, rescind, vary, or order the board to pay all or part of any loss. The grievance procedures in these contracts make no reference to Labour statutes and

require the Minister of Education to appoint a chairperson for arbitration boards in the event of a failure to select one.

Ontario

Education Act R. S. Ontario, 1980, c. 129. and The Negotiation of Collective Agreements Between School Boards and Teachers S.O. 1975, c. 72.

Section 239 of the Education Act indicates that a teacher dismissal or termination notice shall be in writing, and shall give reasons. The section is not limited to any particular type of dismissal. An appeal by the teacher may be made to the Minister within 21 days requesting a Board of Reference. Where a Board of Reference is granted, a judge is appointed as chairman by the Minister (section 241), and two other members are nominated by their respective parties. (The Minister retains the right to deny a Board of Reference.) The Chairman has the powers of a commission under the Public Inquiries Act (section 243). The Board of Reference is limited to upholding the termination or reinstating the teacher. Any appeal from this decision may be made under the Judicial Review Procedure Act to have the "direction set aside" at which point a new Board of Reference is granted by the Minister (section 245). The practice and procedures for the Board of Reference are contained in the Regulations.

The School Board and Teachers' Collective Negotiation Act, commonly known as Bill 100, provides that "unless a collective agreement provides, there is deemed to be included in it a standard clause for arbitration of all differences between the parties arising from the interpretation, application, administration, or alleged contravention of the agreement (section 53)." Part VII of the Act sets out the functions and purpose of the five member "Education Relations Commission" with duties similar to the B.C. Labour Relations Board. A main duty is "to maintain awareness of negotiations between teachers and boards...to select and train mediators, arbitrators..." for teacher disputes. The purpose of the act is stated to be "providing for the making and renewing of agreements and by providing for the relations between boards and teachers in respect of agreements" (section 2) .

The model collective agreement provided by the Federation of Women Teachers' Associations of Ontario, (FWTAO), (1988-89), contains only one clause touching on teacher discipline which they recommend members negotiate into contract: "No teacher shall be demoted, transferred or disciplined or have his/her employment terminated without just and sufficient cause".

One Ontario collective agreement contained this clause:

"No teacher...shall be demoted, disciplined, or dismissed without just cause given in writing. Any grievance commenced under this clause becomes null and void if a Board of Reference (The Education Act, 1980) is appointed to deal with

the same matter" (Nipigon -Red Rock District Teachers Collective Agreement, 1988-89).

It is interesting that the Ontario Secondary School Teachers' Federation, (OSSTF) recommends that teachers attempt to negotiate more extensive discipline provisions into collective agreements and reminds members that it is especially important to achieve "the variation of penalty clause which enables arbitrators to ...reduce a penalty which they believe is too severe"(Teacher's Collective Bargaining Handbook, 1989-90). They go on to point out the many "shortcomings of the Board of Reference system" and believe "protection in the collective agreement is much preferred ...in dealing with unjust dismissal".

Quebec

An Act Respecting Elementary and Secondary Education S. Q., 1984, c.39., An Act Respecting Collective Bargaining in the Sectors of Education S.Q. 1978, c.1-14, and An Act Respecting the Process of Negotiation of Collective Agreements in the Public and Parapublic Sectors (Bill 37).

The Education Act in Quebec gives teachers full collective bargaining rights under the Labour Code of that province (section 525) and like B.C. teachers, disciplinary actions taken against them are governed by processes in labour legislation and labour jurisprudence. The Education Act makes reference in several places to the collective agreement of the "certified association within the meaning of the Labour Code" which will handle appeals from teachers who "believe they have been wronged". (Sections 452, 510, 512). The Act even requires that staffing is done in accordance with the collective agreement (Section 304).

Teacher bargaining is done on a centralized basis for the most part in Quebec. However, the provincial master agreement, states that provisions dealing with teacher discipline matters will be negotiated at the local level. The master provincial teacher collective agreement, covering the majority of teachers, is written in French, as are most local collective agreements and nearly all discipline arbitration awards that might be relevant to this study. Unfortunately, this author is not capable of reviewing them. The Canadian Teachers' Federation does not collect local Quebec agreements or arbitration awards. However, it should be noted that Quebec arbitration awards, also written in French have little relevance to arbitral jurisprudence in the eyes of B.C. arbitrators.

Prince Edward Island

School Act R.S. P.E.I. 1974, c. S-2.

Section 43 of this Act provides that teachers may be dismissed at any time

"for cause or for unsatisfactory service". Under section 42, probationary teachers with less than three full years of service in a district may be terminated with notice and without cause at the end of a term. Appeals under section 43 are made to a Board of Reference consisting of a nominee of the teacher, a nominee of the school board, and a chairman agreed to by the other two. The decision of this Board is final (section 41). The powers of the Board of Reference under section 1.46 are like those of a Board of Reference in other provinces--to administer oaths, summon witnesses, hold hearings, allow representatives to have counsel, etc. Regulation 27 provides for both a Board of Reference to deal with disputes arising from the teacher agreement and a Grievance Review Board to resolve individual complaints of violation of the agreement.

The provincial contract negotiated between "The Province of Prince Edward Island as Represented by the Minister of Education and the Prince Edward Island Teachers' Federation (1985-87), contains no provision whatsoever for dealing with teacher discipline.

New Brunswick

Schools Act, R.S.N.B. 1973, c. S-5.

In accordance with the current statute, a teacher in this province may be dismissed with notice if the teacher has been employed by a board for less than three years (section 47 (1)), or if the dismissal is for cause, by sending a letter setting out the cause (section 47 (3)). Appeals are made to the school board indicating the nominee of the teacher to a Board of Reference (section 47 (4)). The Board of Reference is structured as in P.E.I. and operated in accordance with the Regulations and the Inquiries Act.

Section 56 provides that "the terms and conditions of a teacher's contract of employment are the terms and conditions of employment of a teacher set out in this Act except where and in so far as altered by a collective agreement..." This provision allows a collective agreement provision to deal with the dismissal of teachers and the appeal of those dismissals to some adjudicator other than the Board of Reference under this Act.

The provincial collective agreement between "Her Majesty in Right of the Province of New Brunswick and the New Brunswick Teachers' Federation, 1985-88", does in fact contain a lengthy provision governing teacher discipline and any appeals thereof. Article 44 creates probationary appointments for teachers for the first three years of service. Unless waived by a benevolent school board, a teacher who moves will be on probation again for three years in a new district.

Article 55 states that "no teacher shall be disciplined, suspended, dismissed, or assessed a financial penalty except for just cause." All the standard natural justice provisions are contained: written notice, reasons, a

hearing with the board before action is taken, and the option of resort to the grievance procedure in the contract. That procedure ends in Article 59 with an "Adjudication Procedure" under the Public Service Labour Relations Act. As in Quebec and British Columbia, then, the teachers of New Brunswick also are subject to arbitral jurisprudence in disciplinary situations.

Nova Scotia

An Act Respecting Education R.S.N.S., 1989, c.136.

Section 22 of the Education Act provides that teachers are on probation for at least 1 year in a district but may be kept on probation for two years at the school board's discretion (section 56(2)). Within section 56, subsections (3) and (4) allow boards to suspend "for just cause, with or without loss of salary" at any time for up to ten days or "for a reasonable period". Within 7 days written reasons must be provided and the teacher may "appear before his employer ...to make answer to the matters...". Where the employer decides to revoke the suspension, "it shall be deemed not to have taken place" (section 56 (5)). The employer may alternately decide to uphold, or vary the suspension.

A teacher may be discharged at any time for just cause after the teacher has been given written notice of the charges against him and has had an opportunity to appear before the employer, with counsel, "to make answers to the matters" (section 56 (11)). A probationary teacher may not appeal a termination "to any grievance procedure provided in a contract relating to the employment of the teacher nor to any appeal" (section 56 (10)). A continuing teacher may appeal a discharge or a suspension to the Minister who will constitute a "board of appeal" composed of one person appointed by the Minister. This "board" has the "powers of a commissioner appointed under the Public Inquiries Act and makes an order confirming, varying or revoking the suspension or discharge (section 56 (15)). The order of the board of appeal "shall be final and binding"

An examination of numerous local district teacher contracts negotiated between school districts and the Nova Scotia Teachers' Union reveal that some districts have little or nothing in contract dealing with discipline while others have lengthy clauses repeating the legislative provisions. For example, the Annapolis District and the N.S.T.U (1988) agreement has only one clause touching on discipline: "Article 13.04. Should a meeting of a disciplinary nature be held ...the teacher shall have the right to call on an N.S.T.U. representative as an advisor-observer." On the other hand, the Atlantic Province Specialty Education Authority and the N.S.T.U. agreement contains three pages of provisions which copy the provisions of the Education Act cited above.

Newfoundland

Schools Act R. S. N. 1970, c. 346. The Labour Relations Act R.S.N., 1970 c.191.

The Newfoundland situation is interesting because it appears, after some examination of the legislative paper trail in that province, that teacher discipline legislation was changed there in 1974 in a manner similar to what happened here in B.C.'s Bill 20, 1987.

The Revised Statutes of Newfoundland for 1970 (the most recent set) show a School Act with a comprehensive set of provisions for dealing with teacher discipline in Sections 77 and 78. However, in 1974, those sections were repealed and nothing put in their place. The Labour Relations Act, even as early as 1970, does not exclude teachers, however, as the B.C. Labour Code did until 1987. Therefore, the Newfoundland teachers have negotiated provisions to deal with all matters of discipline.

The provincial collective agreement between "The School Boards and the Government of Newfoundland and Labrador and The Newfoundland Teachers' Association" (1988-90), contains a comprehensive set of provisions to govern teacher discipline and any related appeals in the province. Article 7 requires teachers to be on probation for 2 years and for a further year in a new district unless waived by that board. Article 10 states "no teacher shall be suspended, dismissed, or otherwise disciplined, except for just cause." Written reasons are required, five days notice provided, all documents in a teacher's file which will be used in a discipline case must have been signed by the teacher, and must be destroyed after two years if there was no further occurrence of a similar nature. Article 12 provides boards with the right to terminate without notice where the teacher is charged with "incompetence, gross misconduct, insubordination, neglect of duty, or any similar just cause". The same provision declares that probationary teachers have no right to grieve. Under Article 32, arbitration is the final step in the grievance process with the Minister of Labour appointing the chair in the event of failure of the parties to do so.

APPENDIX B

TEACHER DISCIPLINE CASES REPORTED IN LABOUR ARBITRATION CASES

Brown and Beatty makes reference to only eight cases involving discipline of teachers. A brief review of each of the eight cases is contained below.

1. Board of Education City of Windsor and the Ontario Secondary School Teachers' Federation (OSSTF) (1975), 10 L.A.C. (2d) 165-71 (Kruger).

The arbitrator considers this case to be unusual in that it involves a probationary teacher when "probationary teacher contracts in all Ontario schools can be unilaterally terminated on either of two dates during the two year probationary period without recourse." In addition the collective agreement has no provision, normally contained in industrial contracts for the employer to discharge for just cause. In answer to the arbitrability issue he decides to rule, however, because the strike clause in the contract makes reference to probationary teachers, and because a managements rights provision provides that the board has the "right, duty, and responsibility to provide, operate and manage".

The case involves the dismissal of a probationary teacher who withheld his services during a strike. The arbitrator reviews the arbitral jurisprudence dealing with the standard to be applied to probationary employees and determines that the Corporation of the Town of Mississauga test is preferred: "...that except for discharges based on discrimination on the basis of union affiliation, nationality, ...the question of suitability of a probationary employee to be retained...is left solely to the company". His decision is to deny the grievance because "whether the school boards' decision is right or wrong, it should not be interfered with".

2. Carleton Board of Education and (OSSTF) (1976), 13 L.A.C. (2d) 141-46 (Weatherhill).

In this case several probationary teachers were terminated, allegedly in violation of the "Probationary Teachers' Contract". They were determined to be satisfactory, or better, teachers who had been declared "surplus to the district needs". The only issue was whether the correct process had been followed or not. The arbitrator ruled that "the grievance succeeds" because the teachers were denied the right they claimed to be place on "the preferred list". But he noted, however, that they were not entitled to a job or to

damages because "other teachers on the preferred list had not been hired", and it was not likely these teachers would have been either.

3. Durham Board of Education and(OSSTF) (1978), 17 L.A.C. (2d) 427-32 (Weatherhill).

This case involves one teacher's half day deduction of salary for an absence at the end of June. Several other teachers, also absent on the same afternoon, will be affected by the decision. The head of the Math/Science department, in this case, left the school for the afternoon with his colleagues to attend a year end social at the race track. The principal approved the event and wished them all a good time. The race track event took place the day after Grad when all teachers had been up "until all hours of the night supervising". It was also traditional that the staff hold some social function of this nature the day after Grad. However, the school board did not approve, censured the principal after the fact, and deducted pay from those who took part. The arbitrator ruled the grievance succeeds as the "employee did not absent himself improperly".

4. Notre Dame Integrated School Board and Newfoundland Teachers' Association (1978), 22 L.A.C. (2d) 286-88 (Harris).

This short excerpt contained in the LACs deals only with the arbitrability issue raised in the case. The case involved a principal who received a letter he considered to be disciplinary in nature but which the board claimed was not. The arbitrator determined that the case was arbitrable because the letter was in fact disciplinary, in that a phrase in it stated the letter "will be kept in your file". He claimed "the essence of a disciplinary sanction lies in its negative impact on an employee's work record."

5. Wellington County Board of Education and (OSSTF) (1979), 24 L.A.C. (2d) 431-47 (Abbott).

This award was not unanimous and the dissent is included in full in the LACs. The central question in the case was jurisdictional: Can "just cause" be implied when the collective agreement is silent on the matter in dispute? Can the arbitrator decide the issue? The case involved the head of the guidance department who was transferred to another position in another school. The OSSTF alleged a disciplinary demotion had taken place. The arbitrator devotes considerable discussion to the provisions in the collective agreement since "no provision exists governing discipline, demotion, or transfer,...or for variation of disciplinary penalties". He also is concerned that the legislation which governs provides no provision for the substitution of

penalties by arbitrators. However, he does decide to rule on the basis of the managements rights clause which states that the board will exercise its managements rights "in accordance with the prevailing laws of ...Ontario", and because the board derived the power to demote from the Education Act, section 147 (1)". He states that although he does not approve of the length of the demotion, which is essentially for the remainder of the teacher's employment, he dismisses the grievance.

6. Board of Education, Borough of Scarborough and (OSSTF) (1980), 26 L.A.C. (2d) 160-82 (Picher).

This case involved a probationary employee, discharged for alleged cause in contravention of the collective agreement. The teacher in question was a reading specialist who was also teaching a grade nine English class of 38 students. After being evaluated by her principal while teaching the English class, and found to be unsatisfactory, she was dismissed. The issue revolved around the process used to evaluate the teacher. The OSSTF submission stated "that the evaluation failed to take into account [the teacher's] area of specialization" when the collective agreement required this. In this case, the English class was an exceptionally large and difficult class, and the principal's evaluation was based solely on observations of that class, with the principal stating he did not know how to evaluate her specialist area--remedial reading. The arbitration award condemned the principal's actions, ruled that the termination was in violation of the collective agreement and that the teacher be reinstated to complete a second year of a probationary appointment when a proper assessment could be done.

The school board argued that the discharge was not disciplinary in nature, and that the arbitration board had jurisdiction only if the matter was a disciplinary discharge. The arbitrator rejected this notion and ruled that the matter was disciplinary, but that legislation governing teacher discipline in Ontario "does not contain a provision giving a board of arbitration in discipline cases the power to substitute a different penalty, such as is given to boards of arbitration under the Labour Relations Act". However, he noted that a collective agreement provision "fills a remedial hiatus in the power of arbitration boards under the School Boards and Teachers' Collective Negotiations Act".

He also reviewed several cases from labour jurisprudence dealing with the standard of just cause to be applied in discharge of probationary employees, and quotes Brown and Beatty concerning the standard he will use in this case. His assessment was that Porcupine Area Ambulance Service [(1974) , 7 L.A.C. (2d) 182 (Beatty)], was the critical decision and was among the first cases to require that just cause must mean in probationary discharge cases that "any decision as to suitability must be grounded in legitimate expectations of the employer and not standards that are unreasonable or extraneous to the requirements of the job". His discussion focussed on the unreasonable nature

of the evaluation in this instance contrary to Porcupine.

7. Jones and The Queen in Right of the Province of New Brunswick (1980), 27 L.A.C. (2d) (Kuttner) 184-201. 34 N.B.R. (2d) Q.B. vard 34 N.B.R. (2d) 211, (CA), 36 N.B.R. (2d) 359.

This case is cited at least 14 times in Brown and Beatty's discipline section, usually in relation to employee use of alcohol, or to intoxication in the workplace. It involves a principal who was also a probationary employee who was discharged for being intoxicated, for bringing disrespect to his office, and for conduct unbecoming a teacher. As in the above case, the standard of arbitral review of a probationary employee was the issue. Again Porcupine was reviewed. The arbitrator, after extensive analysis of extenuating circumstances, reinstated the employee because he had gone to such lengths to "recover from his illness". Certain conditions were mandated which included the grievor writing a number of letters of apology, and as well, a two month suspension, already served, was upheld.

The arbitration was convened pursuant to a collective agreement provision negotiated between the teachers and the Treasury Board under the terms of the Public Service Labour Relations Act. The arbitrator notes that the collective agreement does not provide a disciplinary regime for probationary employees different from that applied to other employees. In determining the issue, the arbitrator made a threefold inquiry: "(1) did the grievor engage in the conduct alleged? (2) was the conduct deserving of disciplinary action, and (3) was the offence serious enough to warrant the suspension and dismissal?"

The school board and the Treasury Board applied to the Court of Queen's Bench to quash the award. The Court granted the appeal, ruling that the decision had the effect of amending the collective agreement. The New Brunswick Teachers' Federation then took the case to the provincial Court of Appeal which ruled that in spite of a privative clause in the Public Service Labour Relations Act (section 101) to keep the courts out of arbitration, the adjudicator had failed to answer the central question remitted to him--namely; "Was there just cause for discipline?". Because of this error, "The award cannot stand... It appears that the adjudicator simply asked himself whether or not the penalty of discharge was in fact imposed and if so, whether that penalty was too severe." The decision was to remit the case back to the arbitrator for reconsideration but noted that the teacher was back at work and that perhaps the parties could review the situation.

8. Board of Education for the City of London, Ontario and (OSSTF) (1984), 14 L.A.C. (3d) 17-37 (Brandt).

The last case involves two suspensions--one teacher for two days and another for five days--because one had "borrowed" money from a school account and the other had "acquiesced in the borrowing". The school board charged the conduct was inconsistent with duties and responsibilities as teachers. The board further charged the arbitrator had no jurisdiction to rule because the Education Act sets out powers regarding teacher discipline, nothing on the matter exists in the collective agreement, and therefore, there is no violation of the agreement.

The OSSTF responded that the arbitrator could hear the case but that the school board's action was illegal because the board had failed to inform the two teachers of possible disciplinary action in meetings called to discuss the matter, and had failed to allow the teachers to make representations. Therefore, on the basis unfair treatment, and complete lack of due process, the school board lost its jurisdiction. The OSSTF case was also based on the fact that the Education Act and the School Board and Teachers' Collective Negotiation Act provided no authority to suspend without pay.

The arbitrator noted in his decision that the only provisions in the collective agreement which touched on teacher discipline were contained in "The Teachers' Personnel Manual", but because of Bill 100 s. 52 he had authority to rule on an issue where the collective agreement and the legislation was silent. With regard to the central issue of the "doctrine of fairness" he determined that "the fact remains that as a matter of law, the employment relationship is one of master and servant, and the rights, ...which describe that relationship must flow from the contract. In this case, the collective agreement did not offer the protection of fairness sought." He dismissed the grievance.

It is interesting to note that the teachers based their arguments on the B.C. decision in the Johnston and Ferry v Board of School Trustees, School District 35 Langley (1979), 12 B.C.L.R. 1 (BCSC). Support for the position that the teacher-employer relationship is not a master-servant relationship was found in that Langley decision. However, the arbitrator in this case determined that the Supreme Court decision in LaCarte which decided that it was the collective agreement which governs with regard to procedural protection, was the compelling authority.

APPENDIX C

LEGISLATIVE PROVISIONS CREATING THE LEGAL FRAMEWORK FOR TEACHER DISCIPLINE IN 1986

SCHOOL ACT SECTIONS: 1986

Section 107. Board may require teacher to undergo examination

(2). If a teacher or other employee, within 14 days from the date of receiving notice from the board requiring that an examination [for medical reasons] be taken, fails to take the examination, a board may summarily dismiss him.

(3) If the certificate submitted to the school medical officer shows that the physical, mental or emotional health of the person examined is such as to be injurious to the pupils of the school, the board shall suspend the person from his duties and not permit him to return to his duties until he delivers to the board a certificate signed by the school medical officer permitting his return,...

Section 119. Appointment and assignment of teachers

(2) Every appointment made by a board, except a probationary or temporary appointment made under the regulations, and every contract relating to it, shall be deemed to be continuing contract until terminated as provided in this Act; but no appointment made to fill a vacancy caused by the dismissal or termination of the contract of a teacher who, within 10 days from receiving the written notice of dismissal or termination, sends by registered mail to, or serves on, the board a copy of an appeal or request for review sent by him to the minister shall be deemed to be a continuing contract, unless the action of the board in dismissing that teacher or terminating his appointment is confirmed by a board of reference or review commission.

(3) A board may authorize the assignment of teachers under section 6 (1) (e) as
(a) principals, head teachers and vice principals; or
(b) school district supervisory personnel in the numbers and with the powers and duties prescribed by the regulations, and may, under section 120 transfer a teacher so assigned.

Section 120. Transfer of teachers

(1) Subject to section 121, a board may transfer a teacher from one assignment under section 6 (1) (e) to another at any time by giving at least 7 days' notice in writing to the teacher of the transfer.

(2) Within 7 days after receiving notice of the transfer, the teacher may request, in writing, a meeting with the board.

(3) The board shall, within 7 days after receipt of a request under subsection (2), grant the teacher a meeting with the district superintendent of schools and the board or the district superintendent of schools and a committee of the board, and shall not proceed with the transfer until after the meeting.

(4) If the board directs that the meeting shall be with a committee, it shall consider the committee report before proceeding with the transfer.

(5) If the salary of the teacher is to be decreased by the transfer, then the board may adjust the salary only at the beginning of the next school year.

(6) Transfers made under this section are not subject to the appeal or review provisions of this Act, but if the transfer is from an assignment referred to in section 119 (3), or to an assignment in a school other than the one to which the teacher is presently assigned, it may be reviewed by the minister, whose decision shall then be final and binding on the board and on the teacher, except as provided in subsection (9).

(7) A teacher who wishes the minister to review his transfer shall so request within 7 days of the day the teacher is advised by the board that it is proceeding with the transfer.

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

(9) Notwithstanding this Act or the regulations, a teacher transferred by a board may, if he does not wish to comply with the transfer order, resign immediately by notice in writing to the board.

Section 122. Suspensions or dismissals

(1) A board may at any time suspend a teacher with or without pay from the performance of his duties

(a) for misconduct, neglect of duty or refusal or neglect to obey a lawful order of the board; or

(b) where the teacher has been charged with a criminal offence and the board believes the circumstances created by it render it inadvisable for him to continue his duties.

(2) A board that has suspended a teacher shall

(a) appoint a date within 7 days of the suspension when the teacher shall have an opportunity of meeting with the district superintendent of schools and the board, or the district superintendent of schools and a committee of the board; and

(b) where the teacher is suspended under subsection (1) (a), within 7 days of the meeting, reinstate the teacher without loss of salary, or, after the notice required by the regulations, dismiss him on the same grounds on which he is suspended or take other action permitted by the regulations; or

(c) where the teacher is suspended under subsection (1) (b) and is acquitted of the charge or given an absolute discharge or conditional discharge, reinstate him forthwith after the later of

(i) the expiry of the appeal period, or

(ii) the expiry of the period for appealing from the last court to which an appeal from the decision is taken and in which he is acquitted or given an absolute or conditional discharge.

(3) Where a teacher is suspended under subsection (1) (b) and the teacher is convicted of the charge the board may, after the notice required by the regulations, dismiss him or take any other action that is permitted by the regulations after the later of

- (a) the expiry of the appeal period, or
- (b) the expiry of the period for appealing from the last court to which an appeal from the conviction is taken.

(4) Where a teacher is suspended without pay and is reinstated under subsection (2) (c), the board shall pay the teacher his salary for the period that he was suspended.

(5) Where a teacher is suspended without pay and is reinstated after being convicted, the board may pay a teacher his salary for part or all of the period that he was suspended.

(6) Where a teacher is suspended without pay under subsection (1) (a) and reinstated, the board

- (a) shall pay the teacher his salary from the date specified by
 - (i) the board of reference, where no appeal is taken, or
 - (ii) the last court to which an appeal from the board of reference is taken, and
- (b) shall pay the teacher his salary from the date of reinstatement where no order or decision is made respecting salary by
 - (i) the board of reference where no appeal is taken, or
 - (ii) the last court to which an appeal from the board of reference is taken.

(7) Where the board of reference orders that a teacher be reinstated, the board shall reinstate the teacher

- (a) in the case where no appeal is taken
 - (i) forthwith if the board does not specify any time, or
 - (ii) within the period of time that the board specifies, or
- (b) where an appeal is taken, at the time specified by the last court to which an appeal from the board of reference is taken.

Section 123. Termination of contracts.

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

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

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

Section 129. Appeals.

(1) Within 10 days after receipt of notice under section 122 (2), a teacher may appeal

under the regulations to the minister against a suspension for a period exceeding 10 days or a dismissal.

(2) The minister shall refer an appeal under subsection (1) to a board of reference consisting of 3 members appointed by the minister. The chairman shall be appointed from among the Law Society of British Columbia nominated by the Chief Justice of British Columbia; one member shall be appointed from among persons nominated by the executive of the British Columbia Teachers' Federation, and one member shall be appointed from among persons nominated by the executive of the British Columbia School Trustees Association.

(3) On the request of the minister, the Chief Justice of British Columbia and each executive shall within 14 days, notify the minister of the names of at least 2 persons nominated by him or by it for the purposes of this section.

(4) If the Chief Justice of British Columbia fails to notify the minister of his nominees, within the time limit in subsection (3), the minister shall appoint a suitable person as chairman.

(5) If either or both executives fail to notify the minister of their nominees within the time limit in subsection (3), the minister shall appoint suitable persons as members of the board of reference.

(6) A board of reference shall in accordance with the regulations consider an appeal referred to it and may allow or disallow the appeal or vary the decision made by the board under section 122 and make any order it considers appropriate in the circumstances.

(7) Either party to an appeal to a board of reference may, within 30 days of the decision of the board of reference, appeal the decision to the County Court or Supreme Court in accordance with their respective Rules; but no reinstatement under subsection (6) shall take place during the course of the appeal or a subsequent appeal from it.

(7.1) An appeal from a decision of the court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

(8) For the purposes of an appeal referred to it, a board of reference constituted under this section shall have the powers and privileges of a commissioner appointed under Part 2 of the *Inquiry Act* and sections 12, 15, and 16 of that Act apply to an appeal under this section.

(9) The expenses necessarily incurred by a board of reference under this section, and the allowances to and expenses of its members as the Lieutenant Governor in Council determines, shall be paid from money appropriated by the Legislature for that purpose.

(10) The expenses referred to in subsection (9) do not include the fees or expenses of the parties to the matter in dispute, or their counsel, agents or witnesses.

Section 130. Review of termination.

(1) Except in the case of a teacher on a probationary appointment, a teacher whose appointment or contract has been terminated by a board under section 123 of the Act may, within 10 days of receipt of notice of termination, and in accordance with the regulations, request the minister to direct that a review commission review the termination.

- (2) On receipt of a request under subsection (1), the minister shall direct the chairman of one of the review commissions established under the Act to proceed without delay with a review of the termination.
- (3) The review commission designated under subsection (2) shall, in accordance with the regulations, investigate and review the matters referred to it, and confirm or reverse the action of the board; and the decision of the review commission is final and binding on the teacher and the board.
- (4) Where a review commission directs that the action of the board be reversed, the board shall promptly reinstate the teacher.
- (5) The minister shall appoint, when required, the number of review commissions he considers necessary.
- (6) Each review commission shall consist of
- (a) a chairman appointed by the minister, from among persons qualified under paragraph
 - (b) within the 5 years immediately preceding the date of his appointment;
 - (b) 2 members appointed by the minister, one of whom shall be from among persons nominated by the executive of the British Columbia Teachers' Federation and one of whom shall be from among persons nominated by the executive of the British Columbia School Trustees Association, and each of whom shall be
 - (i) actively engaged in education in the Province, as evidenced by appointment to the staff of a board, college, provincial institute, university or some other educational institution or organization established under this Act, the *College and Institute Act* or the *University Act*; and
 - (ii) not a member of the staff of either the British Columbia Teachers' Federation or the British Columbia School Trustees Association.
- (7) Members, including the chairman, shall hold office at the pleasure of the minister.
- (8) If either party fails to notify the minister of its nominees within 14 days of receipt of his request for the names of nominees, or if both parties fail to notify the minister, the minister may appoint a suitable person as a member of the review commission on behalf of the party that failed to nominate a member.
- (9) A person employed by a board, a college council or a university who is appointed under this section shall be granted leave of absence with full salary to permit him to carry out his duties on the review commission, but the board, college council or university shall be reimbursed as provided in subsection (14).
- (10) To investigate the matters which it has under review, a review commission constituted under this section shall have the powers and privileges of a commissioner appointed under Part 2 of the *Inquiry Act*, and sections 12, 15, and 16 of that Act apply to a matter under review under this section.
- (11) The expenses necessarily incurred by a review commission under this section and the allowances to and other expenses of its members that the Lieutenant Governor in Council determines, shall be paid from money appropriated by the Legislature for that purpose.
- (12) The expenses referred to in subsection (11) do not include the fees or expenses of the parties to the matter under review, or their counsel, agents or witnesses.

(13) The minister may authorize payment to a member of a commission or review commission of an allowance in an amount and under the conditions specified by the minister.

(14) The Lieutenant Governor in Council shall reimburse a board, college council, university or other educational institution or organization from funds voted by the Legislature for the purpose, for the salary of a person appointed under subsection (6), for the period of leave of absence granted under subsection (9).

SCHOOL ACT REGULATIONS: 1986

Regulation 59. Teacher may be placed on probationary appointment

[119,123] (1) Without restricting the powers of a board to terminate the contract of or dismiss a teacher, the board may, during the first 9 months of a teachers' appointment, exclusive of

- (a) any leave of absence during or extending beyond those months, and
- (b) the months of July and August;

terminate his continuing contract and place him on a probationary appointment.

(2) Where a teacher is placed on a probationary appointment under subsection (1), a board shall give the teacher written notice to that effect, such notice to be issued only after consultation with the district superintendent of schools and consideration of any reports issued by the district superintendent of schools, or where the teacher is assigned to a school to which section 93 applies, by the district superintendent of schools and the principal.

Regulation 60. Term of probationary appointment.

[119] Unless cancelled pursuant to the provisions of section 61, a probationary appointment made pursuant to section 59 shall be effective until

- (a) the board, not less than 6 calendar months following the placement on probation, rescinds the probationary appointment; or
- (b) June 30 in the school year immediately following the school year in which the probationary appointment is made,

whichever occurs earlier, and shall then become a continuing contract pursuant to the Act.

Regulation 61. Cancellation of probationary appointment.

[119] A board may cancel a probationary appointment by giving 30 days' notice in writing, providing that the notice shall not be given during the first 30 days of the probationary appointment, and that there shall be at least 20 teaching days included in the notice period, such notice to be issued only after consultation with the district superintendent of schools and consideration of a report issued by the district superintendent of schools pursuant to section 6 of the Act, or where the teacher is

assigned to a school to which section 93 applied, consideration of reports by both the district superintendent of schools and the principal.

Regulation 62. Teacher has right to discuss but not appeal.

[119] A teacher who has received notice that his probationary appointment is cancelled has the right to discuss the reasons for the cancellation with the principal of his school and the district superintendent, and may, where the board so determines, be interviewed by the district superintendent and the board or the district superintendent and a committee of the board, but the right of appeal or review, as provided in sections 129 and 130 of the Act, does not apply with respect to the cancellation of a probationary appointment pursuant to section 61.

Regulation 63. Teacher may be accompanied.

[119] A teacher may be accompanied by another teacher or by a member of the staff of the British Columbia Teachers' Federation, who may represent him or advise him, during an interview referred to in section 62.

Regulation 65. Board may terminate continuing contract.

[119, 123] Except as provided in section 59, a board may terminate a continuing contract under section 123 of the Act, and may recommend to the minister the suspension or cancellation of the certificate of that teacher, only after receipt by the board of at least 3 reports indicating that the learning situation in the class or classes of the teacher is less than satisfactory, or, where a teacher is assigned pursuant to section 119 (3) of the Act, indicating that the performance of the teacher in carrying out his administrative or supervisory duties is less than satisfactory, issued in accordance with the following:

- (a) the 3 reports shall have been issued in a period of not less than 12 or more than 24 months, except as provided in paragraph (e);
- (b) at least one of the reports shall be a report of a district superintendent of schools, a superintendent of schools, or an assistant superintendent of schools;
- (c) the other 2 reports shall include only reports of
 - (i) a district superintendent of schools, a superintendent of schools, or and assistant superintendent of schools;
 - (ii) a director of instruction, the reports to be issued in accordance with this regulation;
 - (iii) the principal of a school to which the teacher is assigned, provided that section 93 is applicable to that school and that the reports were issued in accordance with this regulation;
- (d) where more than one of the 3 reports is written by the same person, at least 6 months shall have elapsed between the writing of the first and the final report by that person;
- (e) (i) where the board has, after the receipt of one or more such reports, recommended to the teacher, and the teacher has accepted the recommendation, that the teacher undertake an agreed program of professional or academic instruction, or both, the remaining report or reports shall be based on inspection of the learning situation or other duties of the teacher not less than 3, or more than 6, months after the teacher has returned to his duties and each report shall be issued within 2 weeks of the inspection;

Regulation 66. Suspensions and dismissals.

[122] (10 Where a board suspends a teacher under section 122 of the Act, it shall send,

by registered mail addressed to the teacher at his last known address, a notice of suspension, and shall state therein the grounds for the suspension.

(2) Where a board dismisses a teacher under section 122 of the Act, it shall send, by registered mail addressed to the teacher at his last known address, a notice of dismissal that shall be effective not longer than 30 days following the date that the notice is mailed.

(3) Where a board has suspended a teacher under section 122 (1) (a) of the Act it may, within 7 days of the interview under subsection 2 (a), direct that the teacher
(a) be further suspended for such period of time as the board may decide, terminating not later than the end of the term next following the term during which the teacher was suspended, and may also direct that there shall be partial or complete loss of salary and benefits during all or part of the past or future part of the suspension, or both; or
(b) be reinstated immediately subject to the loss of salary and benefits for any portion or all of the period of suspension,
and the teacher shall, unless he resigns in accordance with the provisions of the Act, resume his regular duties at the end of the period of suspension.

Regulation 67. Section 122 of the Act to apply.

[122] The provisions of section 122 of the Act for suspension and dismissal apply to every teacher, whether on probationary or temporary appointment, or continuing contract.

Regulation 68. Requests for review to be made in writing.

[129,130] All requests for appeal or review shall be made in writing, with copies to the board concerned.

Regulation 69. Registered mail to be used.

[129, 130] All requests for appeal or review and any other correspondence connected with such action shall be transmitted by registered mail.

Regulation 70. Minister to notify board.

[129,130] Upon receipt of a request for an appeal or review, the minister shall notify the board concerned, and the board shall, within 5 days of the receipt of the notice, deliver to the minister a full statement of the reasons for the notice of dismissal or termination of contract, and shall at the same time provide the teacher with a copy.

Regulation 71. Board to file reports.

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

Regulation 72. Teacher may be accompanied at proceedings.

[129,130] At any proceeding before a board of reference a teacher may be accompanied

or represented by counsel.

(2) At any proceeding before a review commission a teacher may be accompanied by another teacher or by a member of the staff of the British Columbia Teachers' Federation, who may represent him or advise him.

(3) At any proceeding before either a board or reference or a review commission, a teacher and the board, or their respective representatives, may be present during all presentations to the board or commission.

Regulation 73. Time limit on decision.

(1) A board of reference or a review commission shall, subject to subsection (2), make its decision within 30 days after the minister refers an appeal or directs a review, as the case may be.

(2) Where a board or commission does not make a decision within the time set out in subsection (1), the chairman of the board or commission shall notify the minister of the reason for the delay and the minister may extend the period for making the decision or order that the decision be made immediately.

Regulation 74. Notification of decision.

[129, 130] The chairman of a board of reference or review commission shall within 3 days of reaching a decision, notify the teacher, the board, and the ministry of the decision of the board of reference or review commission, and shall forward to the ministry the documents or certified copies thereof examined by the board of reference or review commission.

Regulation 75. Minister to retain documents.

[129,130] The minister shall retain for not less than 60 days all documents or certified copies thereof forwarded to him by the chairman of a board of reference or review commission.

Regulation 76. Board may make temporary appointment.

[119] A board may appoint a teacher

(a) for a period not exceeding one year, to any position temporarily existing or temporarily vacant;

(b) for a period not exceeding the remainder of the existing school year, to any position which has become vacant during a school year,

by giving notice in writing stating that it is a temporary appointment, specifying the period of its duration, and indicating the salary or the method by which the salary shall be determined.

Regulation 77. Termination of temporary appointment.

[119] At the expiration of the period specified in the notice, a temporary appointment shall be deemed to be terminated.

Regulation 78. Renewal of temporary appointment.

[119] The board of a school district, may, with the approval of the ministry, renew a temporary appointment for one or more successive periods, each not exceeding one year's duration, where the renewal of the temporary appointment is to fill a vacancy caused by the absence of a teacher who has been granted leave of absence pursuant to section 125 (1) of the Act.

Regulation 93. Preparation of teacher assessment report.

A principal of a school or schools who is provided with time for the supervision of instruction during which he is not instructing pupils

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

Regulation 94. Content of teacher assessment report.

Reports made under section 93 shall

- (a) be based on a number of supervisory visits to the classroom of the teacher as well as on the general work of the teacher in that school;
- (b) be completed and filed on or before the last school day in April;
- (c) be made in quadruplicate;
- (d) contain an assessment of the learning situation in the teacher's classes and such recommendations for improvement therein as he may consider necessary;
- (e) contain a statement that, in the opinion of the principal, the learning situation is satisfactory or less than satisfactory.

In addition to the above provisions of the School Act and Regulations of 1986, a number of other provisions not cited here are indirectly related to the matter of teacher discipline: Section 148 and Regulations 83, 88 and 89 outline the duties of teachers, Regulation 84 specifies those conditions in which a teacher is permitted to be absent (for illness only), Regulations 85 and 86 prescribe the hours when a teacher must be on school premises, and Regulation 87 requires attendance at all meetings called by the principal or superintendent. Therefore, violations of such provisions can lead to disciplinary action.

JUDICIAL REVIEW PROCEDURE ACT **(excerpts)**

Section 2. Application for judicial review

- (1) An application for judicial review shall be an originating application and shall be brought by petition.
- (2) On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for
 - (a) relief in the nature of mandamus, prohibition or certiorari;
 - (b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

Section 3. Error of law

The power of the court to set aside a decision because of error of law on the face of the record on an application for relief in the nature of certiorari is extended so that it applies to an application for judicial review in relation to a decision made in the exercise of a statutory power of decision to the extent it is not limited or precluded by the enactment conferring the power of decision.

Section 5. Power to remit

- (1) On an application for judicial review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision, the court may direct the tribunal whose act or omission is the subject matter of the application to reconsider and determine, either generally or in respect of a specified matter, the whole or any part of a matter to which the application for judicial review relates.
- (2) In giving a direction under subsection (1), the court shall
 - (a) advise the tribunal of its reasons; and
 - (b) give it such directions as it thinks appropriate as to the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

Section 7. Power to set aside

Where an applicant is entitled to a declaration that a decision made in the exercise of a statutory power of decision is unauthorized or otherwise invalid, the court may, instead of making a declaration, set aside the decision.

APPENDIX D

PROVISIONS GOVERNING THE LEGISLATIVE FRAMEWORK RELATING TO TEACHER DISCIPLINE DURING THE BILL 20 INTERIM PERIOD

Section 107. Board may require teacher to undergo examination.

This section was amended to add a reference to "administrative officers" only.

Section 119. Appointment and assignment of teachers.

Section 119 (2) (3) and (4) were repealed and replaced by the following new sections:

(2) Every appointment made by a board, except a probationary or temporary appointment made under the regulations, and every contract of employment made for that purpose with a teacher shall be deemed to be a continuing contract until

- (a) the teacher has been dismissed under section 122 or 122.1,
- (b) the contract has been terminated as provided in this Act, or
- (c) the teacher ceases to be a member of the college.

(3) A board may authorize the assignment of teachers under section 6 (1) (e) as head teachers or school district supervisory personnel with the powers and duties prescribed by the regulations.

(4) Notwithstanding any other agreement to the contrary, the terms and conditions of a contract of employment between a board and a teacher shall be

- (a) the provisions of this Act and the regulations,
- (b) the terms and conditions, not inconsistent with paragraph (a), of an agreement between the board and the association of teachers in the school district authorized to act on their behalf or certified as their bargaining agent under the *Industrial Relations Act* and
- (c) the terms and conditions, not inconsistent with paragraphs (a) and (b), agreed between the board and the teacher,

and a provision of any agreement or contract excluding or purporting to exclude the provisions of paragraphs (a) and (b) is void.

Section 120. Transfer of teachers.

All nine subsections of section 120 were repealed and a new section was worded:

120. A board may reassign a teacher to a different position or a different school by giving at least 7 days notice in writing of the reassignment to the teacher.

A new section 120.1 outlined provisions governing the appointment and reassignment of administrative officers.

Bill 20 completely repealed Sections 122, 123, 129, and 130 of the School Act and replaced those sections with the following:

Section 122. Suspensions or dismissals

- (1) A board may dismiss or discipline a teacher for just and reasonable cause.
- (2) Where a board dismisses or disciplines a teacher whose employment is the subject of a collective agreement under the *Industrial Relations Act*, the grievance provisions of the collective agreement and Part 6 of the *Industrial Relations Act*, where applicable, apply to the dismissal or disciplinary action.
- (3) Where a board dismisses a teacher whose employment is the subject of an agreement referred to in section 131. 1 (1) between a board and an association, the grievance provisions of that agreement apply to the dismissal or disciplinary action.
- (4) Where
 - (a) an agreement referred to in subsection (3) does not contain provisions dealing with grievance procedures to be followed where a teacher is dismissed or disciplined, or
 - (b) the teacher who is dismissed is not bound by either a collective agreement under the *Industrial Relations Act* or an agreement referred to in subsection (3),the teacher may, within 20 days after being notified, apply to the minister for an investigation of the dismissal or disciplinary action by a board of reference appointed under section 122.6 and shall notify the school board of the application.

122.1. Unsatisfactory performance

- (1) Where a board considers that the learning situation in a class or classes of a teacher is less than satisfactory, the board may
 - (a) dismiss the teacher, or
 - (b) order the teacher to take remedial action that the board considers necessary or advisable.
- (2) A teacher who is the subject of an action by a board under subsection (1) has the same rights with respect to that action as though he were dismissed or disciplined under section 122 (1), and sections 122 (2) to (4) apply, except that the references to dismissal or disciplinary action apply as though they were references to the dismissal or remedial action.

122.2. Suspensions where teacher charged with criminal offence.

- (1) Where a teacher has been charged with a criminal offence and the board believes that the circumstances created by it render it inadvisable for the teacher to continue his duties, the board may suspend the teacher with or without pay.
- (2) A teacher who is the subject of an action by a board under subsection (1) has the same rights with respect to that action as though he were dismissed or disciplined under section 122 (1), and sections 122 (2) to (4) apply as though the references to dismissal or disciplinary action were references to the suspension.

- (3) Where a teacher is suspended under subsection (1) and the criminal proceedings have concluded, the board may
- (a) reinstate the teacher without loss of salary, or
 - (b) take action under section 122 (1).

122.3 Temporary suspension.

- (1) Where a board considers that the presence of a teacher in a school would be dangerous or harmful to the pupils, the board may suspend the teacher with or without pay.
- (2) Where a board suspends a teacher under subsection (1), it shall inform the teacher in writing of the reasons for the suspension and shall appoint a day after that on which the teacher may meet with
- (a) the board and the district superintendent of schools, or
 - (b) a committee of the board and the district superintendent of schools.
- (3) The day appointed under subsection (2) shall not be later than 7 days after the day on which the suspension of the teacher takes effect.
- (4) Where a teacher is suspended under subsection (1), the board shall, within 7 days after the day appointed under subsection (3),
- (a) reinstate the teacher without loss of salary, or
 - (b) take action under section 122 (1).
- (5) The board and the teacher may agree to extend the 7 day period in subsection (4).
- (6) The power of a board to dismiss or discipline a teacher pursuant to subsection (4) (b) is not exercisable on grounds other than the grounds on which the teacher was suspended under subsection (1).
- (7) A teacher who has been suspended under subsection (1) has the same rights with respect to the suspension as though he were dismissed or disciplined under section 122 (1), and sections 122 (2) to (4) apply as though the references to dismissal or disciplinary action were references to the suspension.

122.6 Board of reference.

- (1) On reference from a teacher of an application for an investigation under section 122 (4) of action taken by a board under sections 122 to 122.3, the minister shall appoint a board of reference consisting of
- (a) one person nominated by the teacher,
 - (b) one person nominated by the school board, and
 - (c) one person nominated jointly by the teacher and the school board or, failing such joint nomination, one person nominated in accordance with subsection (3), who shall be chairman of the board of reference,
- but no person nominated pursuant to this subsection shall be a member of the school board which is a party to the investigation.
- (2) A nomination made under subsection (1) shall be made to the minister within 10 days after the receipt by him of the application for an investigation, and the person or persons

who are nominated at that time shall, in addition to any person who may subsequently be nominated under subsection (3), constitute the board of reference and shall exercise its powers.

(3) Where no joint nomination is received by the minister pursuant to subsection (1) (c) within the 10 day period mentioned in subsection (2), the minister shall, within a further 5 days, nominate a person who shall be chairman of the board of reference.

122.7 Investigation by board of reference.

(1) The board of reference appointed under section 122.6 shall hold an investigation and make its decision within 30 days after the appointment of the chairman, or within a further period the minister allows.

(2) The chairman of the board of reference shall give at least 10 clear day's notice to each party of the time and place of the investigation.

(3) The teacher and the school board may be represented by counsel at the investigation.

(4) The scope of the investigation and the findings of the board of reference shall be limited to the reasons given in the written notice of termination of the contract of employment or suspension.

(5) The board of reference may, for the purpose of procuring the attendance of a person as a witness, serve that person with a notice requiring him to attend before the board of reference, and the notice shall be served in the same manner and have the same effect as a subpoena requiring the attendance of a witness and the production by him of documents at the hearing or trial of an action, but no such person shall be required under the notice to produce any document that he could not be compelled to produce on the trial of an action in a court of law.

(6) The board of reference may take evidence under oath, and any member of that board may administer oaths to the parties and to the witnesses.

(7) The board of reference shall make provision for and keep such record of the proceedings of the investigation as it considers necessary.

(8) All questions brought before a board of reference shall be decided by a majority vote of its members and the chairman has the right to vote, and in the case of an equality of votes the chairman has a casting vote.

(9) The board of reference may confirm the action taken by the board of the school district, or

(a) in respect of a dismissal for just and reasonable cause under section 122 (1), order the school board to reinstate the teacher with or without payment of all or part of the salary lost during the period before the reinstatement,

(b) in respect of disciplinary action taken under section 122 (1), determine that the disciplinary action is excessive in all circumstances of the case and impose a lesser penalty,

(c) in respect of a dismissal under section 122.1, order the school board to reinstate the teacher with or without payment of all or part of the salary lost during the period before the reinstatement,

(d) in respect of a suspension under section 122.2, order the cancellation of the suspension with or without payment of all or part of the salary lost during the period of the

suspension, and

(e) in respect of a suspension under section 122.3, order the school board to make payment of all or part of the salary lost during the period of suspension.

(10) The decision of the board of reference is final, and any order or confirmation given under subsection (9) is final and binding.

(11) A certified copy of the decision of a board of reference under subsection (9) shall be filed within 14 days in the office of a local registrar of the Supreme Court and is then enforceable as a judgment or order of that court in the same manner as any other judgment or order of that court.

(12) Each of the parties to an investigation by a board of reference shall pay

(a) his or its own expenses and costs, and

(b) the fees and expenses of a member of the board of reference nominated by him or it.

126. Report of dismissal, etc.

(1) Where a board dismisses or disciplines a teacher or an administrative officer it shall, without delay, report it to the ministry and the council of the college, giving reasons.

(2) Where a teacher resigns, the board shall inform the council of the college of the circumstances of the resignation where the board considers that it is in the public interest to do so.

CHANGES IN REGULATIONS: (effective January 1, 1988).

In addition to changes in sections of the School Act, many of the Regulations were repealed by cabinet in October of 1988 to become effective January 1, 1988 to coincide with the coming into effect of the Bill 20 provisions relating to teacher discipline.

These Regulations remained unchanged: Regulations 59, 60, 61, 76, and 77.

Regulations 62, 63, 65, 67, 68, 69, 70, 71, 72, 73, 78 and 94 were all repealed on January 1, 1988.

Regulations 66, 74, 75 and 93 were revised as follows:

Regulation 66:

(1) Subject to the Act and regulations, suspensions or dismissals in a school district shall be given effect under the Act through policies and procedures established by agreement between the board of the school district and the association of teachers authorized to act on behalf of the teachers in the school district or certified as their bargaining agent under the *Industrial Relations Act*

(2) Where no agreement described in subsection (1) is in effect, suspensions or dismissals in the school district shall, subject to the Act and regulations, be given effect under the Act through policy and procedures established by the board of the school district.

Regulation 74:

The chairman of a board of reference shall, within 3 days of reaching a decision, notify the teacher, the board, and the ministry of the decision of the board of reference, and shall forward to the ministry the documents or certified copies thereof examined by the board of reference.

Regulation 75:

The minister shall retain for not less than 60 days all documents or certified copies thereof forwarded to him by the chairman of a board of reference.

Regulation 93:

The district superintendent of schools, the superintendent of schools, an assistant superintendent or an administrative officer may at any time write a report of the work of a teacher and the learning situation in the teacher's class and, within 6 months of a request of the college established under the Teaching Profession Act, shall deliver to the college such a report.

APPENDIX E

LEGISLATIVE PROVISIONS GOVERNING TEACHER DISCIPLINE SINCE 1989

NEW SCHOOL ACT PROVISIONS, SEPTEMBER, 1989

In December of 1989 the Ministry of Education provided a new "Manual of School Law" "reflecting the new legislation which became effective September 1, 1989". Those few remaining sections of the Act relating to teacher discipline are contained below.

Section 15. Employees.

- (1) A board may employ and is responsible for the management of those persons that the board considers necessary for the conduct of its operation.
- (2) A board shall formulate policies for evaluating employees who are not covered by a collective agreement.
- (3) Subject to subsections (4) and (5), a board shall not dismiss, suspend or otherwise discipline an employee covered by a collective agreement or an agreement with an association except for just and reasonable cause.
- (4) A board may suspend from the performance of his or her duties an employee who is charged with an offence that the board considers renders the employee unsuitable to perform those duties.
- (5) If the superintendent of schools is of the opinion that the welfare of the students is threatened by the presence of an employee, the superintendent may suspend the employee, with pay, from the performance of his or her duties.
- (6) When the superintendent suspends an employee under subsection (5), the superintendent shall immediately notify the board.
- (7) When the board is notified under subsection (6), it shall as soon as practicable confirm, vary or revoke the suspension and shall, where the board confirms and continues the suspension, determine if the continuation of the suspension shall be with or without pay.

Section 16. Report of dismissal

- (1) If a board dismisses, suspends or otherwise disciplines a member of the college it shall without delay report the dismissal, suspension or disciplinary action to the council of the college, giving reasons, and shall send a copy of the report to the member.
- (2) If a member of the college resigns, the board shall without delay report the circumstances of the resignation to the council of the college where the board considers that it is in the public interest to do so and shall send a copy of the report to the member.

Section 27. Scope of bargaining.

A teachers' union or an association may, on matters in respect of which a board has been given power or discretion under this Act or the regulations, enter into a collective agreement or an agreement with a board containing provisions respecting (a) the manner in which the power or the discretion may be exercised, and (b) the consequences that flow from the exercise of the power or discretion, but where this Act or the regulations contain express provisions respecting any matter referred to in paragraphs (a) and (b), those express provisions prevail over the collective agreement or agreement with the board in the event of conflict.

Section 28, Application of Industrial Relations Act.

(1) If there is a conflict between the Industrial Relations Act or the application of the Industrial Relations Act to teachers and this Act, this Act prevails, ...

In addition to the above sections 15, 16, 27, and 28, the School Act also contains elaborate "Board of reference" provisions (sections 36 and 37) for those teachers not covered by a collective agreement. However, these sections do not apply to any teacher and are not included here.

SECTIONS OF THE INDUSTRIAL RELATIONS ACT

Section 7. Duty of fair representation

(1) A trade union or council of trade unions shall not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employees in an appropriate bargaining unit, whether or not they are members of the trade union or of a constituent union of the council of trade unions,

Part 6 Arbitration Procedures (excerpts)

Section 92. Interpretation

(1) In this Part "arbitration board" includes

(a) a single arbitrator; or

(b) another tribunal or body appointed or constituted under this Part or a collective agreement;

"issue", in respect of an award, means make and publish to the parties to the arbitration,

(2) It is the intent and purpose of this Part to constitute method and procedure for determining grievances and resolving disputes under the provisions of a collective

agreement without resort to stoppages of work.

(3) An arbitration board, to further the intent and purpose expressed in subsection (2), shall have regard to the real substance of the matters in dispute and the respective merit of the positions of the parties to it under the terms of the collective agreement, and shall apply principles consistent with the industrial relations policy of this Act, and is not bound by a strict legal interpretation of the issue in dispute.

Section 93. Dismissal or arbitration provision.

(1) Every collective agreement shall contain a provision governing dismissal or discipline of an employee bound by the agreement, and that or another provision shall require that the employer have a just and reasonable cause for dismissal or discipline of an employee; but this section shall not prohibit the parties to a collective agreement from including in it a different provision for employment or certain employees on a probationary basis.

(2) Every collective agreement shall contain a provision for final and conclusive settlement without stoppage of work, by arbitration or another method agreed to by the parties, of all disputes between the persons bound by the agreement respecting its interpretation, application, operation or alleged violation, including a question as to whether a matter is arbitrable.

(3) Where a collective agreement does not contain a provision referred to in subsections (1) and (2), it is deemed to contain those of the following provisions it does not contain:

- (a) the employer shall not dismiss or discipline an employee bound by this agreement except for just and reasonable cause;
- (b) where a difference arises between the parties relating to the dismissal or discipline of an employee, or to the interpretation, application operation or alleged violation of this agreement, including a question as to whether a matter is arbitrable, either of the parties, without stoppage of work, may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference to arbitration, and the parties shall agree on a single arbitrator, the arbitrator shall hear and determine the difference and issue a decision, which is final and binding on the parties and any person affected by it.

Section 94. Unworkable provision.

Where in the minister's opinion a part of the arbitration provision in a collective agreement, including the method of appointing the arbitration board, is inadequate, or the provision set out in section 93 (3) (b) is alleged by either party to be unsuitable, the minister may at the request of either party modify the provision so long as it conforms with section 93 (1) and (2). Until so modified, the arbitration provision in the collective agreement, or in section 93 (3) (b), as the case may be, applies.

Section 95. Failure to appoint arbitrators

(1) Notwithstanding section 94, where there is failure to appoint or constitute an arbitration board under a collective agreement or under section 93 (3), the minister, at the request of either party, shall make the appointments necessary to constitute an arbitration board, and a person so appointed by the minister shall be deemed appointed in accordance with the collective agreement, or under section 93 (3), as the case may be.

(2) Nothing in a collective agreement shall be construed as requiring the minister to constitute an arbitration board consisting of more than a single arbitrator.

Section 96. Referral to officer or board.

(1) Notwithstanding the provision required or prescribed under section 93 or 94,
(a) if at any time prior to the appointment of an arbitration board or other body, either party to the collective agreement requests the council in writing to appoint an officer to confer with the parties to assist them to settle the difference, and the request is accompanied by a statement of the difference to be settled, the council may
(i) appoint that officer; or
(ii) proceed as provided in paragraph (c);
(b) where an officer is appointed under paragraph (a), the officer shall after conferring with the parties, report to the council;
(c) where the council decides, under paragraph (a) (ii) to proceed under this paragraph, or the officer's report is made under paragraph (b), the council may, if it believes the difference, when referred to the council is arbitrable,
(i) refer the difference back to the parties; or
(ii) inquire into the difference, and after the inquiry it considers adequate, make an order for final and conclusive settlement of the difference;
(d) where the council refers the difference back to the parties under paragraph (c) (i), the parties shall follow the procedure in the provision required or prescribed under section 93 for final and conclusive settlement of the difference;
(e) where the council
(i) inquires into the difference under paragraph (c) (ii); or
(ii) advises the parties that in its opinion the difference is not arbitrable, neither the Arbitration Act nor any other procedure for settlement of the difference applies; and
(f) where the council inquires into the difference under paragraph (c) (ii), it may exercise all the powers of an arbitration board under this Part, and its order for final and conclusive settlement of the difference is final and binding on the parties and persons bound by the collective agreement, and all those parties and persons shall comply with the order.

(2) Parties to a collective agreement may at any time, by written agreement, specifically exclude the operation of subsection (1), and in that event subsection (1) does not apply during the term of the collective agreement.

Section 97. Action by board.

Where a difference arises during the term of a collective agreement, and in the council's opinion delay has occurred in settling it or it is a source of industrial unrest between the parties, the council may, on application by either party to the difference, or on its own motion,

(a) inquire into the difference, and make recommendations for settlement; and
(b) where the difference is arbitrable, order that it be immediately submitted to a specified stage or step in the grievance procedure under the collective agreement; or
(c) whether the difference is arbitrable or not, request the minister to appoint a special officer.

Section 98. Authority of arbitration.

For the purposes set out in section 92, an arbitration board has the authority necessary to provide a final and conclusive settlement of a dispute arising under a collective agreement, and without limiting the generality of the foregoing, has authority to

- (a) make an order fixing and determining the monetary value of an injury or loss suffered by an employer, trade union or other person as a result of a contravention of a collective agreement, and directing a person to pay a person all or part of the amount of that monetary value;
- (b) order an employer to reinstate an employee dismissed in contravention of a collective agreement;
- (c) order an employer or trade union to rescind and rectify a disciplinary action taken in respect of an employee that was imposed in contravention of a collective agreement.
- (d) determine that a dismissal or discipline is excessive in all circumstances of the case and substitute other measures that appear just and equitable;
- (e) relieve, on just and reasonable terms, against breaches of time limits or other procedural requirements set out in the collective agreement;
- (f) dismiss or reject an application or grievance, or refuse to settle a difference, where in the arbitration board's opinion, there has been unreasonable delay by the person bringing the application or grievance, or requesting the settlement, and the delay has operated to the prejudice or detriment of the other party to the difference; and
- (g) interpret and apply any Act intended to regulate the employment relationship of the persons bound by a collective agreement, notwithstanding that its provisions conflict with the terms of the collective agreement.

Section 101. Powers of arbitration board.

An arbitration board has power to

- (a) receive and accept evidence and information on oath, affidavit or otherwise as in its discretion it considers proper, whether or not the evidence is admissible in a court of law;
- (b) enter during regular working hours any land, ship, vessel, vehicle, aircraft or other means of conveyance or transport, factory, workshop or place of any kind where
 - (i) work is or has been done or commenced by employees;
 - (ii) an employer carries on business; or
 - (iii) anything is taking place concerning a matter referred to it under this Act,and may inspect any work, material, appliance, machinery, equipment or thing in it, and interrogate a person in relation to it; and
- (c) authorize a person to do anything the arbitration board may do under paragraph (b) and report to the arbitration board in the presence of the parties or their representatives as a witness subject to cross examination by each party.

Section 102. Summons to testify.

(1) An arbitration board may, at the request of a party to the arbitration or on its own motion, summon and enforce the attendance of witnesses and compel them to give evidence on oath and to produce the documents and things it considers requisite to a full consideration of matters before the arbitration board, in the same manner as a court of record in civil cases.

(2) Where an arbitration board consists of more than one person, the chairman of the

arbitration board may exercise all the authority of the arbitration board under subsection (1).

Section 104. Decision of arbitration board.

The decision of an arbitration board is binding

(a) on the parties;

.....

(d) on the employees bound by the collective agreement who are affected by the decision, and they shall comply in all respects with the decision.

Section 105. Filing decision.

An arbitration board shall, within 10 days of issuing an award, file a copy of it with the minister at the Parliament Buildings, Victoria, British Columbia, and the award shall be available for public inspection.

Section 108. Appeal jurisdiction of Industrial Relations Council.

(1) On application by a party affected by the decision or award of an arbitration board, the council may set aside the award, remit the matters referred back to the arbitration board, stay the proceedings before the arbitration board, or substitute the decision or award of the council for the decision or award of the arbitration board, on the ground that

(a) a party to the arbitration has been or is likely to be denied a fair hearing; or

(b) that the decision or award of the arbitration board is inconsistent with the principles expressed or implied in this Act dealing with labour relation.

Section 109. Decision final.

(1) On application by a party affected by a decision or award of an arbitration board, the Court of Appeal may review the decision or award where the basis of the decision or award is a matter or issue of the general law not included in section 108 (1).

(3) Except as provided in the Part, the decision or award of an arbitration board under this Act is final and conclusive and is not open to question or review in a court on any grounds whatsoever, and no proceedings by or before an arbitration board shall be restrained by injunction, prohibition or other process or proceeding in a court or be removable by certiorari or otherwise into a court.

Section 112. Share of cost of grievance recommendations.

Where a collective agreement contains the following provision:

Where a difference arises between the parties relating to the dismissal, discipline or

suspension of an employee, or to the interpretation, application, operation or alleged violation of this agreement, including any question as to whether a matter is arbitrable, during the term of the collective agreement [insert name], or substitute agreed to by the parties, shall at the request of either party

(a) investigate the difference;

(b) define the issue in the difference; and

(c) make written recommendations to resolve the difference

within 5 days of the date of receipt of the request; and, for those 5 days from that date, time does not run in respect of the grievance procedure.

the Minister of Finance, on the minister's requisition, shall pay out of the consolidated revenue fund 1/3 of the cost incurred by the parties for payment of reasonable remuneration, travelling and out of pocket expenses of the person named or his substitute.

APPENDIX F

QUESTIONS USED IN INTERVIEWS WITH DES GRADY AND RALPH SUNDBY

1. Were you (or TSP) the main or first line of contact for a teacher anywhere in the province who had just had some form of employer-initiated disciplinary action taken against him or her? or What did teachers normally do, as a first step, in the case of disciplinary action?
2. Were there some forms of disciplinary action for which you had to tell teachers there was nothing the BCTF could do? Under what circumstances did this happen?
3. The legislation provided that disciplinary action in the form of a suspension "exceeding 10 days or a dismissal" could be appealed. Were there really no accepted or recognized forms of appeal for suspensions of less than 10 days, or for letters of reprimand, etc.?
4. How often did boards discipline teachers with suspensions of 10 days or less? What exactly did the BCTF do in such cases?
5. Can you think of teacher discipline cases where the BCTF became involved in political actions, or legal action pursuant to the Judicial Review Procedure Act, or both, as in the Steve Cardwell case, to seek redress for what the BCTF considered to be unjust disciplinary action that could not be appealed under those appeal provisions in the School Act? Where do you suggest I look to find information on such cases?
6. About how many cases did the BCTF take to the courts under the provisions of the Judicial Review Procedure Act? (Johnston and Ferry, Thomas Young, Steve Cardwell, Barbara Haight (1988), others?) When did the BCTF first try that method of appealing school board discipline actions? Was the 1979 Johnston and Ferry case the first?
7. Teacher transfers: With regard to teacher transfers, how did teachers go about requesting from the minister, reviews of transfers they did not like? Did the minister ever agree to hear an appeal from a teacher who had received a forced transfer? What process did the minister use to hear such appeals?
8. Did the minister ever overturn a teacher transfer? How many forced teacher transfers were overturned by the minister in your memory? How often were transfers disciplinary in nature, in your opinion? Teachers had the option of resigning if they did not like the transfer. Do you recall teachers resigning for such a reason?
9. Do you recall any teacher dismissal pursuant to section 107--failure to take a medical examination?
10. What comes to mind as the main differences between a board of reference and a review commission? Is it true that there was no appeal possible from review commission

decisions? (The legislation indicates this is the case.)

11. The BCTF and the BCSTA were both to be involved, according to the old School Act, in selecting nominees to sit on boards of reference and review commissions. Who was nominated? or What kinds of people were normally selected for each body? Lawyers? Teachers? University professors? etc.? Who actually did the nominating? You? Henry Armstrong? Were the names always put before the BCTF executive for approval? How did the Chief Justice select chairman? Were the same people regularly selected?

12. Did teachers ever apply too late to have an appeal? (Section 129 and 130 gave the teacher 10 days to appeal.) What was done when the 10 days had run out?

15. The old legislation provided that the costs of boards of reference and review commissions would (or could) be paid by government. How were the costs of these bodies actually funded? Did the government actually pay all or part of the costs?

13. School Board Hearings: What kind of due process could you expect would be given a teacher in the school board hearing required by sections 120, 122 and 123? A section 123 termination or a section 120 transfer allows for representation at such a hearing, but a section 122 action does not even provide for that. In any hearing there was no legislative requirement that the full case against the teacher be heard, that witnesses could be called by the teacher, or that the teacher could cross examine those providing evidence against the teacher. Were there due process problems related to these hearings? How did teachers or the BCTF deal with such problems?

14. Were there any due process problems at the actual board of reference or review commission hearings?

15. Probationary Appointments: How often were teachers placed on probation? Were such placements disciplinary? What, if anything did the BCTF do to respond to such placements?

APPENDIX G

BOARD OF REFERENCE CASES IN BRIEF

1. Robert F. Sheward v Board of School Trustees, School District No. 22 Vernon (1961).; Board of Reference: Harold W. Tupper, Chairman, Ian D. Boyd, Frank Venables

John Davies, counsel for the teacher

J.R. Kidston, counsel for the Board

Frank Wilson, counsel for the Principal and Vice Principal

Facts of the case: Sheward, a junior secondary teacher at Lumby, B.C., was suspended indefinitely in the spring of 1961, on the grounds of misconduct for making public statements and involving students of his school in his own investigation into what he alleged was immoral conduct of the administrators in his school. Testimony of the school's janitor and by female students indicated the conduct of the administrator's was at least questionable. However, the tribunal preferred the testimony of the school administrators and Superintendent. The employer was upheld on the basis that the teacher's conduct was so damaging to school discipline it warranted the suspension.

Significance of the case: This is the earliest Board of Reference decision found in BCTF records. It differs in several ways from the later cases. The case involves a "suspension" for an *indefinite time* which appears to have been, in fact, a dismissal. The decision is so poorly written, it is difficult to determine the facts. Besides spelling and sentence structure errors, there are rambling, meaningless paragraphs. For example, one page proposes to describe a party which was said to be relevant to the facts of the case. Because the party "occasioned some embarrassment to [the hostess], a generous and pleasant lady", no clear information is given and the purpose of including the page remains a mystery. Deference paid to the views of the administrators is startling in view of the serious allegations raised against them in testimony. In an environment more sensitive to child abuse, the police would likely have been called in, based on the allegations raised by the teacher about the administrators. The Board of Reference refused to admit evidence that would "attack the moral character of [the principal]". Allegations raised in evidence by the teacher against the Vice Principal were allowed but were ruled to be "trivial" because such information, "if it was true, would mean the [vice principal] was depraved". The decision is signed by the Chairman only, although there is no indication the tribunal was not acting unanimously.

2. John Valois Coyle v Board of School Trustees, School District No. 41 Burnaby (1966).; Board of Reference: F.H. Phippen, Chairman, Ian D. Boyd, E. Pauline Touzeau.

Victor Petricia, counsel for the teacher

Bruce Emerson, counsel for the Board

Facts of the case: Coyle, a senior secondary teacher, was dismissed by the Burnaby school board in June of 1966 on the grounds of "incompetence". The issue was whether the use of the "Group Dynamics Method" of teaching, employed exclusively by the teacher, constituted cause for dismissal. The brief decision is focussed exclusively on evidence brought forth to support or condemn that teaching method. The Board of

Reference upheld the dismissal, ruling that the teacher was incompetent on the basis that he employed a teaching method which disrupted other classes and the school, and resulted in failure on the part of the teacher to carry out his administrative duties.

Significance of the case: The school board's evidence was testimony of six principals and the Superintendent, whereas, evidence supporting the teacher was testimony of eleven witnesses comprising former students, experts from the University, a father of one student, and the teacher. The testimony of the principals was preferred. The main objections raised concerning the teaching method was noise coming from the classroom, poor discipline at the beginning of the year, and failure to prepare lessons properly.

The decision states "the onus is on [the teacher] to show that the School Trustees erred in dismissing him for cause-incompetence, and that the Investigating Committee erred in upholding the dismissal" (2). The Board of Reference noted that its duty was simply to review material put before the Investigating Committee, and then to confirm or reverse the decision of the school board. No other case was cited, and the teacher's past record, qualifications and seniority are not mentioned.

Appeal Decision of the Supreme Court of British Columbia (1975)

Before: Honourable Justice Mackoff

A.Gordon MacKinnon, counsel for the teacher

M. I. Catliff, counsel for the Board of Reference and Attorney
General of British Columbia

B.E. Emerson, counsel for the school board

Facts of the case: Coyle appealed the decision of the Board of Reference to the Supreme Court in 1975, nine years after the decision, asking that the decision "be declared a nullity" on the grounds that there was an error of law because the Board of Reference stated the onus was wrongly placed on the teacher rather than on the school board and further, that the teacher's witnesses were called first. The school board and Board of Reference conceded the error in law on the face of the record, but argued that relief should not be granted because the evidence clearly showed the teacher was incompetent and the case had been delayed too long. The court issued a *Writ of Certiorari* effectively quashing the decision of the Board of Reference, noting that the evidence showed the teacher had earnestly attempted to get the case to court but had been faced with "a series of unfortunate occurrences which delayed the matter". J. Mackoff stated

Consequently, no hearing such as contemplated by and provided for in the Public Schools Act was ever held and the decision of the Board of Reference was made without jurisdiction (4).

Significance of the case: This decision enforces the rule of law on school boards in terms of teacher discipline. The decision reviews the powers of quasi-judicial bodies such as Boards of Reference under the Public Schools Act and cites Smith v. The Queen, ex. rel. Chmielewski (1965) to argue that the granting of a Writ of Certiorari is not a matter of discretion. We learn that Coyle is now 62 years of age, that he was a secondary counsellor and teacher at the time of his dismissal, and that he had taught in Burnaby since 1955.

Second Appeal Decision of the Supreme Court of British Columbia John Valois Coyle v The Minister of Education (1978).

Before: Honourable Madam Justice Proudfoot

R. Crawford, counsel for the teacher
W.E. Everett, counsel for the Minister of Education

Facts of the case: After the Mackoff decision Coyle attempted to get another Board of Reference hearing. The Minister of Education refused to grant one. This court decision challenges that decision of the Minister. It notes that 12 years had elapsed since the teacher's dismissal and a proper appeal had not been provided the teacher. The Minister of Education argued that the decision not to grant another hearing to Coyle was an "order-in-council", not a judicial or quasi-judicial decision, and therefore, not subject to review. In addition, the Minister argued that legislation governing teacher dismissals has changed since 1966 and it was therefore impossible for Coyle to assert the same rights. Justice Proudfoot ruled that Coyle should be granted a new hearing governed by the new s. 134 of the Public Schools Act with one exception--"The Board of Reference shall make a final and binding decision with no appeal to the courts since this right was not granted until 1972". The Minister of Education's "order" was quashed.

Significance of the case: There does not exist any more documentation on this case. Coyle was 65 years of age by the date of the Proudfoot decision and subject to compulsory retirement by the terms of the School Act. He never received the hearing ordered.

3. Gilbert C. Johnstone v Board of School Trustees, School District No. 44 North Vancouver (1969); Board of Reference: Kenneth S. Fawcus,
Chairman, T.M. Chalmers, and F.N.A. Rowell.

P.D. Leask, counsel for the teacher
J. Paul Reecke, counsel for the Board

Facts of the case: Johnstone, a secondary English teacher with 10 years seniority in North Vancouver, was suspended and then dismissed on the grounds that he neglected his duty because of his "lack of administrative cooperation". While he was proven to have been an excellent teacher, who spent a great deal of time both meeting with his students after hours and in doing extra curricular activities, the principal charged that Johnstone neglected to (1) respond to communications from the administration, (2) deal adequately with parent concerns, (3) take in student teachers when asked, (4) attend administrative meetings when asked to, (5) act cooperatively when administrators came to his classroom for an inspection, (6) arrive in his classroom on time, or (7) do his supervision duties. The Board of Reference unanimously upheld the school board's decision to dismiss as "lack of administrative cooperation on the part of a teacher constitutes 'cause' within the meaning of Section 129 (h)".

Significance of the case: The decision outlines the school board's charges against the teacher and testimony which either proved or disproved each one. Some of the charges against Johnstone could not be proved, but because some of the charges could be "proved" by testimony, the school board was upheld. There was no question of an appropriate penalty and no discussion of possible mitigating circumstances. No other case was cited.

4. Gordon A Kapelus v Board of School Trustees, School District No. 75 Mission (1971); Board of Reference: K.S.Fawcus, Chairman, W.T. Gutteridge,
P.D. Walsh.

_____ counsel for the teacher
_____ counsel for the Board

Facts of the case: Kapelus was dismissed on the grounds that he did not arrive every day in his classroom by the warning bell and therefore was late, and secondly that he refused to carry out the lunch hour and after school supervision duties assigned to him. The excerpt of the decision available is not complete and some information unknown to this writer. The Board of Reference upheld the school board's decision to dismiss because the teacher was guilty of misconduct for refusing to supervise the playgrounds when called upon to do so. The decision found the teacher had not arrived late for classes as charged.

Significance of the case: Dismissal was considered too harsh a penalty and transfer to another school thought to be more appropriate. However, there was no jurisdiction to substitute another penalty, the tribunal ruled.

5. Mr. Louis Trapler v Board of School Trustees, School District No. 65 Cowichan (1971); Board of Reference: K.S. Fawcus, Chairman, F. Gingell, T.M. Chalmers.

R.F. MacIsaac, counsel for the teacher
T.G. Ryan, counsel for the Board

Facts of the case: Trapler, a junior secondary teacher, was dismissed by the school board in February of 1971 for alleged misconduct after he struck a teenage boy in his classroom first in the form of three slaps to the face and then a punch with a closed fist to the head and ear. The student required medical care for a bleeding ear. The student agreed that he had told the teacher to "Hurry up, Trapler", and further "smirked 'fuck off'" after being slapped. The teacher admitted he had lost his temper. This incident took place at a time when corporal punishment was legal in B.C. providing it was what a "kind, firm and judicious parent" would have administered. The Board of Reference ruled that the teacher's actions constituted assault and were misconduct and not corporal punishment. The dismissal was upheld.

Significance of the case: Because corporal punishment was legal, the teacher's case involved numerous witnesses--parents, students, and even ministers of the church --stating that they believed the teacher's actions were those of a kind, firm, and judicious parent. Either they would have done the same thing under such provocation, or in the case of student witnesses, their parents would have behaved in a similar manner. No case precedents were cited, the teacher's work record was not mentioned, and the issue of the appropriate penalty was dealt with by the statement "this Board does not consider it within its jurisdiction to recommend any alteration in the decision of the Board of School Trustees to dismiss the appellant...". However, a dissenting opinion by Chalmers claims he will not sign the decision because in his opinion dismissal is too harsh a penalty for an isolated action which was not premeditated, was severely provoked, took place under exceptional stressful circumstances in the school, and involved a teacher with an excellent teaching record, and in a community which wanted him to remain on staff.

6. Evelyn M. Ball and Bona C. MacMurchie v Board of School Trustees, School District No. 61 Greater Victoria (1972); Board of Reference: Kenneth S. Fawcus, Chairman, W.T. Gutteridge, F. Gingell.

L.G. McKenzie, counsel for the teacher
B.R.D. Smith, counsel for the Board

Facts of the case: Both teachers, Ball and MacMurchie, were suspended and then dismissed during the summer of 1972 by their school board on the grounds of neglect of duty for leaving their classroom duties and going to Arizona for eight months without a leave of absence. The teachers, who lived together, stated that they had both been ill for some time, had received advice from their doctor on many occasions and yet had not improved. When they complained to him bitterly about not getting well, he suggested, (facetiously, he claimed later) that they go to a hot dry climate like Arizona to recuperate. They took his advice and left town returning in August to find they had been dismissed. The Board of Reference unanimously upheld the teachers and ordered their reinstatement on the basis that the evidence introduced indicated they were in fact ill and should not have been required to obtain a leave of absence.

Significance of the case: The decision does not include reasons or review evidence which would explain why the Board of Reference found the teachers to be ill. The brief decision outlines dates, facts as given by each side and then a ruling. We learn nothing about the teachers or their work records. The only background material provided is that the two teachers had often been absent on the same days in past years.

Appeal Decision of the Court of Appeal (June,1973), Vancouver Registry, No. 450/73.

Before: The Honourables J.A. Branca, J.A. Taggart, and J.A. Seaton
L.G. McKenzie, counsel for the teacher
B.R.D. Smith, counsel for the Board

Facts of the case: The school board attempted an appeal to the Court of Appeal but it was denied in a brief two paragraph oral statement of reasons agreed to by all judges on the basis that such an appeal must be heard by the County Court or the Supreme Court.

Significance of the case: The ruling confirmed that Board of Reference decisions could not go to the highest court until they had been heard first in lower courts.

Second Appeal Decision of the County Court of Victoria (November,1973), Victoria Registry, No. 653/72.

Before: Judge Tyrwhitt-Drake
L.G. McKenzie, counsel for the teacher
B.R.D. Smith, counsel for the Board

Facts of the case: The unanimous decision to reinstate Ball and MacMurchie was taken by the school board to the County Court one year after the Board of Reference decision. The Judge states that the only issue to be determined is whether or not the teachers were in fact ill during their long absence. The school board charged that the decision was not supported by any evidence and was merely a "charitable determination". However, the court upheld the decision of the Board of Reference ruling that the credibility of the teachers was critical and since he could not observe their testimony he could not quarrel with the findings. He states that letters written by the teachers to their doctor while they were away suggests the teachers were "neurotic and hypochondriacs", but that he does not know what weight was given to the letters by the Board of Reference.

Significance of the case: This decision provides a few more facts: the teachers were elementary teachers; they had only communicated with their doctor by telephone or letter; and the doctor had never seen them face to face during the entire illness. No legal

arguments are provided to support the decision and no precedents cited to explain why a teacher's word can prove illness. The decision shows deference to the Board of Reference, which was chaired by "an experienced member of the Bar" who would be capable of dealing with "any questions of admissibility of evidence as may have been raised" (5). The two teachers, Ball and MacMurchie, were effectively ruled to have been ill by a Board of Reference and a court on the basis of their oral testimony. No medical evidence was produced to back up the testimony.

7. Kenneth N. Beattie v Board of School Trustees, School District No. 61 Greater Victoria (1973); Board of Reference: G.S. Cumming, Q.C., Chairman, W.T. Gutteridge, F. Gingell.

Allan Black, counsel for the teacher
E.E. Pearlman, counsel for the Board

Facts of the case: Beattie, a 29 year old junior secondary teacher, was suspended and later dismissed by the Victoria school board in April of 1973 on the grounds that he failed to comply with a lawful order of the board to explain his repeated absences from school. After five years in the district he had been absent for a total of 86 days. After many warnings, he was forced, in accordance with the Act, to "undergo a medical examination". He was then suspended until he received psychiatric help and dismissed after a report that all efforts had failed to rehabilitate the teacher. The Board of Reference upheld the school board's decision to terminate.

Significance of the case: The decision details the many instances of absenteeism on the part of the teacher and the attempts by administration to correct the behaviour. Once the Board of Reference determined that the teacher had been absent without a legitimate cause, it upheld the dismissal. The question of an appropriate penalty was not asked or discussed. The decision does not cite other cases, nor does it canvass other aspects of the teacher's work record except for the comment "his performance as a classroom teacher was good" (2).

8. William R. Stockman v Board of School Trustees, School District No. 60 Peace River North (1973); Board of Reference: Kenneth S. Fawcus, Chairman, D.C. Gould, R. Young.

P.G. Danyliu, counsel for the teacher
D.R. Campbell, counsel for the Board

Facts of the case: Stockman was dismissed in the fall of 1973 for misconduct and because he "refused to obey a lawful direction" of the school board. The brief two and one half page decision does not provide enough information to determine the facts or arguments. There is reference to numerous exhibits which are not attached or explained. It can only be discerned that Stockman was carrying on a relationship with a young girl in the community and refused to end this relationship after being directed to do so. He instead made a commitment to limit public appearances with her. The Board of Reference upheld the decision of school board to dismiss the teacher on the grounds that this continued relationship "would likely bring the school board into disrepute in the community and amounted to a refusal to obey a lawful direction".

Significance of the case: There is not enough information to determine whether the girl in question was a student in the school district. No information concerning the

teacher is given except that his ability as a teacher was not in question. The decision is signed by only two members, Fawcus and Gould, but there is no explanation for this and no dissent attached. This is the shortest Board of Reference decision on record with only seven short paragraphs and an introduction of persons involved in the case.

9. Joseph [John] A. Young v Board of School Trustees, School District No. 72 Campbell River (1973); Board of Reference: Bernard J. B. Morahan, Chairman, J. Galt Wilson, Robert Wilson.
John N. Laxton, counsel for the teacher
J. Stuart Clyne, counsel for the Board

Facts of the case: John Young, principal of the Campbell River secondary school, was suspended in August and dismissed in September, 1972 on the grounds of misconduct and neglect of duty. He was considered by his employer to have been "grossly insubordinate" when he distributed a memorandum of August 9, 1972, but in addition ten other reasons were cited as contributing to the case against him. Young and his employers (school board, district administrative staff, and the Ministry of Education) had been involved in a bitter public debate for at least three years because the educational philosophy of Young and his staff, "freedom with responsibility", was not in harmony with theirs. The critical issue which caused the dispute to rupture into open public warfare was the school's loss of its accreditation in 1971. Accreditation was regained the next year, but the damage had been done. The Board of Reference said of this incident:

On the basis given for the loss of accreditation, it is difficult to understand its withdrawal. The reasons given are brief and inconclusive and, if anything, indicate that, academically, the school was an average, or slightly better than average, school. It would seem that the Department may have been unwise and perhaps unjust in withdrawing accreditation without fuller investigation and explanation. The failure to grant the school the usual year's warning reflects unfavourably upon the Department, and the fact that five months went by before the reasons were delivered to the school was inexcusable (28).

Young refused to change his philosophy or manage his school in a differently in order to obtain accreditation. When asked to resign, he refused and mounted a public campaign with the help of teachers, students, and a segment of the public. The Board of Reference upheld the dismissal of the teacher on the grounds that he had been insubordinate and he did not deal with student absenteeism as directed by the board; his attitude was uncooperative and defiant; he "showed unrelenting stubbornness" (29) in refusing to make amendments to a school calendar; he involved his students in his public disputes in an unethical manner, and he set out with the express purpose of "publicly discrediting the school board and its administrative officers" (34).

Significance of the case: Until 1985, and the Shewan case, this was the most public teacher discipline case on record. The Board of Reference did not consider whether dismissal was the appropriate penalty for the insubordination found. Possible demotion back to a classroom teaching position was not considered, for example. The approach taken was to determine if there was misconduct warranting dismissal. Mitigating circumstances were not canvassed in the 38 page decision. Young was employed by the district since 1965 and numerous students, parents, and teachers approved of his methods. Numerous case precedents were put forward by counsel for both sides. Of note were excerpts from "Batt in The law of Master and Servant", which dealt with the definition of misconduct: "...it is conduct inconsistent with the due and faithful discharge

of the duties of service" (30). Lacarte v Board of Education of Toronto (1954), an Ontario teacher case, was cited to support the argument that teachers and principals, "have a duty to co-operate with the District Superintendent and the School Board" (32).

10. Joan G. Basic v Board of School Trustees, School District No. 39

Vancouver (1974); Board of Reference: Kenneth S. Fawcus, Chairman, R.E.C. Apps, P. Brelsford.

Des Grady, counsel for the teacher
Mr. T. Bland, counsel for the Board

Facts of the case: Basic, an elementary teacher librarian, was suspended and then dismissed from the Vancouver school district in the summer of 1974 on the grounds of neglect of duty for being absent without leave for the last five days of school that June. She had left Vancouver for a trip to New York and Europe with her husband after phoning in that she would be away from school ill for an indefinite period. Basic maintained that her cold prevented her from teaching but did not prevent travel. She also claimed she received medical attention upon arriving in Europe. After a short review of the facts of the absence, the Board of Reference in a unanimous five page decision upheld the decision of the school board to dismiss because "not only was Basic absent from school, but also she was absent without authority".

Significance of the case: The Board of Reference does not find it necessary to review any other cases, to consider whether or not the neglect warranted dismissal, or to look at the record of the teacher. Neglect of duty is found and the employer is upheld. The five page report simply reviews the facts and issues a ruling in one paragraph. There was only one way to reverse the decision--"establish that her absence was justified". This they determined the teacher did not do. There is no indication that Ball/MacMurchie was introduced in argument in spite of the fact the case was so similar.

11. Patricia Conboy v Board of School Trustees, School District No. 24

Kamloops (1976); Board of Reference: George S. Cumming, Q.C. Chairman, M.A. Paterson, P.D. Walsh.

Mr. H. Huemann, counsel for the teacher
Mr. R. Robinson, counsel for the Board

Facts of the case: Ms. Conboy was suspended and later dismissed in September of 1976 for alleged neglect of duties. The Board of Reference ordered the teacher be reinstated because the technicalities of the School Act had not been complied with. The decision to dismiss had been made by a committee of the board rather than by the school board, the teacher had not been given a copy of the dismissal notice sent to the Minister as required by the Act, and the school board did not observe the rules of natural justice when the teacher was not given notice of the school board hearing and was not in attendance at the hearing although the "complainant" was. The Board of Reference does not outline any of the facts of the case or indicate what "neglect of duties" referred to in this case.

Significance of the case: This decision has been transcribed from an oral decision made the day of the hearing, after a brief adjournment. None of the facts of the case can be learned from the decision. The six page decision deals only with the technicalities and the ruling. Several sections of the Act are outlined and an Alberta Supreme Court decision, Penner v Board of School Trustees, Edmonton, No. 7 (1974), 5 W.W.R. is cited to support the position that natural justice must be provided a teacher in a hearing

called by a school board even in cases where the board is not obliged to hold a hearing.

12. William Roy Drinkwater v Board of School Trustees, School District No. 23 Central Okanagan (1977).; Board of Reference: G.S. Cumming, Q.C.,
Chairman, M.A. Paterson, P.D. Walsh.
R.J. Pushor, counsel for the teacher
Fred Reagh, counsel for the Board

Facts of the case: Drinkwater, a Kelowna "teacher of long experience", was suspended and then dismissed from his job in January of 1977, on the grounds of neglect of duty, because he failed to return to his classroom until January 10 after a Christmas holiday trip to Hawaii when school began January 3. The teacher had been unable to arrange a flight back in time for school opening and when a leave of absence was not granted for the extra days off, he went on the trip anyway intending to secure an early flight back from Hawaii. In fact he did obtain an earlier flight than originally booked --January 6--but because of a serious tooth infection, which he contracted while in Hawaii, he was too ill to attend school until January 10. He refused to use this illness as an excuse for his absence. The school board agreed that Drinkwater was an excellent teacher and the Superintendent stated "the schoolchildren in the area would be better served were he back in the classroom". The Board of Reference upheld the school board's decision to dismiss the teacher because although they "reached this conclusion with a very considerable degree of regret", the school board had reached the decision "in their wisdom and in the exercise of the jurisdiction imposed upon them".

Significance of the case: This decision reviews the facts briefly, finds that there was a measure of "neglect of duty", however unfortunate, or even insignificant, and rules that the dismissal must be upheld. All parties were aware that the teacher would have been too ill to return to work for any of the absent days but acknowledged that the teacher phoned in absent on the basis of a "travel delay" and refused to apply for a medical excuse on a matter of principle. The teacher took the position that he should not be subject to such indignities. No precedents are cited, and no discussion of appropriate penalty is included. No information is provided concerning the grades or subjects taught by the teacher. This is the only Board of Reference decision which appends an "Agreed Statement of Facts" containing four paragraphs all reviewing Drinkwater's excellent teaching record in glowing terms: "highly competent", "high ethical standards", "excellent reputation", "initiator of new programs", etc., etc. In view of the decision the appended "Statement" adds a bizarre touch.

13. David Nordstrom v Board of School Trustees, School District No. 61 Greater Victoria (1977).; Board of Reference: G.S. Cumming, Q.C.,
Chairman, M.A. Paterson, P.D. Walsh.
Mr. Allan Black, counsel for the teacher
Mr. J. Stuart Clyne, counsel for the Board

Facts of the case: Nordstrom was suspended and later dismissed for neglect of duty in February of 1977 for accepting a position with the University of Victoria while in the employ of the school board. The teacher had requested a leave of absence from the school board for a five month period to take a short term education-related position at the University and accepted the job although leave was denied. The issue for the Board of Reference was "whether the school board was justified in dismissing the teacher". The

brief five page Board of Reference decision concludes that there was no jurisdictional option but to uphold the school board as "a person cannot serve two masters".

Significance of the case: The facts provided are so sketchy little relevant information can be learned about the teacher from the decision other than that he was "obviously skilled, compassionate, and dedicated". There was discussion about this being a "painful" case and that "cutbacks had created some difficulties", but no details as to what was meant. Reasons and argument are absent. MacMurchie and Ball is cited in passing and is said to be "clearly distinguishable", but there is no explanation as to what is meant by this.

14. Frank Alfred Vaselenak v Board of School Trustees, School District No. 37 Delta (1977); Board of Reference: G.S. Cumming, Q.C., Chairman, M.A. Paterson, P.D. Walsh.

Rory K. McDonald, counsel for the teacher
John Kinzie, counsel for the Board

Facts of the case: Vaselenak, a senior counsellor and guidance teacher at the junior secondary level, was suspended with pay in the fall of 1976 after being charged with a criminal offence, namely being in possession of marijuana. In April of 1977 he was dismissed by the school board after pleading guilty to the charge and receiving a conditional discharge. McDonald cited numerous cases when he argued on behalf of the teacher that there must be a "conviction" in order for the employer to dismiss in accordance with the School Act. A conditional discharge meant that there was no conviction, he claimed. Kinzie argued, based on numerous citations, that a conviction was in fact present upon a plea of guilty. The Board of Reference sided with the teacher and ordered reinstatement on the grounds that there was no conviction and therefore no grounds for dismissal. The School Act provided that upon acquittal of a criminal charge, the teacher should be reinstated, but if convicted, the school board could dismiss. The Board of Reference found that the Criminal Code had been amended after the cases cited by Kinzie.

Significance of the case: The decision relied completely on one legal argument to rule for the teacher. The facts of the marijuana incident were not reviewed and nothing of the teacher's record was introduced. The ruling simply established that in law a plea of guilty to a criminal offence was not grounds for teacher dismissal when a conditional discharge had been granted.

Appeal Decision of the Supreme Court of British Columbia (1977), Vancouver Registry No. A771468

Before: Honourable Mr. Justice MacDonald
Rory K. McDonald, counsel for the teacher
John Kinzie, counsel for the Board

Facts of the case: The Delta school board appealed the decision of the Board of Reference in the Vaselenak case to the Supreme Court within three months. The court, in a brief decision, reviewed the same cases cited in the Board of Reference decision, found no other facts relevant, and upheld the decision of the Board of Reference on all points.

Significance of the case: In emphasizing the correct reasoning of the Board of

Reference, Justice MacDonald stated that the arguments cited by Kinzie for the school board have not been relied upon since 1953. He reinforced McDonald's arguments and stated:

The section [s.130 in the School Act] deals with a teacher who has "been charged with a criminal offence" and has been "acquitted of the charge", or "convicted of the charge". The legislators were leaving it to the Criminal Code to say whether in a particular case there had been a conviction, and the clear answer in the case of a person conditionally discharged is that he shall be deemed not to have been convicted of the offence to which he pleaded guilty.

15. Donna Caplette v Board of School Trustees, School District No. 92

Nisgha (1978); Board of Reference: Peter Butler, Chairman, Roland Cacchioni, Brian Erickson.

Allan Black, counsel for the teacher

D.R. Clark, counsel for the Board

Facts of the case: Caplette, an elementary and secondary teacher in New Aiyansh, was suspended and later dismissed in August of 1978 after she wrote a letter alleged to be defamatory in nature to her employer to protest her transfer from that of art teacher to that of permanent substitute. Her transfer was made because "another teacher had been promised the art position in writing by the school principal" even though Caplette had been in the position for a year. Caplette's "defamatory letter" had been copied to two people in addition to the administrative staff of the school district--the president of the local teachers' association and the chairman of the education committee of the Nass Valley. It was these two copies which were cited by the employer as creating "a lack of confidence in those people against whom allegations were made". The Board of Reference ruled that the letter did constitute misconduct but ordered the teacher reinstated because dismissal was too severe a penalty for such misconduct.

Significance of the case: This was the first time a Board of Reference found there was misconduct but refused to uphold the dismissal in spite of the misconduct. No precedents were cited. The five page unanimous decision outlines the facts in brief point form and issues its unprecedented "findings" in the last four sentences. The decision states that Caplette had eight years teaching experience, four of them in Nisgha, and that her teaching record was "satisfactory".

Appeal Decision of the Supreme Court of British Columbia (1978),

Vancouver Registry No. A781738. Before: Mr. Justice Gould

D. Clark, counsel for the school board

Allan Black, counsel for the teacher

Facts of the case: The school board appealed the decision of the Board of Reference to the Supreme Court on the grounds that (1) inadmissible evidence was heard, and (2) a finding of misconduct was in contradiction to a decision to reinstate. With regard to the first ground, which was based on allowing evidence concerning a petition signed by 18 teachers in the school, asking that the teacher be reinstated, the court ruled the tribunal was not wrong in admitting such evidence. With regard to the second ground, the ruling stated that a finding of misconduct is not really of much significance, since there must have been some misconduct for "the lady to have been discharged". The real issue was "was there a finding of misconduct justifying discharge". The decision stated it was

clearly within the right of a Board of Reference to rule the misconduct did not warrant discharge.

Significance of the case: This Supreme Court decision led to changes in the School Act giving power to appeal tribunals to vary a penalty. For the first time a court decision confirmed that a finding of misconduct was not necessarily sufficient to uphold a teacher dismissal. The decision reviewed three non-teacher court decisions and found that "it is preposterous to think that a Board when it is hearing an appeal from wrongful dismissal cannot consider the degree of wrong in relation to the dismissal." (Port Arthur Shipbuilding v Henry Arthurs et al (1969) S.C.R. 85, International Woodworkers of America, Local 1-71, v. Weldwood of Canada, 74 W.W.R., 568, and International Woodworkers of America, Local 1-217, v. Industrial Mill Installations (1972), 1 W.W.R., 321).

16. Louis Joseph Lange v Board of School Trustees, School District No. 42 Maple Ridge (1978); Board of Reference: G. S. Cumming, Chairman, M. A. Paterson, P. D. Walsh.

Allan Black, counsel for the teacher
John Kinzie, counsel for the school board

Facts of the case: Lange, a secondary teacher, was suspended and then dismissed in March, 1978 for misconduct on the grounds that he struck a student in the ribs with his fist. A work record which included a similar incident in 1975 for which the teacher had been suspended, dismissed and then reinstated, and other instances of similar past conduct or abusive language was also introduced. The Board of Reference decision deals in the main with the matter of whether the teacher had been denied natural justice because the board dismissed him on the basis of the one recent charge but then introduced the past work record, after the fact, as part of the central case. The past record had not been the subject of discussion at the hearing before the school board when the decision to dismiss was made. The Board of Reference agreed with the teacher's case that natural justice had been denied and the dismissal was overturned.

Significance of the case: The facts of the case are reviewed in relation to School Act provisions regarding prohibition against corporal punishment, and the natural justice arguments are canvassed in relation to several court cases including excerpts from McIntyre v Hockin (1889) on the Law of Master and Servant.

Appeal Decision of the Supreme Court, Before: Justice MacFarlane

A.E. Black, counsel for the teacher
John Kinzie and J. Arnold, counsel for the Board

Facts of the case: The school board reinstated Lange after the Board of Reference decision, paid him his back pay and promptly suspended and dismissed him again for the same reasons, this time providing the proper hearing in accordance with the principles of natural justice. The teacher then made application to the Supreme Court under the Judicial Review Procedures Act. This court decision by Justice MacFarlane upheld the school board's right to dismiss a second time and stated:

I do not think that the legislature, having in mind that persons elected to School Boards are usually people without legal training, contemplated that one procedural error, no matter how fundamental, would have the effect of barring a School Board from taking justified disciplinary action against a teacher. Such an absurd intention

should not, in my view, be attributed to the legislature. The circumstances of this case illustrates the unreasonableness of the conclusion which the petitioner would have me reach....Did the legislature intend, in such circumstances that the teacher, having won the day on the basis of legal error, should not face a new trial on the merits of the complaint against him? I think not (12).

Significance of the case: The Supreme Court decision refers to many authorities for both sides of the argument; but none are taken from labour jurisprudence. School board counsel cited "Smith's Law of Master and Servant" and McIntyre v Hockin to make the case that:

...it is permissible for the defendant to take into account previous delinquencies for as decided in McIntyre v Hockin (1889) 16 O.A.R. 498 at 502, condonation is subject to an implied condition of future good conduct, and whenever any new misconduct occurs, the old offences may be invoked and may be put in the scale against the offender as cause for dismissal (11).

17. Richard Hanna v Board of School Trustees, School District No. 88 Terrace (1978).; Board of Reference: G.S. Cumming, Q.C. Chairman, M.A. Paterson, D.N. Patten.
Des Grady, counsel for the teacher
T.V. Cole, counsel for the Board

Facts of the case: Hanna, a physical education teacher, was suspended and then dismissed by his employer on the grounds that he neglected his duty to adequately supervise his students during physical education classes. Three incidents were cited, all occurring within a period of 18 days in the spring of 1978: (1) a student was "wounded by a javelin, (2) two boys went for a motorcycle ride during an unsupervised class, and (3) a group of students from an unsupervised class walked to the business area of town (Stewart, B.C.). The Board of Reference upheld the dismissal and stated that they also heard other evidence in the hearing to the effect that the teacher failed to use "spotters" during gymnastics. The teacher had failed in his duty to supervise in spite of warnings to do so.

Significance of the case: It was noted that the School Act, did not permit a Board of Reference to vary a penalty. Therefore, the only issue was to reinstate the teacher or uphold the employer. Grady argued unsuccessfully that the case was properly a "Review Commission" as it involved the quality of Hanna's teaching rather than matters of neglect of duty within the meaning of the Act. His attempts to enter evidence concerning Hanna's excellent teaching record was not allowed:

Although such evidence might be admissible in a labour arbitration dismissal case, where an arbitration board may have a discretion, notwithstanding the existence of a just cause for dismissal, to substitute a less severe penalty, we do not consider it admissible in proceedings before a Board of Reference under the Public Schools Act which has only the alternatives of allowing or dismissing the appeal. Accordingly, we refused to admit this evidence. (p.6)

The six page decision, contains no reasons, no guidelines for reviewing such a case, no reference to any other case, and only a brief reference to the facts. The focus is on the hearing process with a review of the provisions of the Act governing in such cases.

18. Gordon Hutton v Board of School Trustees, School District No. 37 Delta (1978); Board of Reference: G.S. Cumming, Q.C. Chairman, M.A. Paterson, P.D. Walsh.

Russel Chamberlain, counsel for the teacher
John Kinzie, counsel for the Board

Facts of the case: Hutton was dismissed from his Junior Secondary position in March, 1978 after he struck a grade nine boy on the cheek and raised a bruise which exhibited swelling the next day. The decision outlines in brief the facts of the case in which a classroom altercation between teacher and teenage student resulted in the boy's mother coming to the school to complain, and the teacher then failing to acknowledge that he had violated the "no corporal punishment" section of the School Act (Regulation 14.1). The Board of Reference states:

the entire incident is, indeed, an unfortunate one. Discipline matters in the Appellant's classroom, at the time in question, were satisfactory. This Board has sympathy for a teacher faced with the difficulties that can be created by a recalcitrant group of teenage students. Nonetheless, it must be the duty of a teacher not only to maintain control of his class but also, to that end, to maintain control of himself (9).

The dismissal was upheld because, as the Board of Reference explains, "no reasonable grounds have been advanced to warrant interference by this Board with the decision arrived at" (10).

Significance of the case: The 10 page decision, containing few arguments, deals mainly with the details of the striking incident itself, burden of proof, and with the definition of corporal punishment. Counsel for the teacher suggested that a criminal standard of burden of proof should be considered, while the Board allowed, after reviewing two authorities, that the civil standard would apply. The decision does not examine the possibility of varying the penalty, simply finds there was misconduct and justifies dismissal, all in one step. No other cases are cited.

19. Mr. R. S. Basi v Board of School Trustees, School District No. 47 Powell River (1979); Board of Reference: G.S. Cumming, Q.C. Chairman, M.A. Paterson, D.N. Patten.

Des Grady, counsel for the teacher
John Kinzie, counsel for the Board

Facts of the case: Basi, a junior secondary teacher, was suspended and then dismissed in November of 1978 on the grounds that he had administered corporal punishment in contravention of the Act. He was charged with two incidents of hitting grade eight students: one a girl in March, 1977 and the other a boy in November, 1978. He had received a warning after the 1977 incident. After a review of the two incidents the Board of Reference concluded that the recent incident was merely "an accident" and therefore the previous incident could not be considered at all. The teacher was ordered reinstated.

Significance of the case: The decision focused on two issues: whether the first incident could be used to justify dismissal if the second incident was not proven to be misconduct, and was the second incident corporal punishment. The decision cites the Law of Master and Servant as cited in McIntyre v. Hockin (1889) 16 O.A.R. 498 and Lucas v. Premier Motors (1928) 3 W.W.R. 192 to support the proposition that the case

must turn on the second incident. The tribunal notes that Basi had never seen written complaints from parents which were generated as a result of the school board's investigation into the two incidents in question until the hearing before the school board. Grady raised this as being unfair but the matter was ruled to be not an issue to be dealt with by a Board of Reference.

20. Miss Betty-Lou Malpass v Board of School Trustees, School District No. 19 Revelstoke (1979); Board of Reference: G.S. Cumming, Chairman, M.A. Paterson, D.N. Patten.

Allan Black, counsel for the teacher
J. Stuart Clyne, counsel for the Board

Facts of the case: Malpass, a junior secondary teacher, was suspended for a period of two and one half months without pay on the grounds that she "touched or handled" two female students during two different classes held on the same day in April of 1979. The notice of suspension also referred to a past warning by the principal against unnecessarily handling students. The Board of Reference unanimously upheld the suspension although one of the two incidents examined was found to be an accident and not misconduct. The second incident found to constitute grounds for the suspension involved the teacher in a "scuffle" with a 14 year old girl who refused the teacher's order to pick up a piece of paper. The Board of Reference upheld the school board because (1) the "scuffle" incident was proven, (2) the teacher's excuse for her actions appeared "conjured up", and (3) she had been previously warned about such matters.

Significance of the case: While "past warnings" to the teacher concerning handling students was considered by the Board of Reference to have carried some weight in its decision, those past incidents were not discussed and the impression is left that those incidents were not raised or examined at the hearing. Indeed, the decision makes it clear that the "the school board's case for the suspension of the teacher was based on and confined to the two [recent] incidents..." (p.3). There is no indication of the teacher's seniority, nor any discussion of mitigating circumstances. The tribunal did not appear to follow any guidelines in their review and did not cite other case precedents. The one "scuffle" incident combined with unknown "past warnings", constituted grounds for a two and one half month suspension without pay.

21. Mrs. M. Rouane v Board of School Trustees, School District No. 47 Powell River (1979); Board of Reference: G.S. Cumming, Q.C. Chairman, M.A. Paterson, D.N. Patten.

Allan Black, counsel for the teacher
J. Stuart Clyne, counsel for the Board

Facts of the case: Rouane, a junior secondary teacher, was suspended and then dismissed in the fall of 1978 on the grounds that she had neglected her duty by "arriving at school on many occasions at a time later than that stipulated in the Regulation". Regulation 87 of the School Act requires that teachers shall be in the classroom 15 minutes before school starts and five minutes before school reconvenes after lunch. In a 14 page decision, the Board of Reference unanimously upheld the school board's decision to dismiss due to the serious nature of the tardiness (up to four times a week).

Significance of the case: Counsel for the teacher argued that tardiness did not constitute neglect of duty, that even if neglect of duty was found, such neglect did not

warrant dismissal, and that if the neglect was not serious enough to warrant dismissal the Board of Reference had no choice but to reinstate. The decision indicates that two precedents were cited: "Port Arthur Ship Building v Arthurs (1969) and Board of School Trustees of School District 92 Nishga v Donna Caplette", which the tribunal declined to examine because "we do not think it necessary or appropriate to endeavour to resolve whatever conflict may exist between the line of authority represented by these [two cases]" (13). The decision does state the teacher had medical problems and family problems, that she had four years of satisfactory service in the district, that she demonstrated an uncooperative attitude, showed personal antagonism toward the principal, and that a teacher should be a positive role model. None of these issues were probed, however, and appeared to be incidental to the case. The central question was "has Regulation 87 been violated?" A positive finding to that question required a dismissal in this ruling.

22. Mr. Jayeson Van Bryce v Board of School Trustees, School District No. 39 Vancouver (1979); Board of Reference: G.S. Cumming, Chairman, M.A. Paterson, D.N. Patten.

T.R. Bland and Maureen Ryan, counsel for the Board
Allan Black, counsel for the teacher

Facts of the case: Van Bryce, a secondary teacher, was suspended and later dismissed for misconduct in February of 1979 on the grounds that he had been found guilty but granted a conditional discharge after a charge of gross indecency under the Criminal Code. The teacher had been put on probation for six months after his involvement with a 17 year old youth in a department store washroom in March of 1978. When the school board later learned of this event they immediately took the action leading to this appeal. The Board of Reference unanimously upheld the employer.

Significance of the case: This was the second case of off duty conduct although not referred to in that manner. Yet the decision does not cite the Vaselenak case which was so similar. In its examination of precedents, the decision quotes at length from several sources: (1) Batt On The Law of Master and Servant (1967) is cited to make the point that a servant can be dismissed for conduct outside his service, (2) Air Canada and International Association of Machinists, 5 L.A.C. (2d) 7 is cited to point out that misconduct may be more harmful depending on the industry and the nature of the employer's business. (3) Marten v Royal College of Veterinary Surgeons' Disciplinary Committee (1966) 1 Q.B. 1 is cited to point out that a professional can bring disrespect on the profession by his misconduct. (4) Allison v General Council of Medical Education and Registration (1894) 1 Q.B. 750 was quoted to make the point that misconduct is more serious in the case of a professional. The Board of Reference, in a half page decision, ruled the teacher's conduct must serve as a model and a leader in the community. The dismissal was upheld with the note that no authority permitted the penalty to be varied. No discussion of the teacher's seniority or work record is included.

23. Mr. R. S. Basi v Board of School Trustees, School District No. 47 Powell River (1980). (Case #2 for this teacher.); Board of Reference: Martin N. Gifford, Chairman, Allan Mole, Brian J. Erickson.

Allan Black, counsel for the teacher
J. Stuart Clyne, counsel for the Board

Facts of the case: Basi, a teacher who had been dismissed for administering corporal

punishment in 1978 and later reinstated, was dismissed again by the same school board one year later on grounds that he had again carried out corporal punishment (or alternately had assaulted a boy) after previous warnings not to do so. He was charged with striking a grade eight boy in the face after the boy stuck a sign on his back which read "I am a Homo". The "self-defence" plea was not accepted and the Board of Reference ruled there had been misconduct. The decision of the Board of Reference was that this incident of misconduct combined with an incident of 1977 as outlined in an earlier Board of Reference case involving this same teacher warranted a dismissal. The school board was upheld.

Significance of the case: The tribunal cited one case, Hutton which helped determine whether the incident in question was misconduct. This Board of Reference raised questions concerning the school board's investigation procedures (as did the tribunal held the previous year concerning this same teacher), and made recommendations to improve their process. Details as to the nature of the concerns are not given. The matter of the appropriateness of the penalty is not discussed. The issue is simply "was there misconduct?" If the answer is yes, dismissal is upheld. The Caplette precedent is not cited. No reference is made concerning the teaching abilities, seniority, or qualifications of the teacher. The Board of Reference does comment that "[the teacher's] only apparent shortcoming...is his inability to deal with cheeky, unappreciative, disrespectful, ill-behaved students in a restrained fashion" (p.7).

24. Ronald A. Jesterhoudt v Board of School Trustees, School District No. 13 Kettle Valley (1980).; Board of Reference: W.P. Lightbody, Chairman, Rendina Hamilton, Roland Cacchioni.

Rory K. McDonald, counsel for the teacher
Peter Csiszar, counsel for the Board

Facts of the case: Jesterhoudt, a learning assistance teacher, was suspended and later dismissed, by the Kettle Valley school board, in the fall of 1979, when it was learned the teacher had made false statements in his resume or application for employment to the district. While the teacher had been employed in 1978 as a teacher in Coquitlam, he had been found guilty of indecent assault of a grade seven male, a former pupil. He was given a conditional discharge but put on probation and at the same time was granted "a release of his teaching contract in Coquitlam" (3). During the summer of 1979 he obtained his position in Kettle Valley by allegedly misleading the interviewer. The superintendent learned of Jesterhoudt's record in a chance telephone call from the Coquitlam superintendent. The decision to dismiss the teacher was unanimously upheld by the Board of Reference.

Significance of the case: The decision outlines three arguments introduced by counsel for the teacher. (1) The Vaselenak Supreme Court decision, was cited to argue that the teacher was not employed in Kettle Valley when the assault incident occurred and therefore could not be disciplined in relation to that incident. (2) He then argued on the defence of "autrefois acquit" that the teacher had already paid for any wrong doing in Coquitlam and could not be made to pay again. (3) Thirdly, the teacher did not give "false information" but instead "failed to disclose", which is not considered a wrong doing in the School Act. The Board of Reference cited Douglas Aircraft Co. of Canada Ltd. v. United Automobile Workers, Local 1967 (1973) 2 L.A.C. (2d) 147, to back their final decision that "the employer has the right to require truthful answers from an applicant for employment..." (p.11). It is not indicated whether this case was brought forward by the school board.

Once again there is no discussion of whether or not the penalty is appropriate. It is assumed that if the school board's allegations are proven, the dismissal must be upheld. There is no outline of how the case must be reviewed, what tests will be applied, or what questions asked.

25. Mrs. Ruth Hall v Board of School Trustees, School District No. 33

Chilliwack (1981); **Board of Reference:** Mary E. Saunders, Chairman, David Bahr, Geoff Peters.

Mr. Allan Black, counsel for the teacher
Mr. J. Stuart Clyne, counsel for the Board

Facts of the case: Mrs. Hall, a grade four teacher, was suspended without pay by the Chilliwack school board from February 25 to April 21 of 1981 (effectively a two month suspension) for being in "neglect of duties" because she had been absent without leave for six days following February 17, 1991. During this six days she had gone to Hawaii with her family after her husband won the free trip. The teacher had requested a leave in order to accompany her family and the Superintendent had denied it. The teacher then suggested she could resign but was told the School Act did not permit this mid term. Hall contacted the Principal, the Vice Principal, and the Chairman of the Board requesting reconsideration. All refused and told her she would jeopardize her teaching certificate by leaving. Hall took the trip anyway but prepared work for her class for the days she was away. The Board of Reference was asked to consider the good teaching record, Hall's planning for her students while she was away, and asked to "lessen the discipline". The two month suspension without pay stood.

Significance of the case: This decision indicates counsel for the teacher attempted to "apply considerations applied by the Labour Relations Board... under the Labour Code", but was rebuffed by the tribunal:

We do not think we are confined to such considerations [LRB decisions] although principles set out in cases before tribunals may be of assistance in considering what is appropriate in a case before a Board of Reference under the School Act (p.3)

If counsel for the teacher did put forth cases applied by the Labour Relations Board, they were not named or discussed in the decision. The Board of Reference found a two month suspension without pay was an appropriate penalty because the teacher would then return to class after the spring break which was "the first natural break open to the School Board".

26. Dr. Mina E. Machado-Holsti v Board of School Trustees, School District No. 44 North Vancouver (1981); **Board of Reference:** Martin N.

Gifford, Chairman, Gordon Eddy, Robert E. Mayne.

Harry A. Slade, counsel for the Board
Des Grady, counsel for the teacher

Facts of the case: Dr. Machado-Holsti, a modern languages teacher with more than 6 years experience in the district and a distinguished career before that, was dismissed for allowing a class of secondary students to consume alcohol at a restaurant where they had gone with their teacher for a luncheon at end of term. She was also charged with lying about the affair and thus setting a poor example to her students. The students had organized and paid for the luncheon and liquor and had used the wine to drink a toast to

their teacher. Dr. Machado-Holsti had warned the students before the lunch that there could be no alcoholic beverages but had relented during the meal under pressure from students. No parents had complained and later several of the students became involved in telling lies to protect their teacher. The Board of Reference ruled on the basis of the tests set out in the William Scott case that a dismissal was an excessive response in all circumstances and that a six month suspension should be substituted.

Significance of the case: This was the first Board of Reference case to use William Scott as a guide in reviewing a teacher discipline case. The decision also draws a parallel between Section 98 (d) in the Industrial Relations Act and wording in Section 129 (6) of the School Act. This decision went on to set out 9 tests, modified from the Steel Equipment list set out in William Scott, which were "appropriate in the school settings in determining whether dismissal is an excessive response in the circumstances" (18):

1. The qualifications and professional experience of the teacher.
2. The length of service of the teacher.
3. Was the misconduct an isolated incident in the employment history of the teacher?
4. Was the misconduct premeditated?
5. Has the penalty imposed created a special economic hardship in light of the teacher's particular circumstances?
6. Have School Board and school policies, regulations or rules, either unwritten or written, been uniformly enforced?
7. Were there circumstances negating intent such as the likelihood that the teacher misunderstood the nature or intent of an order given to the teacher and as a result disobeyed it?
8. The seriousness of the offence in terms of school policy and school obligations to the public, the students and the parents of students.
9. Any other circumstances which the Board should properly take into consideration, for example:
 - (a) extraordinary personal problems of the teacher;
 - (b) failure of the administration to permit the teacher proper opportunity to explain or deny the alleged misconduct;
 - (c) failure of the teacher to apologize and settle the matter after being given an opportunity to do so (18-19).

27. Kenneth John Johnson v Board of School Trustees, School District No. 23 Kelowna (1981); Board of Reference: W. P. Lightbody, Chairman, James R. Insley, Allan Mole.

A. E. Payton, counsel for the teacher
Fredrick E. Reagh, counsel for the Board

Facts of the case: Johnson, an elementary teacher, was suspended and then dismissed by the Kelowna school board, in the fall of 1980 after allegations that he was involved in five incidents of either kicking, kneeling, tickling or taking hold of a boy's testicles. The Board of Reference was critical of the lack of "due process" provided to the teacher by the board's refusal to provide particulars of the allegations to either the teacher or his counsel before and during the school board hearing. However, the Board of Reference stated the matter of "whether or not ... 'due process' [was provided] prior to his dismissal is not the issue of this appeal" (3). The decision explains how each of the five incidents showed some lack of judgement on the part of the teacher but each was an accident, or was misunderstood, and the incidents were not found to constitute misconduct within the

meaning of the School Act. The teacher was ordered reinstated with full back pay except for monies received in the form of UIC during the period of unemployment.

Significance of the case: It is significant that (1) the Board of Reference did not consider the lack of due process an issue it had to deal with, (2) no precedents were discussed, and no other case was cited in argument, (3) no reasons were provided and the teacher's years of service or teaching abilities were not mentioned, and (4) there was no indication that any of the five incidents used as evidence for dismissal were ever brought to the teacher's attention before the date of the dismissal. The facts of each of the five incidents were reviewed in detail and a decision was given in a final single paragraph. There was no indication that any particular test or method of review was used by the tribunal.

28. Mrs. Pamela Mackenzie v Board of School Trustees, School District No. 47 Powell River (1981); Board of Reference: G.S. Cumming, Q.C.
Chairman, M.A. Paterson, D.N. Patten.

Douglas Mackenzie, counsel for the teacher
John Kinzie, counsel for the Board

Facts of the case: Mackenzie, an elementary teacher, was suspended and then dismissed in October, 1980 for neglect of duty for failing to report for work. She had been transferred to a position of "permanent substitute teacher for .5 of the school year" from a regular half time teaching position. She had requested a transfer because she found her job "stressful" due to her conflict with the principal. The teacher had objected to being placed in the position of "permanent substitute" and had requested an appeal to the Minister. In a letter of December, 1980, the Minister notified her he would sustain the school board's decision. While waiting for the response of the Minister, the teacher did not appear for work in spite of numerous letters from the Superintendent urging her to do so during September and October. The school board's decision to dismiss was upheld after this hearing in August of 1981.

Significance of the case: The Board of Reference answered two questions in its review of this case. The first, "Did the teacher have the right to refuse to work pending the outcome of the transfer appeal?" was answered in the negative after quoting passages from two cases cited in the L.A.C.s dealing with the principle of "work now, grieve later": United Steelworkers and Lake Ontario Steel Co. Ltd. (1968) 19 L.A.C. 103, and Ford Motor Co., 3 L.A.C. 779. The second question, "Was the dismissal justified?", was answered as well after quoting a passage from another case cited in the L.A.C.s: Black Diamond Cheese and Canadian Food & Allied Workers (1973). The teacher was said to have given no indication she would take the position of substitute if she was reinstated.

29. David R. Chand v Board of School Trustees, School District No. 35 Langley (1982); Board of Reference: G.S. Cumming, Q.C. Chairman, D.N. Patten, R. Cacchioni.

R.E. Cocking and David Yorke, counsel for the teacher
J. Stuart Clyne and Wendy Devine, counsel for the Board

Facts of the case: David Chand, a grade four teacher, was dismissed in March, 1982 for repeatedly touching and handling the girls in his class in an improper way over a period of three years. Many children gave testimony of Chand's conduct which made

them feel "embarrassed and uncomfortable", but Chand denied he had done anything but give pats (on the bottom) or hugs of encouragement. The evidence of the children indicated there was also touching of private parts. Until the allegations came to light, the parents held him in high regard. The Board of Reference ruled that the teacher's behaviour "went far beyond that which could fairly be described as friendly encouragement or reward for good effort" and constituted gross misconduct. The dismissal was upheld.

Significance of the case: While the decision notes that the tribunal heard from seven lawyers and 27 witnesses, the decision is a brief eight pages in length and includes no outline of argument put forth by counsel, no reasons applied by the Board of Reference members, no indication other case precedents were examined, and includes few facts. The decision does note that counsel for the teacher raised a technical irregularity, that Regulation 70 had not been complied with. This matter is dismissed leaving the impression the decision may have based on unknown subjective criteria.

30. Erling Storness-Kress v Board of School Trustees, School District No. 68 Nanaimo (1982); Board of Reference: G.S. Cumming, Chairman, R. Cacchioni, Mrs. R. Hamilton.

A.E. Branca and J. D. Hope, counsel for the teacher
Mrs. W. Devine, counsel for the Board

Facts of the case: Principal of an "alternative school for troubled teenagers", Storness-Kress, was suspended and then dismissed by the school board in July of 1982 for misconduct based on three reasons: (1) inappropriate behaviour toward female students, (2) use of alcohol while on a field trip, and (3) failure to adequately supervise students on field trips. The central issue was one of credibility of witnesses. The Board of Reference determined those witnesses who supported the school board were most credible and concluded those supporting the teacher were "not truthful or accurate" (6) and displayed an "evident bias in [the teacher's] favour" (7). The ruling states the evidence is overwhelming and the school board was justified in the dismissal. The decision is signed by only two members. The teacher nominee, in an appended statement, agrees the teacher should be dismissed but does not agree that the teacher should be found guilty of all charges brought forward.

Significance of the case: The nine page decision does not cite any other case, nor does it suggest a guiding framework for review. Argument included only deals with rejection of the teacher's claim that natural justice was not provided at the earlier school board hearing. The Board of Reference concluded that in spite of the fact that witnesses were not called at the school board's hearing and the superintendent and assistant superintendent attended at deliberations of the board, natural justice would now be served in this hearing before the Board of Reference.

31. Amy Olson v Board of School Trustees, School District No. 60 Peace River North (1983); Board of Reference: Mary E. Saunders, Chairman, Gordon Eddy, Stuart Hartman.

Des Grady, counsel for the teacher
Wendy Devine, counsel for the Board

Facts of the case: Amy Olson, a primary teacher, was dismissed in March, 1983 after

the School Board learned police had seized stolen property found in her home. Full reasons given by the school board were that she did not take appropriate action in relation to the stolen goods being kept at her home, that she condoned unlawful conduct, that she was unwilling to accept the standard of conduct expected of teachers, and that she was in possession of stolen property. The board of reference did not wish to pass judgment on the last reason, but upheld her dismissal based on a guilty finding in the first three reasons. Olson had good teaching reports, but had received a suspension the previous August when she was involved in a similar incident. She was closely involved with her 18 year old son, her 21 year old companion, and their friends who were using drugs in her home, breaking and entering, and storing stolen property in her home.

Significance of the case: The 16 page decision is devoted mainly to a review of the facts or incidents. Three pages outline why the Board of Reference upholds the dismissal based on the evidence outlined. In the last page and a half there is a discussion of the appropriate penalty. Because of the earlier suspension and the teacher's inability to assure repetition of such behaviour would not occur, a dismissal was warranted in spite of her good teaching reports and her difficult personal circumstances. There is no reference in the decision to any other case, or to any framework for review. There is no clue as to what counsel for either side put forth in argument.

32. Brian F. Smith v Board of School Trustees, School District No. 61

Victoria (1983); Board of Reference: W.P. Lightbody, Chairman, D.N. Patten, Gordon Eddy.

Christopher M. Considine, counsel for the teacher

Robert J. Harvey, counsel for the Board

Facts of the case: Smith, a senior secondary teacher, was suspended and then dismissed in June of 1983, by the Victoria school board, on the grounds that he had a sexual relationship with a 17 year old female student who attended the same school where he taught. The teacher admitted to the charges and testified that he regretted what he had done and apologized for his behaviour. The Board of Reference found the teacher guilty of misconduct but felt the penalty was too harsh. The tribunal substituted a five month suspension without pay and recommended he be assigned to a different school.

Significance of the case: While this decision is only four pages in length, the tribunal does review the facts of the case, sets out a form of review which includes two phases: first, a determination would be made that the teacher either was or was not guilty of misconduct, and then, the appropriate penalty would be determined. In assessing a penalty the tribunal reviewed the teacher's excellent work record, the remorse shown by the teacher, the likelihood that such an incident would happen again, the penalty given by the school board and the qualifications and experience of the teacher. No other case precedents were cited and counsel's arguments were not outlined.

33. Roger M. Tait v Board of School Trustees, School District No. 14

South Okanagan (1983); Board of Reference: Martin N. Gifford, Chairman, Anne M. N. Jones, Anthony Peyton.

Rory K. McDonald, counsel for the teacher

J. Stuart Clyne, counsel for the Board

Facts of the case: A principal at Osoyoos Secondary School, Roger Tait, was suspended without pay for 11 days in June, 1983 for "manhandling" a 15 year old boy in

the hallway. The principal had apologized for his "bad judgement" immediately after the incident to both the boy and his parents. The Board of Reference substituted a two day suspension without pay plus a four day suspension with pay.

Significance of the case: The Board of Reference in this ruling does rely on at least one other case in making its decision. The decision refers to Hutton in determining that manhandling a student does constitute misconduct. The decision includes several pages outlining reasons for the decision. The BCTF code of ethics was cited as being violated by the principal (9), and in addition 11 points were cited as matters considered in determining the appropriate penalty. These items included: (1) Tait's qualifications, (2) his length of service, (3) his employment history, (4) the fact the incident occurred in the heat of the moment, (5) the effect of the penalty on future employment possibilities, (6) the problems of enforceability of school policy, (7) special circumstances, (8) the seriousness of the incident, (9) the personal problems of Tait, (10) the opportunity to explain, and (11) the fact that Tait had apologized. The Board of Reference also noted that the school board had made a decision on the same evening to both transfer and suspend the principal and observed that this was not sound practice.

34. Felice Toneatto v Board of School Trustees, School District No. 56 Nechako (1983); Board of Reference: G.S. Cumming, Chairman, P.C. Rankin, A.E. Peyton.

P.M. Pakenham, counsel for the teacher
Wendy Devine, counsel for the Board

Facts of the case: Grade six teacher, Toneatto, was suspended and then dismissed by the school board in June, 1983 for "improper touching of female pupils in his class". One girl, considered by the Board of Reference to be "an unreliable witness" made the most serious charge when she claimed the teacher had put his hand on her crotch and put her hand on his. The Board of Reference set aside the penalty and substituted a suspension with pay from June 19 to the end of the school year (11 days) in place of the dismissal.

Significance of the case: The short five page decision briefly reviews the facts and makes a ruling. There is no argument provided, nor are there any precedents cited or framework used to review the case.

35. Patricia Conboy v Board of School Trustees, School District No. 24 Kamloops (1984). (Case #2 for this teacher.); Board of Reference: Mary Saunders, Chairman, Roland Cacchioni, John Orr.

Henry Wood, counsel for the teacher
John Hogg, counsel for the Board

Facts of the case: Ms. Conboy, a grades five and six teacher, was suspended and later dismissed from her school district in the fall of 1983 on the grounds that she had abused children verbally or physically on 15 instances. The Board of Reference, in one of the most detailed and lengthy decisions on record (77 pages), upheld the school board. Each of the 15 incidents of alleged abuse was examined in detail with 12 found to prove misconduct on the part of the teacher due to physical abuse of children at school. Verbal abuse was not proved. The hearing was reported to be exceptionally long taking place on 14 days over a three month period. Thirty seven witnesses were called, including young children of ages 11 to 13, and taped conversations admitted as evidence.

Significance of the case: The Board of Reference clearly set out a form of review for this case and proceeded according to plan. Three questions would be canvassed: "Did the teacher misconduct herself? If so, in all the circumstances was the discipline appropriate? and If it was not, what discipline is appropriate?" (10) After misconduct was proven based on the facts concerning the 15 alleged incidents, the tribunal reviewed a number of factors including: (1) the teachers work record which was not all positive, (2) the teacher's health problems which were problematic, (3) the school board's policies which had been clearly communicated to the teacher, (4) the numerous communications to the teacher by the board or administrators advising her that her actions in hitting children were not acceptable, (5) the incidents of the teacher lying to her superiors, (6) the teacher's unwillingness to show remorse, and (7) the fact that the teacher was near retirement age. The seriousness of the incidents were considered to outweigh other factors. But the lengthy decision does not cite any other case.

36. Keith Patey v Board of School Trustees, School District No. 61

Victoria (1984); Board of Reference: W.P. Light body, Chairman, M.A. Paterson, C.E. Fenton.

Jeffrey Green, counsel for the teacher

Robert J. Harvey, counsel for the Board

Facts of the case: Keith Patey, a junior secondary physical education teacher, was suspended and later dismissed, in the fall of 1983 on the grounds that (1) he had a sexual involvement with a female student, and (2) he used marijuana with students. The Board of Reference, after several months of study of the matter through both hearings and receipt of written submissions from both sides, concluded that Patey was guilty of misconduct in that he did smoke marijuana at a party when students were in attendance (not from his school), and he did become involved with a female student, who had once been in his classroom and was in fact living with him at the time of the hearing. The tribunal did not find that the misconduct was so serious as to warrant dismissal and substituted a 16 month suspension without pay in its place. Patey was found to be an exceptional teacher with seven years of conscientious service.

Significance of the case: Patey was not involved in questionable activities during school hours or during school events. He was involved with a former student against the wishes of her mother. The marijuana incident took place as well outside the school and educational context. Patey had taken a one year leave of absence and worked as a labourer near Edmonton in order to stay away from the girl in question at the mother's request. He returned after the girl graduated and at her invitation. When they moved in together, the mother instigated the action through pressure on the school board. Machado-Holsti was cited to argue that the work record of the teacher should be looked at in determining the appropriate penalty. The Board of Reference decision is almost solely devoted to a review of the facts. Arguments of counsel are not reviewed with the one paragraph exception and the decision is a brief paragraph.

37. John and Ilze Shewan v Board of School Trustees, School District

No. 34 Abbotsford (1985); Board of Reference: (June 28, 1985), Marvin Storrow, Chairman, Gordon Eddy, Phillip Rankin.

David Tarnow, counsel for the teacher

J. Stuart Clyne, counsel for the Board

Facts of the case: The Shewans, John and Ilze, a married couple teaching in a secondary school, submitted a semi-nude photograph of Ilze to Gallery magazine. When the photograph appeared, the resulting media coverage created such controversy in Abbotsford and such public pressure on the local school board, the teachers were suspended for six weeks resulting in loss of salary amounting to after tax dollars of \$7,000. The Board of Reference asked two questions: (1) Did the actions of the Shewans constitute misconduct? and (2) Was the penalty appropriate? The decision issued by the majority ruled there was no misconduct in this instance and set aside the decision of the school board ordering full back pay. There was agreement that the teachers were both exemplary teachers with many years of excellent service to the district.

Significance of the case: This Board of Reference decision is unusual in that the majority ruling which exonerated the teachers was issued by the two wingers on the panel while the chairperson, Marvin Storrow, wrote a more lengthy minority award. Both the majority and the minority awards review other precedents. Eddy and Rankin rely on Brown and Beatty (2nd Edition, p. 167), and Towne Cinema Theatres Ltd. v. The Queen, S.C.C. unreported, May 9, 1985 to conclude that "B.C. teachers do not have to have different standards of behaviour depending on what community they teach in" and that "lack of judgment or an imprudent act" does not amount to misconduct within the meaning of the School Act (5-6).

Storrow examined sources to determine the definition of "misconduct" and found the School Act offered no assistance (14-17). He concludes that "a want of judgment or imprudence" does amount to misconduct. Storrow also reviewed the Dian Cromer v. B.C. Teachers' Federation et al No. 82/83, Smithers Registry, a BCTF Code of Ethics case, and BCTF policy on pornography to support his contention that the teachers were guilty of misconduct.

Appeal Decisions of the Supreme Court of British Columbia: John Shewan v Abbotsford School Board (1985) Vancouver Registry No. A850472.

Before: Honourable Mr. Justice MacDonald

David Tarnow counsel for the teacher

J. Stuart Clyne and Peter Owen counsel for the school board

Facts of the case: John Shewan appeared in court to argue that he should be reinstated to his teaching position pending the outcome of his appeal to the Board of Reference. In brief oral reasons the request was denied as being outside the rights provided in the School Act.

Significance of the case: No teacher had ever gone to court before the Board of Reference had held a hearing regarding the same case. The decision confirmed that the outcome of the Board of Reference must come before any appeal to the courts.

**Appeal Decision of the Supreme Court of British Columbia
The Board of School Trustees of School District No. 34 (Abbotsford) v
John and Ilze Shewan, Vancouver Registry, No. A851691. (January 30,
1986).**

Before: Honourable Mr. Justice Bouck

David Tarnow counsel for the teachers

J. Stuart Clyne counsel for the school board

Facts of the case: After the reinstatement order by the Board of Reference, the school board appealed the decision to the Supreme Court. A full hearing of the facts was repeated with even more witnesses appearing. For example, parents were brought in by

both sides to testify that they either would or would not want their children to attend Mr. or Mrs. Shewan's classes. Justice Bouck examined three questions:

1. What is the nature of the appeal jurisdiction granted to this court by s. 129 of the School Act?
2. Assuming this court has the jurisdiction of the Court of Appeal, did the Board of Reference err in law or fact when the majority found there was no misconduct?
3. If there was misconduct what is the appropriate penalty? (9-10).

With regard to the first issue, the ruling stated: "I will look at the record coming from the Board of Reference as if I represented a quorum of appellate judges in the B.C. Court of appeal ..." (14). In answer to the second issue the decision stated the Board of Reference did err: (1) when it adopted the standards of tolerance test in Towne Cinema Centres Ltd., (2) when it gave undue weight to expert evidence, and (3) when it found there was no act of misconduct. Having found there was misconduct, Justice Bouck ruled the penalty was too harsh. He ordered the penalty be a one month suspension or an after tax loss to both of about \$4,600.

Significance of the case: The decision was significant in that it ruled the moral standard to be applied to teachers was that of the local community and not that of Canadian society, and it ruled that teachers are to set an example for their students in terms of behaviour both on and off the job. The decision stated:

Although it is important to stand behind any reasonable imposition of a penalty as determined by a School Board, it is equally important that the offence or misconduct reflect a penalty consistent with other cases, so far as that is possible.

The 41 page decision quotes at length from some ten other B.C. teacher Board of Reference decisions, and also cites teacher cases from Ontario, arbitration decisions affecting many other workers from nurses to firemen, and many court decisions.

Appeal Decision of the Court of Appeal (December 21, 1987).

Before: Honourable Chief Justice Nemetz, and Justices Hinkson and Macfarlane
David Tarnow and D. Greig counsel for the teachers
J. Stuart Clyne counsel for the school board

Facts of the case: After receiving a one month suspension from the Supreme Court, the Shewans appealed to the Court of Appeal. The teachers charged that the Supreme Court had exceeded its powers by substituting its view of misconduct for that held by the Board of Reference. The Court of Appeal ruled that the Supreme Court had not reversed the findings of fact but had concluded, as a matter of law, that the wrong standard had been applied in measuring conduct of teachers. It was determined that the key issue was the meaning given to the word "misconduct" and what standard to apply in determining misconduct. The Court of Appeal upheld the judge's one month suspension.

Significance of the case: The Court of Appeal decision established firmly that:

Teachers must not only be competent, but they are expected to lead by example.
...a teacher must maintain a standard of behaviour which most other citizens need not observe because they do not have public responsibilities to fulfil (6).

38. Dale Tifenbach v Board of School Trustees, School District No. 80

Kitimat (1985); Board of Reference: Karen F. Nordlinger, Chairman, Anthony Peyton, Hugh G. Stark.

Thomas Weiss, counsel for the teacher
Wendy Devine, counsel for the Board

Facts of the case: Tifenbach, a special education teacher, was suspended and later dismissed from the Kitimat school district, on the grounds that he had been charged and had plead guilty to assaulting his own son in 1984 and had then misrepresented in subsequent discussion with his employer the nature of these actions. During the course of the hearing key witnesses brought to testify against the teacher were his two sons and separated wife. Certain allegations of abuse of Tifenbach's pupils also were made but not found to be reliable. However, the Board of Reference found that the evidence against the teacher was overwhelming, that he was guilty of physically abusing members of his own family, that he showed a lack of sensitivity to his actions and to the needs of children, that he was a risk to children in that he had demonstrated an inability to control his temper. His misconduct was found to warrant dismissal. The school board was upheld.

Significance of the case: This was another case of off duty conduct although that term was never used. While 20 of the 22 page decision reviews the many incidents of abuse as outlined by the witnesses, the page and a half of argument is based on quotes taken from the Van Bryce Board of Reference decision, in which two court decisions were cited to show that the conduct of a professional must be held to a higher standard. The teacher's long history of excellent service was noted, but could not out weigh the teacher's lack of interest in taking treatment to deal with his obvious problem.

39. Robert Abbott v Board of School Trustees, School District No. 63 Saanich (1987); Board of Reference: G.S. Cumming Q.C., Chairman, A.E. Peyton, Mrs. Anne M.N. Jones.

Jeffrey Green and Robert Higinbotham, counsel for the teacher
J. Stuart Clyne, counsel for the Board

Facts of the case: Robert Abbott, a middle school principal, was dismissed in September, 1983 when it was learned he had falsified the school's pupil enrolment count on numerous official documents over a period of at least four years, resulting in additional staff and resources being allocated to his school. The effect of his actions also resulted in his own administrative allowance being \$2,000 to \$5,000 more per year than it should have been, and caused the Ministry of Education to grant hundreds of thousands more dollars to the district than rightfully due. The issue was what was the appropriate penalty. Abbott did not deny his action but claimed to have done it for the good of the school. He had 30 years of seniority and an "exemplary record as a leader in the field". The Board of Reference determined "the School Board was justified in dismissing him and that, indeed, there is no other appropriate alternative that it could have adopted" (15).

Significance of the case: This decision is very short, makes no reference to any other case, gives no indication as to what tests or guidelines may have been followed by the tribunal in reaching a decision, (if indeed there were any), no indication of, or outline of, argument is given, and the reasons cover no more than half a page.

40. David Singh v Board of School Trustees, School District No. 29 Lillooet (1987); Board of Reference: A. K. Mitchell, Chairman, M. A. Paterson, T. S. Peach.

Rory K. McDonald, counsel for the teacher
J.B. Carter, counsel for the school board

Facts of the case: Singh, a secondary and junior secondary teacher, was dismissed for misconduct because of his manner of disagreeing with the principal about how to discipline certain students, and also because of his history of misconduct. In a three and one half page decision, the Board of Reference upholds the school board although it claimed it heard "complimentary evidence" concerning the teacher's abilities in the classroom, and although it "did not condon all the actions" of the teacher's superiors.

Significance of the case: The decision is so brief as to obtain no information about the case. Few facts, no arguments, and no case citations are included.

Appeal Decision of the Supreme Court of B.C.

Before: Honourable Mr. Justice Lander
R.K. McDonald, counsel for the teacher
J.B. Carter, counsel for the Board

Facts of the case: The judge in this case was asked to review a Board of Reference decision which upheld the school board's dismissal Singh. In reviewing the facts of the case the court, in pages 4 to 24 of a 26 page decision simply reprinted selected direct transcript of testimony from the Board of Reference hearing. The testimony related stories of Singh's "loud", "belligerent", "aggressive" manner, his altercations with a number of administrators, and of verbal or telephone complaints received about the teacher's use of unacceptable language in swearing at students or calling them "dummies", "morons", or "pigs of the week". The incidents reviewed took place over a period of eight years and in two school districts, Kitimat and Lillooet. The final incident which resulted in the dismissal by the Lillooet board involved Singh yelling at his principal, in front of students: "Leave her alone - go away - you have done enough damage (3)." Singh and his principal did not agree on disciplinary measures to use with two girls. The Lander decision upheld the Board of Reference decision because:

Unfortunately, this misconduct was another incident in a history that had been established by this teacher and we are not, in finding misconduct, limiting it to this incident in isolation but taking the whole of the employment record that was adduced before us into account and putting this incident in that context (3, and repeated at 26).

The judge quotes from the Board of Reference decision:

Even though the Board heard complimentary evidence as to Mr. Singh's teaching abilities within the classroom, the Board particularly focused on Mr. Singh's past relationship with his employer, including the fact that he, Mr. Singh, had been the recipient of an ungrieved suspension some several months prior to this last incident, for other similar unacceptable behaviour directed toward the principal. (94).
(emphasis added)

While the court's decision provides detail at page 19 about this earlier five day suspension there is no acknowledgement that no grievance was permitted in accordance with the law at that time.

Significance of the case: The judge in this case claims the issue of misconduct was not before him but that his task was to "consider whether the Board of Reference erred" (26). Yet reasons for his decision are limited and most of the decision involved a

regurgitation of selected facts. One paragraph states:

In the school system there is a hierarchy that is necessary but Mr. Singh decided that he would handle the matter in his own way that was contrary to the manner in which his superiors felt it should be handled. Rather than attempting to dissuade Mr. McAteer by rational discussion, Mr. Singh acted in an unseemly and irrational manner in front of students, employees and a parent. Mr. Singh's conduct reveals a person who is unable to fit in with the system. My impression of the system is that it is not one that is inflexible but one where constructive criticism should be accepted and ideas and thoughts that have merit could be discussed and considered. The approach adopted by the appellant was obstructive and certainly not conducive to the smooth operation of the school itself(25).

It is of note that the word insubordination is never used in reference to Singh's behaviour, although it appears that was act involved. It is also of note that the doctrine of the culminating incident, as it is known in labour jurisprudence was not adhered to in this case. There was no determination made as to whether the final incident was of itself serious enough to warrant any discipline whatsoever. The work record was critical and used to justify dismissal although not outlined. It is also interesting that the work record referred to incidents in another school district. The judge failed to recognize that teachers cannot grieve suspensions of less than 10 days and allowed the act of not grieving such a suspension to be held against a teacher in a later case. Only one case, Shewan, was cited.

41. Sharon Western v Board of School Trustees, School District No. 68

Nanaimo (1987).; Board of Reference: Bruce Cohen, Chairman, Gabriel Somjen, James MacFarlan.

Peter D. Ramsay, counsel for the teacher

Alan Francis, counsel for the Board

Facts of the case: Sharon Western, a 47 year old primary teacher, was dismissed in the fall of 1986 for misconduct after six years of alcohol-related incidents including chronic absenteeism. She had taught in the district since 1965 and had good teaching reports. The school board cited as a central issue or final event, her action in "keeping liquor in her classroom", but also referred to her failure to provide a medical certificate pursuant to Section 107 of the School Act, and to her long-standing drinking problem (19). The Board of Reference decision is a 40 page review of the events and a short outline in six pages of its decision to reinstate the teacher immediately on condition that she not drink again and continue to attend Alcoholics Anonymous meetings. The Board of Reference decision states in conclusion:

We were impressed with her demeanour at the hearing and the honest way in which she gave her evidence and answered cross-examination. At this time her health appears to be satisfactory and at least consistent with those times when she appeared to her supervisors to be able to undertake her teaching responsibilities. Her attendance at Schick Chadel shows her to be well motivated and committed to winning her battle with her alcohol addiction. She is attending A.A. meetings, following her after-care plan and keeping in touch with counselors at Schick Shadel" (47).

Significance of the case: In the 47 page decision, no other case is cited, and no tests or guidelines are used in reviewing the case. Counsel for the school board, Francis, argued that the decision should be based on the facts known to the school board at the

time of the dismissal and that the teacher's efforts to rehabilitate herself after the fact were not relevant (36-38). Ramsay, for the teacher, argued the school board failed to use progressive discipline, failed to recognize alcoholism as a non-culpable cause, and failed to follow its own E.A.P. policy with respect to mandatory employee referral and treatment. No authorities are cited in the decision. The Board of Reference discusses only one of the arguments given by counsel: the school board's failure to follow the E.A.P. program of the district. They say nothing about the principle of progressive discipline nor do they discuss the non-culpable nature of the offence, issues raised by the teacher. They determine only that "the dismissal was premature"(42).

42. Larry J. Peterson v Board of School Trustees, School District No. 65 Cowichan (1988); Board of Reference: Joan I. McEwen, Chairman, Sandra Banister, John Orr.

D. Peter Ramsay, counsel for the teacher
Wendy Devine, counsel for the Board

Facts of the case: Peterson, a 37 year old middle school teacher of grade eight slow learners, was suspended and then dismissed on the grounds that he had sexual contact on two occasions with a student in the same school system (not school) in which he taught. The teacher was reported to hold an excellent record as a highly qualified, competent teacher of 15 years. The female student he admitted to having sexual contact with was a 17 or 18 year old slow learner from another school in the district, who had attended Peterson's class two years before. The two incidents of sexual contact were reported to have been initiated by the girl. The teacher claimed he did not know the young woman was still a student at the time of the incidents, but the majority of the tribunal did not find this statement believable. The Board of Reference found that misconduct was proved against the teacher, that the penalty of dismissal was appropriate in this case, and that the school board's decision was upheld.

Significance of the case: This 38 page decision is set out in a manner similar to an arbitration award. At the outset the facts are outlined in two sections: those not in dispute, and those in dispute. A determination of what the facts were is set out first including reference to "Farnya v. Chorny" as a test used to measure the plausibility of evidence and credibility of witnesses. Peterson was found not credible based on this test. In the second section, the decision deals with the question: "Do the two acts of sexual contact constitute 'misconduct' within the meaning of the Act?" The meaning of misconduct is then canvassed in reference to the BCTF code of ethics and testimony of witnesses. The teacher's actions were ruled to constitute misconduct.

In the third section the decision addresses the question "What is the appropriate penalty for this misconduct?" Several previous cases are canvassed both from past teacher Board of Reference cases, (Smith and Patey), from a B.C. labour arbitration case, (Health Labour Relations Association and HEU, January 16, 1978; unreported), and from the U.S. Supreme Court (Weissman v. Board of Education of Jefferson County School District No. R-1 (1976), 547 Pacific Reporter, 2nd Series, 1267). These cases were summarized to show: (1) dismissal is not always the appropriate penalty in such a case, (2) higher standards of behaviour may be required for professionals, and (3) mitigating factors may dictate the substitution of a lesser penalty.

In the fourth section those mitigating factors are set out in nine points and then discussed. The factors appear very similar to the Steel Equipment list included in William Scott, although this is not mentioned. The factors listed are (1) the teacher's competence, (2) seniority, (3) the isolated nature of the misconduct, (4) no premeditation was evident, (5) dismissal would be a special economic hardship, (6) the seriousness of the offence, (7)

the teacher's expressions of remorse, and (9) the after effects possible in the community.

The conclusion gives the tribunal's reasons for its decision to uphold the dismissal. Excerpts from Smith and Patey are cited and this decision said to be not irreconcilable with those previous rulings. While in those two cases the teachers were not dismissed, this decision points out how those two cases could be distinguished from this case.

It is of note, that this case, as well set out and argued as it is, has attached to it a nine page dissenting opinion by Sandra Banister in which a case is made that the penalty of dismissal is too harsh a penalty.

Appeal Decisions of the Supreme Court of British Columbia (1987).

Before: Honourable Mr. Justice Cohen

Peter Ramsay, counsel for the teacher

Wendy Devine, counsel for the school board

Facts of the case: The teacher appealed the decision of the Board of Reference decision to the Supreme court on the grounds that the Board of Reference erred in concluding that the teacher should be dismissed for the misconduct found. The Supreme court Justice Cohen relied on Shewan to rule that "the penalty of dismissal on a professional person should only be imposed in the most serious of cases" (4) and ordered a 12 month suspension without pay in place of the dismissal.

Significance of the case: The short four page decision does not review the facts or arguments presented but does state that counsel "thoroughly reviewed the facts and findings...and cited...voluminous authorities of boards of reference and courts dealing with findings of misconduct of teachers, particularly relating to sexual contact between teachers and students". He noted that decisions vary widely. Cohen also determined that the Court of Appeal Act permits him to make or give any order that could have been given or made by a Board of Reference. The brief court decision, in form, is in sharp contrast to the detailed and carefully set out Board of Reference decision.

Appeal Decision of the Court of Appeal (1988)

Before: Honourable Justices Lambert, Anderson, and McLachlin.

J. Stuart Clyne and W. Devine, counsel for the school board

Peter D. Ramsay, for the teacher

Facts of the case: This decision results from a further appeal from the Supreme Court judgement brought by the school board. Two judges of the Court of Appeal upheld the Supreme Court's decision to reinstate the teacher and to substitute a 12 month suspension as a penalty. The reasons given were that there was no evidence that the respondent would become a repeat offender (Anderson, 10 and Lambert, 5), and that the student involved was 18 years old and was not a student in Peterson's class or school at the time of the sexual incidents (Lambert, 5 and Anderson, 12). Anderson also claimed the Board of Reference "failed to give consideration to the deterrent effect of these proceedings upon the respondent" (11).

Significance of the case: The school board argued in this case that some American decisions should be considered authorities rather than other B.C. Board of Reference decisions cited by counsel for the teacher. Weissman v. Board of Education of Jefferson City School District (1976) 547 Pacific Reporter (2d) 1267, Morrison v. State Board of Education, 1 Cal. 3d 214, 82 Cal. Rptr. 175. and Erb v. Iowa State Board of Public Instruction, 216 N.W. 2d 339, were cited to argue that the test should be based on whether the teacher's conduct brought harm to the community. The minority decision of Madam Justice McLachlin found this argument compelling:

...the findings of potential harm to the school community and the fundamental breach to which I have referred justify the Board of Reference's conclusion that the School Board was entitled to dismiss Mr. Peterson. I am fortified in this conclusion by the authorities to which we were referred" (6).

The other judges, however, found previous B.C. teacher cases to be the compelling authorities and cited Smith, Patey, and Shewan to justify their rulings.

43. Gordon Ledinski v Board of School Trustees, School District No. 23 Kelowna (1989); Board of Reference: A.P. Pantages, Q.C., Chairman, Rendina Hamilton, Q.C., Michael Bishop.
Ken Conner, counsel for Ledinski
Robert Groves, counsel for the Board

Facts of the case: Ledinski, a 46 year old teacher, had been convicted of gross indecency, fined \$1,000 for engaging in mutual masturbation with a 15 year old boy. Subsequently, as a result of these convictions, he was terminated from his teaching position in the school district. The boy (or victim) involved in the gross indecency case was not a student and the incident not work related. The question considered by the Board of Reference was "whether the teacher should be dismissed due to this gross indecency conviction or whether an alternative penalty was appropriate" (6). The Board of Reference canvassed a number of precedential decisions dealing with both the off-duty conduct of employees from labour jurisprudence and decisions dealing with the sexual misconduct of teachers both in B.C., (Shewan), and in the U.S., (Weissman v. Bd. of Educ. of Jefferson County Sch. Dist. No. R-1). But their decision was based to a large extent on the earlier Peterson Court of Appeal decision as well as reports of psychiatrists. They determined that the teacher was a homosexual but not a pedophile and posed no risk to future students in his care. His 26 year record as an excellent teacher was weighty. The decision was that Ledinski be reinstated and that a 23 month suspension, which had already been served, be substituted in place of the dismissal.

Significance of the case: The Board of Reference decision was not accepted by a vocal minority group in the community. Political pressure was brought to bear to keep this case in the limelight until further action was taken by the school board.

Appeal Decision of the Supreme Court of British Columbia (1990)

Before: Honourable Mr. Justice Meredith
Robert Groves counsel for the School Board
Ken Conner counsel for the teacher

Facts of the case: The school board appealed the Board of Reference decision to the Supreme Court. The Supreme Court ordered that the Board of Reference reconsider its decision concerning Ledinski on the basis that the new Bill 20 provisions governing teacher dismissal must be applied. Justice Meredith stated that the Board of Reference had made a decision as though the previous School Act provisions were still in place. He ruled that the Board of Reference, in accordance with the Bill 20 teacher discipline provisions in s. 122, was limited to either upholding the school board's decision to dismiss or not. The provisions did not permit substitution of a lesser penalty. He ruled that the Board of Reference should have confined itself to a determination of whether or not there was just and reasonable cause for the teacher's dismissal and then should have ruled either to reinstate or uphold the dismissal.

Significance of the case: This ruling is significant in that it is the only case which spells out how the Bill 20 provisions dealing with teacher discipline or dismissal would have been interpreted by the courts and Boards of Reference had teachers not unionized. This case was one of three which occurred during the transition period between the adoption of Bill 20 and the ratification of first collective agreements which put teachers under the provision of the Industrial Relations Act. The distinction between dismissal and discipline was ruled to be vital in cases under Bill 20 because as Justice Meredith stated

Under s. 122.7 (9) (a) the Board of Reference had 2 options: either to confirm the action taken by the School Board, or order the School Board to reinstate the teacher with or without payment of all or part of the salary lost during the period before the reinstatement (p.4).

During this time the parents and community were mounting political pressure to prevent Ledinski from returning to the classroom by keeping their children at home.

Board of Reference Reconvenes, 1990

After reconvening, the Board of Reference ruled that "in view of the directions given to it by the Supreme Court, is bound to confirm the action of the Board of Trustees, School District No. 23, in dismissing the teacher...(6)". In reviewing the Meredith decision the Board of Reference found that "...the school board had acted under its authority to dismiss and not under its authority to discipline. Therefore, the Board of Reference did not have jurisdiction to substitute a disciplinary penalty for the dismissal order (2)".

Appeal Decision of the Supreme Court of B.C. (1990), (Second in the Ledinski Case)

Before: Honourable Mr. Justice Gow (oral reasons)
Allan Black counsel for the teacher
Robert Groves counsel for the school board

Facts of the case: Gordon Ledinski appealed the second decision of the Board of Reference which upheld his dismissal. The Supreme Court ruled that the Board of Reference had still not properly answered the critical question in this case which was "Was there just and reasonable cause for the teacher's dismissal?" Justice Gow pointed out that "Once upon a time it could have been said that the law was that any misconduct by an employee justified termination....Modern law is not so draconian" (3). His order was that the Board of Reference once more reconsider its decision and deal with the real question "Was the misconduct of the teacher of such a kind as to constitute just and reasonable cause for dismissal?" If the answer to the question is "yes" then the school board's dismissal can be upheld. If the answer is "no" then reinstatement with or without pay or with partial payment must be the order.

Significance of the case: The Courts were unwilling to make the order and twice sent the case back to the same Board of Reference because as was pointed out by Justice Meredith, under s. 122.7 the decision of the Board of Reference is said to be final. This final order was not carried out as new evidence against this teacher surfaced in Saskatchewan and the decision to dismiss was not challenged further. Because the legislation which Ledinski was based on has been repealed, the case will likely have little or no precedential value in future.

44. Gregory Ruffell v Board of School Trustees, School District No. 63
Saanich (1989); Board of Reference: John M. Orr, Chairman, Patrick Brady,
Edgar Carlin.

Ray Cocking, counsel for Ruffell
Wendy Devine, counsel for the Board

Facts of the case: Ruffell was dismissed for "an incident involving violence with a particular grade seven student" in the fall of 1988. The teacher had received warning letters on four previous occasions over the previous 13 years for either use of force, or for verbal abuse of students, and had received suspensions on two occasions in 1981 for these reasons. His evaluation reports over a 10 year period reported that students "expressed anxiety" or "were fearful" due to Ruffell's manner. The board of reference upheld the school board's decision to dismiss the teacher.

Significance of the case: Although this hearing took place in 1989, the "teacher's employment was not yet the subject of a collective agreement under the Industrial Relations Act (2)." This case is one of three that were subject to Bill 20 interim legislation. The decision cites the William Scott principles at page 10 and followed that model in the review. While there is no reference to a "culminating incident" that principle is evident when the decision states the first question to deal with is whether the incident of October 6, 1988 gave the school district just cause for some form of discipline. The decision looks for signs of provocation or a "momentary lapse of otherwise good conduct" (10), determines there was a basis for looking at the teacher's work record, looks for evidence of "corrective discipline which did not prove successful in solving the problem" (18), and upholds the school board, noting that the teacher had not apologized, had an "unevitable employment history", and had not responded to repeated warnings or moderate forms of discipline (19).

APPENDIX H

REVIEW COMMISSION CASES IN BRIEF

1. Mrs. Alexandra Pazitch v Board of School Trustees, School District No. 70 Alberni (1973).; Review Commission: C. I. Taylor, Chairman, J. L. Doyle, Dr. J. F. Ellis.

Peter Johnson counsel for the teacher
B. Morahan counsel for the Board

Facts of the case: Pazitch was terminated after receiving three unsatisfactory teaching reports. There is no indication as to why she was considered to be an unsatisfactory teacher. The Review Commission agreed with counsel for the teacher that the reports were not valid because they were not written in accordance with the Regulations. The decision of the school board was reversed.

Significance of the case: This three page decision is so brief that few relevant facts can be determined. The Review Commission in this case ruled that (1) the wording of a teaching report must conform to the precise words contained in the Regulations, (2) the reports must conform to the time limits in the Act, and (3) one of the reports should have been written by the District Superintendent. Because these three conditions were not met the teacher was ordered reinstated.

Note: The Pazitch case is perhaps the most unusual personnel case on file at the BCTF. After this Review Commission case was over, the BCTF investigated Mrs. Pazitch on the request of the local teachers' association in Alberni. In 1974 her membership in the BCTF was terminated for unprofessional conduct. Any study of teachers being dismissed by the College of Teachers should review this case as the first and only case where the BCTF lifted a teacher's certificate. Her discipline case file is exceptionally extensive and complex but will not be dealt with in this paper as the disciplinary action brought against her was not brought in the end by the employer but by her professional organization.

2. Miss Gurdev Kaur Dosanjh v Board of School Trustees, School District No. 41 Burnaby (1974).; Review Commission: W. E. Lucas, Chairman, J. L. Doyle, Dr. J. F. Ellis.

Bruce E. Wark counsel for the teacher
Bruce E. Emerson counsel for the Board

Facts of the case: The brevity of the decision does not allow the reader to know what grades or subjects Miss Dosanjh taught or why her teaching was considered to be unsatisfactory. The decision merely confirms that the correct process was followed in accordance with the requirements of the School Act and upholds the decision of the school board to terminate.

Significance of the case: The decision indicates that the Review Commission was concerned only with whether the process for terminating a teacher for unsatisfactory performance had been followed. The learning situation in the teacher's classes was not an issue, nor was the Review Commission interested in pursuing the fact that the teacher did

not agree with the content of the three unsatisfactory reports. They were satisfied that the teacher agreed that the reports were clearly unsatisfactory as written.

3. Mrs. Pauline Lefebvre v Board of School Trustees, School District No. 59 Peace River South (1974).; Review Commission: W. E. Lucus, Chairman, J. L. Doyle, Dr. J. F. Ellis.

Des Grady counsel for the teacher
Kenneth Staples counsel for the Board

Facts of the case: This 1974 decision is so brief few facts are known. It cannot be learned from the decision what grade(s) or subjects the teacher, Lefebvre, taught, or what actions on the part of the teacher led to a conclusion that the learning situation was "less than satisfactory". However, the Review Commission concludes that (1) the three reports are competently prepared and meet the requirements of the Act, (2) the teacher has received proper information concerning her case, (3) the teacher had received suggestions concerning the need for improvement, and (4) in spite of suggestions for improvement, the learning situation remains "unsatisfactory". The Commission, in a unanimous decision, upholds the decision of the school board to terminate.

Significance of the case: In the six page decision exhibits and a list of witnesses are listed, technical arguments are outlined as to why certain reports may not be valid, (these are dismissed), and a brief decision is given.

There are no arguments, except those relating to whether or not the three reports are valid. No other teacher cases were cited, no tests or guides for such a review are outlined, and no discussion of what conditions or situations constitutes an unsatisfactory learning situation. The focus is on whether the reports are or are not written in accordance with the Act. Once this is proven to be the case, the school board case for termination is upheld.

4. Mr. Robert Bezold v Board of School Trustees, School District No. 66 Lake Cowichan (1976).; Review Commission: W. E. Lucus, Chairman, R. D. MacQueen, Dr. J. F. Ellis.

Allan Black counsel for the teacher
John Kinzie counsel for the Board

Facts of the case: Bezold, a secondary teacher, was dismissed in 1976 after receiving three unsatisfactory reports written in accordance with the School Act. Reasons outlined as to why the teacher was considered to be unsatisfactory included (1) not planning lessons properly, (2) not following the direction of the principal, (3) not using correct methodology in teaching physical education classes, (4) allowing students to wear improper dress for physical education classes, (5) being poorly organized, and (6) demonstrating little evidence of instruction and teaching. The Review Commission, in a unanimous decision, upheld the school board.

Significance of the case: Allan Black entered Pazitch as evidence but it is not known what arguments were made in relation to that case. The decision does not indicate what arguments were made by either counsel. It reports simply that each counsel "summarized his reasons for requesting that the decision be confirmed or reversed" (8). Much of the report is given to reasons for accepting the three reports as valid and in accordance with the requirements of the Act, in the face of charges by the teacher that they were not valid. Discussion revolves around whether the word "unsatisfactory" can be used when the Act seems to imply the term "less than satisfactory" must be used. There is no review of the termination based on any test or guidelines, no legal arguments are outlined other than the

discussion of technicalities regarding which words are required to be used in the three reports.

5. Mr. Kenneth J. Raison v Board of School Trustees, School District No. 45 West Vancouver (1978).; Review Commission: W. E. Lucas, Chairman, John Ward, T. Brian Killip.

S. Russel Chamberlain counsel for the teacher
J. Stuart Clyne counsel for the Board

Facts of the case: Raison, a secondary social studies teacher, was dismissed by the school board in 1978 after receipt of three unsatisfactory reports written in accordance with the School Act. The Review Commission, in a split decision, upheld the board's decision. Their decision is focussed on the content of the three reports and outlines what actions by the teacher constituted "unsatisfactory" performance, but also includes discussion of who testified, who wrote reports, and what their reputations were, and what type of evidence would be acceptable. The decision indicates what was wrong with Raison's teaching: (1) classroom management was weak, (2) an essay assignment was questionable, (3) inappropriate mannerisms were used in class, (4) coarse and lewd words were used, and (5) the teacher was loath to accept criticism from the administrative staff.

Significance of the Case: The decision indicates that other unsatisfactory reports received by the teacher would not be considered as they were "out of time" or did not occur within the two year period. The Review Commission considered it their duty to determine if the three reports were "correctly rated as less than satisfactory" (5). The decision is a very brief five page report. No legal arguments or reasons are given, no guidelines for review of such a case are outlined and even the facts of the case must be gleaned by reading between the lines.

The minority report written by John Ward includes more facts. Ward questions the process because the Director of Instruction has written an unsatisfactory report after 19 visits within a two week period. Such visits, Ward claims, must have been "harrowing if not intimidating to the teacher". Ward notes several items of incorrect information included in the unsatisfactory reports and claims "common sense would dictate it is improper to base a significant evaluation on incorrect information". He also notes that Raison's "unusual mannerisms", such as shaving in the classroom weighed heavily in the decision of the Review Commission; yet this information was not contained in either of the three reports and was not given in testimony by any witness. He does not say where the information came from. He also questioned the process whereby the Review Commission agreed to hear new testimony under the guise of "rebuttal". Ward also claimed the Commission's chairperson was advised early in the proceeding by a Ministry representative of the Attorney-General that the Commission report should consist of a single page ruling. He offers this to support his contention that the review procedure should have been limited to a determination of whether or not each point made in the three unsatisfactory reports could be substantiated or not.

Appeal Decision of the Supreme Court Of B.C. (1980)

Before: Honourable Mr. Justice McKenzie

J.S. Clyne, counsel for the Defendants (School Board administrators):

In person, counsel for the Respondent (teacher):

Facts of the case: Raison filed a 33 page Statement of Claim in the Supreme Court, acting on his own behalf, after his termination was confirmed by the Review Commission, in which he alleged that the reports used to justify his termination were "false, defamatory, and malicious". He set out some 60 instances of libelous statements. In his ruling, Mr. Justice McKenzie reviewed the relevant School Act sections and critical case law on libel and issue estoppel and concluded that the teacher's case had no merit. The decision of the Review Commission was upheld.

Significance of the case: It was established in this ruling that when a Review Commission accepts unsatisfactory reports as justifying a teacher's termination, the truth of the reports have been established in law to the point where an action such as this one is barred on the basis of issue estoppel. But the decision pointed out in the last two paragraphs that another aspect of the case outlined in the Statement of Claim, namely, that the Review Commission was not a tribunal of competent jurisdiction and therefore denied equity and natural justice, could not be properly dealt with by this court and would have to be argued under the Judicial Review Procedure Act. This was never done.

Appeal Decision of the Court of Appeal Kenneth Raison v. Ronald V. Fenwick, Bernard G. Holt, Edgar M. Carlin, and the Board of School Trustees, School District No. 45 West Vancouver, Vancouver Registry CA 800341, January 23, 1981

Before: Honourable Chief Justice Nemetz, and Justices Hutcheon, MacDonald.

J.S. Clyne, counsel for the Defendants (School Board and administrators):

In person, counsel for the Respondent (teacher):

Facts of the case: After the teacher's appeal to the Supreme Court was dismissed, the teacher took his action for defamation against the writers of the "unsatisfactory reports" to the B.C. Court of Appeal. The province's highest court upheld the Supreme Court in a two to one decision. However, two of the justices ruled that a statement in one of the reports by a principal concerning the teacher having wrongly accused a student of plagiarism could be considered by the courts in a defamation action. Hon. Justice Hutcheon stated

In my opinion, the allegation against the plaintiff that, wrongly, he had accused a student of plagiarism is an allegation quite distinct from the other allegations in the three reports. These allegations are concerned, in the main, with the charge that the plaintiff used inadequate and inferior methods of instruction. The essay allegation concerns not only incompetency but also the ethical standards of the plaintiff. (also endorsed by Hon. Chief Justice).

Significance of the case: This ruling confirmed that statements made by the author of a teaching report that are incidental to the learning situation, or to the requirements of the School Act, may be subject to defamation action. However, once a Review Commission confirms a learning situation is less than satisfactory, reports or statements in teaching reports which state essentially that, may not be challenged in further action. Justice MacDonald, in his 13 page judgement, noted that the words of Regulation 62 (later Regulation 65) dealing with "a learning situation which is less than satisfactory" is imposing "a standard which comprehends many deficiencies in a teacher; not just incompetence. But obviously some matters are beyond their scope" (11).

Appeal Decision of the Supreme Court Kenneth Raison v. Bernard G. Holt, Vancouver Registry No. C790625, April 29, 1983.

Before: Honourable Justice Esson

J.S. Clyne, counsel for the Defendants (School Board administrators):
In person, counsel for the Plaintiff (teacher):

Facts of the case: As in the previous two court challenges, Raison represented himself and this time alleged that the principal, Holt, who had written a "less-than-satisfactory report" concerning Raison's teaching had made libelous statements which led to his termination. He sought damages. Justice Esson ruled that statements made by the principal were not true, could be defined as libel but were not actionable because no malice was present. The case was dismissed without costs.

Significance of the case: This case indicated the care required on the part of report writers in preparing teaching reports in a fair, non-discriminatory manner. J. Esson found no malice was intended in the untrue report prepared because as he stated "Mr. Holt impressed me as an entirely fair-minded and honourable man" (18). This case demonstrated how long a teacher termination case could be prolonged in court action after a Review Commission completed its decision in spite of the wording of School Act s.130 which makes these decisions "final and binding on the teacher and the board". The Holt report challenged by Raison in this final court action had been written six years earlier.

6. Mr. George Desmoulin v Board of School Trustees, School District No. 34 Abbotsford (1978).; Review Commission: S. J. Graham, Chairman, Dr. William Holdom, Stanley Yee.

Allan Black counsel for the teacher
J. Stuart Clyne counsel for the Board

Facts of the case: Desmoulin, a junior secondary French teacher, was dismissed after receipt of three unsatisfactory reports. The decision outlines who gave testimony and what their credentials were, who wrote reports and why they were credible, but not what the content was or why Desmoulin was considered to be an "unsatisfactory" teacher. The Review Commission finds in favour of the school board in a unanimous decision although it "sympathized with the teacher's distressing marital and family problems" (7).

Significance of the Case: This decision does not cite another case, does not include any principles for reviewing such matters and does not include arguments to back the decisions reached. It outlines exhibits referred to by the witnesses, is critical of the school board's process, but in a short seven page decision, provides nothing that would allow the case to be used as a future precedent.

7. Mrs. Beatrice Sederberg v Board of School Trustees, School District No. 31 Merritt (1978).; Review Commission: P. B. Pullinger, Chairman, Dr. Nathan Divinsky, Francis Worledge.

Des Grady counsel for the teacher
John Kinzie counsel for the Board

Facts of the case: Sederberg was dismissed for unsatisfactory performance on the basis of three reports in 1978. This decision is so brief as to leave most questions unanswered. However, it is reported that her request for a transfer was denied and that the "unsatisfactory reports" were focussed on her "poor pupil control". The Review Commission ordered her reinstatement on the basis that (1) the removal of the one "bad" pupil from her classroom would have helped the situation, (2) there is no documentary

evidence that the learning situation was unsatisfactory, (3) there is no evidence that her pupils did not achieve in a satisfactory manner, (4) there were reports indicating the situation in her classes was "mainly commendable" and (5) the teacher had been retained at one school despite her request for a transfer. The report is not unanimous and Nathan Divinsky's dissent lists five reasons why the termination should have been upheld. His reasons are included in the school board petition to the Supreme Court outlined below.

Significance of the Case: The content of the three reports appears to be the only focus of the tribunal although the written decision does not indicate what actions by the teacher were considered to constitute "unsatisfactory performance". The decision states that counsel for each side presented argument but does not outline what the arguments were. No other cases are cited, no guidelines for reviewing such a termination are given. The brief decision lists exhibits and witnesses called, outlines the format or agenda of the hearing, and finally, presents a one and a half page decision.

Appeal Decision of the Supreme Court Decision (1979)

Before: Honourable Justice Verchere

John D. Kinzie, counsel for the petitioner (school board):

Desmond J. Grady, counsel for the respondent (teacher):

Facts of the case: The school board petitioned the courts under the Judicial Review Procedure Act to quash the Review Commission's decision on five grounds: (1) that the Commission had exceeded its jurisdiction by reviewing the contents or opinions expressed in the three reports rather than simply determining whether or not they were justified; (2) that the Review Commission had no right to take into account such matters as whether or not a transfer had been granted or whether pupil assessment data was satisfactory; (3) the supervisor of instruction had not been permitted to testify; (4) the Review Commission stated wrongly that the Superintendent's report must give recommendations for improvement; and (5) the Review Commission erred in law or on the face of the record when it stated the discipline problems were caused by one pupil. The Supreme Court upheld the Review Commission decision on all points. Justice Verchere stated:

It does not seem to me that in seeking to determine that question [whether the learning situation in the class or classes of the teacher concerned was less than satisfactory], a Commission, and in particular the Commission here, is circumscribed by the Act or the Regulation. There, in my view, it would be wrong to say that a Commission's investigation and review must be confined entirely to the consideration of what seems to me to be only an interlocutory matter, namely, whether the opinions expressed in the reports before it were justified.

...I think that the Commission here was free to consider all the evidence before it and, having done so, to reach the several conclusions which are recited at pp. 8 and 9 of its report; and I am also of the view that those things having been done, it was proper, that is to say, within its jurisdiction, for a majority of its members to form the opinion that "the case against Mrs. Sederberg has not been proven by the testimony and evidence presented to it" ...neither the Act nor the Regulations circumscribes the conduct of the Commission in any way in the performance of its function (178).

The facts presented in this decision, unlike those presented in the Review Commission decision, establish that the teacher, Sederberg, was an elementary teacher with 16 years seniority in the district.

Significance of the case: Thereafter the "Verchere decision" was cited as establishing that Review Commissions should review not only the procedures of the school board in dismissing for poor performance but should also consider and decide the question of whether the learning situation in question was in fact less than satisfactory. The full merits of the teacher's case could now be unquestionably reviewed. In addition, the Verchere established that supervisors could not be called upon to testify against a teacher at Review Commission hearings, that pupil assessment data was admissible evidence, that a teacher's seniority was relevant and admissible, that evidence that one pupil caused the reported discipline problems, was relevant and admissible evidence, and that a teaching report could be cast in doubt as to its validity when it did not include suggestions for improvement.

Unlike the Review Commission decision, the Supreme Court decision is filled with references to previous cases, both past Review Commission cases (Bezold, Raison, and Desmoulin), and to numerous court decisions. The decision is completely focussed on legal argument unlike the Review Commission decision which highlighted the hearing procedures and lists of exhibits.

8. Miss Lillian Easton v Board of School Trustees, School District No.

61 Greater Victoria (1979).; Review Commission: S. J. Graham, Chairman, Dr. Norman Robinson, Francis Worledge.

Des Grady counsel for the teacher
John Kinzie counsel for the Board

Facts of the case: Lillian Easton, a grade two teacher, was dismissed after 20 years of successful service with the Victoria School District for unsatisfactory performance after receipt of three unsatisfactory reports. The decision is focussed on the three reports and Grady's response to them. The three unsatisfactory reports focus on "a deterioration in two fundamental skills of teaching, namely control and class management" (6). The Review Commission, in a unanimous decision, orders reinstatement of the teacher and advises that she be given a leave of absence in accordance with her recent request which had been rejected by the school board so that she could "put her personal and professional affairs in order. The teacher does not argue that the unsatisfactory reports are in error but that due to the state of her health and the stress in her personal life at the time, she must have a leave of absence for medical reasons. This request had been ignored by the employer.

Significance of the case: Grady refers to the Verchere decision in Sederberg to argue that the tribunal can look at the Easton case in a total context and is not bound only to determine if the opinions expressed in the three reports are justified (9). The seniority or service record of the teacher in this case was at issue and combined with her medical condition resulting from stress considered to be valid reasons for a second chance and therefore reinstatement.

9. Ms. Carolyn Jones v Board of School Trustees, School District No. 75

Mission (1985).; Review Commission: Ken Mutter, Chairman, Shirley Fowler Brown,

Francis Worledge.
Des Grady counsel for the teacher
Wendy Devine counsel for the Board

Facts of the case: Ms. Jones, a teacher of 12 educable mentally handicapped pupils

was discharged in 1985 by the school board after three unsatisfactory reports by administrators concluded the learning situation in her classroom was "poor" or "less than satisfactory". Ms. Jones was found to be unable or unwilling to change three aspects of her teaching: "1. Planning and Implementation of Individual Educational Programs. (I.E.P.'s) 2. Application of Instructional Skills, and 3. Utilization of Teaching Aids/Aides to maximize learning (p.4)". The Review Commission in this case reversed the board's action and ordered the teacher reinstated forthwith.

Significance of the case: The report of the Review Commission indicates that a great deal of information was brought forth as evidence by the board to show the teacher was not performing adequately. Evidence presented by Grady which was persuasive enough to warrant a unanimous decision for the teacher, focussed on the fact that (1) the teacher had not received the assistance required and requested in order to improve, (2) the teacher had some health problems, (3) the pupils were very difficult to deal with and the parents were not unhappy with the teacher, (4) the teacher had made some progress, (5) the expectations of the school board were somewhat unreasonable, and (6) there was no evidence of pupil discipline or attitudinal problems. The school board focussed on the three negative reports which the Review Commission determined "do not meet the specifications of Regulation 65"(12). Evidence introduced is noted in two lists as exhibits 1 to 31 (school board evidence) and A to W (teacher's evidence) which included three previous teacher discipline cases (Sederberg, Hutton, and Lefebvre). However, there is no indication as to what arguments were made concerning each exhibit nor is there any indication as to the weight given by the Review Commission to exhibits brought forward. There is no discussion at all of past teacher cases. No legal arguments or reasons are mentioned in the decision, aside from the brief reference to Regulation 65, and there is no indication that the Review Commission followed any guidelines or tests in reviewing the case. The facts are reviewed very briefly, evidence is listed in four pages, and the decision is given.

10. Ms Mary Leitao v Board of School Trustees, School District No. 92

Nisgha (1985).; Review Commission: Alvin R. Myhre, Chairman, Don Crowe, Shirley Fowler Brown.

Allan Black counsel for the teacher
J. Stuart Clyne counsel for the Board

Facts of the case: Ms. Leitao was terminated by the Nisgha school board in 1985 after receipt of three "less than satisfactory" reports issued in accordance with the School Act. The reports were said to indicate the following areas of concern: (1) the learning situation was less than satisfactory; (2) classroom management was poor; (3) the teacher refused to change or improve and blamed her disciplinary problems and lack of respect from the students on the administration; (4) there was no evidence of effective planning; (5) offers of assistance ended in confrontation; (6) relationships with parents were poor; and (7) alternative assignments for the teacher were not feasible. The tribunal unanimously upheld the decision of the school board to terminate although it regretted the board had not set out clear expectations for staff in the form of policy, and that little time had been provided for the teacher to respond to the suggestions for change set out in the teaching reports examined in this hearing.

Significance of the case: There is no indication of the grades or subjects taught by the teacher, no indication that any other case was cited as a precedent or guide to be followed in reviewing this case. The decision includes five pages of hearing procedures, including pages which simply list exhibits. Four pages review main arguments and then

end with a one paragraph decision. The focus of the school board's case is on the content of the three reports which it claims shows "incompetence". The teacher's case is based on the limited time frame given to improve, the fact that the teacher was not transferred or asked to take a leave for professional improvement, the fact that "incompetence" was charged but not established, and that no evidence had been given to show learning was not taking place in the teacher's classroom.

11. Miss Cecilia Froleck v Board of School Trustees, School District No. 38 Richmond (1986).; Review Commission: F. W. Marshall, Chairman, John Betts, Joan MacLatchy.

Terry M. Mullen counsel for the teacher
Wendy Devine counsel for the Board

Facts of the case: Miss Froleck was terminated by the Richmond school board in June of 1986 after receiving four unsatisfactory reports written in a two year period. Her dismissal was not upheld by the Review Commission which ruled in its four page decision that the technical requirements of section 123 (2) of the School Act had not been adhered to. The school board failed to give the required 30 day notice of intent to terminate as required. (They had given 22 days.)

Significance of the case: No other details of this case are given in this short decision other than the arguments by both counsels concerning the technical objections raised by the teacher regarding the four reports and the notice of intent to terminate. Mullen raised four objections and won the case for the teacher based on his fourth objection. In response to his other objections the Review Commission ruled (1) Regulation 65 does not require that only three reports be specified, (2) dates of the reports satisfied the Act, (3) inclusion of the unsatisfactory reports in the letter to the Minister satisfied the requirements of Regulation 70. This case established that a termination could be overturned due to a legal technical failure on the part of the employer without the Review Commission even hearing the reasons for termination.

12. Mr. Anthony Geoghegan v Board of School Trustees, School District No. 16 Keremeos (1986).; Review Commission: A. Holmes, Chairman, E. McLean,, J. Ward.

Allan K. Hoem counsel for the teacher
J. S. Clyne counsel for the Board

Facts of the case: Mr. Geoghegan, a secondary teacher, had been dismissed by the school board after receipt of three "less-than-satisfactory" reports in which his "teaching performance" was said to be unsatisfactory. The teacher was charged with (1) not practicing standard techniques of teaching, (2) planning lessons in a confusing manner, (3) narrow course coverage, (4) rejecting the advice of his superordinates, (5) not keeping adequate students marks, (6) using unsuccessful methodologies, and (7) not adequately monitoring student notebooks. The Review Commission rejected the school board's assessment, and ordered immediate reinstatement. The school board was ordered "to produce a developmental program designed to assist the teacher to achieve a satisfactory level of professional competence before he is reassigned to a classroom" (13) and stated that they were not convinced that "the Board understands that natural justice requires that a comprehensive program of rehabilitation should be followed before steps are taken which lead to the dismissal of a staff member". The Review Commission went on to outline what they perceived to be the "consequences of a measure of insensitivity and omission

on the part of the Board" (8).

Significance of the case: (Mr. Geoghegan never did return to the classroom as he died of a heart attack within a year of this decision.) The decision does not refer to the teacher's years of service either in the Keremeos district or as a teacher in general, yet it was common knowledge among his fellow BCTF activists that he had considerable seniority and was nearing retirement age. Neither does the decision mention that Mr. Geoghegan was an activist within his local association and the BCTF and had been the local bargaining chairperson and local president in the years immediately before the "less than satisfactory" reports were written. It would appear these matters were not considered relevant.

The focus of the decision is concentrated on the three unsatisfactory reports, their content and the process used to obtain them. The Review Commission is highly critical of both the school board's process and of the reports written, in particular that written by a principal. They outline what they consider to be "careless report writing" and note "vagueness" in the recommendations, spelling errors, ignorance of the statutory requirement, "shifting focus", and "varying terminology" (9-10).

The hearing is reported to have taken 19 days, including some night sittings, although only five witnesses were called. The Review Commission ruled after this that it would not receive further evidence and invited closing arguments. The decision does cite any case nor does it outline a method of review. The facts are reviewed as outlined in the three reports and a decision is given in relation to those facts. Six recommendations are added which the Review Commission hopes will produce an improved working relationship between the teacher and the district's administrative staff.

13. Ms. Rosemary Parker v Board of School Trustees, School District No. 35 Langley (1987).; Review Commission: J. L. Doyle, Chairman, Jan Lindsay, Ilse Link.

Terry M. Mullen counsel for the teacher
Mary Saunders counsel for the Board

Facts of the case: Ms. Parker was dismissed by the Langley school Board in June, 1987 after receipt of the three reports required by the Act showing that the learning situation in her class was "less than satisfactory". The problem areas indicated in the reports were identified as (1) lack of "depth" in planning, (2) poor instructional strategies, (3) inadequate and inconsistent classroom management, (4) poor relations with parents, and (5) an inability or unwillingness to improve after suggestions to do so were given by superiors. The Review Commission unanimously upheld the school board's decision to terminate the teacher and ruled that (1) the three reports were reliable and accurate, and (2) the teacher had failed to make necessary improvements after being advised to do so.

Significance of the case: The decision is brief (8 pages), cites no precedents, or legal arguments, and provides no review guidelines. There is no indication of the grade or subjects taught by the teacher. The decision outlines the order of appearances over the six days of hearings, lists the exhibits presented, and allows that counsel for each side advanced arguments but fails to indicate what they were. The only exception here is that the decision states Mullen "expressed concern about the criteria used" by the report writers. The ruling is given in a half page after the of events of the six days.

14. Rodger Austin v Board of School Trustees, School District No. 13 Kettle Valley (1989).; Board of Reference: Mervin I. Chertkow, Chairman, Dr.

Lloyd MacDonald, Frances Worledge.
Allan Hoem, counsel for the teacher
Wendy Devine, counsel for the Board

Facts of the case: Rodger Austin, a 53 year old elementary and secondary teacher, was dismissed on the grounds of unsatisfactory performance from the Kettle Valley school district effective June 30, 1988. The first collective agreement under the Industrial Relations Act had not yet been reached between the Kettle Valley Teachers' Association and the local school board. Therefore, the provisions of Bill 20 (interim legislation) governed. This case would have been heard by a Review Commission one year earlier or by an arbitration board one year later. Board of Reference chair, Chertkow, is a well known and respected B.C. arbitrator and his review of what he referred to as a non-culpable discipline case, provides insight into what is to come in terms of third party reviews of non-culpable teacher discipline cases in future within a unionized environment. This is the last Board of Reference case on record for B.C. teachers, and the most lengthy at 196 pages. In addition, a minority report of 233 pages written by one of B.C.'s most well known and respected teacher leaders, Francis Worledge, is appended. While called a Board of Reference case, it properly falls in this section as there were no longer Review Commissions after 1988.

Although there was no requirement in law at the time for three unsatisfactory reports before a termination could take place, the school board declared they had adopted this procedure (old School Act Regulation 65) as policy. The Board of Reference, then, is primarily concerned with a review of the three "less than satisfactory" reports. On the basis of its examination of the reports, including lengthy examination of numerous witnesses, and detailed examination of arguments from both counsel, the majority of the Board of Reference upheld the dismissal.

The minority report by Worledge examines in great detail the Regulation 65 time limits issue and finds several errors. The Regulation was a "bridging agreement", she claims, not a policy as alleged by the employer, and should have been upheld. She reviews Froleck and other teacher cases which she claims were ignored and which provide precedents that state in regard to time limits for the three reports, scrupulous adherence is required. In addition, she finds the evaluation criteria were "incomplete and defective" (167), and the majority report wrongly puts the focus on "unsatisfactory performance" rather than the requirement of the act to review the "less than satisfactory learning situation" (218).

Significance of the decision: The case is significant in several ways: [1] Chertkow determined that the principles set out in National Harbours Board "will set the framework for our decision in this dispute" (171). Each of the eight factors enunciated by arbitrator Hope in that case was reviewed in relation to the evidence and arguments put forth in the Austin hearing. [2] The decision is set out to follow the model of a full fledged labour arbitration hearing. The evidentiary part of the hearing is summarized in order of appearance of witnesses, along with testimony under direct examination, cross-examination, and re-examination. Next the arguments of each side are set out and examined in reference to numerous case precedents taken from labour arbitrations, Canadian and American court decisions, and past B.C. teacher decisions. Finally, the decision of the Board of Reference is outlined along with reasons for that decision. [3] Unlike Review Commissions of the past which adopted the position of being bound by the technicalities of the "three report process", this Board of Reference did not feel the time limits in that process were mandatory. [4] Unlike other Board of Reference or Review Commission decisions, the terms "non-culpable and culpable discipline", "insubordination", and "incompetency" are liberally used and not challenged.

Appeal Decision of the Supreme Court of British Columbia (1990).

Before: Honourable Mr. Justice Thackray

J. M. Gropper, counsel for the teacher

Wendy Devine and E. Marion, counsel for the school board

Facts of the case: The teacher appealed the decision of the Board of Reference under the Judicial Review Procedure Act on the grounds that correct and fair procedures were not followed. The court upheld the school board and refused to quash the decision of the Board of Reference. The Judge stated "[A Judicial Review] does not concern itself with the appropriateness of result but looks at the process to ensure that the persons involved have fair treatment" (2). He determined the case was "heavily weighted" on the side of the employer.

APPENDIX I

SAMPLE CLAUSES RELATED TO TEACHER DISCIPLINE CONTAINED IN VARIOUS B.C. TEACHERS' COLLECTIVE AGREEMENTS

July 1, 1990-June 30, 1992

1. Sample Grievance Procedure and Arbitration Provision From the Terrace Collective Agreement:

Article 8: Grievance Procedure

8.1 The parties agree that this Article constitutes the method and procedure for a final and conclusive settlement of any dispute (the "grievance"), respecting the interpretation, application, operation or alleged violation of this Agreement, including disputes concerning dismissal, discipline or suspension of an employee bound by this Agreement, and including a question as to whether a matter is arbitrable.

Grievances and replies to grievances shall be in writing at all stages. All employees directly affected by a grievance and the Association and the employer shall receive copies of the grievance and replies.

At each step of the grievance procedure the employee alleging the grievance shall have the right to be present.

8.2 The following procedure shall apply to the resolution of grievances.

Step 1

The employee alleging the grievance and a representative of the Association, shall first seek to settle the grievance with the employee's supervisor to the satisfaction of the Association. Such action shall take place no later than thirty (30) working days after the earlier of the date:

(i) on which he/she was notified orally or in writing of the action or circumstance giving rise to the grievance.

(ii) on which he/she first became aware of the action or circumstances giving rise to the grievance.

Step 2

If the grievance is not resolved within seven (7) calendar days of the Step 1 meeting, the Association, may within a further twenty (20) working days present the grievance to the Superintendent or designate, referring to the provision of the Agreement in dispute and remedy sought. The Superintendent or designate shall forthwith meet with the President of the Association or designate and attempt to resolve the grievance. If the grievance is not resolved within seven (7) calendar days of the meeting referred to in Step 2, the Association may, within a further twenty (20) calendar days, refer the matter to arbitration.

8.3 The time limits fixed in this grievance procedure may be altered only by mutual consent of the parties, but the same must be in writing.

8.4 Grievances of general application by either party, and grievances by the School Board may be referred directly to Step 2 of the grievance procedure. The parties may in any case agree to waive any step of the grievance procedure requirements.

8.5 No employee shall suffer any form of discipline or discrimination by the Board as a result of having filed a grievance or having taken part in any proceedings under this Article.

8.6 TECHNICAL OBJECTIONS TO GRIEVANCES

It is the intent of both parties to this Agreement that no grievance shall be defeated merely because of a technical error (other than time limitation in processing the grievance through the grievance procedure). To this end an Arbitration Board shall have the power to allow all necessary amendments to the grievance and the power to waive formal procedural irregularities in the processing of a grievance in order to determine the real matter in dispute and to render a decision.

8.7 The employer agrees that, after a grievance has been initiated by the Association, the employer's representatives will not enter discussion or negotiation with respect to the grievance, either directly or indirectly, with the aggrieved employee(s) without the consent of the Association.

The Association agrees that, after a grievance has been initiated, the employee(s) alleging the grievance will not enter into discussion either directly or indirectly, with Board officials or Trustees.

8.8 If the Association does not present a grievance to the next higher level, the Association shall not be deemed to have prejudiced its position on any future grievance.

8.9 All discussions and correspondence concerned with the grievance procedure shall be without prejudice and shall not be admissible at any arbitration proceeding subject to exceptions established by arbitral jurisprudence.

3. Sample Arbitration Procedure From the Terrace Collective Agreement:

Article 9 Arbitration

9.1 COMPOSITION OF BOARD OF ARBITRATION

When either party requests that a grievance be submitted to arbitration, the request shall be made in writing, addressed to the other party.

The parties agree that a single Arbitrator shall be used, unless either party wishes to have the grievance heard by an Arbitration Board composed of three members.

In the case of a single Arbitrator, the Arbitrator shall be selected by mutual agreement

of the Board and the Association from the agreed upon list and should the parties be unable to agree on an Arbitrator within ten (10) working days, either party may request the Dean of Law of the University of Victoria to make the appointment.

In the event that either party requests a three member Arbitration Board, one member shall be appointed by the Board and one member shall be appointed by the Association. Each party shall notify the other of the name and the address of its nominee. The two nominees shall select a chairperson from the agreed upon list which shall be appended to this Agreement. Should the parties be unable to agree on a Chairperson within ten (10) working days of the reference to arbitration, then either party may request the Dean of Law of the University of Victoria to make the appointment.

9.2 BOARD PROCEDURE

The Arbitrator or the Arbitration Board may determine its own procedure, but shall give full opportunity to all parties to present evidence and make representations. The Arbitrator or the Arbitration Board shall hear and determine the difference or allegation and make every effort to render a decision within thirty (30) working days from the time the Chairperson is appointed, in the case of a Board of Arbitration, or within twenty (20) working days in the case of a single Arbitrator. The decision of the majority shall be the decision of a Board of Arbitration.

9.3 DECISION OF THE BOARD

(a) The decision of the Arbitrator or Arbitration Board shall be final and binding on all parties, but in no event shall the Arbitrator or Arbitration Board have the power to alter, modify or amend this Agreement in any respect.

(b) Should the parties disagree as to the meaning of the decision, either party may apply, after advising the other party and within seven (7) working days of the receipt of the decision, to the single Arbitrator or Chairman of the Board to clarify the decision, which shall be done within three (3) working days of the request being made.

(c) Expense of the Board

Each party shall pay:

(i) the fees and expenses of the nominee it appoints, if applicable;

(ii) one half the fees and expenses of the Chairman or single Arbitrator.

3. Sample Expedited Arbitration Clause from the North Vancouver Collective Agreement:

Article A. 27 : Expedited Arbitration

1. Any grievance that has not been resolved after Step 2 may be referred to expedited arbitration by the Association.

2. The arbitration award shall be final and binding, however, it shall carry no precedent. The arbitration award will not be introduced into other grievance arbitration proceedings by either party.
 3. Unless the Board and the Association can agree on a single arbitrator within five (5) school days of referral to expedited arbitration, the arbitrator shall be chosen by lot from a list to be maintained by the parties as an Appendix to this Collective Agreement. If no arbitrator from the list is available within ten (10) school days, the first available arbitrator from the list shall be selected.
 4. Within ten (10) school days of being appointed, the arbitrator shall hear the grievance and shall render a binding decision within five (5) school days.
 5. The parties shall share equally in the costs of the expedited arbitration.
 6. Either party shall be free to appeal the decision of the arbitrator.
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2. Sample Troubleshooter Clause From The Revelstoke Collective Agreement:

Article 6.06

Section 112 of the Industrial Relations Act: Investigator

Where a difference arises between the parties relating to the dismissal, discipline or suspension of an employee, or to the interpretation, application, operation or alleged violation of this agreement, including any question as to whether a matter is arbitrable, during the term of the collective agreement Vince Ready, or Stephen Kelleher, or substitute agreed to by the parties, shall at the request of either party

- (a) investigate the difference;
- (b) define the issue in the difference; and
- (c) make written recommendations to resolve the difference within 5 days of the date of receipt of the request; and, for those 5 days from that date, time does not run in respect of the grievance procedure.

In such cases, application will be made to the Minister of Labour, for the payment of one third (1/3) of the cost incurred by the parties for payment of reasonable remuneration, travelling and out of pocket expenses of the person named or his substitute; and the parties shall share equally the total amount not so paid.

4. Sample Discipline and Dismissal Clause (Misconduct) From the Kelowna (Central Okanagan) Collective Agreement:

Article C.2 Dismissal and Discipline (Misconduct)

- C 2.1 The Employer shall not discipline or dismiss any person bound by this Agreement save and except for just and reasonable cause.

- C 2.2 Where an employee is under investigation by the Employer for any "cause", the employee shall be advised at the earliest reasonable time, in writing, of the reasons for the action unless substantial grounds exist for concluding that such notification would prejudice the investigation. At the same time, the Union shall also be notified that such an investigation is being conducted. An employee shall have the right to a Union representative at any meeting with the employee in connection with such investigation.
- C 2.3 The Employer shall not dismiss any employee bound by this Agreement unless it has, prior to considering such action, held a meeting of the Employer or a committee of the Employer and the Superintendent of Schools with the employee entitled to be present, in respect of which:
- C 2.3.1 The Employer shall, within not less than seventy-two (72) hours before the meeting, provide the employee in writing with reasons why dismissal is being contemplated and all documents available at that time. Not less than twenty-four (24) hours before the meeting, all material that will be considered by the Employer at the meeting will have been given to the employee. The employee shall be entitled to file a written reply to any allegations made;
 - C 2.3.2 The employee shall hear all details of the nature of the allegations upon which the contemplated dismissal is based;
 - C2.3.3 The employee may comment on the allegations, including the submission of a written response;
 - C 2.3.4 The employee may present or have presented his/her arguments to the Employer;
 - C 2.3.5 The employee may ask or have asked questions of clarification, procedure and information of the Employer.
The employee may be accompanied by representatives and/or spokespersons of his/her choice.
- C 2.4 The decision of the Employer to suspend or dismiss shall be communicated to the employee in writing giving the reasons for the decision. The Union shall be advised of the decision.
- C 2.5 Where an employee has been dismissed, the Union shall have the option of referring a grievance regarding the dismissal directly to arbitration.
- C 2.6 At an arbitration in respect of the discipline or dismissal of an employee, no material from the employee's file may be presented unless the material was previously brought to the employee's attention.
- C 2.7 Discipline, suspension or dismissal shall not be set aside by an arbitrator on the basis of a technical irregularity or an error in procedure.
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5. Sample Dismissal For Poor Performance Clause From the Kelowna Collective Agreement:

Article C. 3 Dismissal For Non-Performance

- C 3.1 The Employer shall not dismiss an employee for lack of performance except where the Employer has received three (3) reports indicating that the learning situation is less than satisfactory.
- C 3.2 The reports referred to above shall be prepared in accordance with the process established in Article E 3 (Evaluation) and in accordance with the following conditions:
- C 3.2.1 The reports shall have been issued in a period of not less than twelve (12) months nor more than twenty-four (24) months. Any leave, paid or unpaid, shall not be counted in the twenty-four (24) months;
 - C 3.2.2 At least one of the reports shall be a report of a Superintendent of Schools, an Assistant Superintendent of Schools, or a Director of Instruction;
 - C 3.2.3 The other report(s) may be written by a principal or a vice-principal;
 - C 3.2.4 No more than two reports may be undertaken by any one evaluator.
- C 3.3 When an employee receives his/her first or second less than satisfactory report the employee may:
- C 3.3.1 request a transfer and, where there is mutual Agreement, the Employer shall proceed with the transfer, or
 - C 3.3.2 request and be granted leave of absence without pay of up to one (1) year for the purpose of taking a program of professional or academic instruction in which case subsequent evaluations shall be undertaken not less than two (2) months after the employee has returned to teaching duties. This period of leave plus the two (2) month grace period shall not count for the purposes of the twenty-four (24) month period referenced in item C2.2.1 above.
- C 3.4 Where the Employer intends to dismiss an employee on grounds of less than satisfactory teaching performance, it shall notify the employee and the President of the Union of such intention and provide an opportunity for the employee and her/his representative to meet with the Board of School Trustees within fourteen (14) days of such notice.
- C 3.5 Where an employee has been dismissed, the Union shall have the option of referring a grievance regarding the dismissal directly to arbitration.
-

6. Sample Remediation Provision From the Fernie Collective Agreement:

Article B.5.5

- a. After the first and/or second less than satisfactory summative report, the Superintendent of Schools or designate shall meet with the teacher and President of the Association or designate to develop a program for locally developed remediation.
 - b. After the second less than satisfactory summative report, the teacher may request and be granted leave of absence of up to one year for the purpose of taking a program of professional or academic instruction. This leave is without pay; the teacher can remain on the benefit program by arranging to pay the total premiums for such programs.
 - c. Evaluations shall be undertaken not less than three (3) months nor more than six (6) months after the teacher has returned to teaching duties.
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7. Sample Probation Provision From the Qualicum Collective Agreement:

Article C.8 Probationary Teachers

- 8.1 During the first nine (9) months of a teacher's employment, exclusive of any leave of absence during or extending beyond those months and exclusive of the months of July and August, the Board may place the teacher on probation in accordance with the Article.
- 8.2 No teacher shall be placed on probation unless they have received a less than satisfactory report prepared pursuant to Article E.5 (Evaluation of Teaching) of the agreement.
- 8.3 Where a teacher is placed on probation the Board shall give the teacher written notice to that effect and inform the Association, such notice to be issued only after consultation with the Superintendent of Schools and consideration of any reports issued under Article E.5 (Evaluation of Teaching).
- 8.4 The probation shall be effective until the earlier of:
 - 8.4.1 the Board, not less than six (6) calendar months following the placement on probation, rescinds the probation; or
 - 8.4.2 June 30 in the school year immediately following the school year in which the teacher is placed on probation; or
 - 8.4.3 the employment is terminated under Article C.8.5 or C.8.8.
- 8.5 A teacher on probation may terminate his/her appointment by giving the Board at

least thirty (30) days notice in writing, such notice to be effective at the end of a school term.

- 8.6 If a teacher who has been placed on probation for the next school year so requests, the Board shall make all reasonable efforts to arrange a transfer of the teacher to a mutually agreeable assignment or school.
- 8.7 A teacher on probation may be dismissed only after receipt by the Board of a second less than satisfactory report prepared pursuant to Article E.5 (Evaluation of Teaching) of the agreement.
- 8.8 The Board may dismiss a teacher on probation by giving thirty (30) days notice in writing, provided that the notice shall not be given during the first thirty (30) days of probation and that there shall be at least twenty (20) teaching days included in the notice period, such notice to be issued only after consultation with the Superintendent of Schools and consideration of a second less than satisfactory report prepared pursuant to Article E.5 (Evaluation of Teaching).
- 8.9 A teacher who has received notice under Article C.8.3 has the right to discuss the reasons with the principal of the school and the Superintendent of Schools, and may, where the Board so determines, be interviewed by the Superintendent of Schools and the Board, or the Superintendent of Schools and a committee of the Board.
- 8.10 A teacher may be accompanied by another teacher or by a representative of the Association who may represent and/or advise the teacher during an interview referred to in Article C.8.9.

8. Sample Transfer Clause From The Princeton Collective Agreement:

Article 71.0 Transfer and Assignments

71.1 The Union and the Employer endorse the concept of voluntary teacher transfer as one method for teachers to experience professional growth.

71.2 Employer Initiated Transfers

- a) Transfers shall not be initiated by the by the Employer for arbitrary or capricious reasons.
- b) An Employer official intending to recommend a transfer of a teacher shall meet with and inform the teacher of the nature of the proposed transfer and the reasons for it, at least five (5) days prior to the recommendation being placed before the Employer.
- c) The teacher shall have the opportunity to consider the matter and reply within seventy-two (72) hours and may request a meeting with the Superintendent or

designate to discuss the matter. The teacher shall have the right to be accompanied by a member of the Union.

- d) At, or subsequent to, such a meeting, the Employer shall consult with the teacher to determine the in-service required, if any, to adequately prepare for the proposed transfer.
- e) Transfers initiated by the Employer shall be completed no later than June 15 in a school year for the next school year, as far as practicable.
- f) Transfers initiated by the Employer during the school year as a consequence of changes in student enrollment shall not be subject to the time limits contained in sections 71.2(b) and 71.3(c) above.
- g) Where the Employer initiates a transfer during the school year, and where the assignment is different than the current assignment, the Employer shall consult with the teacher to determine the support and release time required to facilitate the relocation.
- h) Unless exceptional circumstances exist, any teacher who has been transferred without agreement shall not be subject to a further transfer without agreement for two (2) school years

9. Sample Evaluation Clause From the Surrey Collective Agreement:

Article 40: Employee Evaluation and Report Writing

40.10 Occasion For Reporting and Evaluation

Reports may be written upon employees in the following instances:

- 40.11 Upon request of the employee, in writing, prior to January 31.
- 40.12 During the first year of employment in the district (See Article 41).
- 40.13 When there is a substantial change in assignment (e.g., between the elementary and secondary levels, or between a special assignment and a regular classroom assignment.).
- 40.14 When a question of competence arises.
- 40.15 When requested by the Board or Superintendent.

40.20 Evaluation During The Second Year

An employee who has received a "Satisfactory" report under the provisions of Article 41.40 shall not receive another formal report during the subsequent 12 month period unless that employee requests a written report pursuant to Article 40.11.

40.30 Reports For Other Reasons

- 40.31 When a report is to be written upon an employee for reasons other than those noted in 40.11 - 40.15 above, the evaluator will provide the employee who is to be evaluated with a written explanation of the circumstances which give rise to the occasion for evaluation and reporting.

- 40.32 This is to be done at least two weeks prior to the initiation of those steps outlined in Articles 40.40 to 40.95 below.
- 40.33 Should the employee upon whom the report is to be written disagree with the occasion for reporting and evaluation, when it comes about for reasons other than those noted in 40.11 - 40.15 above, then the employee must give written notice of this disagreement to the President or designate, and to the Superintendent or designate, within this two week period.
- 40.34 Within seven (7) days of receipt of written disagreement a meeting between the parties will be held to resolve the matter.
- 40.35 Should consensus on resolution not be possible at the meeting, the Superintendent may direct that a report be written under the provisions of 40.15 above.

40.40 Process

- 40.41 When a report is to be written, the evaluator and the employee shall meet at a mutually agreeable time to discuss the process by which this formal evaluation will take place. This will include a discussion of pre-arranged visitations, impromptu visitations, and at least one postf observation conference.
- 40.42 The evaluator/employee meeting shall also include a discussion of the criteria which will be used as a basis for the report. A copy of the criteria, definitions and guidelines shall be given to the employee at this meeting.
- 40.43 Should the employee elect not to avail himself/herself of the opportunity to meet with the evaluator within two (2) weeks of being invited to meet, the evaluator will provide the employee with this information in writing.
- 40.44 Involvement or non-involvement of an employee in extra-curricular activities is outside the scope of a report on the work of the employee.
- 40.45 A written report shall be based on a minimum of three classroom visitations of a duration sufficient for the collection of data based on the criteria.
- 40.46 A copy of the collected data from the visitations will be given to the employee as early as possible and prior to the post-observation conference.
- 40.47 Included in the post-observation conference will be suggestions for remediation where weaknesses were observed.
- 40.48 When any of the above processes are not appropriate due to the nature of the employee's assignment (see Article 40.70), the employee and the evaluator will meet to discuss and identify the revised process.
- 40.49 If an employee on whom a report is to be written has reason to believe that the person who is to write the report holds an unreasonable bias, the employee will advise the Superintendent and the President of this belief. Upon recognition of alleged bias, the employee will report his/her belief as soon as possible. A report of alleged bias will only be entertained prior to the meeting to discuss the draft report. (See Article 40.94)

40.50 Criteria

Subject to Article 40.70, evaluators shall use the following criteria:

- 40.51 Lesson format
- 40.52 Evidence of planning
- 40.53 Instructional process and skills
- 40.54 Assessment and evaluation of student progress
- 40.55 Classroom management, discipline and climate
- 40.56 Classroom environment
- 40.57 Professional development

40.60 Model

The criteria, process, definitions and guidelines will be as defined in Appendix G.

40.70 Revised Criteria

40.71 When the above criteria are not appropriate due to the nature of the employee's assignment, the employee and the evaluator shall meet to discuss and identify the revised criteria.

40.72 It will be the responsibility of the evaluator to provide the employee with a final copy of the revised criteria.

40.73 Where revised criteria might be applicable to the evaluation of other Association members the President will also be provided a copy.

40.80 Direct Observation

A report should be based on the direct observation by the evaluator of the employee who is to be evaluated, and shall be written in consideration of only those criteria cited in Article 40.50 above or other criteria as may be determined through application of Article 40.70.

40.90 Reports

40.91 A report written on an employee should be based primarily upon observations made in the employee's major area of assignment. The report should also note any discrepancy between the employee's current assignment and areas of training.

40.92 Specific comments made by the evaluator shall be directly related to the evaluation criteria, definitions, and guidelines.

40.93 If an evaluator notes an area in an employee's work where the need for continued growth is indicated, the evaluator shall include specific recommendations.

40.94 Once a draft of a formal report is prepared, the evaluator and the employee shall meet at least one week prior to the final draft being submitted, at which time a copy of the draft will be provided to the employee. After a reasonable time, the evaluator and the employee shall discuss the draft and possible amendments. After all possible amendments have been fully considered, the evaluator shall prepare and submit the final report.

40.95 A report on an employee is "received" by the employee when it is presented to the employee by the evaluator, thereafter

40.96 An employee has the right to submit a written commentary on any report which shall be filed with all copies of the report.

Article 41 First Year Employees

41.10 Nature of Appointments

All employees hired after January 1, 1991 will be appointed to continuing contracts of employment.

41.20 First Evaluation

41.21 No later than six (6) school months following appointment, employees will receive an initial evaluation, which evaluation shall be conducted using the FIRST YEAR EMPLOYEE EVALUATION form developed by the parties as at 1990-12-17.

41.22 This evaluation will be conducted in accordance with Articles 40.40 to 40.96 with Article 40.45 being replaced with,

- 40.45 A written report shall be based on a minimum of two classroom visitations of a duration sufficient for the collection of data based on the criteria.
- 41.23 Should the first evaluation be "Less Than Satisfactory", the employee shall be placed on probation and the employee and the Association notified immediately, in writing, of the action.
- 41.30 Performance Deemed Satisfactory**
An employee's performance shall be deemed to be "Satisfactory":
- 41.31 On the receipt of a "Satisfactory" report prepared pursuant to Article 41.20, or
- 41.32 If no report is prepared pursuant to Article 41.20.
- 41.40 Second Evaluation**
No later than six (6) school months subsequent to issuance of the initial evaluation report pursuant to 41.20, employees who have been placed on probation may receive a second evaluation. This evaluation shall be conducted in accordance with the whole of Article 40.
- 41.50 Completion Probation**
An employee's performance shall be deemed to be satisfactory and the employee shall be deemed to have satisfactorily completed a probationary period:
- 41.51 On receipt of a "Satisfactory" report prepared pursuant to Article 41.40, or
- 41.52 If no report is prepared pursuant to Article 41.40.41.60 **TERMINATION OF SERVICE**
- 41.61 The Board shall not terminate the services of an employee placed on probation unless the Board has received a "Less Than Satisfactory" report under Article 41.20 and a "Less Than Satisfactory" report under Article 41.40.
- 41.62 When the services of an employee placed on probation are to be terminated, the employee will be:
- 41.62.1 Provided with at least one (1) month's written notice of termination, with termination to be effective as of the end of the then current term or semester, as applicable, and
- 41.62.2 Afforded a hearing pursuant to Article 56 prior to the proposed termination date.
- 41.70 Article 54.20 In Effect**
If an employee receives a "Satisfactory" report under Article 41.20 but a "Less Than Satisfactory" report under Article 41.40, the second report (under Article 41.40) shall be understood as a first "Less Than Satisfactory" report under the provisions of Article 54 and Article 54 will apply.
- 41.80 Extending Time Limits**
- 41.81 Where an employee covered in Article 41 is absent for any period(s) in excess of one (1) month, the time limits in this Article will be extended by a period or periods equal to such absence(s).
- 41.82 Notwithstanding Article 41.23, where there is reasonable cause to believe that circumstances not within the control of the employee resulted in a less than satisfactory report under Article 41.20, the employee may request a transfer, within fourteen (14) days of notification under Article 41.23, and the Board shall:

- 41.821 Make all reasonable efforts to arrange a transfer under Article 33 to a mutually agreeable assignment or school for the succeeding school term/semester, but in such event the probationary provisions shall commence anew as of the effective date of any such transfer, or
- 41.822 Ensure that the subsequent report under Article 41.40 is written by a different evaluator.

ARTICLE 42

Evaluation of Substitutes

- 42.10 The provisions of Articles 40 and 54 will be extended to include evaluation of substitute teachers and will prevail except as amended below:
- 42.20 The following will not apply to the evaluation of substitute teachers: Articles 54.22, 54.23 and 54.30 to 54.45, inclusive.
- 42.30 Articles 40.11 to 40.14 will be replaced with:
 - 40.11 Prior to March 31st of each school year a substitute teacher may request, in writing, an evaluation report from an Administrative officer.
 - 40.12 Such a request shall not be unreasonably denied where the substitute teacher:
 - 40.12.1 Has taught in the school for at least five days (either consecutive or random),
 - 40.12.2 Has previously worked with the class or classes involved,
 - 40.12.3 Has not received an evaluation report at that school in the current school year, and
 - 40.12.4 The Administrative Officer has a reasonable expectation that the substitute teacher will be reassigned to the school for a further five days before the end of the school year.
- 40.13 During a school year a substitute teacher may request evaluation reports from Administrative officers in a maximum of two different schools.
- 42.40 Article 40.45 shall be replaced with,
- 40.45 A written report shall be based on a minimum of two classroom visitations of a duration sufficient for the collection of data based on the criteria.
- 42.50 Article 54.10 shall be replaced with,
 - 54.10 The Board shall not dismiss a substitute teacher for unsatisfactory performance except where the Board has received two evaluation reports, written by different evaluators, which indicate that the learning situation is less than satisfactory.
- 42.60 Article 54.21 shall be replaced with,
- 54.21 The second evaluation report shall be issued within three school months of the initial report.
- 42.70 **Evaluation Form**
Evaluators will use the substitute teacher evaluation form developed by the parties as at 1990-12-17.

APPENDIX G (Surrey Collective Agreement)

**EVALUATION & REPORT WRITING CRITERIA
DEFINITIONS:**

1.00 Definition of Lesson Format: [Article 40.41]

Lesson format refers to direct instruction and is cyclical and proceeds through identifiable stages which are interdependent:

1.02 Anticipatory Set:

Establish Purpose, Set Direction, Transfer Previous Skills or Concepts

1.12 Closure:

Post Test, Homework Assignment, Related Project or Summary Activity

1.04 Introduction:

Motivate, Establish Performance Standards and Objectives

1.06 Instruction:

Group Appropriately
Develop Concepts Through Discovery/Lecture
Demonstration/Presentation
Modes, Reinforce and Refine Concepts/Skills

1.10 Guided Practice:

Practice under supervision or Peer Tutoring, Encourage and/or Praise

1.08 Check For Understanding:

Monitors: Sample, Group or Individual Response. Reteach if necessary using Modified/Altered Presentation Mode

2.00 Evidence of Planning [Article 40.42]

2.02 Planning requires a statement of short and long range goals for the curriculum areas in order that objectives for each lesson, unit and learning activity be established.

2.04 The planning document(s) also relate(s) objectives to student learning outcomes and student evaluation.

The provincial curricula guides provide resource manuals for this process.

EVALUATION & REPORT WRITING CRITERIA GUIDELINES:

- 1.01 Defines purpose of lesson clearly;
- 1.03 Provides for transfer of previous content to new;
- 1.05 Provides for motivation;
- 1.07 Provides for appropriate grouping;
- 1.09 Monitors for understanding;
- 1.11 Provides for guided skill practice;
- 1.13 Provides for opportunity for independent practice and for reinforcement;
- 1.15 Provides for closure.

- 2.01 Develops long range plans: e.g. units, yearly plans, scope & sequence, objectives;
- 2.03 Adheres to provincial and local curricula;
- 2.05 Maintains short range plans: e.g. day plan, lesson plan;
- 2.07 Demonstrates instructional planning e.g. identification of strategies which will

meet course objectives.

DEFINITIONS:

- 3.00 **Instructional Process and Skills** [Article 40.43]
3.02 Instructional process and skill provide structured learning experiences through teacher planning and decision-making.

-
- 4.00 **Assessment and Evaluation of Student Progress** [Article 40.44]
4.02 Assessment and evaluation provide continuous feedback on student strengths and weaknesses to all concerned with student progress.

GUIDELINES:

- 3.01 Targets instruction to appropriate level of difficulty;
3.03 Instructs to clearly defined goals and objectives;
3.05 Demonstrates clarity of presentation;
3.07 Monitors learning;
3.09 Provides for student motivation;
3.11 Defines student expectations clearly;
3.13 Identifies and provides for individual differences;
3.15 Provides for closure;
3.17 Selects and uses strategies to respond to the variety of learning styles;
3.19 Utilizes effective questioning techniques which reflect both the instructional objectives and the ability level of the students.
-
- 4.01 Clearly defines evaluation criteria for students;
4.03 Assesses student progress on a regular and frequent basis;
4.05 Plans assessment which provides for differences of individuals and of groups;
4.07 Designs and interprets tests appropriately;
4.09 Evaluates student growth and achievement in line with objectives of program;
4.11 Marks tests, assignments and projects according to a criteria of acceptable levels clearly understood;
4.13 Adheres to department and school policies and procedures;
4.15 Maintains a system of accountability for student progress and completion of assignments;
4.17 Provides feedback on performance regularly to students;
4.19 Maintains appropriate written records;
4.21 Maintains open channels with parents regarding student progress;
4.23 Reports regularly to parents on student progress

DEFINITIONS:

- 5.00 **Classroom Management, Discipline and Climate** [Article 40.45]
5.02 Classroom management, discipline and climate are the establishment of and

adherence to a set of expectations
for teacher and student behaviours which maximizes opportunities for ordered
learning to occur.

- 6.00 **Classroom Environment** [Article 40.46]
6.02 Classroom environment is the optimal adjustment of the physical environment
to facilitate and sustain
interest, guidance and motivation for learning in safe, comfortable conditions.
-

- 7.00 **Professional Development** [Article 40.47]
7.02 Professional development is the building and the strengthening of a teacher's
knowledge, understanding
and skills through out-of-class experiences that improve the quality of
teaching.
-

GUIDELINES:

- 5.01 Defines and adheres to a clear set of classroom rules, routines and
procedures consistent with school practices;
5.03 Emphasizes on academic goals and/or achievement;
5.05 Sets high expectations for students;
5.07 Facilitates student involvement and participation;
5.09 Facilitates smooth transition from one activity to another, with attention to
appropriate pace;
5.11 Defines appropriate behaviour and consequences;
5.13 Monitors student behaviour;
5.15 Responds effectively to unanticipated interruptions;
5.17 Actively promotes positive student <-> teacher, student <-> student
interaction;
5.19 Builds group cohesiveness and consensus;
5.21 Accepts, clarifies and supports students' ideas;
5.23 Monitors student work habits.
-
- 6.01 Adjusts the physical environment and equipment to accommodate variety in
the learning situation;
6.03 Provides facilities for displays, exhibit books and student work;
6.05 Attends to conditions that affect health and safety of students;
6.07 Organizes and arranges classrooms so as to facilitate learning and minimize
disruptions.
-
- 7.01 Participates in the development, implementation, and/or review of school
policies and procedures;
7.03 Participates in the development, implementation, and/or review of philosophy
and goals statement;
7.05 Maintains positive professional rapport with colleagues;
7.07 Keeps self up to date in areas of specialization and in general trends in
education;
7.09 Takes advantage of in-service education opportunities;
7.11 Participates in school/district provincial committees;
7.13 Participates in committee work of the local and/or provincial professional

- association;
 - 7.15 Shares ideas, materials, and methods with professional colleagues;
 - 7.17 Shares in the evaluation of the effectiveness of educational programs;
 - 7.19 Consults with teachers, team leaders, department heads, consultants, and specialists to improve the teaching learning process;
 - 7.21 Interprets school programs to parents and community as opportunities occur;
 - 7.23 Maintains positive relationships with parents;
 - 7.25 Sets professional standards of integrity, attitude towards professional growth, attitude towards constructive criticism and in meeting obligations.
-

10. Sample Right To Representation Provision From the Langley Collective Agreement

Article 13: Right To Representation

- 13.1 A teacher shall be accompanied by a representative, who is a member of the union, to attend a meeting which is discipline related between a teacher and a school-based administrative officer or that teacher's immediate supervisor.
 - 13.2 A teacher shall have the right to be accompanied by a representative, who is a member of the union, to attend a meeting between that teacher and a school-based administrative officer or that teacher's immediate supervisor if the teacher or the administrative officer has reasonable cause to believe such a representative should be present.
 - 13.3 A teacher shall be accompanied by up to four representatives to attend a meeting which is discipline related between a teacher and board representative(s) not referred to in paragraph 13.1 or 13.2 above.
 - 13.4 A teacher shall have the right to be accompanied by up to four representatives to attend a meeting between that teacher and board representative(s) not referred to in paragraph 13.1 or 13.2 above if the teacher or a board representative has reasonable cause to believe such representative(s) should be present.
 - 13.5 In the event that a meeting as referred to above takes place during instructional time the teacher and representative(s) will be relieved of instructional duties with no loss of pay.
-

11. Sample Personnel Files Provision From the Delta Collective Agreement:

Article E.7 Personnel Files

- 7.1 There shall be only one district personnel file for each employee covered by this agreement, maintained at district offices. Any file relating to an employee, kept at a school, shall be destroyed when the employee leaves that school.
- 7.2 After receiving a request from an employee, the Superintendent and/or designate, in respect of the district file, or the administrator of the school, in respect of any school file, shall grant access to that employee's file at a mutually convenient time.
- 7.3 An appropriate school board official shall be present when an employee reviews his/her file, and the employee shall have the right to be accompanied by a Union representative.
- 7.4 The school board agrees that only factual or material relevant to the employee shall be maintained in personnel files.
- 7.5 Upon written request, material critical of the employee (other than evaluation reports) or in the nature of a reprimand, will be removed after two (2) years with the following proviso: if the Board decides to retain any of these materials, it may do so for two (2) more years, after which time, upon request, they shall be removed, provided that no material of a similar nature has been filed subsequent to the initial filing.
- 7.6 District personnel files shall be in the custody of the Superintendent or designate and shall not be accessible to other than appropriate administrative officials of the school district.

APPENDIX J



GRIEVANCE REPORT

ALREADY REPORTED IN PROGRESS?
 Yes No

F15-26

LOCAL	SUBJECT/DESCRIPTION	CARRIAGE	STAGE
02 Cranbrook	Suspension without pay _____ (Gary Roberts) _____ <small>GRIEVOR</small>	LOCAL Flo Road BCTF Mackay	J.C.
<p>Gary Roberts, Eng Dept Head at Laurie Middle School was suspended for pushing a grade 8 male student into the locker. G.R. has an excellent teaching record but this is the 3rd incident involving discipline by the board. He was suspended in '78, given a written reprimand in '86, now his contract has some language on removal of items from the file but G.R. had never asked.</p> <p>At the hearing the CDTA argued "mitigating circumstances" quite strongly. School staff came forward to support G.R. and when we used the weighting formula on his class of 23 it was equivalent to 43.</p> <p>When board met, 3 members were in favour of a written reprimand & immediate return to work, three were in favour of dismissal. The board chair was neutral. Result a compromise of a suspension from Mar 28, 1990 - Feb 1, 1991.</p> <p>CDTA immediately grieved at Step 2 (according to their contract) arguing that the suspension was equal to a fine of about \$40,000. No resolution at Step 2.</p> <p>Now the grievance moves to J.C.</p>			<p>P (Pre-Grievance)</p> <p>G (Formal grievance filed, initial in-house steps)</p> <p>JC (is proceeding to or awaiting a final committee decision)</p> <p>X (Point of decision to arbitrate)</p> <p>A (in arbitration incl 108)</p> <p>R (Resolved settled, with drawn award issued)</p>
_____ Staff Reporting		90-04-17 Date	

Distribution: Bargaining Division Administrative Staff

APPENDIX K

ARBITRATION AWARDS RESOLVING DISCIPLINE CASES: 1989-1991 SUMMARIES

1. Robert McWhinnie and the Langley Teachers' Association v Board of School Trustees, School District No. 35 Langley (1989). Single Arbitrator: David H. Vickers; Mary Saunders, counsel for the school board, Terry Mullen, counsel for the teachers.

Facts of the case: A teaching report written on teacher McWhinnie, a grade five teacher with nine years seniority, by the director of instruction concluded that "the learning situation in the class is less than satisfactory". The report was the third less than satisfactory report received by the teacher in a 24 month period. The teachers' association claimed the report was not "independent", a requirement of the collective agreement, because the report writer had read the first two reports and used information from those two reports in an improper fashion. The report writer was biased, the union claimed, and the report should be declared invalid. The arbitrator upheld the report and dismissed the grievance.

Significance of the case: This case does not deal with dismissal even though the teacher may have been dismissed as a result of receipt of the third less than satisfactory report, the subject of this grievance arbitration. The arbitrator ruled in favour of the school board and stated that the report writer was not biased and his report was written independently. The teacher had taught in the district since 1980. A number of precedents were cited in the 11 page decision including a previous Langley arbitration case (Parker, unreported) and other labour arbitration awards from the L.A.C.s in attempts to get at the meaning of "independent" evaluation. The arbitrator was influenced by the fact that the collective agreement conceded that members of management would write the evaluation reports. Such people cannot then be considered biased because they are management. The Director of Instruction was found to have behaved in a reasonable manner even though "he may have reached wrong conclusions". The conclusions, however, were not matters for this arbitration to examine.

2. The Chilliwack Teachers' Association v Board of School Trustees, School District No. 33 Chilliwack (1990). Single Arbitrator: H. Allan Hope; J. S. Clyne, counsel for the school board, Lorraine Shore, counsel for the teachers.

Facts of the case: The grievor, a male secondary teacher (unnamed), had been suspended for seven months after a female student accused him of voyeurism, or of looking through a grill in the bottom of the door to the girl's change room. The teacher was reported to have three years experience in the school and to have an excellent reputation. The charge was made three weeks after the event and the decision to suspend made by the school board on the basis of reports by the school principal who interviewed the girl. Hope found the charges to be false and completely exonerated the teacher, ordering full back pay. He determined after viewing the scene that such an instance could not physically have occurred.

Significance of the case: While the case appears relatively simple, Hope takes 46

pages to review all the facts, to criticize the principal and the school board for its poor investigative practices and to explain why the charges could not possibly have been true. He also gives a possible explanation for the employer's actions and unfounded beliefs in the face of such an obvious mistake on the part of the student and the principal. The numerous case precedents cited from court decisions and arbitral precedent go to the issue of standard of proof, of the reasonable doubt standard that should govern, and concerning the issue of a witness being honestly mistaken. He says about the standard of proof required:

Allegations of impropriety made against teachers by their students are not uncommon and their vulnerability to such allegations requires that care be taken in any adjudicative process to ensure that the rights of the teacher are preserved with the same scrupulous care that the rights of students, parents and society generally are preserved. In that context, it is appropriate to require proof to a high degree of probability of any allegations made against the professional reputation of a teacher, bearing in mind not only the disciplinary consequences of finding such allegations to be true, but the implications in terms of professional reputation. It is of note that the teacher is not named in the award.

3. William Aspden and the Powell River Teachers' Association v Board of School Trustees, School District No. 47 Powell River (1991).

Arbitration Board: Bryan Williams, Chairman, James Foster, Appointee of the association and grievor, and Ed Carlin, Appointee of the employer; Judith Anderson, counsel for the school board, J. Miriam Gropper, counsel for the teachers.

Facts of the case: Aspden, a secondary teacher in this district for 15 years, was dismissed after receipt of three less than satisfactory teaching reports. The test provided in the National Harbours Board was applied and the decision stated that the "correctness" test would be applied. That is, the three reports were found to be in order, the evaluation reasonably and fairly done, but also the grievor was found to be performing in a less than satisfactory manner. The dismissal was upheld.

Significance of the case: The 21 page award reviewed in detail the three negative teaching reports as well as the rebuttal from the union concerning points made in each one. The arbitration board viewed the classroom which was alleged by the teacher to be largely responsible for the poor teaching situation, and rejected arguments from the union that the three reports were not written in time. The award states that the "law and the arguments submitted by counsel" were carefully considered but such arguments were not outlined other than the review of the National Harbours Board eight points. It is of note that the two wingers on the board are members of the education community.

4. Gary Roberts and the Cranbrook District Teachers' Association v Board of School Trustees, School District No. 2 Cranbrook (1991).

Single Arbitrator: Donald R. Munroe; Wendy Devine, counsel for the school board, Lyndon A. Best, counsel for the teachers.

Facts of the case: Roberts, a male grade eight teacher with 17 years seniority in the district, was suspended for ten months after he used physical force against a teenage boy. The teacher had a record of past similar conduct for which he had received a suspension. The ten month suspension was timed to end when the new semester began in February. The arbitrator found the teacher had been provoked, was honest,

cooperative, and remorseful, had served in the district "for a long time", his emotional health was not as it should have been at the time, and although a long suspension was justified the semester break should not be considered. Munroe concluded that the suspension was excessive and substituted a five month suspension.

Significance of the case: The arbitrator determined that the only issue of substance was whether the ten-month suspension was excessive in the circumstances. He referred to Wm. Scott to indicate that mitigating circumstances must be examined. All such circumstances were examined in detail in the 25 page award. It was noted that the grievor could have requested, in accordance with a provision of the collective agreement, to have his past negative work record removed. Although he had not done this the arbitrator agreed that such a past record "be accorded only marginal weight" in light of such a collective agreement provision. Sections of the BCTF Code of Ethics, the Criminal Code of Canada, and the School Act provision dealing with corporal punishment were cited to determine that there was cause for some form of punishment, and as well numerous case precedents from arbitral jurisprudence were cited to justify substituting a new penalty in place of the one meted out by the employer.

5. Gaston Allen and the Bulkley Valley Teachers' Association v Board of School Trustees, School District No. 54 Bulkley Valley (1991).

Arbitration Board: Stephen Kelleher, Chairman, Doug Quinn, Nominee of the employer, and Tom Hutchison, nominee of the Union; Mary Saunders, counsel for the school board, Miriam Gropper, counsel for the teachers.

Facts of the case: Allen, a male physical education teacher in the junior secondary school, was suspended and later dismissed for twice striking students and for failure to disclose on his application to the district that he had been charged with assault and involved in criminal proceedings. The arbitration board upheld the school board's dismissal on the basis that grounds for discipline was proved, the offence against the students was serious, the teacher was on a temporary appointment and had only a few months seniority, the teacher had been warned about physical abuse of students before the recent incident, the teacher showed no remorse and demonstrated lack of candor.

Significance of the case: The 63 page award reviews in great detail the two incidents of striking students along with the various versions from all the witnesses, as well as the matter of the teachers record of criminal charges and the conditional discharges and probation which resulted. The Union's objections to the school board's process are dealt with one at a time and rejected on the basis of precedents from other arbitration cases and an IRC decision. The Haight-Smith (Kamloops teacher) case was cited by the Union to support the contention that the Superintendent should not have been present when the decision to dismiss was made by the board. This is rejected as not being relevant now in the collective bargaining arena. Kelleher agrees with the reasoning of Hope in the Chilliwack case cited above regarding the standard of proof required and how to deal with allegations made against teachers. However, unlike in the Chilliwack case, the teacher is found guilty of the allegations in this case.

The arbitrator makes it clear at the outset that the Wm. Scott test will be applied to review the case.