

AN INVESTIGATION INTO THE FUNCTIONS OF  
SCHOOL BOARDS IN BRITISH COLUMBIA

by

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## ABSTRACT

The significance of school districts as an object of study lies in the direct manner in which the provision of public education serves the needs of society and is, in fact, a societal undertaking. Public schooling is a major instrument for the expression of the public will in a democratic society, and the school system both models and maintains the essential attributes of that society. As a result, school districts, the basic structural unit in the organization and operation of public schools in Canada, create records which reflect the educational values and concerns of this society at the most fundamental level. Because the effective administration of education requires that records be kept, sometimes by law, it is essential to analyze the functions of school boards as a means of understanding the records they produce and their significance.

The aim of this study is to identify and synthesize those facts, laws, historical developments, functions, and competencies common to the local administration of education in British Columbia with the express purpose of establishing a framework in and through which the archival control of their records may be examined. This analysis is undertaken in accordance with the archival methodology of functional analysis.

The need to examine and understand the legal foundation upon which school districts and their controlling boards rests is critical because so many of their activities are largely determined by law. Accordingly, the thesis begins with an analysis of the legal framework of school district activity and shows that as political and legal entities

school districts are considered to be provincial agents, albeit acting in a local capacity, with the status of quasi-municipal corporations. From this point of departure, an analysis of the relevant statute law, common law, and administrative law is then undertaken in order to determine the historical evolution of British Columbia school boards, their mandate and their functions. This examination reveals that each school board shares three primary or governing functions (legislative, judicial, and executive) and two management functions (education administration and business administration).

The thesis concludes by offering an evaluation of the implications of this study for archival practice through an examination of several issues related to the archival management of school board records as well as the reasons for their permanent preservation by an archival agency.

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## INTRODUCTION

In British Columbia, as in all other provinces in Canada, school districts are the fundamental unit in the organization and operation of the public school system. As the basic structural unit they have been given the exclusive responsibility for the direct provision of public educational services within a specific geographical region. Each of these districts contains "a number of schools, some appointed officials, and generally an elected school board which is charged both with implementing government policies and with policy-making on local issues."<sup>1</sup>

The significance of school districts as an object of study lies in the direct manner in which the provision of public education serves the needs of society and is, in fact, a societal undertaking. Public schooling is a major instrument for the expression of the public will in a democratic society, and the school system both models and maintains the essential attributes of that society. As a result, school districts, and their controlling boards of trustees, create records which reflect the educational values and concerns of this society at the most fundamental level.

In her thesis "Appraising Records of Visual Artists" Victoria Blinkhorn has observed that "just as the significance of the records rests on their relationship to the creator, the significance of the creator rests on his or her relationship to society."<sup>2</sup> The significance of the creator may be understood through an examination of the

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<sup>1</sup>P. Coleman and L. LaRocque, Struggling to be 'Good Enough': Administrative Practices and School District Ethos (London: The Falmer Press, 1990), 25.

<sup>2</sup>As discussed by Susan Hart in "Archival Acquisition of the Records of Voluntary Associations," (M.A.S. Thesis, University of British Columbia, 1989), 2.

"pervasiveness of the organization [or individual], taking into consideration the ways in which it influences and functions for society, and the extent to which it reflects society."<sup>3</sup> One may safely presume both the position and place of local school boards as significant agencies within Canadian society. In fact, the integral role of educational activities distinguishes societies and their respective cultures. In modern societies, where educational activities have been grouped and made available through a system of public education, school systems have evolved into "one of the most important purposive social institutions."<sup>4</sup>

One must also consider that all decisions regarding the purpose and direction of the education system reside properly with a competent governing body and it is decisions made by governing bodies that ultimately constitute public policy. In the Canadian constitution, the provinces have jurisdiction over education. They delegate responsibility for the direct administration of schools to school boards. Because the effective administration of education requires that records be properly kept, sometimes by law, it is essential to analyze the functions of British Columbia school boards as a means of understanding the records they produce and their significance.

An analysis of the activities associated with public education within a particular society thus offers insight into the social structures, attitudes, and behavior that characterize that society. These observations lead to the conclusion that archivists must develop a greater awareness of public educational organizations, their

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<sup>3</sup>Hart, "Archival Acquisition of the Records of Voluntary Associations," 2.

<sup>4</sup>William Castetter, The Personnel Function in Educational Administration, 4th ed., (New York: Macmillan Publishing Company, 1986), 7.

functions and activities, as well as the types of records that result from these activities. The primary intent of this study is to bring into an organized perspective those facts, laws, historical developments, functions and competences common to the local administration of education which are conducive to providing a better understanding of the present legal status and operation of British Columbia school boards. From this point of analysis, the thesis will conclude by offering an evaluation of the implications of this study on archival practice through an examination of several issues related to the archival management of school board records as well as the reasons for their permanent preservation by an archival agency. The primary instrument through which these tasks will be accomplished is a functional analysis.

The intrinsic methodology common to the functional analysis of organizations, agencies, and individuals is based upon several accepted archival principles. The basic element of all archival accumulations is the record. Records are the documents, regardless of physical form or characteristics, made or received in the natural conduct of affairs carried out in the performance of the functions and activities of artificial and natural persons (whether public or private) and subsequently preserved as evidence of those functions, policies, decisions, procedures, operations, other activities, or because of the informational value of the data contained therein.<sup>5</sup>

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<sup>5</sup>This definition of "record" has been derived from the following three sources: Sir Hilary Jenkinson, A Manual of Archival Administration (London: Percy Lund, Humphries, and Co., 1922; reprinted in 1965), 6.

T.R. Schellenberg, Modern Archives: Principles and Techniques (Chicago: University of Chicago Press, 1956; Midway reprint, 1975), 16.

Terry Eastwood, "Towards a Social Theory of Appraisal," in The Archival Imagination: Essays in Honour of Hugh A. Taylor, ed. Barbara Craig (Ottawa: Association of Canadian Archivists, 1992), 72.

Records derive their nature from the manner of their creation. They are the product of the activity and circumstances associated with their creation as records. They do not, as Schellenberg would suggest, acquire an archival nature simply as a result of their selection for permanent preservation.<sup>6</sup>

Archives are thus born with their fundamental nature. Acceptance of this fact allows several subsequent conclusions to be made about the character of archival documents. One of these is that archives are intrinsically linked to the functions and activities of their creator. Subsequent to this is the fact that records are created, accumulated and/or used by the creator as the means to carry out these activities. In this sense they have the inherent nature of an instrument.

The creator then, as a result of the continuing nature of his, her, or its ongoing activities, naturally and spontaneously both produces and accumulates a body of archival material. This body of archives, bonded by their common destination, may be thought to be organic in character in the sense that each individual document is related to and thus derives its meaning from the preceding and subsequent documents in that body of archival material. It is accepted, then, that "an archives consists of a complex whole the parts of which are interdependent, no one document having its full meaning if it is abstracted from its relationships with other documents."<sup>7</sup>

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<sup>6</sup>Schellenberg, Modern Archives: Principles and Techniques, 16. Jenkinson further emphasizes this distinction when he writes that "archives are not drawn up for the interest or for the information of posterity." Manual of Archival Administration, 6.

<sup>7</sup>Eastwood, "Towards a Social Theory of Appraisal," 72.

Two further elements of archives follow upon this discussion of organicity: their uniqueness and their impartiality. Each record was created and used in response to a specific need at a particular time with regard to a unique transaction.<sup>8</sup> These factors combine to ensure that each document is uniquely placed within the creator's body of records. "The uniqueness of archives [thus] derives from the place each document has in the structure of the whole, from the fact of its position in relation to other documents."<sup>9</sup>

It follows from the above idea of natural and spontaneous creation that archives are also necessarily impartial. They were created in order to carry out an activity of their creator, not for the purposes of future researchers, and are immediately reflective of this original action only. They were created not to disseminate historical knowledge to future users but, rather, to meet the immediate practical needs of their creator. As a result they are the "unselfconscious by-products of human activity [and thus] have the objective formlessness of raw material."<sup>10</sup>

The elucidation/examination of the nature of archives developed above, in which the synonymic relationship between records and archives has been developed (albeit briefly), will now be used to define, investigate, and expand upon the critical role the concept of function plays in the record creation process. It is a principle of archival science that the archives of any given agency are created as a result of the

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<sup>8</sup>The transaction is unique only to the particular context of the moment. Obviously many transactions are repetitive in nature.

<sup>9</sup>Eastwood, "Towards a Social Theory of Appraisal," 72.

<sup>10</sup>J.H. Hodson, The Administration of Archives (Oxford: Pergamon Press, 1972), 4.

various activities which comprise the functions of that particular agency.

Consequently, the inherent organic relationships among the resulting body of archival material are conditioned or established through those structures, functions, and activities, and the way in which they are formed or carried out, specific to that agency.<sup>11</sup> Acceptance of such an understanding, in which the archival document is firmly placed "in the heart of a functional process"<sup>12</sup>, demands that the archivist analyze the structure, functions, competences, and activities of individual record creators "if the full context and meaning of archival documents is to be understood."<sup>13</sup>

When the terms structure, function, competence, and activity are used in developing an administrative context, such as they are here, a concept of relatedness arises. In other words, an archivist is likely to think of how the individual constituents are related to one another when specific issues of structure, function, competence, activity, and form (when the analysis of the documents eventually takes place) are raised. The method or instrument through which the archivist proceeds to examine the various relationships among the creating body's inherent elements of structure, function, competence, and activity is that of a functional analysis.

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<sup>11</sup>"A Study of Special Archival Science on an Organization and its Records", 1. This citation refers to a syllabus provided as part of the course materials for Archival Studies 505 - 'Canadian Government Records' that was taken as part of the Master of Archival Studies program at the University of British Columbia.

<sup>12</sup>Michel Duchein, "Theoretical Principles and Practical Problems of *Respect des fonds* in Archival Science," *Archivaria* 16 (Summer 1983), 67.

<sup>13</sup>Terry Eastwood, "General Introduction," in The Archival Fonds: from Theory to Practice, ed. Terry Eastwood (Canada: Bureau of Canadian Archivists, 1992), 5.

A functional analysis is the study of an administration in a systematic and comprehensive manner, through the examination of these constituent elements (function, structure, competence, and activity) and how they are related. This investigation also analyzes and incorporates applicable mandates, laws, and regulations. The product of such an analysis provides the archivist with a range of knowledge about the organization or agency that has been studied. This knowledge is critical, for,

as context and interrelationship between records qualify archives, in order to evaluate them, the archivist must understand in the most general and assimilative sense, the social, political, legal, moral, geographical, and cultural context which influenced their creation.<sup>14</sup>

A functional analysis thus provides a systematic way of reasoning for the archivist to understand the archival material at hand and proceed with the treatment of it. The benefits of such an approach are emphasized when one considers that it is changes in

structure, function, and activity [as well as] the complexities of relationships, both internal to the whole and external to related archives, [that] is essentially what complicates the archival processes of appraisal, arrangement, description, and reference.<sup>15</sup>

Archivists, with their perspectives on context and evidence, rely heavily on their ability to analyze the information that they have derived from their analysis of the administrative structure, functions, competences, activities, and procedures of the

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<sup>14</sup>Victoria Blinkhorn, "The Records of Visual Artists: Appraising for Acquisition and Selection" (M.A.S. thesis, University of British Columbia, 1988), 39-40.

<sup>15</sup>"A Study of Special Archival Science on an Organization and its Records", 1.

agency at hand.<sup>16</sup> In other words the archivist "must become knowledgeable about the history, structure, functions, objectives, and activities of the creator of the records."<sup>17</sup> The key terms of analysis, however, are those of function and structure.<sup>18</sup>

Before one can begin to investigate functional concepts and how they relate to specific agencies there must be an understanding of the mandate under which that specific agency is operating. A mandate is the general authority under which an agency or person administers certain matters and is, in essence, what permits that agency or person to undertake a function or set of functions, along with their component activities, in society.<sup>19</sup> In order to receive such authority to function, however, this mandate must be officially recognized by the society in which the agency is operating. In turn, many mandates are accompanied by a related mission statement or corporate vision, which is the agency's specific statement of guiding values, but it is the mandate alone which grants the agency the authority to function.

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<sup>16</sup>John McDonald, "Archives and Cooperation in the Information Age," unpublished paper presented to the Joint Session of the Association des archivistes du Quebec, the Association of Canadian Archivists, and the Society of American Archivists, held in Montreal, September 1992, 6.

<sup>17</sup>Blinkhorn, "The Records of Visual Artists: Appraising for Acquisition and Selection," 40.

<sup>18</sup>Terry Eastwood, "General Introduction," in The Archival Fonds: From Theory to Practice, 4. Determining the way in which these elements are fused in an administrative body is the elemental goal of most functional analyses.

<sup>19</sup>Michael Gourlie, "The Records of Lawyers: Archival Appraisal and Access," (M.A.S. thesis University of British Columbia, 1994), 11.

Subordinate to the mandate and stated mission is a set of goals or aims which are broad but definable aspects of the mandate/mission statement. The subset of each of these goals are objectives which may be defined as the specific measurable qualities of a goal. That is to say that each objective equates to the accomplishment of a specific purpose that is necessary to achieve the stated goal. In an operational sense these objectives are known as functions.

A function may be defined as the whole of the activities, considered abstractly and independently of the specific organs or persons who carry them out at any given time, necessary to accomplish one purpose.<sup>20</sup> Each of the activities that together constitute the function, in turn, follow policies and procedures.<sup>21</sup> Procedures constitute the formal sequence or process of steps and stages through which the organization achieves its practical aims. It is the execution of these policies and procedures, in the form of practical activities which in turn involve transactions, that leads to the creation, accumulation, and use of records.

Such an understanding, however, is only a common starting point in the methodology archivists must use to examine the role of function in the workings of administrative bodies in general and in the creation of records in particular. When applied in specific instances, archivists must complement this definition of function with an understanding of the context of the creating body itself. That is to say that

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<sup>20</sup>University of British Columbia, School of Library, Archival and Information Studies, "Select List of Archival Terminology," s.v. 'function.'

<sup>21</sup>Peter Sigmund states that ". . . almost all activities of an administration can be reduced to procedures, set out in instructions and regulations." Peter Sigmund, "Form, Function and Archival Value," *Archivaria* 33 (Winter 1991-92), 144.

the above definition of function, in which it is defined as an abstract notion, obviously cannot be construed as rigid and unchanging, rather, it must take the form of a flexible template in which the vagueries of specific organizational structures and cultures are acknowledged and explained.

This approach to the concept of function arises through the realization that the specific context of a record keeping system, established as part of the archivist's analysis of the functional environment, directly affects the identification of the resultant functions. This process of identification is forged through the link between function and the related concept of competence. Competence is defined as "the authority and capacity of carrying out a determined sphere of activities within one function attributed to a given office or individual."<sup>22</sup> The link in the relationship between a function and a competence is the juridical person because it is a juridical person who "carries out certain duties and responsibilities within a specified function."<sup>23</sup> The process of identification, then, involves taking the concept of function, as an abstract notion involving the whole of the activities, recognizing and developing the various sous-functions associated with it (through the determination of the various spheres of activities within it), and then tying in the associated/relevant competences responsible for those activities. As such, we may speak more of the

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<sup>22</sup>Luciana Duranti, "Diplomatics: New Uses for an Old Science (Part III)," *Archivaria* 30 (Summer 1990), 19 n. 10.

<sup>23</sup>Donna Humphries, "Canadian Universities: A Functional Analysis," (M. A. S. thesis, University of British Columbia, 1991). A juridical person, as defined by Luciana Duranti, is "an entity having the capacity or the potential to act legally and [is] constituted either by a collection or succession of physical persons or a collection of properties." Luciana Duranti, "Diplomatics: New Uses for an Old Science (Part 1)," *Archivaria* 28 (Summer 1989), 25 n. 20.

**characterization** of function rather than the definition or identification of function as we are characterizing the function through its more tangible constituent elements of competences, juridical persons, and activities.<sup>24</sup>

The relationship flow that has been developed thus far is that of function -> competence (with associated juridical persons) -> activity. This flow of related components or elements must also necessarily acknowledge or include the element of accountability. The element of accountability enters into the above equation at the competence stage for it is here, in the form of the juridical person, that the authority, capacity, and responsibility for ongoing activities resides.

The characterization of function through competences and activities, as described above, is strengthened through the recognition of how the element of accountability is fused into the records creation process. This is because records are evidence of transactions and are preserved for, among others, reasons of accountability, the degree of which may vary but not disappear. As such, the concept of accountability directs the functional analysis to be more competence specific for it is the identification and preservation of records of evidential value that is primary to subsequent stages of the archivist's treatment of the records. Accordingly, the importance of a functional analysis is emphasized through the manner in which it details the areas of the organization where the operational

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<sup>24</sup>In his article "What, If Anything, is a Function?" Chris Hurley states that "it is [a primary function's] exclusive association (at a single point in time) with an actual administrative unit which gives it a 'reality' denied to other functional statements which are constructs." Chris Hurley, "What, If Anything, is a Function," Archives and Manuscripts, vol. 21, number 2, 213.

accountability for each function resides.<sup>25</sup> This emphasis on competence and accountability obviously increases in significance when the creating body under study is part of delegated hierarchy. This is especially true with respect to those entities that are considered sovereign, to various degrees, within their relative spheres of authority.<sup>26</sup>

Directly related to, or subsumed within, the above exploration of function is the concept of a "functional hierarchy" or, alternatively, a "hierarchy of functions". The introduction of such a concept is intrinsically linked to the understanding that each functional area is, in fact, made up of various sous-functions and, in much the same sense as the concept of a "hierarchy of fonds"<sup>27</sup>, we may speak of a

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<sup>25</sup>The necessity that records with strong evidential value be preserved, regardless of whether there is a present need or use for them, is partly an issue of accountability. Records, particularly dispositive records, are the physical manifestation of facts. If the records are destroyed, it is the facts which are lost. Accordingly, we must know where in the organization records of prime evidential value are being created, accumulated, and used so that we may preserve them as evidence of those actions and transactions.

<sup>26</sup>As Terry Eastwood has pointed out, "the main relationships of external structure are established in the process of delegation of authority [from which accountability arises] and function. Authority and function are fused in formal organizations like governments and corporate bodies, but are separable in abstract terms. Each administrative body and each person holding a position in it is given authority to act and acts to carry out activities functional to the broad purposes of the organization and to the specific responsibilities assigned to the body or person. Within organizations, any body delegated authority and functional responsibility and given the power to act under those terms is an agency. The difficulty is that authority relations and functional relations influence the structuring of agencies in different ways." Terry Eastwood, "General Introduction", 4.

<sup>27</sup>"Hierarchy of fonds" is the concept where certain administrative structures may contain more than one fonds, as defined through the criteria set forth in Duchein, due to their organizational (ie. authority and accountability) structure. An example of this would be a typical university where the structure would be; University -> Board of Governors -> President -> Faculty of Arts and Sciences -> Dean of Arts ->

progression or scale of functions based upon a relative order of authority relations within the agency at hand. The relative effect upon the author of the functional analysis is that he or she is left to the task of incorporating either a maximalist or a minimalist approach to the designation of functions within the organization or agency.<sup>28</sup> The question to be asked, then, is are there to be a few general (maximalist) functions or are there to be many specific (minimalist) functions and what are the links between them.

In order to answer this question the archivist must, of course, incorporate the intrinsic organizational elements of the specific agency under study. Just as importantly, however, the archivist must take into account the precise intent or purpose of the study. If the functional analysis seeks to analyze organizations, professions, or agencies generically, as does this one, or is, in other ways, intended

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Department of History. In using Duchein's criteria, records at each of these levels may be classified as an independent and complete fonds yet they remain strictly related through their hierarchial relationships. In the archival world the resultant dichotomy is the differentiation between "maximalist" (ie. large fonds) or "minimalist" (ie. small fonds) approaches. For an abstract of the maximalist/minimalist debate see Terry Cook, "The Concept of the Archival Fonds: Theory, Description, and Provenance in the Post Custodial Era" in The Archival Fonds: from Theory to Practice, ed. T. Eastwood (Canada: Bureau of Canadian Archivists, 1992), 52 - 64.

In his analysis of the notion of "function" Chris Hurley compares such a hierarchy of function to the taxonomy used within the natural sciences where specimens may belong to the same or different subspecies, species, genus, or phylum. Following upon the idea of breaking functions down into categories and hierarchies Hurley goes on to state that "any functional expression can be broken down into more specific aspects or drawn together with closely related functions to form a larger 'generic' unit." Hurley, "What, if Anything, is a Function," 213.

<sup>28</sup>Hurley concurs with this dilemma by stating that "it is we who decide what to include and what to leave out of a functional [analysis] (though we must be guided by reality, the boundaries are ours to determine)." Hurley, "What, if Anything, is a Function?", 214.

to be more historical in focus then the course of inquiry should tilt more towards the maximalist side of the spectrum. A functional analysis based upon an administrative, legal, and historical investigation of a particular class of organization, agency, or profession must adopt a maximalist approach so as to accommodate the vagueries of organizational change and thus direct the study to the essential nature of the class in question.

If the analysis is to be focused on more specific entities or is to determine specific records management requirements, such as the development of a records classification system, then the identification of functions should proceed with a strong minimalist approach. An example would be a functional analysis directed towards the lower or subordinate levels of a large corporation or government department. Given the reality of the body's delegated status within the greater whole the intent would have to focus on that agency's relatively more specified functions.

A final point, perhaps, is the need to understand, and thus incorporate into the analysis, the difference between facilitative and substantive functions. Substantive or primary functions are those functions which directly contribute to the agency's ability to meet its mandated objectives. In turn, facilitative or secondary functions are those functions which allow the substantive functions to take place.<sup>29</sup> Given the focus of this thesis the functional analysis undertaken in the following pages will concentrate primarily on the identification and elucidation of substantive functions.

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<sup>29</sup>Eastwood, "General Introduction," in The Archival Fonds: From Theory to Practice, 11.

Using the processes and methodology discussed above this thesis will examine the functions of British Columbia school boards. To begin this analysis chapter one will establish the legal status of Canadian school boards in general and British Columbia school boards in particular. The second chapter will provide an historical overview of the statute law in British Columbia that has helped to shape school boards into the governmental agencies that they are today. The third chapter, following upon the findings and observations of the first two chapters, will detail the functions and competence of British Columbia school boards as they exist today.

## CHAPTER ONE

### THE CONSTITUTIONAL AND LEGAL STATUS OF SCHOOL BOARDS IN BRITISH COLUMBIA

This chapter sets out to examine the way in which the authority for the governance of public education in British Columbia has been delegated to school boards. A logical starting point for determining the legal status of local school boards, within the public school system of British Columbia, is to study the component relationships inherent to the Province's system of education as set forth in Canadian law.

The British North America Act, 1867 (now the Constitution Act, 1867) remains the legal foundation upon which the Province, through the promulgation of successive school acts, has developed its modern school system. The Act of 1867 granted sovereign power over educational matters to the original signators' provincial legislatures through the provisions stated in Section 93 of the Act. These constitutional provisions immediately became legally applicable in British Columbia upon the passing of the Act of Union in July of 1871. Section 10 of the Terms of Union provided that the articles of the British North America Act should be applicable to British Columbia as if the former colony "had been one of the Provinces originally united by the said Act."<sup>1</sup>

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<sup>1</sup>Imperial Order-in-Council, Terms of Union, 16 day of May, 1871.

Section 93 of the British North America Act of 1867 states:

In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:

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

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

(3) Where in any Province a System of Separate or Dissident Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:

(4) In case any such Provincial Law as from time to time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section.<sup>2</sup>

The exact nature of the wording found in Section 93 is important as the responsibility for education is clearly assigned to the individual provincial legislatures (subject only to the provisions of the Section) and not, for example, to the Lieutenant Governors of the provinces, the respective Departments of Education, the teachers, the local

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<sup>2</sup>Section 93, British North America Act, 1867. This act is also subsequently known as the 1867 Constitution Act.

trustees, or any of the Federal government's agencies.<sup>3</sup> The provincial legislatures alone have been granted absolute discretion in this matter.

A second significant point to note in Section 93 is that the language of the statute is permissive in that it states that "the legislature may exclusively make laws . . . ." An exact interpretation of this phrase indicates that individual provinces may or may not choose to exercise the educational authority which the British North America Act has assigned to them. If the individual legislature chooses to exercise its option in this regard, as each provincial legislature in Canada has, it may then do so in whatever manner it deems appropriate.<sup>4</sup>

This discretionary power, and how it has been subsequently exercised by the individual legislatures, is significant in that it is the provision through which the position, role and, in fact, the very existence of school boards is governed. It is this clause alone which permits the legislature to choose and implement both a system and structure of education within that individual province.

In accepting the constitutional responsibility for providing public education in the province, the legislature is confronted with the task of establishing an appropriate and practical educational structure. In the face of such a responsibility legislatures are confronted with two antithetical options. The legislature may choose to implement a completely centralized system in which there are no school boards, all

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<sup>3</sup>F. Enns, "School Law and the Board" in The Organization and Administration of Education in Canada, eds. E. Hodgson et al (Edmonton: University of Alberta, 1976), 313.

<sup>4</sup>F. Enns, "School Law and the Board" in The Organization and Administration of Education in Canada, 313.

delegated power being held by the legislature, perhaps with local administrators directly appointed by the legislature as agents. Conversely, the legislature may instead choose to set up a completely decentralized system in which the entire mandate of providing public education is "assigned to local bodies such as churches, municipal governments, or even school boards."<sup>5</sup> All provinces have, in fact, created education systems in which the division of educational responsibilities are partly centralized and partly decentralized.

The authority assigned to the legislatures through Section 93 also allows that the legislatures may, at any time, amend or otherwise modify existing statutes and thus change the relative proportion of central and local control. In theory, a legislature may even abolish the province's existing education system entirely, but this eventuality is unlikely. The power of the provincial legislature to pattern and control education in any manner it desires is thus absolute.<sup>6</sup>

Because of the many obvious logistical and practical constraints, the provincial legislature cannot directly manage the administration of a province-wide system of public education.<sup>7</sup> Instead, the legislature delegates some of its responsibilities to designated agents and directs the province's educational system by administering it

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<sup>5</sup>F. Enns, "School Law and the Board", in The Organization and Administration of Education in Canada, 313-314.

<sup>6</sup>Stephen J. Knezevich, Administration of Public Education, 3rd ed. (New York: Harper & Row, 1975), 207.

<sup>7</sup>The variety of factors that contribute to this include the fact that the legislature sits for only a small part of each year, it cannot normally be concerned with administrative trivia, and generally lacks the professional expertise to maintain close administrative control over all departmental operations.

through these agents. The legislature creates these agents to act on its behalf by assigning certain functions to each through appropriate legislation. In British Columbia these delegated agents are the Provincial Department of Education and the local school boards, each of which are created by acts of the legislature, are responsible to the legislature, have certain obligations imposed upon them by the legislature and are, accordingly, granted certain powers to aid in the carrying out of these obligations.<sup>8</sup> The delegation of authority in this manner allows the legislature to confine its attention, in the field of education, primarily to the setting of regulating policies through the promulgation of legislative acts.

The legislature's ability to delegate in this manner is subject to the doctrine of parliamentary sovereignty. Under this doctrine only the Parliament of Canada and the respective provincial legislatures "are constitutionally able to conduct this delegation process," subject to certain legal constraints.<sup>9</sup> A further consequence of the doctrine of parliamentary sovereignty is that the delegated body may not re-delegate to a second inferior body.<sup>10</sup> The class of statutes through which legislatures delegate authority to an inferior body is known as primary or enabling legislation. The

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<sup>8</sup>F. Enns, "School Law and the Board", 314. Delegation may be defined as the method by which authority is both conferred and defined. As in all instances where a sovereign body has delegated responsibilities to a lower body, ultimate accountability remains with the premier agency/officer. This is especially important in a parliamentary system where, for example, the Minister of Education, an officer of the legislature, must be able to answer to the legislature (the people) for the state of education in the province.

<sup>9</sup>Gerald L. Gall, The Canadian Legal System, 3rd. ed. (Toronto: Carswell Legal Publications, 1990), 353.

<sup>10</sup>Gall, The Canadian Legal System, 354. This is known as the doctrine *delegatus non potest delegare* (a delegate may not re-delegate).

implications of the doctrine of parliamentary sovereignty, as it directly relates to school boards, will be developed later.

The principal act through which the British Columbia legislature delegates authority in the area of education is the School Act. It is the enabling legislation for the creation and existence of both the Department of Education and local school boards.

In discharging its constitutional responsibilities for education through the delegation of certain powers and functions to the Department of Education and school boards, the legislature is operating on the understanding that some elements of government are more responsive to community needs, and therefore more effective, if they are positioned closer to the people who are actually being directly served. It is also clearly desirable that local citizens be able to exercise some role in the determination of both the quality and kind of education that is to be provided for their children.<sup>11</sup> In this system of educational governance the law provides for an electoral mechanism through which the local people may select those who are to act as the educational representatives of the community. It is important to note that the legislature is not divesting itself of any of its plenary authority and accountability as a result of these actions but is simply creating what it judges to be the best infrastructure through which to accomplish its constitutional responsibility for public education. Further, the delegation of authority by the legislature in this manner

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<sup>11</sup>Report of the Provincial Advisory Committee to the C. E. A. - Kellogg Project in Educational Leadership, School Organization in British Columbia, (Victoria: Department of Education, 1952), 36.

allows it to be both sensitive to the political process as well as responsive to those forces that come to its attention as a result.<sup>12</sup>

School districts may indeed be characterized as "instrument[s] created to facilitate the realization of a definite governmental purpose."<sup>13</sup> The paradox found in the delegation of authority described above is that while school boards are the governing bodies of local school districts they are, in reality, "agents of the [province] responsible for local education [and] are not free to exercise unfettered discretion on behalf of their local constituencies; they must act within the parameters established by the [province]."<sup>14</sup>

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<sup>12</sup>The local school board provides citizens with ready opportunities for dialogue, debate, influence and direct involvement in education, in a setting where, as in most jurisdictions in North America, access to senior government is more difficult. British Columbia, Royal Commission on Education: Support Systems for Learning: Governance and Administration, vol. 6 (Victoria: Queens Printer, May 1988), 12.

<sup>13</sup>Knezevich, Administration of Public Education, 207. We can say that the legislatures have established school districts and their controlling boards, through the enactment of certain laws, which allow the boards to act on their behalf in carrying out their constitutional mandate with respect to education. "The system of local governance of education through publicly elected boards of school trustees, mandated by the provincial government through legislation and other public policy, and by the local community through the electoral process, has served education well." British Columbia, Royal Commission on Education: Support Systems for Learning: Governance and Administration, vol. 6, 22.

<sup>14</sup>C.J. Russo, "The Legal Status of School Boards in the Intergovernmental System," in School Boards: Changing Local Control, ed. P.F. First and H.J. Walberg (Berkeley: McCutchan Publishing Co., 1992), 3. School boards may, in fact, be characterized as provincial agencies with local jurisdictions.

In most provinces, including British Columbia, the respective school acts clearly declare school boards to be corporations or corporate bodies.<sup>15</sup> None, however, distinguishes them as to exactly what type of corporation they are intended to be.<sup>16</sup> For the most part, this question has been left for the courts to decide upon and, as a result, historically there has been considerable contention by the courts, in both the United States and Canada, as to the exact nature of the corporate entities created for the purpose of providing public education. The prevailing judicial opinion in both Canada and the United States, as evidenced through a vast body of court decisions, has seen school districts classified as public corporations in general and, more specifically, as quasi-municipal corporations due to the nature of their restricted powers.<sup>17</sup> How this consensus was reached and what it means with regard to the legal status of local school districts and their controlling boards is of some importance.

In order to establish clearly the nature of local school districts as quasi-municipal corporations, and how they specifically differ from private, municipal, and

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<sup>15</sup>School Act, 1989, Section 85. (1) The trustees elected or appointed under this Act for each school district and their successors in office constitute a board of school trustees for the district and are a corporation under the name of "The Board of School Trustees of School District No. 1 (Fernie)" (or as the case may be).

<sup>16</sup>The British Columbia Interpretation Act, under which the School Act falls, defines "corporation" as "an incorporated association, company, society, municipality or other incorporated body where and however incorporated, and includes a corporation sole other than Her Majesty or the Lieutenant Governor." As a point of reference, Black's Law Dictionary identifies and defines over twenty different varieties of corporations each with resultingly different powers.

<sup>17</sup>M. K. Remmlein, The Law of Local Public School Administration (Toronto: McGraw-Hill Book Company, Inc., 1953), 8.

other public corporations, one must first determine the nature of corporate entities themselves. A corporation may be defined as;

[a]n artificial being or legal entity created by or under the authority of the laws of a state. Such an entity subsists as a body politic under a special denomination, which is regarded in law as having a personality and existence distinct from that of its several members, and which is, by the same authority, vested with the capacity of continuous succession, irrespective of changes in its membership, either in perpetuity or for a limited term of years, and of acting as a unit or single individual in matters relating to the common purpose of the association, within the scope of the powers and authorities conferred upon such bodies by law.<sup>18</sup>

Such a definition, though true to local school boards in all respects, is much too general, within the constraining eye of the judicial system, to be of specific application to local school boards. That is to say that the differences which exist both between and within private and public corporations are not made readily apparent through this definition.<sup>19</sup> The point of analysis must be made more specific. A first step in this regard is to examine those attributes common to public corporations as these are clearly the most applicable to school boards.

A public corporation may be defined as;

an artificial person (e.g. municipality or a government corporation) created for the administration of public affairs. Unlike a private corporation it has no protection against legislative acts altering or even repealing its charter. [They are] instrumentalities created by state, formed and owned by it in public interest, supported in whole or part

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<sup>18</sup>Black's Law Dictionary, c.v. 'corporation', 237.

<sup>19</sup>An example of the differences between a private corporation and school boards is that while the former has certain incidental or assumed powers which are necessary for its operation, a school corporation does not have any powers which have not been expressly assigned to it.

by public funds, and governed by managers deriving their authority from state.<sup>20</sup>

With respect to this definition it is clear that local school boards are indeed public corporations. It must be understood, however, that not all public corporations are the same and although all school boards enjoy this status, the same as municipalities and all other public corporations, they are not to be considered equal in all regards.

The differences between municipal and school district corporations have also been articulated through common law. Legal opinions, as expressed primarily through the courts, have continually emphasized the fact that although the two corporations may carry out local government functions in the same geographic region, both the municipality and the school board have been assigned specific functions by the legislature and neither is responsible to the other, has the power to act for the other or may interfere with the other.<sup>21</sup> It is also important to remember that while the school district and municipal constituencies are often overlapping they are not necessarily identical. In fact, many British Columbia school districts include more than one municipality. As a result, throughout Canada's political history there has been, in general, a determined separation of school and municipal governance as a careful distinction must be made between school boards and other municipal corporations due to the nature and extent of their respective associated powers.

A principal point of difference is in the very composition of the two corporations. In a municipal corporation, for example, the citizens of the

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<sup>20</sup>Black's Law Dictionary, c.v. 'public corporations', 855.

<sup>21</sup>Enns, "School Law and the Board", 318 - 321.

municipality are the members of the corporation and the City Council is equivalent to the corporation's Board of Directors. Conversely, in school boards it is the trustees who are the members of the corporation and the board (as a unit) itself is the corporation.<sup>22</sup> A second example of how the two bodies differ is in the performance of governmental functions and the possession of proprietary powers. A municipal corporation may, if applicable to its jurisdiction, operate a variety of commercial enterprises, such as utilities, airports, harbours, and transit systems.<sup>23</sup> School corporations, on the other hand, can only engage in business activities that are directly related to their mandates, as set forth in the school act. A common example of this would include the renting of a school gymnasium to a community group or other local organization. These are but a few examples of the several differences that exist among the variety of public corporations in Canada. It is as a partial consequence of these facts, however, that school boards have been grouped among that more specific class of public corporations known as the quasi-municipal corporation.

Quasi-municipal corporations are those

[b]odies politic and corporate, created for the sole purpose of performing one or more municipal functions. Public corporations organized for governmental purposes and having for most purposes the status and powers of municipal corporations (such as counties,

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<sup>22</sup>Enns, "School Law and the Board", 315. This distinction is evidenced by the very wording of their respective enabling legislation. The School Act, for instance, states in section 85 (1) that the "trustees . . . constitute a board of school trustees for the district and are a corporation under the name . . . ."

<sup>23</sup>The extent of this depends, of course, on the political system in which the municipality exists as the operation of many of these interests are currently not municipally controlled in British Columbia.

townships, school districts, drainage districts, irrigation districts, etc.), but not municipal corporations proper, such as cities and incorporated towns.<sup>24</sup>

As all school boards are corporate entities it follows that all the principles of administrative law apply to them. Although there are many such principles related to the functions and status of school boards, several of these, including sovereignty, corporate acts, and continuous succession are of primary importance.

Among the important distinctions to be made through this delineation of the corporate status of local school boards is the degree to which the local board retains or possesses various degrees of sovereignty. Sovereignty connotes the degree to which the body in question possesses both independent and supreme authority. Sovereignty, an attribute of most corporate bodies, cannot be fully ascribed to school boards however. This discrepancy arises from the fact that, unlike a private corporation, the school board "has no protection against legislative acts altering or even repealing its charter."<sup>25</sup> As a corporation, then, the school board exists solely at the pleasure of the legislature and may only function in ways in which the legislature has empowered it to do so. This does not mean, however, that the boards are completely without standing in all instances for they are indeed sovereign within the constraints set forth in and by the current school act or other forms of enabling

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<sup>24</sup>Black's Law Dictionary, c.v. 'quasi municipal corporations', 705.

<sup>25</sup>Black's Law Dictionary, c.v. 'quasi municipal corporations', 705. As such, they are simply "instrumentalities created by state, formed and owned by it in public interest, supported in whole or part by public funds, and governed by managers deriving their authority from state." It is thus only in a narrow sense that school boards can be considered to be local self-governing bodies.

legislation. Outside agencies, including superior levels of government and the judiciary, may not

interfere with the operations of the school board as long as the board does not exceed its powers as specified by law, as long as any irregularities in procedure which occur do not cause serious harm, or where the board, if it were mistaken, acted in good faith, and in general as long as the board did not act unjustly, prejudicially, or in bad faith.<sup>26</sup>

As such, it is clear that although the board's powers are restricted in general, within the scope of the school act the board's authority is supreme. In the final analysis, however, it must be understood that although school boards affect postures of sovereignty, they can never be completely sovereign.<sup>27</sup>

A second aspect of corporate law that is relevant to this examination is the board's inherent capacity for continuous succession. As long as the board's articles of incorporation are still in effect the school board has perpetual existence. Over the course of its existence a board's membership may change with each and every election, the boundaries of the board's jurisdiction may change as the result of a provincial redistribution of districts, its responsibilities and powers may be changed or altered through a revised school act, or its assets and liabilities may vary over the course of its normal operations but the corporation's existence, legal status, and authority is not altered as the result of any of these modifications.<sup>28</sup> The board's

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<sup>26</sup>Giles et al, Educational Administration in Canada, 61-62

<sup>27</sup>Harry K. Fisher, "Local-Provincial Relations in Education" in School Boards and the Political Fact, P.J. Cistone ed. (Toronto: The Ontario Institute for Studies in Education, 1972), 26.

<sup>28</sup>Enns, School Law and the Board, 315.

inherent capacity for continuous succession relates directly to the fact that it is a legal entity distinct from the individuals composing it.<sup>29</sup> An important attribute of the board's capacity for continuous succession is that the network of school boards in the province provides stability and continuity in the operation of public schools through both local and provincial elections and other instances of crises or change.

A third facet is that as a corporation all of the board's acts must be corporate acts. This aspect of corporate and school law states that the board may transact business only with a quorum present during a regular or special meeting called in conformity with the School Act.<sup>30</sup> As a legal construct or abstraction all the authority held by a local board lies with the board as a corporate body. It is the board, as a corporate entity, which is treated as the legal person (albeit artificial), with the associated capacity to act, in the eyes of the law. The school board is thus a legal entity that is complete, separate and distinct from the individuals composing it.<sup>31</sup>

This legal principle manifests itself in several direct ways. The first is that the board may only act at formally constituted meetings, the prerequisites for which are

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<sup>29</sup> E. Edmund Reutter, Schools and the Law, 5th ed. (Reson, Virginia: National Association of Secondary School Principals, 1981), 23.

<sup>30</sup>"It is only at a lawful meeting of the corporate body that the corporation can act or do anything": Pictou School Trustees v. Cameron, (1879), 2 S. C. R. 690, 701.

<sup>31</sup> E. Edmund Reutter, Schools and the Law, 23. This fact also relates to the board's capacity for continuous succession.

explicitly detailed in the School Act. A second feature is that the acts of individual trustees are not acts of the board and are thus not binding upon the board.<sup>32</sup>

These factors are significant because, in terms of corporate law, the school board can "neither divest itself of the powers entrusted to it by statute nor delegate its discretionary power."<sup>33</sup> As a result, the various standing committees, committees of the whole or other ad hoc committees employed or set up by the board do not have the legal status or authority to act in a direct fashion; some provincial school acts are very specific about this, and, as a consequence, all of their recommendations must be subsequently passed by the board as a whole.<sup>34</sup>

This thesis has examined the legal status of school boards in Canada. It has determined that school districts are the basic structural unit in the organization and operation of public schools in Canada. As political and legal entities school districts are considered to be civil subdivisions of the province with the status of quasi-

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<sup>32</sup>"[M]embers of a corporation aggregate cannot separately give their consent . . . ." Pictou School Trustees v. Cameron, (1879), 2 S. C. R. 690, 701.

<sup>33</sup>Russo, "The Legal Status of School Boards in the Intergovernmental System", 11. This relates directly to the doctrine of *delegatus non potest delegare* (a delegate may not redelegate).

<sup>34</sup>The following excerpt from the British Columbia School Act of 1989 illustrates this fact explicitly:

- s. 85. (2) A board may
- (a) establish committees and specify the functions and duties of those committees
  - (b) establish a district advisory council comprised of persons representing parents' advisory councils and other organizations in the community, and
  - (c) delegate specific and general administrative and management duties to one or more of its employees.
- (3) Committees of trustees or individual trustees may not exercise the rights, duties and powers of the board.

municipal corporations. These districts may vary in size and shape as well as in the organization of the board which governs them, but the common element to all is that they are recipients of delegated authority from their respective provincial legislatures.<sup>35</sup>

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<sup>35</sup>T. E. Giles et al, Educational Administration in Canada, 56.

## CHAPTER TWO

### SCHOOL LEGISLATION AND SCHOOL BOARDS

As we have seen in the preceding chapter, school districts, each with a controlling board, have been and continue to be the basic unit of educational administration in Canada. In British Columbia, since the beginning of the colonial period, these boards have been formally established in law and, as a consequence of their creation and legal status, they have been closely regulated by the provincial government.

It is both necessary and instructive that any inquiry into the status and functions of contemporary British Columbia school boards first examine and assess the legislated powers of British Columbia school boards, as they have existed and evolved over time, through an analysis of the various school acts that have been promulgated in the province from its colonial beginnings up to and including the present School Act. This examination of the historical evolution of the provisions and objectives of these statutes, from which the legislative framework and background of the present school system arose, is necessary in order to provide a perspective from which to analyze and understand those specific factors that have helped to shape school boards into their present form.<sup>1</sup> This analysis will focus on the functional

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<sup>1</sup>Derek J. Allison, "The Development of the Position and Role of Chief Education Officers," in Understanding School System Administration, ed. K. Leithwood and D. Musella (London: The Falmer Press, 1991), 210.

delineations of the acts, as they specifically relate to school boards, and not on any procedural guidelines or other attributes of the statutes that relate to other developments in the provincial education system, although these may be acknowledged from time to time where appropriate.

The delegation of specific powers and duties from the central control of Provincial agencies to local school authorities will also be noted as is necessary. This analysis of the how the competence of school boards has changed is important for two reasons. First, it is critical to chart the delegation, movement and/or transfer of functions between levels of government, other agencies, or even competences within those agencies. Second, understanding the movement of functions in this manner both complements and illustrates the concepts and legal foundations of the provincial/local relationships discussed in the previous chapter.

In the years preceding 1849, the children of the few early settlers and travelling officials had to be content with sporadic and informal education provided by parents, relatives, or anyone else willing to help. In 1849, the British government established Vancouver Island as a crown colony. The new colony was placed under grant to the Hudson's Bay Company, whose Chief Factor was James Douglas, and Richard Blanshard was named as the colony's first Governor. This development, in that it gave rise to the establishment of a European system of government, law, and order, was the necessary first step towards the development of a recognized system of education for the non-native people in the colony.

During the early stages of the colony's development the responsibility for education was vested in the Governor by authority of the Crown Charter granted to

the Hudson's Bay Company. The beginnings of an educational system in British Columbia thus may be seen to lie with the arrangements made between the Hudson's Bay Company and its employees for the former to provide an education for the children of the latter at the Company's new trading post; the place where the City of Victoria now stands. Several other schools subsequently opened in various districts on the island but education essentially remained a local and somewhat ad hoc affair.

Early in 1865 the Governor of the Colony of Vancouver Island, reacting to popular demand for a general public system of education (led through a concerted press campaign by the British Colonist editor Amor de Cosmos), introduced a new law entitled "An Act Respecting Common Schools" and it was subsequently passed by the legislature of the Colony of Vancouver Island on 15 May 1865.<sup>2</sup> This law, the first school legislation in what was to become the province of British Columbia, centered virtually all authority in the Governor and was the foundation of a highly centralized system in which the Government bore almost the total cost of providing education in the colony. This act gave the Governor power to appoint the general board of education, the superintendent of education, local three person boards, and even the teachers of the several schools in existence at that time.

The Act stated, in part, the following:

I. It shall be lawful for the Governor from Time to Time to appoint not less than Nine Persons, who shall constitute a General Board of Education, Three of whom shall form a Quorum.

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<sup>2</sup> This act was also known familiarly as the "Free Schools Act".

II. The General Board of Education shall be a Body Corporate with all the general Powers of Law affecting or relating to Bodies Corporate, and all School Property shall be vested in such General Board.

VIII. It shall be lawful for the Governor from Time to Time to appoint a Local Board of Education, of not less than Three Persons in any School District if he shall think it expedient so to do.

IX. Such last named Board shall have Power and authority to Visit and report on the State of the Schools within its District for the Information and Guidance of the General Board of Education.

X. The General Mode of transacting Business by such Local Board of Education, and the Nature of the Reports to be furnished shall be subject to the Order and Direction of the General Board of Education.<sup>3</sup>

Despite the fact that this act granted little in the way of direct authority, status, or functions to local boards of education, and what there was remained vaguely defined, it is important to this study as it is the first acknowledgement of the legal existence of local boards of education in the region. It is also a significant grounding point in that it sets forth those powers considered necessary for the General Board of Education to meet its mandate of providing a system of education in the colony. These powers and duties would be delegated, over time, to the various local boards of education as the system of delivering education throughout the province evolved. It is, however, obvious that such a completely centralized system of school administration left limited responsibility in the hands of local school boards. The act itself recognized this as it stated that the Governor could exercise his discretion to

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<sup>3</sup>British Columbia Archives and Records Service, Colony of Vancouver Island, Board of Education, Correspondence Series, Letter No. 1, 6 June 1865.

appoint local boards "from time to time . . . in any School District if he shall think it expedient so to do."<sup>4</sup>

The superintendent, on a yearly contract that was dependent upon good behavior, was ex-officio the secretary of the General Board.<sup>5</sup> As the appointed agent of the board, his regular duties primarily involved visiting the various schools in existence at that time and reporting on them according to the instructions of the General Board. Those few local school boards that existed served mainly in an advisory and reporting capacity.

Under the auspices of this act considerable progress was made towards the development of a public system of education on Vancouver Island. However, the financial crisis of 1866 brought this process of development to a standstill as the Governor of the Colony advised Superintendent Alfred Waddington that there would be no money available for educational purposes after August of that year.<sup>6</sup>

The development of education on the mainland was quite different than that of Vancouver Island. In 1862, four years before the mainland and Vancouver Island were united, the Reverend Robert Jamieson , a Presbyterian minister, opened the first school. The school was located in New Westminster. It was non sectarian, and,

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<sup>4</sup>"An Act Respecting Common Schools", 1865, section VIII.

<sup>5</sup>Dominion of Canada, Bureau of Statistics; Education Division, The Organization and Administration of Public Schools in Canada, 3rd ed. (Ottawa: Queen's Printer, 1966), 17.

<sup>6</sup>Dominion of Canada, Bureau of Statistics; Education Division, The Organization and Administration of Public Schools in Canada, 20 and F. Henry Johnson, A History of Public Education in British Columbia (Vancouver: University of British Columbia, 1964), 36.

though intended to be a "public" school, it was supported by tuition fees. Two years later, in 1864, the small urban centres of Yale and Douglas refused to set up schools on the same basis as in New Westminster as they opposed the idea of non-sectarianism. A year later however, in 1865, the Governor of the colony indicated that all regulations concerning the provision of public education "would provide for nonsectarian schools with the utmost deference for the religious convictions of all Christians."<sup>7</sup> These developments were significant in that they directly contributed towards the development of the non-sectarian school board system that is presently in place in British Columbia rather than the system of separate school boards that arose in eastern Canada.<sup>8</sup>

Through an Act passed by the Imperial Government on 6 August 1866 the Colonies of Vancouver island and British Columbia were united and became one colony under the name of British Columbia. At this time school administrators on Vancouver Island were struggling to carry out the provisions of the School Act of 1865 by accepting donations and tuition payments from the local populace. Similarly, on the mainland the government was only contributing approximately forty percent of the necessary funds which left sixty percent to be provided by the parents

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<sup>7</sup>Dominion of Canada, Bureau of Statistics; Education Division, The Organization and Administration of Public Schools in Canada, 20.

<sup>8</sup>Although the Common School Ordinance of 1869 did not include a formal clause designating non-sectarianism it implicitly recognized the non-sectarian character of the British Columbian school system when it stated that "Text books used in the Common Schools must be of a proper and non-sectarian character."

of those children who were attending the school.<sup>9</sup> The relatively uncertain state of the colony's educational system, such as it was, found little support from the new Colonial Governor of British Columbia, Frederick Seymour, who declared that the colony was not yet mature enough for a regular school system.<sup>10</sup>

A regulated, colony-wide system of public education for British Columbia was not to be set in place until three years later when, on 13 March 1869, Seymour introduced and the Legislative Council gave assent to an Act that was entitled "An Ordinance to establish Public Schools throughout the Colony of British Columbia." This new ordinance repealed the Colony of Vancouver Island's school act of 1865. Section 2. of the this act read, in part:

II. It shall be lawful for the Governor in Council from time to time, —

(a.) To describe School Districts, to define the boundries thereof, and from time to time repeal, alter, or amend the same:

(c.) To appoint Teachers to Common Schools, and upon good cause shewn, to remove the same, or appoint others in their stead:

(f.) To provide for the visitation and inspection of Common Schools when deemed necessary, and for hearing and determining all complaints relating to the management, arrangement, and maintenance of Common Schools, and for the Public Grants made under this Ordinance being properly applied; provided, always, that the expenses of any such visitation and inspection shall not be borne by the School funds;

(h.) To take charge of all Lands and Buildings set apart for general School purposes, and applicable therefor, however acquired, whether

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<sup>9</sup>Dominion of Canada, Bureau of Statistics; Education Division, The Organization and Administration of Public Schools in Canada, 20.

<sup>10</sup>Dominion of Canada, Bureau of Statistics; Education Division, The Organization and Administration of Public Schools in Canada, 20.

by original reservation by the Government or otherwise, and administer the same for the purposes of this Ordinance;

(i.) To make Rules and Regulations for the management and government of Common Schools;

(j.) To provide for the establishment and election of Local Boards, as hereinafter provided.<sup>11</sup>

It is obvious from this excerpt that this act followed upon the provisions of its predecessor in instituting a centrally controlled system of education. As in the act of 1865, all authority lay with the Governor in Council who was granted the power to establish and define school districts, appoint teachers, administer all land and school buildings, provide for the establishment of local boards, and to make all subsequent rules and regulations pertaining to educational matters.<sup>12</sup>

It is section 6 of the Act, and its related provisions, that is the most significant with regard to this study. Section 6 of the 'Common School Ordinance of 1869' states that the responsibilities of the Local Boards were to be, in part, as follows:

6. It shall be the duty of the Local Board: —

(1.) To appoint one of themselves, or some other person to be Secretary and Treasurer, for the correct recording of all proceedings, and the safe keeping of all papers and moneys:

(2.) To have the safe custody of all School property within the District:

(3.) To do whatever they may judge expedient with regard to the maintenance, repair, and furnishing of School premises, and to have the

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<sup>11</sup>"An Ordinance to establish Public Schools throughout the Colony of British Columbia", No. 122, 1869.

<sup>12</sup>It should be acknowledged that most of the powers granted to the Governor in Council in this act would eventually devolve to become 'traditional' local school board activities. This highlights the strong centralist nature of this law.

general management of the Schools, subject to the Rules and Regulations of the Governor in Council:

(8.) To transmit, before the 31st December in each year, a Report of the condition of the Schools within the District, together with a statement of all receipts and expenditure for School purposes, to the Governor in Council:

(9.) To make application to the Governor in Council for a grant of the public money, if required, to aid the establishment or maintenance of a Common School, stating . . . all such information as may be required by the Governor in Council.

(10.) To demand, receive, and account for all moneys collected or payable under any By-Law as aforesaid from all moneys collected or payable under any By-Law as aforesaid from the residents of the District, or received from the parents or guardians of children.<sup>13</sup>

It is significant that this legislation provided for the position of Secretary and Treasurer in section 6(1). The introduction of this position, which at this time could be filled by either a board member or some other person, established in law what has become one of the senior administrative positions in all local school boards.<sup>14</sup>

Section 7 of this ordinance granted Local Boards the power to pass a By-Law for levying and collecting a tax for school purposes while section 8 provided the Local Board with the necessary power to enforce the payment of the tax. Under this act, then, the most important activities to be undertaken by the local boards included the furnishing and maintenance of the school premises, the raising of money through tuition fees (not to exceed two dollars per month per student or by a general rate),

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<sup>13</sup>"An Ordinance to establish Public Schools throughout the Colony of British Columbia", No. 122, 1869.

<sup>14</sup>Currently, elected board members are prohibited from occupying this position.

and the appointment of collectors to collect the monies that were necessary to operate the local school.

The School Ordinance was amended within the year so as to provide for the position of an Inspector of Schools, a provincial official whose salary was to be paid out of the general revenue of the colony and whose duties were to visit individual schools and report on the management, efficiency and general conditions of the schools, the character and qualifications of the teachers, the text books in use, and all complaints that may have been received regarding the operation of that school.<sup>15</sup>

Correspondence from one of the School Districts in existence at this time directly illustrates how this act was received by the local boards and what they understood their responsibilities to be. In a letter dated 26 July 1869 and addressed to the "Officer Administering the Government in Victoria", J. W. McKay, the chairman of Yale School District, submitted a report "in accordance with the British Columbia Common Schools Ordinance of 1869."<sup>16</sup> This letter, naturally passed on to the Board of Education, reported that a public meeting of residents was held, that a system of compulsory taxation for educational purposes was agreed upon (resulting in the collection of 300 dollars), provided a definition, for the information of the General Board, of the limits of the school district, the name of the teacher, and

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<sup>15</sup>"Amendment to "The Common Schools Ordinance, 1869".

<sup>16</sup>British Columbia Archives and Records Service, Board of Education, Correspondence re: Yale School District, 1869, BCARS: GR 2082, Box 1, File 1, letter of 26 July 1869.

requested that a grant of 500 dollars be provided for under the provisions of the Act.<sup>17</sup>

A noteworthy aspect of this exchange of letters is that the provincial Board of Education, using the clause set forth in section II. (A) of the Act, disallowed the local board's definition of the limits of the Yale school district because it felt that any boundary exceeding a two mile radius from the school house would be too far to allow people outside of that radius to justly receive the benefits of the school for which the property owner was being taxed.<sup>18</sup>

There were, however, some serious problems in the actual working of the system of public education. In 1871 the Inspector General submitted a report in which he stated that

. . . the practical working of the system so far . . . contains two serious defects, 1st, in the constitution and power of the Local School Boards, and 2nd, in the mode of raising local contributions for school purposes . . .<sup>19</sup>

This report, titled Report on the Condition of the Public Schools Throughout the Country, stated that certain local school boards in the province were relatively indifferent as to the levying and collecting of school taxes with the consequence that many schools were left without adequate funds through which to operate the local

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<sup>17</sup>British Columbia Archives and Records Service, Board of Education, Correspondence re: Yale School District, 1869, BCARS: GR 2082, Box 1, File 1, letter of 26 July 1869.

<sup>18</sup>British Columbia Archives and Records Service, Board of Education, Correspondence re: Yale School District, 1869, BCARS: GR 2082, Box 1, File 1, letter of 18 August 1869.

<sup>19</sup>British Columbia, Report on the Condition of the Public Schools Throughout the Country, Office of the Inspector-General (Victoria: 1871), 2.

school. The reluctance of most boards to enforce the payment of the school tax, coupled with the fact that the frequency of annual elections weakened their authority, placed the schools in fiscal crisis. For instance, financial difficulties were partially responsible for the lapse of public education in the City of Victoria from September 1870 until the promulgation of new, post Confederation, legislation in 1872. This legislation, the Public School Act of 1872, established a new, free, and province wide school system.

The first act concerning education to be promulgated by the new provincial legislature was entitled 'An Act Respecting Public Schools' which the assembly gave assent to on 11 April 1872. This legislation, commonly referred to as either the Public Schools Act of 1872 or the Free School Act of 1872, "established the basic structure of the provincial system of education, which, despite modification by frequent amendments, remains in principle to this day."<sup>20</sup>

The 1872 Act, which received strong input from Superintendent John Jessop, was partially modelled on Reverend Egerton Ryerson's Ontario school legislation that was passed between 1846 - 1871. Among the notable parallels were that both provided for locally elected school boards which operated under the direct authority and control of a Provincial Board of Education which was chaired by a Superintendent of Education.<sup>21</sup> In both instances the Provincial Board members as well as the Superintendent were appointed by the Lieutenant-Governor-in-Council.

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<sup>20</sup>Johnson, A History of Public Education in British Columbia, 44.

<sup>21</sup>F. Henry Johnson, "The Ryersonian Influence on the Public School System of British Columbia" in Shaping Schools of the Canadian West, eds. David C. Jones et al (Calgary: Detselig Enterprises Ltd., 1979), 32.

The duties of Local Boards, as stated in the Public School Act of 1872, were:

30. It shall be the duty of the Trustees of each School District to appoint one of themselves to be Secretary and Treasurer to the Corporation, who . . . [must ensure] the correct and safe keeping . . . of the papers and moneys belonging to the Corporation, and for the correct keeping of a record of their proceedings in a book procured for that purpose, and for the receiving and accounting for all school moneys which shall come into his hands, and for the disbursing of such moneys in the manner directed by the majority of the Trustees. The Trustees shall take possession and have the custody of and safe-keeping of all Public School property, which has been acquired or given for Public School purposes in such District, and shall have power to acquire and hold as a Corporation, by any title whatsoever, any land, moveable property or income for school purposes, and to apply the same according to the terms on which the same were acquired or received; to do whatever they shall judge expedient with regard to the building, repairing, renting, warming, furnishing, and keeping in order the District School House or Houses, and the furniture and appendages belonging thereto, and the school lands and inclosures held by them; to pay the Teacher or Teachers employed in their District the salary or salaries of such Teacher or Teachers, to visit, from time to time, each school under their charge, and see that it is conducted according to the authorized regulations, and that such school is duly provided with a register; to see that no unauthorized books are used in the school, and that the pupils are duly supplied with a uniform series of authorized text books, sanctioned and recommended by the Board of Education; to exercise all the corporate powers vested in them by this Act; to cause to be prepared and read at the annual meeting of their District the annual school report for the year then terminating; and such report shall include, amongst other things, a full and detailed account of the receipt and expenditure of all school money received and expended in behalf of such District, for any purpose whatever, during such year; to prepare and transmit annually, on or before the fifteenth day of January, a report to the Superintendent of Education . . . .<sup>22</sup>

The Public School Act of 1872 followed the School Ordinance of 1869's provision for elected three person school boards in each district. The act also retained the

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<sup>22</sup>Statutes of British Columbia, 1872, 35 Victoria, c. 16. This section is cited almost in its entirety because it formed the basis of British Columbia's education legislation, as it pertains to School Boards, for almost the next 100 years.

traditional British Columbia concept of non-denominational schools with the result that only one school board in each district was necessary. With such limited powers granted to the local boards, however, the system essentially remained centralized under the control of the provincial government and the Superintendent was, in effect, the manager of the entire school system.<sup>23</sup>

Funding for education under this new act was provided through provincial grants to the school boards which were meant to cover the necessary costs of education. As a result the entire cost of operating schools came from the general revenues of the province rather than from local property taxes.

In addition to the above legislation, other rules and procedures were soon forthcoming as the Provincial Board of Education drew up its regulations. Included among these were provisions related to the election of the local trustees in each of the twenty-five school districts existing at this time.

The provisions of the new Public School Act set forth a highly centralized system for the establishment, maintenance and management of public schools throughout the province. In spite of this development, however, a trend towards the decentralization of school services developed soon after the passing of the Public Schools Act as increases in population and the rise of new urban centres produced a resultant increase in the number of school districts.

This delegation of authority from the province to the local boards began the following year as the first of several subsequent amendments to the act signalled a

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<sup>23</sup>J.H. Putman and G.M. Weir, Survey of the School System (Victoria: King's Printer, 1925), 16.

small move towards the decentralization of some activities. In 1873 the first attempt at compulsory education was made as an amendment to the initial act. The "Public School Amendment Act, 1873" stated that trustees "shall make by-laws requiring parents or guardians to send their children aged between seven and fourteen to school, to determine the time of attendance and to impose penalties for a breach of the by-laws."<sup>24</sup> In addition to the changes regarding compulsory attendance, the power to appoint teachers, formerly lodged with the Board of Education, was also transferred directly to the school trustees of the district. The Board of Education reserved the power to approve the dismissal of teachers by the school trustees.

A subsequent act was passed in 1874 regarding the establishment and operation of Public Boarding Schools. An interesting feature of the "Public Boarding School Act, 1874" was the prohibitive aspects related to the powers of existing public school trustees over Boarding Schools in their district. In such instances the Lieutenant Governor in Council was to appoint three trustees for each school who were to continue to hold office at the pleasure of the Lieutenant Governor in Council.

The passing of "An Act to amend and consolidate the 'Public School Acts'" on 19 May 1876 saw only a few changes with regard to the actual powers previously granted to the local school boards. This was primarily because, as the title suggests, it was simply a consolidation of the previous acts and amendments.<sup>25</sup> The most significant change related to compulsory attendance. As described above, the

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<sup>24</sup>Statutes of British Columbia, 1873, 36 Victoria, c. 8.

<sup>25</sup>These acts would be the "Public Schools Act, 1872", the "Public Schools Amendment Act, 1873", and the "Public Boarding Schools Act, 1874".

trustees were required to make bylaws related to compulsory attendance and to impose penalties in case these laws were breached . The new act of 1876 modified this clause in two ways. The first was the new obligation of trustees "to make a complaint of such neglect or violation to a Magistrate or Justice of the Peace."<sup>26</sup> The second was that the penalty for non compliance was set forth in the act rather than through local bylaws.

The only other significant change to school board powers found in this legislation related to the trustees' ability to appoint and dismiss teachers. Section 35 of the new act stated that in addition to selecting and appointing teachers within their district trustees could also remove and dismiss teachers under their employment. The provincial Board of Education, however, was required to approve both the appointment and the dismissal of individual teachers throughout the province.

In 1876 the government of Premier Elliot also passed an "Act to provide for the maintenance of public schools in the Province of BC." Section 1 of this legislation defined the parameters for the establishment of new school tax districts throughout the province. The revenue raised through this tax went directly to the provincial government to use for educational purposes. It should also be noted that section 42 of this act stated that "[s]chool buildings and school lands shall be under the control of the [Provincial] Lands and Works Department."<sup>27</sup>

Three years after the passing of the "Consolidated Public School Act, 1876" the legislature proclaimed the Public Schools Act of 1879. This act, which

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<sup>26</sup>Statutes of British Columbia, 1876, 39 Victoria, c. 2, s. 39.

<sup>27</sup>Statutes of British Columbia, 1876, 39 Victoria, c. 27, s. 42.

superseded the previous one, introduced several changes to the existing structure of education in the province. The major new initiative saw the central board of education abolished and the control of schools placed under the authority of the Lieutenant-Governor - in - Council. Among the new duties delegated to the local boards in legislation was the responsibility for the operation of local high schools as the act stated that "every such High School shall be under the control of the local Board of Trustees for the District wherein such High School is situate."<sup>28</sup> The act also provided the trustees with the discretionary power to operate a school in one part of the district during certain days, weeks, or years and in another part of the district during the remainder.<sup>29</sup> A final change found in this act was that the powers of the Trustees with regard to the appointment and dismissal of teachers within the School District were expanded. As described above, the previous act, the "Consolidated Public School Act of 1876," allowed the Trustees to select and appoint or remove and dismiss teachers only with the consent of a majority of the Board of Education.<sup>30</sup> Section 34 of the new act removed the provision for the approval of the provincial Board of Education and thus expanded the authority of local boards by proclaiming that,

the Trustees of any School District shall, from time to time, select and appoint (from amongst those persons properly qualified) the Teacher or Teachers in the School District of such Trustees, and may remove and dismiss such Teacher or Teachers upon giving at least thirty days' notice

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<sup>28</sup>Statutes of British Columbia, 1879, 42 Victoria, c. 30, s. 5. Interestingly, the power to establish the High School was held by the Lieutenant-Governor in Council.

<sup>29</sup>Statutes of British Columbia, 1879, 42 Victoria, c. 30, s. 32.

<sup>30</sup>Statutes of British Columbia, 1876, 39 Victoria, c. 2, s. 35.

to the Teacher or Teachers of such intention of removal and dismissal.<sup>31</sup>

The act of 1879 also placed some restrictions on the local boards of trustees. Section 44 of the Public School Act stated that the trustees of school districts created under the general provisions of the act "shall not have, exercise, or perform, with respect to any Public Boarding School within their District, any of the rights, powers, or duties given, conferred or imposed by this Act."<sup>32</sup> Under its subsequent provisions, the act allowed for the appointment of three person boards by the Lieutenant Governor in Council who were to form a new Corporation under the name of "The Trustees of the [naming the title] Boarding School."<sup>33</sup> Sections 46 to 50 of the act went on to detail the somewhat restricted powers, as compared to the public school boards, of these trustees.

The evolution towards increased autonomy for local school board trustees began to take firm hold in 1888 as the province began to shift an increasing proportion of the cost of education to the local communities directly. As the cost of providing educational services began to weigh more and more on the provincial treasury the provincial government felt that it was only proper that local authorities contribute to the increased expense of managing the school system. "This could hardly be done without also making some concessions to local control."<sup>34</sup>

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<sup>31</sup>Statutes of British Columbia, 1879, 42 Victoria, c. 30, s. 34.

<sup>32</sup>Statutes of British Columbia, 1879, 42 Victoria, c. 30, s. 44.

<sup>33</sup>Statutes of British Columbia, 1879, 42 Victoria, c. 30, s. 45.

<sup>34</sup>Johnson, History of Public Education in British Columbia, 91.

This change in policy is evidenced by the amendment to the School Act that was passed in 1888. This amendment required, among other things, that the cities of Victoria, Nanaimo, New Westminster, and Vancouver refund to the Provincial Treasury one third of the money allotted for the salaries of the teachers who taught there. The act did, however, provide such concessions as granting the local trustees control over the high school property as well as permitting the trustees of all districts to impose fees on pupils attending high schools within that district.<sup>35</sup>

The Public School Act of 1891 introduced several new changes to the administration of education within the province. Beginning in that year a new provincial body, the Council of Public Instruction, was made responsible for managing educational policy and practice. A provincial agency, the Council of Public Instruction was a cabinet council, responsible to the Legislative Assembly, which was chaired by the minister responsible for education, kept its own minutes and issued its own Orders-in-Council.<sup>36</sup> The Superintendent of Education was appointed the Secretary of the council. Almost all of the powers formerly held by the Lieutenant Governor in Council under the previous act were transferred to it. Among the powers held by the Council those most directly affecting local boards included the power to create school districts, define the boundaries of existing school districts, grant certain monies to the boards, as well as the authority to render decisions on all cases of appeal arising from the actions of local trustees.

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<sup>35</sup>Statutes of British Columbia, 1888, 51 Victoria, c. 32, s. 12. The children of indigent parents were to be admitted free of tuition.

<sup>36</sup>Patrick Dunae, The School Record: A Guide to Government Archives Relating to Public Education in British Columbia, 1852 - 1946, 23.

In addition, the new act provided for significant changes to both the composition and civic autonomy of the local boards in the province's four largest cities; Victoria, Nanaimo, New Westminster, and Vancouver. In these centers the number of trustees was increased from three to seven members of whom three were to be appointed by the Lieutenant-Governor-in-Council and four appointed by the municipal council of that city.<sup>37</sup> In addition, these cities were now to "bear the total cost of sites, buildings, repairs, and incidental expenses, and in addition were to pay one-half of the teachers' salaries."<sup>38</sup> In order to help meet these additional costs the respective councils of each city were required to levy the necessary amounts as a part of their regular municipal tax levy and reimburse that portion to the school board.

The school legislation that was passed in April of 1901 saw a significant realignment of the school boards in the province. As a result of this new law, urban centers were classified into "cities" of the first, second, and third class for school purposes. The classes into which each city was to be categorized were based upon the number of enrolled students and each class of city was given a different grant from the province. Under this system cities of the first class, which consisted of those with 1000 or more students were to receive \$13 per student. Cities of the second class, 250 - 1000 students, received \$15 per pupil. Those cities which formed part of the 3rd class, that is those with under 250 students, received a grant

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<sup>37</sup>Statutes of British Columbia, 1891, 54 Victoria, c. 40.

<sup>38</sup>Putnam-Weir, Survey of the School System, 17.

of \$20 per student.<sup>39</sup> The number of trustees for each class of city was also set with seven trustees for cities of the 1st class, five trustees for 2nd class cities, and three trustees for each of the 3rd class cities. All local trustees were to be elected by the community ratepayers.

The Public School Act of 1901 also provided for the appointment of a City Superintendent of Schools in those cities who "wished to appoint such an officer to assist the trustees in managing school affairs."<sup>40</sup> Although considered optional under the provisions of the act this amendment marks the introduction of what has now become the most senior administrative position in all local school districts throughout province.

In April of 1905 the province passed an Act to Amend and Consolidate the Public Schools Act primarily to redress and revise some of the funding discrepancies that had become apparent since the 1901 Act. The premise underlying the system of equalization established in the 1901 Act was that larger cities could afford to pay more of the cost of education directly and thus receive a smaller provincial grant. As H.B. King later pointed out in his survey, this assumption was flawed as some

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<sup>39</sup>Statutes of British Columbia, 1901, 1 Edward 7, c. 48, s. 4. Putnam and Weir also discuss these developments on page 17 of their study. The cities of Victoria and Vancouver were the two first class cities; Nanaimo, New Westminster, Nelson, and Rossland were second class; and the 11 smaller cities of Columbia, Cumberland, Grand Forks, Greenwood, Kamloops, Kaslo, Phoenix, Revelstoke, Sandon, Vernon and Wellington were of the third class. Given the fact that inclusion into any of the three classes is based upon enrollment it is obvious that other cities could be included or that the relative proportion of cities in each class could change.

<sup>40</sup>Putnam-Weir, Survey of the School System, 17. The hiring of a City Superintendent was subject to the approval of the Provincial Superintendent of Schools.

communities had large populations of school age children but comparatively little taxable wealth.<sup>41</sup> The new act provided for the establishment of rural school districts (which also included assisted schools), in addition to the previously introduced city school districts of the first, second, and third class, and, further, established new guidelines under which city and town councils could levy a tax for school purposes.<sup>42</sup> Finally, the 1905 legislation also required boards to hire one teacher for each sixty students enrolled in the district.

A significant amendment to the Public Schools Act was passed in 1906. This amendment further refined the changes effected in the 1905 legislation by allowing for the creation of a new category of school district, the rural municipality school district.<sup>43</sup> This act simplified the educational governance of British Columbia's expanding rural population by placing all schools within a rural municipality, which had previously been governed by separate school boards, under the control of one rural municipal school board. "Where there had formerly been one hundred and twenty-seven single school areas each with a three-man board, there were now twenty-one rural municipality school districts each with a five-man board."<sup>44</sup> A precursor to the large scale consolidation of school districts that was to take place in

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<sup>41</sup>H.B. King, School Finance in British Columbia (Victoria: King's Printer, 1935), 11.

<sup>42</sup>Statutes of British Columbia, 1905, 5 Edward 7, c. 44.

<sup>43</sup>Statutes of British Columbia, 1905, 5 Edward 7, c. 44, s. 11(4).

<sup>44</sup>Johnson, A History of Public Education in British Columbia, 95.

the 1930's and 1940's, this development brought economies of scale and efficiency of administration to many rapidly growing areas within the province.

Formal statutory provisions for the medical inspection of schools were set forth in the Schools Health Inspection Act of 1910.<sup>45</sup> Under the provisions of this act, school trustees in both urban and rural municipal school districts were required to appoint school health inspectors. Health inspectors for rural school districts were appointed by the Provincial Board of Health. Inspectors were required to examine the general health of all children, teachers, and maintenance workers annually and to report on the sanitary condition of school buildings and grounds.<sup>46</sup> The specific provisions of this act were later incorporated into the Public School Act of 1924.

In 1910 the province also established provisions for both the direct funding of school libraries in all districts and the establishment of superior schools in those districts where the operation of a normal high school was impracticable.

A minor amendment to the School Act in 1912 saw the position of City Superintendent changed to that of a Municipal Inspector of Schools. This change in title was reflective of an increased control by the Council of Public Instruction over such officials.<sup>47</sup>

In 1914, a change to the Public School Act required trustee boards to appoint a teacher for each forty pupils or fraction of forty enrolled. Ten years later, in

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<sup>45</sup>Statutes of British Columbia, 1910, 10 Edward 7, c. 45.

<sup>46</sup>Dunae, The School Record, 6. It is interesting to note that the board for the City of Vancouver had appointed a Medical Inspector as early as 1907.

<sup>47</sup>Statutes of British Columbia, 1912, 2 George 5, c. 28.

response to a continued high rate of absenteeism, the responsibility for enforcing compulsory attendance laws was placed on the school boards and "in that year [1923] the average attendance reached eighty-two per cent."<sup>48</sup>

In addition to legislative changes, the Provincial government also commissioned a series of complete surveys of the provincial system of education. These individual analyses were undertaken in 1924, 1934 and 1944 respectively. The recommendations of each successively culminated in a major administrative reorganization in 1946 which consolidated the existing multitude of local school districts into 74 large administrative units - with correspondingly dramatic effects on the operation of local school boards. The provincial government, in an effort to equalize educational opportunity throughout the Province, also assumed the major burden of educational costs during this period of time.

The first of the major surveys was the Putnam-Weir Commission. Initiated in 1924 and delivered in 1925, this report, titled Survey of the School System, proved to be a "state of system in 1924" analysis of education in the province. The report made several major recommendations including the adoption of a more meaningful and utilitarian approach to education, the establishment of a 6-3-3 grade structure (with the junior high segregated if possible), and the consolidation of small school districts under larger units of administrative authority. Many of the reports recommendations were subsequently implemented by the government. The recommendation for larger school districts, however, went, for the most part, unheeded and it would take until

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<sup>48</sup>Johnson, A History of Public Education in British Columbia, 56.

the Cameron Commission, twenty years later, for this fundamental restructuring of the education delivery system to take place.

In 1934 the province established the "British Columbia Commission on School Finance". The final report of the commission, prepared by its technical advisor Dr. H.B. King, was published in March of 1935. Known as the "King Report", it delivered a series of recommendations that were "drastic to the point of being revolutionary."<sup>49</sup> The King Report was characterized by the extent to which it advocated an extremely centralized system of education administration. Among his recommendations were the following; that "the system of having the schools administered by a multiplicity of school boards (826) be abandoned", that the province should be divided into large "educational areas" under the control of a provincial official, that all appointments within the education services, including teaching and non-teaching personnel, be made in Victoria by a Ministry of Education appointments committee, and that the provincial government should assume the entire cost of education within the province.<sup>50</sup> The public reaction to the King Report was unfavourable and it was all but ignored by the Government at the time.<sup>51</sup> It did, however, reiterate the call for the creation and implementation of larger school districts within the province. This call was not to remain unheeded for long.

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<sup>49</sup>Johnson, A History of Public Education in British Columbia, 118.

<sup>50</sup>King, School Finance in British Columbia, III - IV.

<sup>51</sup>Johnson, A History of Public Education in British Columbia, 120 - 121.

By 1942 six consolidated rural school districts had been established by the provincial government. A year later there were 29 united districts of varying sizes in the province. These new larger entities administered schools in an area that had previously been governed by 164 original school districts.<sup>52</sup> This trend, which was to become the norm only three years later, was perhaps the most influential development in the expansion of school board autonomy in the history of the province.<sup>53</sup> The rise in school board responsibilities that would normally follow as a result of these amalgamations did not take place immediately as most of these larger districts were managed by inspectors appointed by the Department of Education in Victoria. They did, however, point to a need for the province to reevaluate its educational delivery system.

As a result, in 1945, the Provincial government appointed a new Royal Commission to evaluate the present system of educational governance and finance in British Columbia. Under the direction of Dr. M. A. Cameron the commission was set up under the "Public Inquiries Act" in order ". . . to inquire into the existing distribution of powers and responsibilities between the Provincial Government and the school districts and to appraise the present fiscal position of the school districts in

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<sup>52</sup>The three main united districts and the dates of their creation were the Peace River Educational Administrative Area (1934), the Matsqui-Sumas-Abbotsford Area (1935), and the Nanaimo-Ladysmith United Rural School District(1942). Others in place at this time included the Creston Valley and the South Okanagan United Rural School Districts.

<sup>53</sup>The consolidation/amalgamation of many school districts into fewer larger districts is considered as a major turning point in the governance of education in Canada. This took place in several provinces over time in the years surrounding the Second World War.

British Columbia . . . ."<sup>54</sup> As a result of its findings, the Cameron Commission was to make several significant recommendations to the province which in turn led to major amendments of the Public Schools Act in 1946 as the provincial government adopted his report almost in its entirety.

Titled "Report of the Commission of Inquiry into Educational Finance" the study made two important recommendations based upon its findings. The first was that the province abolish existing school districts (649 at the time of writing) and divide the province into 74 large administrative areas, each under a single school board. The second recommendation was that the province should adopt a grant formula for boards based upon a standard salary scale for teachers, current expenses based on average daily attendance, and supervision related to number of pupils in the district.

Dr. Cameron reported that

[i]n general most of the administration of the system is in the hands of local Boards of School Trustees, elected by popular vote for the one purpose of running the schools. Thus the Boards appoint and discharge teachers, fix salaries, and erect, maintain, and operate school buildings. In fact, however, the Boards have not as much freedom as this. Economic conditions and a strong teachers' association reduce the Boards' autonomy on salary matters; the "Public Schools Act" greatly restricts them in the discharge of teachers, and two Departments of the Provincial Government supervise them in erecting buildings.

In decisions as to what the schools shall teach and how they shall teach it, the Boards take little part. The Department of Education allows local variation, but not much advantage has been taken of this.<sup>55</sup>

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<sup>54</sup>Maxwell Cameron, Report of the Commission of Inquiry into Educational Finance, (Victoria: King's Printer, 1945), 3.

<sup>55</sup>Maxwell Cameron, Report of the Commission of Inquiry into Educational Finance, 7-8.

In his report Dr. Cameron went on to state that such a situation pointed to the fact that the provincial school system had become much more centralized and that this trend was increasing. He specifically acknowledged the degree to which the Council of Public Instruction had begun to exercise increased control over the system through its ability "to appoint an Official Trustee for any school district to replace the School Board", a power which it had utilized "to an increasing extent in the last few years."<sup>56</sup> Further to these developments, the province had also established two Educational Administrative Areas under the direction of the Council of Public Instruction and its two provincially appointed Directors of Education. Dr. Cameron concluded his introductory remarks by stating that it was "clearly one of the duties of the report to come to decisions as to whether or not this tendency towards centralization should proceed further, or should be arrested or reversed."<sup>57</sup>

The findings of Dr. Cameron's commission were clear and straightforward. In his concluding chapter, titled "The School Districts", Cameron reported that:

[e]nlarged school districts should result in increased efficiency and economy, Business management, the purchase of supplies, insurance, the placing of buildings, and the transfer and continued use of equipment from closed schools are only a few examples of the many ways in which improved efficiency could result.<sup>58</sup>

He went on to conclude that:

[s]ince the need is so great and the remedy so obvious the recommendation that the Province undertake a thorough reorganization of its school districts is one of the most urgent and important in the

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<sup>56</sup>Cameron, Report of the Commission of Inquiry into Educational Finance, 8.

<sup>57</sup>Cameron, Report of the Commission of Inquiry into Educational Finance, 8.

<sup>58</sup>Cameron, Report of the Commission of Inquiry into Educational Finance, 84.

report. Our way is clear. It is to create school districts large enough and powerful enough that their work will be a challenge to the trustees who control them, and to see to it that these districts have financial resources adequate to their responsibilities.<sup>59</sup>

In order to implement Cameron's recommendations, which were accepted almost in their entirety, the province passed "An Act to amend the Public Schools Act" in April of 1946. This act, which amended but did not repeal the previous act of 1936, significantly altered the distribution of school districts in the province. The key amendment in this regard was Section 8 which stated, in part, the following:

(b) To create large municipal school districts, as may be considered expedient, by uniting two or more municipal school districts or by uniting one or more rural school districts with one or more municipal school districts or by uniting a portion only of a municipal school district with one or more other municipal school districts; and to create large rural school districts, as may be considered expedient, by uniting two or more rural school districts or by uniting a portion only of a municipal school district with one or more rural school districts, and as may be considered expedient, including within the boundaries of such large municipal or rural school districts any area of unorganized territory not comprised within the limits of a school district; and to define the boundaries of large municipal or rural school districts so created and, when considered expedient, to alter their boundaries or to abolish the districts.<sup>60</sup>

The creation of larger consolidated school districts in British Columbia that began in the 1930's, and culminated with the reorganization in 1946, contributed to significant changes throughout the province's educational delivery system. Several hundred school districts and their boards disappeared while official trusteeships, previously held almost exclusively by inspectors of schools, were discontinued. New boards with enlarged powers and expanded jurisdiction came into being. With

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<sup>59</sup>Cameron, Report of the Commission of Inquiry into Educational Finance, 85.

<sup>60</sup>Statutes of British Columbia, 1946, 10 George 6, c. 64, s. 8 (b).

respect to the boards of trustees themselves, they moved towards a greater legislative role with a subsequent decline in the day to day management and administration of school district activities as the resulting increases in this area demanded greater delegation to a full time administrative staff.<sup>61</sup>

As a result of the changes that followed the passing of the "Act to Amend the Public Schools Act" there was less provincial control of such specific activities as school organization and operation, transportation, pupil services, local curriculum and examinations. As school board personnel assumed authority for these activities and others there was a considerable change in the day to day relationship between the Provincial Department of Education and most school boards in the province. The Department of Education did, however, retain control over the selection and appointment of the District Superintendent of Schools for all districts except Vancouver.

In 1949 an amendment to the Public Schools Act made it possible for local boards of trustees and the Federal Indian Affairs Branch to enter into agreements for the sharing of costs where both native and non-native children could attend the same school. An acknowledgement of the federal government's responsibility for the the education of native peoples, as stated in the British North America Act, 1867, this provision stated that the Board of any school district may

with the approval of the Minister, enter into and execute, or cause to be executed, an agreement with the Government of Canada for the

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<sup>61</sup> J.F.K. English, "An Evaluation of the Reorganized System of Local School Administration in British Columbia" in Canadian Education (June 1956), vol. 11 number 3, 24 - 25.

education of Indian or other children for whose education the Government of Canada assumes responsibility<sup>62</sup>

The authority of school boards to contract in this manner, though limited by the need for ministerial approval, serves as an example of the how local boards maintained an ongoing relationship with external government bodies.

In February 1958, Bill Number 66, an Act respecting Public Schools, was passed by the Provincial Legislature. So frequently had the School Act of 1936 been amended, or otherwise reinterpreted, that there was an obvious need to consolidate and simplify the complexity of existing school legislation. The Public Schools Act of 1958, however, effected very little in the way of changes to existing school district operations.

The second major development related to education in 1958 was the appointment of a Royal Commission on Education. Chaired by S.N.F. Chant this task force was "to inquire into, assess, and report upon the provincial educational system to [the] university level."<sup>63</sup> The Commission submitted its 460 page report in 1960 after exhaustively investigating all attributes of the existing school system. Despite the exhaustive nature of this report, however, it had, in general, very little to say regarding the operation of school boards. The primary concern expressed in this regard was that centralized controls could become more restrictive than they ought to

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<sup>62</sup>Statutes of British Columbia, 1949, 13 George 6, C. 57. An example of some of the elements involved in such negotiations is found in the minutes of the Department of Indian and Northern Affairs regional managers meeting of March 24, 1969. National Archives of Canada, Record Group 10, accession V1984-85/330, box 500125, file 1 - 3.

<sup>63</sup>British Columbia, Report of the Royal Commission on Education (Victoria: Queen's Printer, 1960), 1

be especially if the central authority, the province, controlled grants of money to the local body. The Commission's recommendation was that the lines of communication between the department and the local boards be improved, especially with regard to possible alterations of provincial school policy, and that there be regular meetings between the executive of the B.C. School Trustees Association and officials of the Department of Education.<sup>64</sup> Overall the commission's main comment with regard to local school boards was that local autonomy should, in general, be increased or, minimally, it should be made more clear where the board could increase its presence.

The next significant piece of provincial legislation to affect school boards was the passing of the School District Capital Finance Act in 1963. The purpose of this legislation was the creation of a new provincial corporation called the British Columbia School Districts Capital Financing Authority. The object of this agency, which was comprised of the Minister of Finance, the Minister of Education, and the Deputy Minister of Finance, was

to assist the boards of school trustees of various school districts created under the School Act to finance their capital expenditures by purchasing debentures issued by boards of school trustees with money raised by the issue and sale of debentures of the authority.<sup>65</sup>

Six years later, in 1969, the provincial legislature passed the School District Housing Act. For the most part, this minor legislation simply supplemented the provisions for housing found in the existing School Act by allowing the minister to

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<sup>64</sup>British Columbia, Report of the Royal Commission on Education, 62.

<sup>65</sup>Statutes of British Columbia, 1963, 11-12 Elizabeth 2, c. 6.

recommend to cabinet that the various boards within the province be authorized to finance the construction and furnishing of approved housing for the employees of the board. The act further allowed for the sale of any necessary debentures to the British Columbia School Districts Capital Financing Authority.

Significant new legislation was passed in April of 1982 with the enactment of the Education (Interim) Finance Act. This statute provided for several important changes to the way in which the provincial government provided funding for the educational system in British Columbia.

In the years preceding 1982 the revenue necessary for basic educational programs was collected according to a standard, province wide, tax rate on assessed property values. Under this system school districts which collected tax revenues above the amount needed to finance the basic educational program turned their surplus over to the province, which, in turn, provided supplementary grants to those districts collecting lower tax revenues. The problem with this system lay in the relatively wide disparity between the assessed property values of the Lower Mainland and Victoria districts and the more rural districts of the province. In effect, the larger urban centres of the southwest corner were subsidizing the other districts as a result of their collection of higher school taxes.

The new Education Finance Act sought to reduce this disparity. Under its terms the province "redesigned equalization among districts by taking over property taxation of non-residential property and providing grants of from 60 to 90 percent of

a school district's cost, depending on the district's per-student residential property tax base."<sup>66</sup>

A new school act, Bill 67, passed Third Reading on the 7th day of July, 1989 and became effective on September 1, 1989. This revised act, primarily based on the 1988 recommendations of the Sullivan Royal Commission, was the first major rewrite of the School Act since 1958. In all it replaced the former School Act, the Education (Interim) Finance Act, as well as the School District Housing Act.

The Powers and Duties of the school boards as they stand today are primarily set forth in Part 6, Division 2 of the new act. This division encompasses sections 92 - 105 of the act. The variety of powers and duties outlined in these sections include, but are not limited to, the following: the establishment and closure of schools within the district, the management of schools and property, the provision of educational programs, the preparation of annual reports, the signing of agreements, determination of local policy for the effective and efficient operation of schools, the establishment of codes of conduct for pupils, the provision of transportation services for students, and the development of local programs for use in the district's schools. Other duties, such as the provision of health and other support services, are found in other relevant sections.

As mentioned above, the new act replaced the Education Finance Act. It did not, however, incorporate all of its provisions. Instead, the new act provided for a revised system of funding in which the provincial government paid each school

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<sup>66</sup>Robert L. Bish, Local Government in British Columbia, 2nd. ed. (Vancouver: Union of British Columbia Municipalities, 1990), 139.

district "a base grant for that year consisting of a percentage . . . of the school district's shareable operating expenses"<sup>67</sup> Under this structure the school districts were responsible, at minimum, for securing the remaining tax revenues necessary to meet 100 percent of the basic program expenditures.

This new approach to school financing was to last only one year as 1989 salary settlements, the first to take place under teacher unionized collective bargaining, caused significant increases in school board budget expenditures. As these added costs had to be met through increased residential property taxes, local taxpayers complained.<sup>68</sup> As a result, the provincial government changed its approach to financing a third time and passed the School Amendment Act in 1990. Under the provisions of this act the provincial government assumed responsibility for the "collection of all school property taxes and use[d] its cost-based formula to provide a bloc grant to each school district in the province."<sup>69</sup>

This chapter has examined how the responsibilities of local school boards evolved over time. It has been demonstrated that the responsibilities delegated to school boards changed as a direct result of the promulgation of new school acts by the provincial legislature in a continual response to needs for elaboration and

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<sup>67</sup>Statutes of British Columbia, 1989, 38 Elizabeth 2, c. 61, s. 128 (1). Shareable operating expenses, or basic program costs, were derived according to a province wide formula. Both the formula and the basic program costs were determined by the Department of Education. According to Bish this grant ranged from 55 to 95 percent with the average amount of money paid by the province being 80 percent of basic program costs.

<sup>68</sup>Bish, Local Government in British Columbia, 139.

<sup>69</sup>Bish, Local Government in British Columbia, 139.

expansion of the school system. The first school act established local school boards as distinct entities within the provincial system of education. This has not changed. What has changed over time is the increasing degree to which certain duties were delegated from the central control of the province to the local control of the school boards. This shift has contributed to the development of an ever expanding local administration and resulted in the evolution of a distinct administrative structure within all school districts in the province. What originated as local three person boards with limited powers and duties has now become a complex corporation administered by numerous juridical persons.

## CHAPTER THREE

### FUNCTIONS AND COMPETENCES

Drawing from both the theory presented in the introduction and the observations recorded in the first two chapters, this chapter will proceed to establish and further examine the functions of British Columbia school boards as they have generally existed over time but with specific reference to those functions and competences currently in place today.

As the introduction makes clear, a functional analysis must begin with an examination of the agency's mandate. From this point of departure the discussion will proceed to introduce and develop the functions which have been derived from the examination of the agency's mandate. In turn, this investigation into the functions of school boards will incorporate specific and relevant competencies found in the School Act and relate them to the functions for which they are responsible - much as the idea of "characterization of function" was developed in the introduction.

When introduced earlier in this study a mandate was defined as the legal authority under which an agency or person administers certain matters and is, in essence, what permits that agency or person to undertake a function or set of functions in society.<sup>1</sup> In order to be juridically valid, however, this authority to function must be officially recognized by the society in which that agency is

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<sup>1</sup>Michael Gourlie, "The Records of Lawyers: Archival Appraisal and Access", 11.

operating. The general mandate under which British Columbia school boards have operated over the entire course of their existence has been the many School Acts which have been enacted and amended over the course of British Columbia's history. The mandate derived from these legislative acts has come about through the various delegated powers that have been assigned to school boards as a result of the changing provisions in these acts. This mandate is officially recognized by society through the promulgation of the individual school acts by a publicly elected legislature that has sovereign power in this regard. The mandate afforded to British Columbia school boards, then, arises from the enabling legislation that permits their very creation, other related and relevant public policy, and is recognized by, as well as accountable to, the local community through the electoral process.

The School Act of 1989, however, sought to provide more specific meaning to the idea of a mandate for the British Columbia school system. Among the changes introduced in this bill was, for the first time in the history of the School Act, the addition of a preamble. This preamble reads as follows;

Whereas the purpose of the British Columbia school system is to enable learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy society and a prosperous and sustainable economy;<sup>2</sup>

Further to the addition of a preamble, the Act also included a new amendment that allowed for the periodic issuance of a provincial educational policy statement. Partially intended to both complement and give specific direction to the general

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<sup>2</sup>Statutes of British Columbia, 1989, 38 Elizabeth 2, c. 61. One may argue that the preamble, in effect, serves as the mission statement for the school system.

philosophical ideals found in the preamble, section 183 (3) of the new act provided that, subject to cabinet approval, "the minister of education shall from time to time issue a statement of education policy for British Columbia."<sup>3</sup> This new provision was utilized almost immediately by the Social Credit government in power at that time as Tony Brummet, then Minister of Education, issued the first policy statement titled "Mandate for the Schools System: Province of British Columbia" in late 1989. In his section on school boards he stated that they

have a duty to govern districts and their schools in accordance with specified powers in a fiscally responsible and cost effective manner. They have a responsibility to ensure that schools provide students with opportunities for a quality education; to set education policies that reflect the aspirations of the community and that are consistent with overall provincial guidelines; to provide leadership and encouragement to schools and the community; to cooperate with the community and social service agencies in the delivery of non-educational support services to students; and to focus on the following areas of district concern: (1) implementation of provincial and local education programs; (2) school finance and facilities; (3) student access and achievement; (4) teaching performance; and (5) accountability to parents, taxpayers, the community and to the Province.<sup>4</sup>

In this paragraph Brummet outlines clear responsibilities and provides a mandate statement from which the local school boards in the province can set their priorities and objectives. Such a policy statement, to which all the local school boards in the provincial system of education may be held accountable, is an important development, for "while possibly not 'law' like an act or regulation, it

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<sup>3</sup>Statutes of British Columbia, 1989, 38 Elizabeth 2, c. 61, s. 183 (3).

<sup>4</sup>Anthony J. Brummet, Mandate for the School System: Province of British Columbia (Vancouver: Queen's Printer, 1989), 6-7..

should probably be considered as persuasive."<sup>5</sup> The specificity and authority that accompanies a policy statement such as this is a drastic improvement on what had for years unofficially stood as the boards' mandate; enabling legislation in the form of the School Act through and by which the board was to act as a provincial agent in determining local policy.

The primary mandate of local school boards then, as drawn from Brummet's statement, is much more clear and precise. It is that school boards "have a duty to **govern** districts and their schools in accordance with specified powers."<sup>6</sup> The realization that the mandate of school boards directly relates to their ability to govern and the way in which this contributes to the identification of specific school board functions will be addressed later.

Following the model outlined in the introduction, most mandates are accompanied or supported by a related mission statement or corporate vision (motherhood statement) that is particular to the individual agency or organization. It is reasonable to conclude that the majority, if not all, of school districts in the province do have individual mission/vision statements.<sup>7</sup>

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<sup>5</sup>Alan C. Nicholls, A Guide to The School Act of British Columbia, 6th ed. (Vancouver: Eduserv Inc., 1990), 24.

<sup>6</sup>Brummet, Mandate for the School System: Province of British Columbia, 6-7. Emphasis mine.

<sup>7</sup>As this thesis is investigating only those aspects that are generic or common to all school boards, specific instances or examples of mission statements are outside of its scope. An informal survey of the policy manuals of many of British Columbia's school districts does show, however, that each has developed and adopted a mission statement.

What, then, are the primary functions of British Columbia school boards? If an agency's functions derive from its authority to act, that is from its mandate, it is the mandate which must provide the direction to this answer. According to the policy statement described above (as issued by the Provincial Government) school boards "have a duty to govern districts . . . in accordance with specified powers."<sup>8</sup> Drawing from the legal considerations and statute law developed in the previous chapters it is further made clear that each board of trustees, though a provincial agent in fact, does constitute a governing body. In the organized political life of any juridical system governing bodies function to carry out the legislative, judicial, and executive responsibilities entrusted to them.<sup>9</sup> As one such governing body, each board of school trustees shares these same three primary or governing functions: **judicial, legislative, and executive**. As the examination of the executive function will describe below there are also two management functions that are secondary to these governing functions. These two management functions, which together comprise the executive function, are the **education administration** function and the **business administration** function.

It is important to clearly identify the functions in this manner as it is critical for "determining the ambit of the power granted to the delegate, the procedure which the delegate must follow in exercising that power and the remedies which may be

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<sup>8</sup>Anthony Brummet, Mandate for the School System: Province of British Columbia, 6-7.

<sup>9</sup>D. Jones and A. de Villars, Principles of Administrative Law (Toronto: Carswell, 1985), 43 - 49 and Cistone, "The Recruitment and Socialization of School Board Members", in Understanding School Boards, 47.

available to challenge the legality of the delegate's action in court."<sup>10</sup> Similarly, the distinction made here between governing and management functions is based upon the same accepted rules of administrative law. According to the tenets of administrative law, legislative and judicial powers which have been delegated by a sovereign body may be exercised only by the person, natural or artificial, to whom they have been directly granted, whereas administrative powers can usually be re-delegated to other officers.<sup>11</sup> Thus, although the board of trustees alone are directly accountable for all of the powers, functions, and activities delegated to them by the provincial legislature it is its administrative officers who are primarily responsible, at the operational level, for the management functions.<sup>12</sup> Each of these functions, the activities of which they are comprised, and the competences associated with them will be examined individually below.

The function that is most commonly associated with school boards, and the trustees of which they are comprised, is the legislative function. This function, which is perhaps the most important to the overall operation of the school district, is the one through which the board sets district policy as a result of its delegated authority to pass bylaws and the subsequent rules and regulations which are related to those bylaws. It is through the creation and enactment of these bylaws and resolutions, which are equivalent to policy statements in most instances, that the board provides

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<sup>10</sup>D. Jones and A. de Villars, Principles of Administrative Law, 49.

<sup>11</sup>D. Jones and A. de Villars, Principles of Administrative Law, 49.

<sup>12</sup>It is important in this context to emphasize the need to differentiate between the decision making activities and the decision implementing activities that exist within any functional sphere.

the district's administrative staff with the guidance necessary to accomplish the activities associated with the implementation of the various programs in the school district. School board policies are usually drafted to provide continuity and a sense of purpose, in terms of priorities and objectives, for school district staff who are administering and operating the schools. "Such policies provide rules of general application throughout the district and may cover such practical matters as school bus operations, or provide an overall philosophy or objective for the district."<sup>13</sup>

The authority for the board to legislate in this manner is found in the School Act. Section 85 (4) states that "unless expressly required to be exercised by bylaw, all powers of a board may be exercised by bylaw or by resolution."<sup>14</sup> Part (5) of this section complements this by stating that "a board shall exercise a power with respect to the acquisition or disposal of property owned or administered by the board only by bylaw."<sup>15</sup> As a consequence of the central role of policy development in the effective and efficient operation of the district it may be stated that all other functions of the school boards are subservient to the legislative function because of their direct link to the district's policy framework under which all operational activities fall.

Given the importance of the legislative function it is both necessary and instructive to examine parts of the legislative process, as set forth in the School Act, in greater detail. The primary point at which legislative activities are publicly made explicit is during the school board meeting. It is through the provisions set forth in

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<sup>13</sup>Allan C. Nicholls, A Guide to The School Act of British Columbia, 26.

<sup>14</sup>Statutes of British Columbia, 1989, 38 Elizabeth 2, c. 61, s. 85 (4).

<sup>15</sup>Statutes of British Columbia, 1989, 38 Elizabeth 2, c. 61, s. 85 (5).

sections 85 - 91 of the School Act that the role and procedures of school board meetings are formally acknowledged. These meetings must be open to the public<sup>16</sup> and must take place "as often as is necessary to transact its [the board's] business and in any event not less than once in every 3 months."<sup>17</sup>

The first meeting of a newly elected board must take place within thirty days of the beginning of its new term in office. The responsibility for convening this meeting lies with the secretary treasurer. At this initial meeting the board must elect from its members a chairperson and may also choose to elect a vice chairperson as well.<sup>18</sup>

The chairperson's responsibilities in board meetings are as follows:

1. To confirm that the meeting has been duly convened and is properly constituted.
2. To conduct the proceedings in a regular and proper manner.
3. To decide points of order and all incidental questions of procedure.
4. To ensure that all business transacted is within the competence of the board.
5. To decide who shall speak.
6. To decide when there has been sufficient discussion of a matter, and to move that the question be now put.
7. To put motions and amendments to the vote and to declare the result.
8. To ascertain the sense of the meeting on any question properly put before it.
9. To preserve order.
10. To cause the removal of disorderly persons.

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<sup>16</sup>Statutes of British Columbia, 1989, 38 Elizabeth 2, c. 61, s. 88 (1). Subsection (2) of section 88 does allow, however, that "if, in the opinion of the board, the public interest so requires, persons other than trustees may be excluded from a meeting."

<sup>17</sup>Statutes of British Columbia, 1989, 38 Elizabeth 2, c. 61, s. 87 (3).

<sup>18</sup>Statutes of British Columbia, 1989, 38 Elizabeth 2, c. 61, s. 87 (1) and (2).

11. To adjourn the meeting when it is impossible to maintain or restore order.
12. To declare the meeting closed when all the business has been transacted.
13. To sign the minutes of the meeting at which he or she presides.<sup>19</sup>

The method or procedures through or by which the various bylaws and resolutions are proposed and passed or defeated is left up to the individual boards to determine. Section 87 (5) simply states that "a board shall establish procedures governing the conduct of its meetings and shall permit any person to inspect those procedures."<sup>20</sup> As a result of the relative silence on the part of both the act and the school regulations all school boards have been left to develop and implement their own detailed procedures.<sup>21</sup> Those points of order or other acts on procedure not covered by the School Act or district bylaw are usually governed by an established text such as Robert's Rules of Order.

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<sup>19</sup>Statutes of British Columbia, 1989, 38 Elizabeth 2, c. 61, s. 89 (1) and s. 91 (1)(c) and William G. Craig, The Law and Procedure of Meetings in Canada, (Toronto: Ryerson Press, 1966), 14 - 15. In addition to his or her duties at school board meetings, the chairperson is also responsible for two other major tasks; public relations and staff relations. The chairperson is usually the official spokesperson for the board and in this capacity he or she is responsible for announcing matters of policy, answering questions from both the public and the media, as well as maintaining official relationships with other external bodies such as the municipal council, British Columbia School Trustees Association and the Ministry of Education. The chairperson also plays a significant role as both a mediator and facilitator of board/staff relationships.

<sup>20</sup>Statutes of British Columbia, 1989, 38 Elizabeth 2, c. 61, s. 87 (5).

<sup>21</sup>In order to provide some guidance in this regard the British Columbia School Trustees Association has published a sample set of procedural bylaws that is available to all boards within the province. School Board Meetings: A Sample Set of Procedural Bylaws, (Vancouver: British Columbia School Trustees Association, 1992).

In order for the board to transact its business, or for a resolution or bylaw to be passed, there must first be a quorum of board trustees present at the meeting. A quorum may be defined as "the minimum number of members of any body who must be present at its meetings and deliberations before any business can be validly transacted."<sup>22</sup> Section 86 of the act states that a quorum consists of "a majority of the trustees holding office at the time of the meeting of the board."<sup>23</sup> It is the responsibility of the chairperson to satisfy him or herself that a quorum is present.

As a legal creation of the provincial legislature, to which it is ultimately accountable, the board's legal ability to enact bylaws must acknowledge the legal framework of the enabling legislation under which it falls. As discussed in Chapter One, school boards may affect postures of sovereignty but they are never completely sovereign. The inherent restrictions of this fact are clearly evidenced by the restraints placed on the board's ability and freedom to legislate as it wishes. School boards, in enacting subordinate legislation, "must do so only in accordance with the authority granted it under the enabling or governing legislation passed by the sovereign legislative body."<sup>24</sup> As such, the board's ability to legislate is restricted by those obligations and powers expressly imposed or granted by the School Act.

The nature of these mandatory or imposed powers are easily identified in the School Act. Mandatory duties are explicitly set forth in those provisions of the act

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<sup>22</sup>William G. Craig, The Law and Procedure of Meetings in Canada, 11.

<sup>23</sup>Statutes of British Columbia, 1989, 38 Elizabeth 2, c. 61, s. 86.

<sup>24</sup>Gerald L. Gall, The Canadian Legal System, 3rd. ed. (Toronto: Carswell Legal Publications, 1990), 37.

which state that "the board shall . . . ." As these duties are prescribed by the law the province may, if necessary, use the courts to enforce school board compliance.

The board, however, is not completely restricted through its relationship to the Provincial Legislature for the School Act also allows the board to act in a discretionary capacity. The board's authority to proceed in this manner is identified in the act by the phrase "The board may . . . ." It is through acting in this capacity that the board truly works as a sovereign body. Further, it is through these discretionary powers that the board is most able to determine local policy as a representative of the local community.

The second governing function inherent to the board of trustees is the judicial function. There are several instances when school boards may be called upon to act judicially or "in a manner having the attributes of a formal legal proceeding."<sup>25</sup> An example of such would relate to the board's ability to hear and rule on appeals that have arisen as a result of challenges to administrative decisions that have been made on matters such as student or employee discipline.<sup>26</sup> Due to the limited nature of this authority this function has sometimes been described as a 'quasi-judicial' function.<sup>27</sup> Quasi-judicial is defined as,

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<sup>25</sup>Wayne MacKay, Education Law in Canada (Toronto: Emond-Montgomery Publications Limited, 1984), 28.

<sup>26</sup>R.D. Strahan and L. C. Turner, The Courts and the Schools (New York: Longman Inc., 1987), 64. The board's ability to suspend students, for example, is set forth in section 103(2)(d) of the School Act - 38 Elizabeth 2, 1989.

<sup>27</sup>C.J. Russo. "The Legal Status of School Boards in the Intergovernmental System," in School Boards: Changing Local Control, ed. PF. First and H.J. Walberg (Berkeley: McCutchan Publishing Co., 1992),12 and Strahan and Turner, The Courts and the Schools, 64.

the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature<sup>28</sup>

The procedures or activities by and through which this function is effected are usually set in local policy. As such, they usually involve an appearance before the board of trustees, whether at a regular or special meeting, a presentation of the specifics of the case, followed by a decision of board after suitable, and perhaps incamera, discussion.<sup>29</sup>

It should be acknowledged that the board cannot be considered to be the final arbitrator as its decisions are subject to appeal by the affected party or parties. Because the board is considered to have the power and capacity of a natural person of full capacity, the board may sue or be sued and, as a result, its judicial decisions

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<sup>28</sup>Black's Law Dictionary, c.v. "Quasi judicial", 866.

<sup>29</sup>In the analysis of the Greater Victoria School System prepared by the Centre for the Study of the Administration in Education at the University of British Columbia the report of the study states that, in opposition to the above, the judicial function involves the examination and evaluation of policy decisions so that they may be periodically adjusted to fit new or changing conditions. It is this study's belief that such evaluative activities are better placed within the executive function as it is only as a result of the feedback gained through the operational implementation of the policy that most policies may be properly evaluated. The knowledge gained through this executive level evaluation would be communicated by the superintendent back to the board and subsequent amendments would occur through the procedures and activities that make up the legislative function. In fact, the above mentioned report seems to acknowledge this very approach when it states that "ideally, the Board should assume responsibility for the evaluation of policy; but since the executive officer has a hand both in the shaping and in the implementation of policy, it follows that he ought to be involved in the process of evaluation." Report of the Cooperative Study of the Greater Victoria School System, by L.W. Downey, Chairman (Vancouver: Center for the Study of Administration in Education - University of British Columbia, 1966), 31.

may be subsequently challenged in a court of law. As shown in Chapter One, however, if the board is not in breach of its enabling legislation or its own policies and rules, and thus ultra vires, its judicial decisions usually have legal standing.

The third governing function is the board's authority to act in an executive capacity. It is through this function that the board's policies, developed through its legislative powers, contribute to the implementation of operational activities and, in addition, it is here that the school board (as a corporation) oversees the direct implementation of the School Act at an operational level. The wide range of activities that make up this function has led to the fact that the majority, if not all, of these activities have been delegated to administrative officers.<sup>30</sup> In fact, the board's primary activity in this functional sphere is the selection and hiring of delegated officials who oversee the operational activities that comprise this functional areas. It is at this point in the administrative structure of British Columbia school boards that the separation between governing functions and management/administration functions takes place.<sup>31</sup>

The executive function is itself comprised of two major functions. The first of these is the function of education administration. The function of education administration is composed of those sub-functions and activities directly related to the educational operations of the school district. Examples would include Curriculum and

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<sup>30</sup>Statutes of British Columbia, 1989, 38 Elizabeth 2, c. 61, s. 85 (2)(c) states that a board may "delegate specific and general administrative and management duties to one or more of its employees."

<sup>31</sup>It is interesting to note that the majority of sources reviewed for this study stated that the most ineffective boards are those that refuse to relinquish control in this area and thus become bogged down in 'administrivia'.

Instructional Services, Human Resources/Personnel, Pupil Services, Assessment, Continuing Education, Research and Evaluation, and School Health among others. Each of the areas mentioned here are often directly managed by an assistant superintendent of schools or equivalent. The majority of the spheres of activities that constitute these sub-functions are, in themselves, further comprised of various sub sub-functions and activities.

As can be seen from the above elucidation, there is a relative scale of functional levels within the education administration function. The identification of sub-functions as such is, as stated in the introduction, dependent upon the functional hierarchy established by the author of the analysis. As the introduction makes clear, the identification of functional levels as subordinate does not deny their standing as functions with regard to the definition of function.

The second major functional area within the executive function is the business administration function. The function of business administration includes those sub-functions and activities directly related to the corporate administration of the school district. Examples of such areas would include Facilities Management (which includes Physical Plant, Buildings and Grounds and Custodial Services), Financial Services (which includes Comptrolling, Payroll, and Budget), Purchasing, and Computer Systems. Like the education administration function above, each of these subordinate areas is further comprised of various sub sub-functions and activities.

The significance of the executive function, and its delegated nature, is both acknowledged and highlighted by the fact that the School Act explicitly allows for and specifically identifies two administrative officers who share responsibility for, to

varying degrees, the operational activities that make up this function. These two officers are the superintendent of schools and the secretary treasurer. Other administrative officers, such as assistant superintendents, are also acknowledged within the School Act but as these positions are administratively below the level of analysis necessary to this thesis they will not be developed in the same manner.<sup>32</sup> In order to both acknowledge and further develop the importance of the official capacities of these two administrators, their legal status and operational roles within the management structure of the school district will be examined below.

In order to understand the relationships that exist between the board of trustees and its various officials it is necessary to first delineate the possible school district reporting structures that may exist throughout British Columbia. The administrative structure of each school district remains a local prerogative and it is important that it is based upon both the board's preference as well as district needs. In a manual commissioned by the British Columbia School Trustees Association three alternative models for assigning senior administrative responsibilities are suggested - unitary, dual, and multiple structures.<sup>33</sup> In the unitary model the superintendent of schools acts in the capacity of chief executive officer with the deputy superintendent (or assistant superintendent[s], director of instruction, etc.), responsible for activities

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<sup>32</sup>School based functions and their associated competences, such as principals and vice-principals are also acknowledged within the Act but they remain clearly outside the scope of this thesis. The School Act also mentions other district, as opposed to provincial, level competences such as teachers but as they too do not directly relate to this study they also will not be developed here.

<sup>33</sup>Terrance James and Arthur Kratzmann, The Recruitment and Selection of School District Senior Administrative Personnel, (Vancouver: BCSTA, 1979), 25. The three models developed below are based upon pages 25 to 27 of this manual.

associated with education administration, and the secretary-treasurer, responsible for business administration activities, reporting directly to him or her. The dual control model is characterized by both the superintendent, responsible for the education administration function, and the secretary-treasurer, responsible for the business administration function, reporting to the board directly. The third option is the multiple control model under which all the senior administrative officers, such as the superintendent, secretary-treasurer, director of instruction, supervisor of buildings and grounds, etc., report directly to the board of trustees.<sup>34</sup> In the majority of British Columbia school districts it is the unitary control model that is utilized.

Under the unitary control model, the administrative structure of most school districts usually finds the board of trustees acting in the capacity of a board of directors, the superintendent of schools as its chief executive officer, and the secretary treasurer as the corporation's chief corporate financial officer. Because the superintendent of schools has been delegated by the school board direct responsibility for the day to day education and business operations of the school district, including the supervision and direction of administrative officers and teachers, the administrative reporting structure within the corporation finds the secretary treasurer and the various assistant superintendents reporting to the board only through the superintendent.

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<sup>34</sup>According to The Recruitment and Selection of School District Senior Administrative Personnel manual the multiple control structure is not popular and does not appear to be appropriate under most circumstances.

As can be seen from the above comments, it is the superintendent of schools who has, in most instances, been delegated the direct responsibility for all the various operational functions and activities that together constitute the executive function. The position of district superintendent of schools, and his or her general duties, are set forth in section 22 of the School Act. This section states that:

(1) A board shall appoint a superintendent of schools for the school district who shall, under the general direction of the board, have general supervision and direction over the educational staff employed by the board of the school district and shall be responsible for the general organization, administration, supervision and evaluation of all educational programs and for the operation of schools in that district and shall perform other duties set out in the regulations.<sup>35</sup>

The regulations, as they pertain to the duties of the superintendent of schools, state, in part, the following:

6.(1) A superintendent of schools shall

- (a) assist in making the Act and regulations effective and in carrying out a system of education in conformity with the orders of the minister,
- (b) advise and assist the board in exercising its powers and duties under the Act,
- (c) investigate matters as required by the minister and after due investigation submit a report to him or her, and
- (d) perform those duties assigned by the board, and may, subject to section 88 of the Act, at his or her discretion attend any board meeting.<sup>36</sup>

As evidenced by the general nature of the wide range of duties and powers outlined in both the School Act and its associated regulations, the position and role of the superintendent of schools, as it exists in the legislation, is somewhat flexible and is often dependent upon the individual personality of the governing board.

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<sup>35</sup>Statutes of British Columbia, 1989, 38 Elizabeth 2, c. 61, s. 22 (1).

<sup>36</sup>School Act, School Regulation, B.C. Reg. 265/89, O.C. 1281/89, Section 6. (1).

The position and general duties of the secretary treasurer is described in section 23 of the School Act. The first element of this section states that the board must appoint a secretary treasurer and that this person must be bonded to an amount considered appropriate by the board. Subsection (2) states that the secretary treasurer "shall be its corporate financial officer and shall perform those duties set out in the regulations."<sup>37</sup>

The regulations, however, do not add substantially to the general description found in the School Act. Section 7 of the School Regulations stipulates only that the secretary treasurer must:

- (1) (a) become familiar with and comply with the accounting and administrative procedures specified by the minister and shall keep a record of the proceedings of the board and perform the other duties the board may assign in relation to its corporate affairs,
- (b) perform the duties specified for a secretary treasurer by the Act and the regulations, rules or orders made under it, and
- (c) perform those duties assigned by the board.

- (2) The records referred to in subsection (1) (a), and all books, accounts, vouchers and papers of the board, shall at all times be subject to inspection by the minister or his or her designated representative and by the comptroller general of the Province.<sup>38</sup>

In fact, in most school districts the secretary treasurer, as the corporate financial officer responsible for both the fiscal and business related activities of the school district, is directly accountable for such functional areas as comptrolling, payroll, purchasing, buildings and grounds, computer systems, and the hiring and supervision of the staff who work in these capacities.

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<sup>37</sup>Statutes of British Columbia, 1989, 38 Elizabeth 2, c. 61, s. 23 (2).

<sup>38</sup>School Act, School Regulation, B.C. Reg. 265/89, O.C. 1281/89, Section 7.

This chapter has examined and developed the functions and competences common to all school boards in British Columbia. Following upon the functional analysis model outlined in the introduction, it began by establishing the mandate under which school boards have generally operated. From this mandate the five main functions of British Columbia school districts, and their controlling boards, were determined. These functions are separable into the two main categories of governing functions and management/administrative functions. The governing functions are comprised of legislative, judicial, and executive functions. The management functions are found within the executive function and are comprised of education administration and business administration. In addition to detailing the functions of British Columbia school districts, this chapter also identified and expanded upon those officers, both within the board of trustees and the senior administrative staff, competent for carrying out the activities of which these functions are comprised. These officials included the chairperson of the board of trustees, the superintendent of schools, and the secretary-treasurer.

## CONCLUSION

The preceding three chapters have set forth the legal status of school boards in Canada, developed the history of statute law as it pertains to school boards in British Columbia, and analyzed the functions and competences common to all school boards in British Columbia. As a result of the findings that have been derived from these examinations several direct conclusions have been made.

This thesis has proceeded from the premise that school districts are the basic structural unit in the organization and operation of public schools in British Columbia. As distinct legal entities within the provincial system of education the need to examine and understand the legal foundation upon which school districts and their controlling boards rests is critical because so many of their activities are largely determined by law. As Woodrow noted in his thesis on educational governance, "the separation of law from the process of administration can be achieved only in a general way."<sup>1</sup> Given the pervasiveness of legal considerations affecting both the establishment and operation of British Columbia school boards, it was determined that the legal status of the school district must first be clarified before a direct analysis of their functions could be undertaken.

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<sup>1</sup>James Woodrow, "Authority and Power in the Governance of Public Education: A Study of the Administrative Structure of the British Columbia Education System," (Ph. D. diss., University of British Columbia, 1974), vi. The essential subject of administrative law is rules which govern the conduct of the general business of a government body.

In response to this need to clarify the legal status of school districts, Chapter One undertook an analysis of the legal framework of school district activity. It was shown that as political and legal entities within the province, school districts are considered to be civil subdivisions of the provincial government with the status of quasi-municipal corporations. As corporate entities school districts are bound to follow all the principles of corporate law that may apply to them. In general, it was determined that although school districts throughout the province may vary in size and shape, as well as in the organization of the board which governs them, they were all recipients of delegated authority from the provincial legislature and are, in law, provincial agents acting in a local capacity.

Chapter Two followed upon this legal analysis by examining how legislative changes and statutory responsibilities of British Columbia school boards evolved over time. The local school district of the nineteenth century was established and organized to serve only the population, usually rural, located within reasonable walking distance of a central point where the school house was located. Very little in the way of real authority and autonomy were accorded to the numerous little school districts and their three person boards that were the norm at this time. The responsibilities delegated school boards changed as a direct result of the promulgation of new school acts by the provincial legislature in a continual response to needs for elaboration and expansion of the school system. These changes to local autonomy were characterized by the increasing degree to which certain duties and powers were delegated from the central control of the province to the local control of

the school boards.<sup>2</sup> The delegation of authority in this manner was most clearly revealed by the imposition of consolidated school districts in 1946 as a result of the findings of the Cameron Commission. This shift from many small districts to fewer large ones directly contributed to the development of an ever expanding local administration and resulted in the evolution of a distinct administrative structure at the school district level. What had originated as local three person boards with limited powers and duties has over time evolved into a complex corporation administered by numerous juridical persons.

Building upon the functional analysis model established in the introduction, Chapter Three began by articulating the provincial mandate under which schools boards in British Columbia operate.<sup>3</sup> Through an analysis of the relevant statute law, common law, and administrative law (as exemplified by provincial rules, regulations, and policy statements) the mandate of British Columbia school boards was revealed as the enabling legislation which permitted their very creation. The specific realization that the mandate of school boards related to their ability to 'govern' directly contributed to the identification of specific school board functions. In the organized political life of any juridical system governing bodies share three primary or governing functions: legislative, judicial, and executive. As governing bodies school boards share these same three. Secondary to these governing functions,

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<sup>2</sup>As quasi-municipal corporations the powers and duties accorded to school boards arise out of and are restricted by the provisions of statute law.

<sup>3</sup>The need to clarify the mandate in this manner was based upon the understanding that an agency's authority to function in society derives from its authority to act, that is from its mandate.

however, school boards also share two management functions. These two management functions, which together make up the executive function, are that of education administration and business administration.

The analysis of school boards set out in these chapters has been undertaken in accordance with the archival methodology of functional analysis developed in the introduction. The theoretical underpinnings of the functional analysis approach are based upon the foundation that records are created as a result of or through an identifiable process involving functions, activities, and transactions. The functional analysis proceeds to investigate this process, or model, of records creation through what has come to be known as a top down approach.

Given the fact, however, that it is a process that is integral to this records creation model it is obvious that a complementary analysis may proceed from the "other direction"; that is to say, proceeding from the document up through the transaction, activity, and function which ultimately contributed to the document's creation. The accomplishment of each function is governed by specific policies and procedures as they constitute the formal sequence or process of steps and stages through which the organization achieves its practical aims. It is the execution of these policies and procedures, in the form of practical activities - which in turn involve transactions, that leads to the creation, accumulation, and use of records. All of these elements are reflected in the records that result. "Due to this fact, the archivist should always be able to understand a record-creating process from a direct study of

the the records."<sup>4</sup> In fact, the bottom up approach has been the traditional method by and through which archivists have appraised, arranged and described archival material. As Heather MacNeil has stated:

the top down approach is itself just a starting point and should properly be viewed as a supplement to, not a replacement for, the more traditional bottom up approach. The illumination of the provenancial and documentary relationships embodied in organizational structures and bureaucratic procedures, and embedded in documentary forms, depends upon an analysis that continually mediates between acts and the documents that result from them. These relationships can only be brought to light through the simultaneous application of a bottom up analysis, which is most clearly typified by the diplomatic analysis of the genesis, forms and transmission of documents. Such analysis is critical in order to ensure that the documents brought into archival custody actually reflect - accurately and meaningfully - the functions, activities, transactions and rules of procedure that shaped their formation; in other words, that they do what they are supposed to do.<sup>5</sup>

The need to ensure that records "do what they are supposed to do" is not to be underestimated.<sup>6</sup> This thesis has proceeded with the understanding that the functions of British Columbia school boards descend directly from the statute law that governs both their existence and operation as corporate entities. In essence, however, the legislation merely prescribes what must or may be done. It does not always express how it must be done. As a result, the functional delineations developed through this study are not, in themselves, an endpoint. This study may be complemented, for example, by a subsequent analysis of individual school board

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<sup>4</sup>Blinkhorn, "The Records of Visual Artists: Appraising for Acquisition and Selection," 41.

<sup>5</sup>Heather MacNeil, "Weaving Provenancial and Documentary Relations." *Archivaria* 34 (Summer 1992), 197.

<sup>6</sup>For a partial analysis of some of the difficulties posed by "out of scope" records please see Avra Michelson, "Description and Reference in the Age of Automation," *American Archivist* 50 (Spring 1987): 192 - 208.

offices. In such instances, where the bottom up approach can be utilized effectively, a breakdown of the record-generating activities particular to that individual agency can be developed so as to lead to the identification and/or confirmation of the specific record types created during each phase of activity and its resultant transactions. Such a study would directly, and greatly, complement this analysis by providing a comprehensive structure from which the archivist would then be able to derive relative appraisal values.<sup>7</sup>

The bottom up approach also allows the archivist to determine which of the creator's records have actually been transferred to the custody of the archives. This is important for the subsequent retrieval of the records as provenance based systems assume that "records will be where inferential logic suggest they ought to be which will not always be the case."<sup>8</sup> Complementary to this is the reality that the "creator's activities and functions that become access points in a provenance based authority control system may not correspond to the records that are actually in the custody of the archives; records concerning certain functions may not have survived."<sup>9</sup>

There are, however, many benefits to be gained directly from the functional analysis itself. As discussed in the introduction, the value of such studies are emphasized when one considers the way in which they can explicitly detail changes

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<sup>7</sup>Blinkhorn, "The Records of Visual Artists: Appraising for Acquisition and Selection," 41.

<sup>8</sup>Bureau of Canadian Archivists, Subject Indexing Working Group, Subject Indexing for Archives (Ottawa: Bureau of Canadian Archivists, 1992), 34.

<sup>9</sup>Subject Indexing Working Group, Subject Indexing for Archives, 34.

in the structure, functions, and activities within an agency. It is the changes to these elements of structure, function, and activities with their attendant effect upon the external and internal structure of archives, that is "essentially what complicates the archival processes of appraisal, arrangement, description, and reference."<sup>10</sup>

As evidenced by the findings detailed in Chapter Two, school districts are not immune to such changes. Take, for example, the different administrative departments or offices that constitute all school board offices. Each of these offices are usually established along functional lines. If a function is gained or lost the corresponding department, or similar structurally based construct, is usually expanded, reduced, or disbanded. "Obviously, we will want to distinguish and keep together the records produced by these units in the course of their activities."<sup>11</sup> This is especially important if the function is not created or let go but simply transferred to a different area. The fact that records follow functions is a truism and the ways in which functional analyses, especially those conducted with an increased "minimalist" intent, detail how records arise organically from functions and, somewhat, artificially from structure contributes greatly to the archivist's ability to meet change within an agency.<sup>12</sup>

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<sup>10</sup>Archival Studies 505, "A Study of Special Archival Science on an Organization and its Records," 1.

<sup>11</sup>Carol Couture and Jean-Yves Rousseau, The Life of a Document: A Global Approach to Archives and Records Management, translated by David Homel (Montreal: Vehicule Press, 1987), 191.

<sup>12</sup>D. Bearman and R. H. Lytle, "The Power of the Principle of Provenance" Archivaria 21 (Winter 1985-86): 14 - 27; S. Muller, J. A. Feith, and R. Fruin, Manual for the Arrangement and Description of Archives, 2d ed., trans. by Arthur H. Leavitt (New York: The H. W. Wilson Company, 1968); and M. C. Norton, Norton

As a result of the knowledge that is revealed through a functional analysis, the archival tasks of arrangement, description (including authority control and indexing), and reference are made easier. As Terry Eastwood has noted,

no longer is it a simple matter of a single archivist sitting down to analyse a closed and complete body of documents. Instead, it is a matter of articulating a systematic way to capture and record information about the nature and structure of the whole from the necessary piecemeal treatment of its parts in order to promote understanding and effective use of archives.<sup>13</sup>

As evidenced by the findings of this study, functional analyses remain one of the most important tools for both the capturing and the recording of this type of contextual information. In addition to the purely archival processes discussed above, the concurrent application of top down and bottom up approaches, through which "knowledge of administrative structures, bureaucratic procedures, documentary processes and forms"<sup>14</sup> are revealed, will also enable archivists and records managers to

participate with competence in the creation, maintenance, and use of current records by giving advice about the determination of document profiles, the simplification of bureaucratic procedures, and the adoption of classification and retrieval systems.<sup>15</sup>

Such an understanding, which is complementary to the elucidation of archival nature that took place in the Introduction, helps to confirm the universal application of

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on Archives: The Writings of Margaret Cross Norton, ed. T.W. Mitchell (Carbondale, Ill.: Southern Illinois University Press, 1975).

<sup>13</sup>Eastwood, "General Introduction," in The Archival Fonds: From Theory to Practice, 12.

<sup>14</sup>Duranti, "Diplomatics: New Uses for an Old Science," *Archivaria* 28, 9.

<sup>15</sup>Duranti, "Diplomatics: New Uses for an Old Science," *Archivaria* 28 9.

functional analyses in the management of information throughout its life cycle. By its very nature, however, the life cycle concept includes the systematic and permanent preservation of select categories of records.

The ongoing and permanent preservation of select school board records is necessary for several reasons. The first of these elements is that the preservation of specific categories of records created and/or held by school boards is mandated by law. The School Act states that both the minutes of board meetings and the records of student achievement must be retained by the corporation.<sup>16</sup> In addition, other legal considerations that are common to all corporations, such as land and liability for example, also require that the board retain certain classes of records permanently.

The second element to consider is the constitution of the board itself. As discussed earlier, all boards of school trustees are elected as the result of regularly scheduled elections. Because of this electoral mechanism there is an element of fluidity inherent to the board's membership. This degree of turnover among trustees, which may vary from place to place and from time to time, demands that both new and veteran trustees have recourse to information pertinent to the development of policies previously enacted. An example of this need arises when current policies and procedures are being reviewed or debated as part of the board's ongoing activities. Although the minutes may record the decision that was previously made they do not usually detail the accompanying analysis. This is especially true in those districts where policy development often proceeds on a committee basis with the

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<sup>16</sup>Statutes of British Columbia, 1989, 38 Elizabeth 2, c. 61, s. 91 and 97.

result that the majority of supporting documentation is not presented to all the board members at the board meeting as they are merely endorsing the committee's recommendation. It is also obvious that the administrative staff would often have an operational need for similar types of information as part of their ongoing activities - much as the needs of any agency, in both the private and public sectors, demands the systematic preservation of records.

The inclusion of school districts under the umbrella of the Freedom of Information and Protection of Privacy Act also demands that school boards exercise greater care over their records. In order to meet the provisions set forth in the legislation public institutions such as school boards must clearly detail the types of records created, the information that they contain, and how they may be easily accessed. Such requirements necessitate the implementation of stringent records management policies. An elemental factor of any records management program is the identification and preservation of permanentlyvaluable records.

Finally, as the introduction makes clear, public schooling is a major instrument for the expression of the public will in a democratic society and the school system both models and maintains the essential attributes of that society. As a result, school districts, and their controlling boards of trustees, create records which reflect the educational values and concerns of this society at the most fundamental level. One may further reason that these records provide insight into the social structures, attitudes, and behavior that characterize that very society. It is safe to say that the records have acquired a cultural significance that goes beyond their evidential value and, as such, deserve inclusion as part of our documentary heritage.

School board records are archival in nature because they are the product of practical activities, constitute an organic accumulation, and are retained for the ongoing use of their creator. In addition, school board records must also be preserved for reasons of accountability, as they are records of a public agency, as well as for the cultural factors just described. It is for such reasons that the systematic acquisition and permanent preservation of select school board records by an archival agency must be considered necessary.

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