

7

Problems in Education Series

Teachers' Rights, Responsibilities and Legal Liabilities



The Alberta Teachers' Association

**Problems in Education
Series Number 7**

Teachers' Rights Responsibilities and Legal Liabilities

Mission Statement

The Alberta Teachers' Association, as the professional organization of teachers, promotes and advances public education, safeguards standards of professional practice and serves as the advocate for its members.

The Alberta Teachers' Association
Barnett House, Edmonton

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INTRODUCTION

This monograph was first published by the Association in 1978. Since that time the legislation itself has changed materially, and many of the changes affect the responsibilities and rights of teachers. This monograph has been revised regularly to keep it current. The monograph includes a chapter on assault and material on child abuse.

While this monograph is reviewed and updated annually and every effort is made to ensure accuracy, readers should keep in mind that legislation is frequently amended and regulations are subject to change with little notice or fanfare. Therefore a teacher experiencing serious difficulty would be wise to check with an Association staff officer that the advice contained in this monograph is still current before using it as the basis of final action.

At many points throughout this monograph, the teacher is urged to contact the Association for advice and assistance; in such cases, the correct contact most frequently is with a staff officer in Member Services. Teachers north of Innisfail should phone Barnett House; those south of Innisfail should phone the Southern Alberta Regional Office. For other program areas, such as Teacher Welfare for salary or benefit (eg, sick leave, maternity) matters, phone Barnett House. The phone numbers of these offices are

Barnett House

Local calls 780-447-9400

Toll free in Alberta 1-800-232-7208

Fax 780-455-6481

Southern Alberta Regional Office

Local calls 403-265-2672

Toll free in Alberta 1-800-332-1280

Fax 403-266-6190

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TEACHER CONTRACTS

Employment as a Teacher

Certification

The Professional Standards Branch of Alberta Education is responsible for the evaluation of credentials and issuance of certification for teachers in Alberta.

The requirements for interim certification in the province are a minimum of sixteen years of schooling, inclusive of four years of university education, and a recognized degree that includes, or is supplemented with, a structured, preservice teacher preparation program from an institution acceptable to the minister of education. The program must include, at minimum, 48 semester-hour credits (1 and 3/5 years) in professional teacher education coursework, inclusive of a minimum of 10 weeks in supervised student teaching at the elementary or secondary level. Currently, all preservice teacher education programs in Alberta exceed the minimum requirements both in the amount of coursework and weeks of practicum that are required to complete their programs. Depending upon the institution, up to one year of advanced credit may be given to qualified journeymen who enter the vocational education route and to persons holding acceptable credentials in music, drama or art.

For applicants who have graduated from a teacher education program at an Alberta institution, an interim professional certificate is generally issued on the recommendation of the dean of a faculty offering a bachelor of education program, providing other qualifications have been met.

The certificate is valid for up to three years with the possibility of extension if needed. To move to permanent certification an individual must have taught for a minimum of two school years (or equivalent) in the province's school system (public, separate, private, charter, francophone and band schools) and receive a written recommendation for permanent certification by the superintendent of schools or other officer acceptable to the minister of education attesting that the teacher's practice consistently demonstrates the knowledge, skills and attributes (KSA) for permanent certification as identified in the Teaching Quality Standard Applicable to the Provision of Basic Education in Alberta, Ministerial Order (#016/97).

Due to the recent Agreement on Internal Trade (AIT), teachers from outside Alberta who hold valid Canadian certification can obtain certification in Alberta without additional training and examination, with the exception of teachers who hold a certificate with a limited scope of practice. A teaching certificate with a limited scope of practice is one that restricts teaching

practice to certain grade levels or specific subject areas. This is only applicable to teachers who hold a valid teaching certificate from another Canadian jurisdiction. It does not apply to teachers who hold a certificate that has been suspended or revoked or has expired.

Two types of certificates can be issued in Alberta to teachers with Canadian certification:

1. Certificated teachers from Canadian jurisdictions whose scope of practice as denoted on their teaching certificates is the same as in Alberta (can teach in kindergarten through Grade 12) will be granted an interim professional certificate with no additional requirements.
2. Certificated teachers from Canadian jurisdictions whose scope of practice as denoted on their teaching certificates is different from Alberta's scope of practice will be issued a letter of authority. The letter will include the same conditions on scope of practice (grade levels and subject areas) as established by the current certifying jurisdiction.

The letter of authority is issued for three years and can be renewed. However, teachers can take additional coursework to meet the requirements for interim certification and can then apply for an interim professional certificate. Only days taught under an interim professional certificate can be counted toward permanent certification.

Addresses

Director, Teacher Development and Certification Branch
44 Capital Boulevard
10044 108 Street NW
Edmonton, AB T5J 5E6

Teacher Qualifications Service
Alberta Teachers' Association
11010 142 Street NW
Edmonton, AB T5N 2R1

Obtaining a position _____

Whether new to teaching in Alberta or merely wishing to change employers, most teachers secure a teaching position by applying to the superintendent. Sometimes application is made on forms provided by school boards; however, it is common for teachers to write their own letters. An application must specify the teacher's desires with respect to geographic location, grade level and subject preference. A copy of the application letter should be retained since it may be the only record of any conditions that the teacher placed on the type of assignment deemed acceptable. If the application was in response to a specific advertisement, a copy of it should be kept as well. Copies of all correspondence should be kept.

An applicant should attach copies of evaluation reports, if any. University transcripts and recent student teaching reports are often required. Copies rather than original documents should be used to avoid loss of originals. Catholic jurisdictions require a reference letter from a priest or pastor.

The teacher should maintain a permanent file of all documents and retain a list of all boards to which applications are submitted.

Nature of a teaching contract

In Alberta, a teacher's contract is made up of three parts: (a) an exchange of offer and acceptance, (b) specified clauses of the *School Act* and (c) the collective agreement between the employing board and the Alberta Teachers' Association. The first part may contain specific provisions that do not conflict with the other two.

Section 97 of the *School Act* deals with contracts of employment between a board and a teacher.

School Act

Section 97

- (5) Every contract of employment between a board and a teacher shall
- (a) be in writing,
 - (b) be offered to a teacher by a person acting on behalf of the board, and
 - (c) be accepted by the teacher.
- (6) For the purposes of this Division, an offer, acceptance, confirmation, statement or notification shall be in writing and shall be
- (a) sent by registered or ordinary mail or by courier to,
 - (b) personally served on, or
 - (c) sent by fax or electronic mail to
- the person to whom it is addressed.

Note that the offer and acceptance, which together constitute a contract, shall be in writing and may be delivered by a variety of methods, including by hand.

The *School Act* does not specify the period of time to elapse between the receipt of the offer of employment and the acceptance in writing by the teacher. The significance of this fact is that the teacher and the person acting on behalf of the board must agree on the period of time that the teacher will be allowed to decide about the position. Ideally, that period would be specified in the offer. If it is not, the teacher would be wise to clarify this point if wishing to wait a few days before accepting. A teacher should be wary of a verbal offer of a position when it is not immediately confirmed by an offer in writing.

The offer of a position and its acceptance within the agreed time limit, both in writing, constitute a contract of employment between a teacher and a school board. All the terms and conditions of employment that are contained in the collective agreement between the Alberta Teachers' Association and the employing board apply to each teacher and are part of the individual's contract. No teacher can agree with a board to accept conditions or responsibilities that are in conflict with those specified in the collective agreement.

A further requirement is that no agreement between a board and a teacher is valid if it negates or contravenes those matters covered by sections 96 to 99 and 101 to 110 of the *School Act*. These sections define the length of the contract, give the superintendent the right to transfer a teacher, specify the conditions under which a board or a teacher can terminate a contract of employment, specify the reasons and manner in which a suspension or termination of a teacher can be carried out and provide the teacher with the right to appeal to the Board of Reference in case of a suspension or termination. Therefore, all these matters must be handled in a manner consistent with the statute and not by any other mutual agreement in conflict with it. No teacher should sign a contract that purports to waive or supersede these rights without first seeking advice from the Association.

Section 97(3)(c) allows the board and the teacher to specify further contract provisions about matters that are not dealt with by either the collective agreement or the aforementioned sections of the act. If, for example, the collective agreement does not in any way specify conditions for noon-hour supervision or for cocurricular activities, it would be permissible for the board and the teacher to make some agreement about such a matter. Teachers could make use of this section to specify grade level or subject matter assignments that they are willing to accept. Teachers offered conditions about which they are dubious should consult the Association prior to accepting the offer.

Probationary contracts

Most teachers, particularly those just entering the profession or new to the province, will start employment with a board under a probationary contract, a provision introduced by the *School Act* 1988. Section 98 sets out the requirements. The contract must be for a complete school year, cannot be offered to someone employed by the board in the preceding school year (other than as a substitute or temporary contract teacher—see below) and will terminate on the following June 30. If, at the end of the year, the employer's evaluations of the teacher so indicate and the teacher agrees, the probationary contract may be extended for an additional period not exceeding a second full year.

School Act

Section 98

98(1) A board may employ a teacher under a probationary contract of employment for a complete school year if that teacher

- (a) was not employed by that board as a teacher in the school year prior to the school year in which the contract was entered into, or
- (b) was employed by that board in the school year prior to the school year in which the contract was entered into under section 100 or under a contract referred to in section 101.

(2) For the purposes of subsection (1), a teacher employed under section 103 is deemed to have been employed by the board under a probationary contract of employment if at the conclusion of a school year the total amount of time that the teacher taught for the board is at least equal to the amount of time the teacher would have been required to teach in a complete school year if the teacher had been employed by the board to teach on a full-time basis.

(3) A probationary contract of employment shall terminate on the June 30 next following the commencement date specified in the contract.

(4) Notwithstanding subsection (3), if evaluations of the teacher indicate to the board that a further probationary period is required and the teacher agrees, the probationary contract of employment may be extended for a further period ending no later than the June 30 next following the date of the renewal of the contract.

Interim contracts

The interim contract is described in section 102. Although there is a suggestion that this was intended to provide for limited time projects, nothing in the act restricts it to that purpose. Rather, it seems that the most common use will be

for employing teachers new to the system who start work after the year has begun. An interim contract can be for up to 360 consecutive teaching days and may be offered only to the same individuals who would also qualify for a probationary contract. It normally expires on June 30, but a different date may be specified in the contract.

A probationary contract may not immediately follow an interim contract nor vice versa.

School Act

Section 102

102(1) A board may employ a teacher for a period of not more than 360 teaching days under an interim contract of employment if that teacher

(a) was not employed by that board as a teacher in the school year immediately prior to the school year in which the interim contract of employment commences, or

(b) was employed under section 100 or under a contract referred to in section 101 by that board in the school year immediately prior to the school year in which the interim contract of employment commences.

(2) For the purposes of subsection (1), a teacher employed under section 103 is deemed to have been employed by the board under an interim contract of employment if at the conclusion of a school year the total amount of time that the teacher taught for the board is at least equal to the amount of time the teacher would have been required to teach in a complete school year if the teacher had been employed by the board to teach on a full-time basis.

(3) An interim contract of employment terminates on the June 30 next following the commencement date specified in the contract unless otherwise specified in the contract.

Temporary contracts _____

School Act

Section 101

101(1) A teacher may be employed by a board under a temporary contract of employment when that teacher is employed for the purpose of replacing a teacher who is absent from his duties for a period of 20 or more consecutive teaching days.

(2) A temporary contract of employment entered into under subsection (1) shall

(a) specify the date on which the teacher commences employment with the board, and

(b) terminate

(i) on the June 30 next following the commencement date specified in the contract, or

(ii) on a date provided for in the contract, whichever is earlier.

(3) Notwithstanding anything contained in a temporary contract of employment, a party to a temporary contract of employment may terminate that contract by giving 30 days' written notice of the termination to the other party to the contract.

(4) Section 132 does not apply to the termination of a temporary contract of employment under this section.

Section 101 of the act deals with temporary contracts. These are used when a teacher is employed to fill a vacancy expected to be 20 or more consecutive teaching days. This written contract must specify the starting date; it may specify the ending date, but if it does not, it ends on June 30. It may be terminated earlier by either party giving 30 days' notice to the other. In this event there is generally no appeal to the Board of Reference.

Teachers are cautioned about temporary contracts that expire "on the return of the teacher." Although this clause provides a legitimate reason for the board to terminate the temporary contract, the board must still provide 30 days' notice as required under the *School Act*.

Substitute teaching

A teacher may, under section 100 of the act, be employed (a) on a day-to-day basis or (b) to occupy a vacancy that is expected to be less than 20 consecutive teaching days. It frequently happens that a vacancy filled by a substitute teacher extends beyond 20 teaching days. In this event, a temporary contract, which provides 30 days' notice of termination, should be provided to the teacher in the position. Whether or not a temporary contract comes into effect, most collective agreements provide that, after a specified number of consecutive teaching days in the same position, salary changes from substitute pay to that determined by the salary grid. A few agreements provide full grid placement from day one.

School Act

Section 100

100(1) A teacher may teach without a contract of employment that is in accordance with section 97 only when the teacher is employed

- (a) on a day to day basis, or
- (b) to occupy a vacancy that is expected to be less than 20 consecutive teaching days in duration.

(2) Neither a teacher who teaches without a contract of employment that is in accordance with section 97 nor the board employing the teacher may appeal to the Board of Reference.

Continuing contract

A board may employ a teacher on a continuing contract. If the board has been employing the teacher either under a probationary contract (or an extended probationary contract) or under an interim contract, and the board wishes to employ that teacher in the next school year and the teacher agrees, the teacher is on a continuing contract. While this is the normal process, a board can also hire a teacher new to the division or a teacher who has been on a temporary contract provided these teachers have demonstrated successful teaching with at least two full evaluations. If the board does not wish to employ such a teacher, it is not legally required to provide the teacher with reasons for that decision, assuming that it is acting in good faith. However, it is morally obligated to do so. A teacher in such a situation, if genuinely ignorant of the reasons, should request them from the superintendent.

The continuing contract is a contract that remains in force from year to year without any further documentation being required. Any teacher offered a contract that does not conform to this requirement should immediately consult an Association staff officer prior to any action on the contract offer.

TEACHERS' EMPLOYMENT ARRANGEMENTS IN ALBERTA

[The *School Act*, 2000 with Amendments in Force as of December 2007]

TYPE OF CONTRACT	MAY BE OFFERED TO	DURATION	EXTENDABLE	TENURE PROVISIONS
PROBATIONARY section 98	a) teacher not on staff in prior years or for a period equivalent to a full year of service. b) substitute or on temporary contract in prior year	complete school year (or full-time equivalent); terminates June 30	once, if evaluation indicates a need and if teacher agrees	premature termination may be appealed to Board of Reference; on prescribed termination date, no obligation on board to provide reasons for non-reemployment
INTERIM section 102	same as above	up to 360 consecutive teaching days; terminates next June 30 or as specified	not applicable	as above
TEMPORARY section 101	any teacher	replacement for minimum of 20 consecutive teaching days; terminates June 30 or on the date specified	further temporary contracts permitted	termination on 30 days' notice; no appeal
CONTINUING section 99	any teacher	indefinite	not applicable	any termination may be appealed to Board of Reference; notice must be minimum of 30 days by either party and may not be served during, or less than 30 days prior to, a vacation of 14 or more days
SUBSTITUTE section 100	any teacher	day-to-day	unlimited, unless absent teacher to be gone for 20 or more consecutive teaching days	termination without notice; generally no appeal
PART-TIME section 103	any teacher	Position may be probationary, interim, temporary or continuing and above rules apply, except that school board may vary fraction of time for next semester or school year and if teacher does not accept, board may terminate, in which case there is generally no appeal.		

Note: This is general advice only and should not be applied to your personal situation without direct contact.

Part-time teaching

Any of the above employment arrangements may be on a part-time basis. In the case of probationary and interim contracts, all requirements should be interpreted as full-time equivalents. Thus a probationary contract that is half-time could be valid for two years or an interim contract could be for up to 720 half-time consecutive teaching days. A continuing part-time contract, like a continuing full-time contract, is subject to appeal to a Board of Reference if terminated by one party. However, if the teacher is employed under a part-time contract, there is a unique provision: the board may vary the fraction of time the teacher is required to teach in the subsequent year or semester. If the board varies the amount of time and the teacher does not agree to teach for that new amount of time, the board may terminate the contract. In that event, except in unusual circumstances, the teacher does not have the right to appeal to the Board of Reference.

Drastic changes in the amount of assigned time under a part-time contract may constitute a constructive termination of the contract. Contact an Association staff officer if you are in this situation.

Terminating a Contract

Resignation

The *School Act*, in sections 107 and 108, provides that either a school board or a teacher may terminate a contract by giving not less than 30 days' notice in writing of intention to do so. Such a notice may not be given at any time in the 30 days preceding or during a vacation of 14 or more days' duration. In most cases this condition means that a teacher may not give the board notice after the end of May or before the first of September, though the actual dates will vary from one jurisdiction to another since they depend on the specific school calendar. Similarly, teachers should note that when the Christmas vacation lasts 14 or more days, resignation is prohibited for 30 days preceding and during that vacation.

A letter of resignation should clearly state the effective date of termination and should be in the hands of the appropriate school board official a full 30 days before the intended termination date. Date of receipt can be certain if the letter is personally delivered or sent by registered mail, though other forms of transmission are acceptable.

A teacher who intends to resign should give the board as much notice as possible. The 30 days required by the *School Act* is a minimum. Resignations during a school year should be infrequent and for strong reasons only, such as urgent personal circumstances or intolerable working conditions. Resignations for trivial or frivolous reasons are not in the best interests of children or of education generally.

The *School Act* provides for termination by mutual consent. Occasionally a teacher has to request release during a vacation period or on less than 30 days' notice. Most school boards and superintendents are cooperative and release by mutual consent is not difficult to arrange when the circumstances are justified and a replacement is readily available.

A teacher does not have to resign because someone (anyone) makes such a request. A teacher who is asked to resign should contact the Association before any letter of resignation is signed or submitted.

Resignation prior to having rendered service under a contract is particularly frowned upon. Section 108 provides that in such a case no other board in the province may employ the teacher without first obtaining the consent of the original board. When a teacher accepts a position, it is expected that more enticing subsequent offers will be resisted.

Any resignation that does not meet the conditions described above (that is, 30 days' notice in proper time or consent of the board) may constitute unprofessional conduct and could, therefore, lead to the teacher being charged before the Professional Conduct Committee of the Association.

Termination or suspension by school boards _____

Tenure is the right of a teacher to have a contract of employment with a school board continue so long as no adequate cause for its termination arises. Having a continuing contract with a board is tenure. The *School Act* provides that a contract of employment between a board and a teacher terminates if the teacher's certificate is suspended or cancelled by the minister or if the certificate of qualifications (such as a letter of authority) expires. The *Teaching Profession Act* provides that a board may not continue to employ a teacher who ceases to be a member of the Association except as provided in the act.

School Act

Section 18

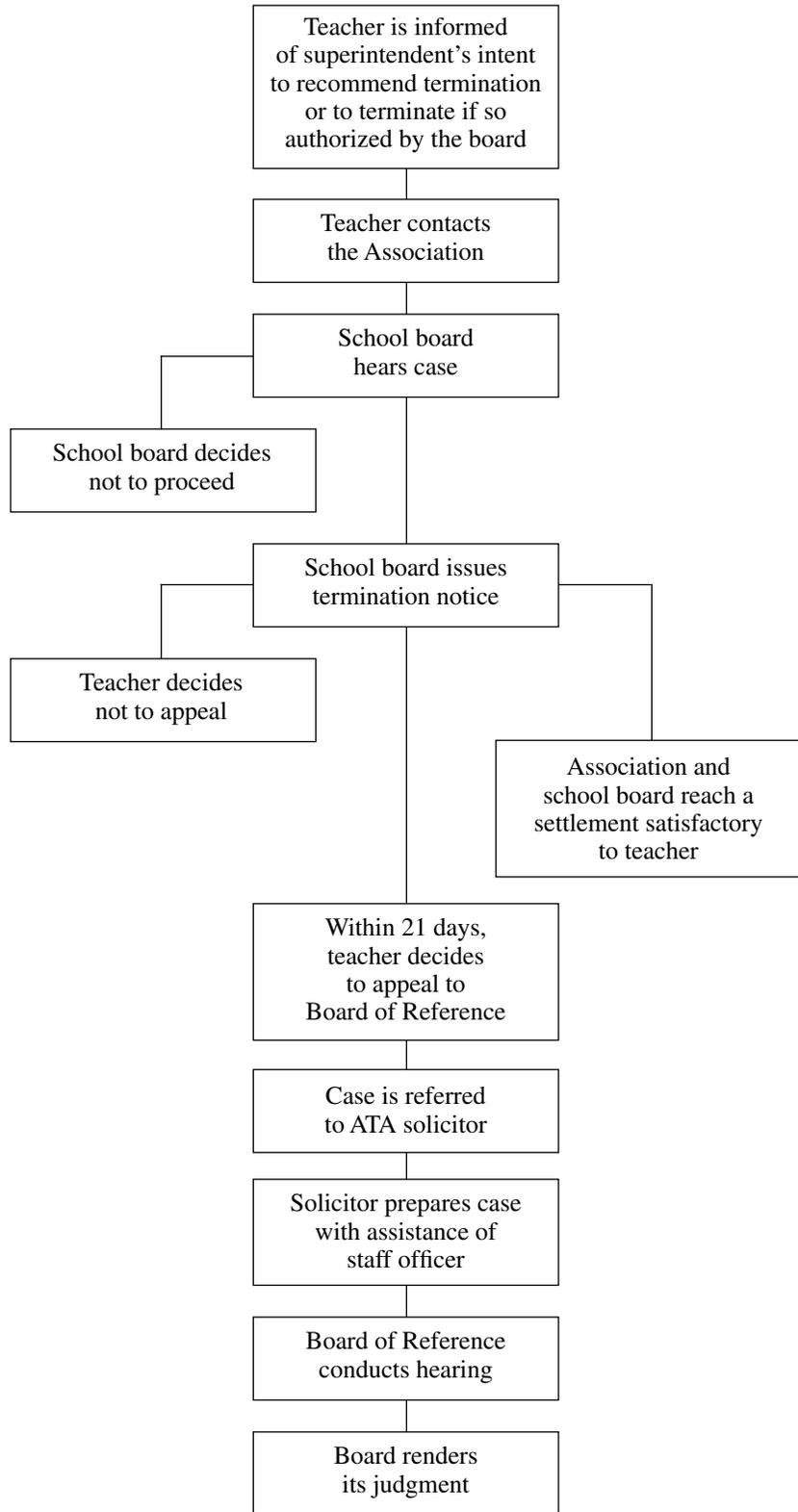
18(1) A teacher while providing instruction or supervision must

- (a) provide instruction competently to students;
- (b) teach the courses of study and education programs that are prescribed, approved or authorized pursuant to this Act;
- (c) promote goals and standards applicable to the provision of education adopted or approved pursuant to this Act;
- (d) encourage and foster learning in students;
- (e) regularly evaluate students and periodically report the results of the evaluation to the students, the students' parents and the board;
- (f) maintain, under the direction of the principal, order and discipline among the students while they are in the school or on the school grounds and while they are attending or participating in activities sponsored or approved by the board;
- (g) subject to any applicable collective agreement and the teacher's contract of employment, carry out those duties that are assigned to the teacher by the principal or the board.

(2) At any time during the period of time that a teacher is under an obligation to the board to provide instruction or supervision or to carry out duties assigned to the teacher by a principal or the board, a teacher must, at the request of the board,

- (a) participate in curriculum development and field testing of new curriculum;
- (b) develop, field test and mark provincial achievement tests and diploma examinations;
- (c) supervise student teachers

Termination of contract



Loss of employment could occur if the teacher was suspended or expelled from membership as a penalty under the discipline process, following conviction on a charge of unprofessional conduct, or suspended by the Executive Secretary pending results of a discipline investigation or hearing.

The *School Act* provides that a school board shall act reasonably if it terminates the contract of a teacher. *Reasonable* has a definition in law and it may be presumed that a board would be judged to have acted reasonably if it established that the teacher was incompetent, if something serious in the mode of life or character of the teacher was judged to be detrimental to the students of the school or if the termination was necessary to accomplish a required reduction in district staff. Other reasonable grounds for termination would include excessive or flagrant breaches of section 18 of the *School Act* (see box on page 10).

Prior to serving notice of termination, a school board or superintendent must give notice of its intent to consider such action. Actions taken must comply with the rules of natural justice: (a) reasons for possible termination must be given; (b) the teacher must be given the opportunity to appear at a hearing in person, alone or with an advocate, or to be represented by counsel to answer to these reasons; and (c) the teacher must have enough time to prepare a case.

The *School Act* permits a board or an authorized superintendent to suspend a teacher to whom notice of termination has been given. It also provides in section 105 for suspension if the board has reasonable grounds for believing that the teacher has been guilty of gross misconduct, neglect of duty or refusal or neglecting to obey a lawful order of the board. In either case, the teacher is paid his/her regular salary during the period of suspension. A teacher may appeal a suspension under section 105 to the Board of Reference, which may reinstate the teacher or confirm the suspension. If the suspension is confirmed, the school board may reinstate the teacher or may terminate the teacher's contract. If it chooses to terminate in this sequence of events, it is deemed to have acted reasonably and no further appeal to the Board of Reference on that point would be allowed.

School boards and superintendents do not have the right under the provisions of the *School Act* to dismiss a teacher summarily; that is, at once and without notice, except after conviction of an indictable offence as per section 109(2). It must be recognized, however, that the school board has authority to adopt policy and to make rules. Section 18 explicitly requires the teacher to carry out duties assigned by the board. In some instances the rules or duties may be part of the collective agreement. In any event, any such rules must be reasonable. This requirement is based on at least three sources: the common law of master and servant, the provisions of the *School Act* and the *Labour Relations Code*, all of which may relate to the dismissal of teachers.

Termination of designation

School Act

Section 20

20 A principal of a school must

- (a) provide instructional leadership in the school;
- (b) ensure that the instruction provided by the teachers employed in the school is consistent with the courses of study and education programs prescribed, approved or authorized pursuant to this Act;
- (c) evaluate or provide for the evaluation of programs offered in the school;
- (d) ensure that students in the school have the opportunity to meet the standards of education set by the Minister;
- (e) direct the management of the school;
- (f) maintain order and discipline in the school and on the school grounds and during activities sponsored or approved by the board;
- (g) promote co-operation between the school and the community that it serves;
- (h) supervise the evaluation and advancement of students;
- (i) evaluate the teachers employed in the school;
- (j) subject to any applicable collective agreement and the principal's contract of employment, carry out those duties that are assigned to the principal by the board in accordance with the regulations and the requirements of the school council and the board.

A school board may terminate a teacher's designation without terminating the teaching contract. All the observations on termination of contracts in the foregoing section also apply to terminations of designation. Reasons would, of course, have to relate to performance or behaviour of the teacher in the designated role only. In the case of a principal, the reasons could include serious or flagrant breaches of section 20 of the *School Act*. Termination of a designation is appealable to a Board of Reference.

Appeal of termination or suspension

If a teacher's contract is terminated by a school board or superintendent on 30 days' notice, the teacher may appeal to the Board of Reference within 21 days of receipt of the notice of termination. The appeal must be in writing, must set out the board's reasons for the termination, should indicate the reason(s) for contesting the board's decision and must be dispatched to the minister of education by registered mail along with a \$250 certified cheque or money order as a deposit.

A teacher is urged to consult with the Association as soon as a termination notice is received so that, if the choice is to appeal, help in filing an appeal in the proper form may be given. In most cases, the teacher would already have had the assistance of an Association staff officer at the district level hearing.

A teacher filing an appeal may ask that the Association provide the services of its solicitors at Association expense. If such a request is made, an investigation of the circumstances involved in the termination of contract will be carried out and the solicitor's advice sought as to what arguments can be made on behalf of the teacher. While Association support may not be granted in certain cases, such a decision in no way prejudices the teacher's right to proceed with the appeal, if so desired, at the teacher's own expense.

School Act

Section 138

138(1) In deciding the matter being appealed, the Board of Reference may make an order doing one or more of the following:

- (a) confirming the termination, suspension or refusal to give an approval;
- (b) changing the termination date of a contract of employment or of a designation;
- (c) directing the board
 - (i) to reinstate the contract of employment or the designation of a teacher, or
 - (ii) to give the approval;
- (d) removing the suspension;
- (e) confirming the suspension and authorizing the board to terminate the contract of employment of the teacher;
- (f) directing a board to pay to the teacher an amount of money equivalent to the teacher's salary for a specified period;
- (g) authorizing a board not to pay salary to the teacher for a specified period;
- (h) providing for any matter not referred to in clauses (a) to (g) that the Board considers just in the circumstances.

(2) In making an order under subsection (1)(c)(i) or (d), the Board of Reference may take into consideration any matter that the Board of Reference considers relevant, but in making that order the Board of Reference must consider at least the following:

- (a) whether the teacher is guilty of gross misconduct;
- (b) whether the teacher refused to obey a lawful order of the board without justification;
- (c) the risk to the safety of students, co-workers and the teacher;
- (d) the ability of the teacher to perform teaching duties effectively;
- (e) the effect of reinstatement on the future relationship between the board and the teacher;
- (f) the possibility of recidivism;
- (g) whether the reinstatement would have the effect of undermining the confidence of Albertans in general in the public education system;
- (h) fairness to the teacher.

(3) Notwithstanding subsection (1), the Board of Reference shall not make an order under subsection (1)(c)(i) or (d) if the Board of Reference determines that

- (a) the teacher should not be engaged in teaching for a board, or
- (b) there is just cause for terminating the contract of employment or designation.

(4) Subsection (3) applies notwithstanding that any technical or procedural irregularity by any party to the appeal may have taken place in relation to the matter being appealed.

(5) The Board of Reference, unless the Minister directs or gives permission to the Board of Reference to do otherwise, must render its decision, including any reasons on which the decision is based, in respect of the matter being appealed within 45 days from the day that the Board of Reference concludes its hearing of the appeal.

(6) For the purpose of subsection (5), the direction or permission of the Minister may be given by the Minister before or after the end of the 45-day period.

The Board of Reference is composed of one person assigned from a list of arbitrators as approved by the Lieutenant Governor in Council. All evidence placed before it is given under oath. The school board must first state its case and register the supporting evidence. The teacher then has the opportunity to rebut the case, usually by introducing witnesses to counter the testimony led by the board. Both parties are usually represented by legal counsel. The Board of Reference may make any order it deems appropriate to the case. Such orders could include support for the board's termination, support for the teacher's appeal, payment of salary or recovery of salary. The order is registered with the Court of Queen's Bench and is appealable only to the Alberta Court of Appeal.

Teachers who have been suspended under section 105 of the *School Act* or holders of designated positions whose designations have been terminated pursuant to section 110 of the act may appeal to the Board of Reference in a similar manner to that described on page 13.

Other Contractual Matters

Transfers

Section 104 of the *School Act* provides that a superintendent may transfer a teacher from one school to another at any time during the school year. In carrying out a transfer, the superintendent must give the teacher at least seven calendar days' notice in writing. If the teacher wishes to contest the transfer, a written request for a hearing before the school board must be made within seven calendar days of receiving the transfer notice. If the teacher does request a hearing, the transfer may not take place until the hearing has been conducted by the board. The hearing must be scheduled not earlier than 14 days from the day the teacher received the transfer notice. If the teacher is unsuccessful in persuading the board to reverse the superintendent's transfer decision, the teacher may decide to resign upon 30 days' notice. If so, the transfer does not take effect; the board must pay salary to the termination date but may relieve the teacher of further duties forthwith (see flow chart).

Teachers wishing to appeal a transfer should obtain advice and assistance from an Association staff officer.

Provisions of collective agreements

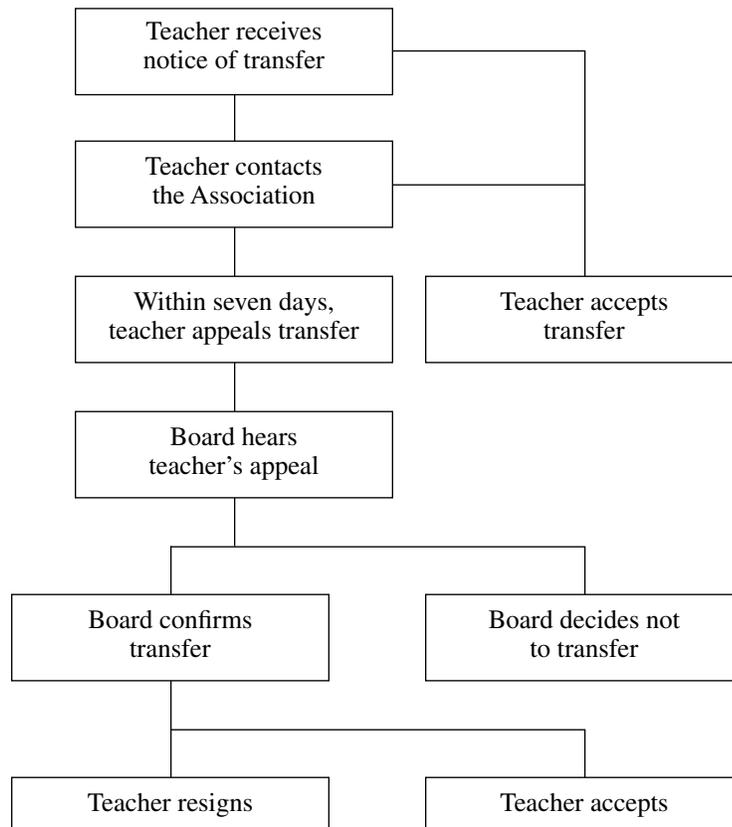
If a disagreement arises between a school board and a teacher over the interpretation, application or violation of any provision of a collective agreement, the teacher may file a grievance as provided for in the collective agreement. Procedures for the settlement of grievances normally require that the grievance first be processed at the bargaining unit or local level. A teacher who has a grievance should consult the chair of the economic policy committee or the president of the local in the first instance. Advice may also be obtained from Teacher Welfare staff at Barnett House. If the grievance cannot be resolved, it may be submitted to the grievance or interpretations committee. If no decision is reached at this level, the grievance may later be submitted to arbitration, in which case the Association assumes the responsibility for the action.

A major source of grievances is a teacher's long delay or failure to submit to the board a statement of teacher education for salary purposes. A teacher should take steps to secure an evaluation immediately after accepting employment with a board or on completing additional university work that will lead to an increased evaluation. The first step is to submit an application for an evaluation to the Teacher Qualifications Service of the Association, along with proper original transcripts and other documents. Most school boards, if

asked, will extend the deadline for receipt of evaluations if the teacher has unusual difficulty in obtaining transcripts but the teacher has a responsibility to demonstrate that the application has been filed in good time and that the teacher has done everything possible to expedite the matter.

Another source of grievances lies in the application of the sick leave provisions of the *School Act*, which are included with other salary matters in section 111. If a teacher has been ill and is experiencing difficulty in collecting proper salary, advice should be sought from the Association.

Transfer of teacher



Teacherages

Some school districts or divisions provide teacherages for some of the teachers in their employ. Policy with respect to rental rates varies. In some areas, particularly the more isolated ones, rent is considerably less than the current rate in the area for similar, privately-owned accommodation. Other boards take the position that, while they are willing to provide teacher accommodation, they will not do so at subsidized rates.

Teacherage rental rates are rarely included in collective agreements, though some agreements do contain a provision requiring notice of increased rates to be given well before the end of a school year if they are to be effective in the next school year.

Some school boards enter into lease agreements with teachers while others simply operate on some type of understanding. Teachers would be well advised to have the terms and conditions of their rental agreement with a board clearly stated in writing. A properly executed lease with mutually agreed conditions is the best insurance against misunderstanding and trouble.

2

TEACHING DUTIES

Nature of Teaching Duties

For the purposes of this monograph, teaching duties are defined as all those professional tasks encountered by teachers in the course of their activities concerned with the instruction of pupils. Included would be (a) the actual conducting of classes and presentation of lessons; (b) the preparation of lessons; (c) requisitioning of audio-visual and other materials and equipment; (d) evaluation and reporting of student progress; and (e) maintenance of such classroom order as is necessary to promote a healthy learning climate. Implied, as well, is an expectation for a teacher to carry out such general pupil supervision as may be required by law, by regulation or by agreement to assist to a reasonable extent with the school program as agreed to by the staff, to cooperate with other teachers in the best interests of students and generally to act as an enthusiastic member of the school's educational team. *School Act* sections 18 (shown on page 10) and 20 (shown on page 13) form the legislative basis for *these duties*. Also included in the term teaching duties are the tasks of such functional specialist assignments as administrator, teacher-librarian, counsellor, supervisor and so forth.

Duties in Classroom Instruction

Preparation _____

It is axiomatic that a teacher has a duty to prepare adequately for daily teaching assignments and to plan the semester's or year's work in each subject to promote orderly development and progress. Good conscientious preparation of lessons would seem to demand that a teacher know exactly what is to be attempted from the beginning to the end of each lesson period. As well, teachers should have a very clear idea of how they and their students are going to accomplish the objectives set. This requires that teachers make advance decisions as to the method of presentation; proportions of teacher and student activity; student assignments, both in class and for homework; and the audio-visual and other teaching aids that will be used.

It would be absurd to attempt here to specify the length or nature of preparation since it will vary widely with the subject, the topic and the

experience and qualifications of the teacher. Many authorities believe that proper lesson preparation gives the teacher a confidence and enthusiasm that is reflected in the attitudes of students. On the other hand, there is little doubt that inadequate preparation contributes to student apathy and to the serious discipline problems that often accompany it.

It is obvious that in cooperative or team-teaching arrangements a substantial amount of time will be required for group planning in addition to the individual preparation time needed.

Presentation

One of the most frequently heard criticisms of unsuccessful or marginally successful teachers is that they lack the quality of enthusiasm and cannot excite their students about learning. Probably this quality is a result of many things, including depth of knowledge, clearly defined objectives, careful planning, a sincere liking for children, good health, job satisfaction, a well-modulated manner of speech and willingness to adjust and to innovate. Whatever its components may be, a teacher who aspires to excellence would do well to strive to project an image of enthusiasm.

No two teachers could, or should, present a lesson in exactly the same way. The choice of the methods by which a professional carries on practice is a matter for individual decision. A professional is obliged to keep abreast of the best in current practice and to be accountable for the success of the methods chosen. Major reliance on the lecture type of lesson presentation is currently in disfavour both with teachers and students; more stimulating methods of teaching do exist and should be used. Use of persons from the community who have expertise in specific topics is frequently advocated. When such people are brought in, it must be recognized that the teacher is still in charge and is responsible for student supervision and evaluation. With the current emphasis on the use of the inquiry method and other participative techniques, teachers should find it possible to devise lessons that will motivate students and encourage their participation.

Evaluation of students

This topic is discussed in some detail in a succeeding section. Accordingly, it should be sufficient here to point out that a teacher's duties include the systematic, objective and continuous evaluation of the progress being made by each of the students, having in mind their abilities, the general objectives of education and the specific objectives of each course.

Duties as a Staff Member

Records and reports

Teachers are required by law to keep accurate records of the attendance of pupils in their charge, including absences and lateness. In many schools, the traditional room register, kept by each teacher, has been supplanted by central record keeping, generally with the aid of a computer. Nonetheless, teachers will still frequently have a responsibility for providing input information. This information must be accurate and promptly supplied.

In addition to routine attendance records, teachers are obligated to keep systematic records of evaluations of student progress, including test and examination results. This matter may assume great importance if a parent questions the grading assigned to a child by a teacher or the decision to withhold advancement to a succeeding grade. Anecdotal records have also proved useful.

School Act

Section 23

Student records

23(1) A board shall establish and maintain pursuant to the regulations a student record for each student enrolled in its schools.

(2) Subject to subsection (4), the following persons may review the student record maintained in respect of a student:

- (a) the student;
- (b) the student's parent, except where the student is an independent student;
- (c) a person who has access to the student under a separation agreement or an order of a court.

(3) A person who is entitled to review a student record under subsection (2) may request a copy of the student record from the board, and the secretary of the board shall provide, or on request shall send, the copy to the person on receiving payment for it at the rate prescribed by the board.

(4) Where a student record contains

- (a) a test, a test result or an evaluation of a student that is given by a person who has a recognized expertise or training in respect of that test or evaluation, or
- (b) information relating to a test, test result or evaluation referred to in clause (a),

the individuals referred to in subsection (2) are entitled to the things referred to in subsection (5).

(5) If subsection (4) applies, the individuals referred to in subsection (2) are entitled

- (a) to review that test, test result or evaluation referred to in subsection (4)(a) or information referred to in subsection (4)(b), and
- (b) to receive from a person who is competent to explain and interpret it an explanation and interpretation of the test, test result, evaluation or information.

(6) If a person reviewing a student record referred to in subsection (4) so requests, the board shall ensure that a person who is competent to explain and interpret the test, test result, evaluation or information is available to explain and interpret that test, test result, evaluation or information.

(7) A person who contributes information to a student record is exempt from any liability with respect to the provision of that information if that person, in providing that information,

- (a) acted in good faith,
- (b) acted within the scope of that person's duties and responsibilities, and
- (c) did not act in a negligent manner.

(8) If, on examining a student record, a person is of the opinion that the student record contains inaccurate or incomplete information, that person may request the board to rectify the matter.

(9) The Minister may make regulations respecting student records.

Efficient evaluation and accurate records are particularly important for use in regular parent–teacher interviews, which are scheduled by many schools, as well as for individual interviews, which parents have the right to request if they are concerned about their child’s progress.

Another and very important use of pupil evaluation records is to aid teachers in their own self-evaluation. If student-evaluation procedures are adequate and records good, a teacher can often assess the success of the teaching methods being used and devise more effective ones if individual or general progress do not meet expectations.

Section 23 of the *School Act* gives parents rights to examine and to appeal student records. Moreover, the minister may make regulations on this topic. Teachers’ and schools’ student records must conform to section 23 and to any subsequent regulations made by the minister.

Staff meetings

Schools have an obligation to hold staff meetings at regular intervals and teachers have a duty to attend these meetings. A teacher who fails to attend the staff meeting without being previously excused for adequate reason could well be charged with neglect of duty, which, in turn, might lead to disciplinary action.

On the other hand, teachers have a right to expect that staff meetings will not be called with unreasonable frequency, with inadequate notice or without taking into consideration other employment and/or professional commitments of teachers. Consideration must be given to scheduling meetings at reasonable times for part-time teachers to attend. Normally this would mean at a time during or close to their assigned work hours. All teachers also have a right to expect that an agenda will be prepared by the staff and administration in cooperation and that the meetings will be of reasonable length.

Curricular activities

School staffs often schedule activities involving students and teachers that are related directly to the function of the school and to the general objectives of education but that occur outside of regularly scheduled classroom periods. They may arise out of any program undertaken by the school. They are designed primarily to be additional educational experiences for the students and often aid both students and teachers by creating an atmosphere in which mutual understanding can be enhanced.

Most educational authorities agree that such activities not only are desirable but also form an integral part of the educational process. Expectations for involvement in curricular activities beyond the classroom must be reasonable in both scope and commitment.

A school staff should agree on the nature and extent of the program to be undertaken for the year. Since each teacher is a member of the educational team and must be reasonably in accord with the educational philosophy of the school, it follows that the teacher has a responsibility to support whatever program of curricular activities colleagues collectively agree to institute. A reasonable interpretation of this responsibility might be that all teachers should be willing to contribute to curricular activities within the limits imposed by their teaching assignments, skills and abilities and health. It is inherent in this attitude that the participation by teachers in a given activity and in the total program should be voluntary and not assigned by the school administration or the board and should be shared as equitably as possible by the staff as a whole.

If the trend toward defining the teacher’s workday in terms of a required amount of instructional time plus a required amount of time devoted to other assigned duties continues, it may be that the assignment of broad-based curricular activities to teachers will tend to be more directive. Should this happen, some of teachers’ spontaneity and enthusiasm for such activities will be lost.

Extracurricular activities

School programs are enhanced with a program of activities designed to motivate students and enrich their educational experience by going outside the curriculum. These activities are voluntary for both students and teachers and may include athletic, cultural or other special-interest activities.

An individual teacher's involvement will reflect the personal time available to the teacher and the individual's skill, abilities and health.

School discipline

As with many other aspects of teaching, student discipline is not the same for every teacher. Some teachers find class control a constant struggle while others seem to cope effortlessly. While a good deal of latitude should be, and is, allowed to teachers in discipline within their own classes, there must be a considerable degree of consistency within a school staff covering student conduct and control between classes, in hallways and washrooms, on playgrounds, on excursions and in assemblies. Most schools have developed and publicized concise policies and these must be supported by all staff members, at least until the rest of the staff can be persuaded, through proper processes, to implement a change. Workshops, presentations and materials on student discipline are available from the Association. Contact the Professional Development program area for workshops and presentations and the ATA library for print and digital resources.

The *Youth Criminal Justice Act* is federal legislation that redefined disciplinary rights for children in some circumstances. Among the implications is the concept that a young person has the same civil rights as an adult and, in addition, further rights because of being young. This comes into play in schools in such serious breaches of discipline as to constitute possible criminal charges. In this type of circumstance, teachers must be careful to carry out procedures in such a way that the student's rights are not violated, thereby enabling him or her to escape punishment on these grounds. Teachers and principals must act in *parens patriae*, which requires that they protect the rights of the student. Students have the same rights as adults in criminal matters. Those rights include the right to remain silent, the right to counsel and the right to know what the charges are. Before allowing the police to interview students, principals should contact both the Association and the school division for advice.

Noncertificated Personnel

The term *educational assistant(s)* is used by the Association to designate noncertificated personnel of all kinds employed to assist teachers.

The Association favours the use of educational assistants provided they are used in accordance with Association policy. The major aspects of that policy are as follows:

- The purpose of educational assistants is to enable teachers to extend their professional service.
- The deployment and assignment of duties of educational assistants is the responsibility of the teachers in the school.
- Assistants are responsible to teachers to whom they are assigned.
- The assignment of an educational assistant must have the approval of the teacher to whom the assistant is assigned, and the teacher must determine the assistant's specific duties.

Code of Professional Conduct

2 (1) The teacher is responsible for diagnosing educational needs, prescribing and implementing instructional programs and evaluating progress of pupils.

(2) The teacher may not delegate these responsibilities to any person who is not a teacher.

3 The teacher may delegate specific and limited aspects of instructional activity to noncertificated personnel, provided that the teacher supervises and directs such activity.

A teacher who assigns an assistant responsibility for professional services or who has an assistant do a major share of services that ought to be performed by the teacher may be charged with unprofessional conduct.

Another category of noncertificated personnel is parent volunteers. In many schools, especially at the elementary level, large numbers of parents assist in the school on a regular basis. Their help is very much appreciated, and the increased community awareness of the school's tasks and difficulties is beneficial. The work volunteers undertake is similar to that done by educational assistants, and the same restrictions apply. The teacher has a greater responsibility for supervision to compensate for the lower level of responsibility inherent in the role of volunteer as compared with the role of employee.

See the ATA publication *Teachers and Educational Assistants: Roles and Responsibilities* for further information.

Financial Responsibilities

School funds _____

Teachers, especially principals, often have occasion to handle and administer school funds either provided by the board or acquired through fund-raising activities. There may be arguments as to whether it is a legal duty of teachers to collect or handle such monies, but there is little question that any teacher who accepts the responsibility must safeguard the funds, see that they are properly expended, take reasonable precautions to guard them from loss or theft and account for them meticulously. Carelessness in handling money or poorly kept records can lead only to embarrassment and possibly to serious trouble.

When teachers have been delegated authority to make purchases on behalf of the board, they must conform scrupulously to any relevant regulations and give proper attention to accounts and forms.

School purchases _____

Proper procedure in making purchases for a school has been a sensitive area of concern and has even led to termination of designations or contracts. Trouble seems to arise most often when a principal neglects to follow purchasing procedures laid down by the school board. A common example is the forwarding of purchase orders directly to supplying firms without the countersignature of the secretary-treasurer or other designated official. Another example is failure on the principal's part to forward invoices promptly to the board office.

School administrators and others involved are advised to become familiar with purchasing procedures adopted by their boards and to adhere meticulously

to such procedures. Failure to do so may lead to charges of refusal to obey a lawful board order and, at the least, can cause deterioration of relations with the board.

Hours of Work

Preparing lessons, marking and other tasks that must be performed to provide proper instruction add many hours each day and week to the more visible part of a teacher's job. Research shows that teachers spend between 1 and 1.5 hours preparing and marking for each hour spent on instruction. Section 97(2) of the *School Act* states that a board may not require a teacher to instruct for more than 1,100 hours or more than 200 days in a school year. Most teachers would maintain that 5.5 hours of instruction a day is not merely excessive but also nearly impossible to carry out enthusiastically and efficiently. Some school boards appear to agree. This is shown by provisions in the collective agreement or otherwise for periods of preparation time or other limits on instructional load.

Teachers working in schools, distributed learning centres, central office positions and administrative designations have become increasingly concerned about the intensification of their workloads. As of June 2013, the Joint C2 Committees on Teachers' Workload*, mandated by the *Assurance for Students Act*, is providing an opportunity to identify teachers' tasks and determine what can be eliminated or modified to reduce teacher workload and improve teacher efficacy. The ministerial order associated with the act also stipulates a maximum of 907 hours of instruction per year for teachers.

*The C2 Committee derives its name from part C and clause 2 of the framework that refers to teacher workload and formation of a joint committee between school jurisdictions and bargaining units.

3

TEACHER LIABILITY

Introduction

There is a great deal of interest in teacher liability at this time for three basic reasons.

First, many school and off-campus activities are prone to accidents and therefore to possible litigation. The number of off-campus activities has increased dramatically in the past several years, thereby increasing the potential danger of an accident that could lead to allegations of teacher negligence.

Second, in recent years the courts in Canada have awarded large sums of money to students who were seriously and permanently injured during a school activity. There is now a much greater incentive for parents whose children are injured at school to risk the high cost of litigation in the hope of obtaining a large compensation award.

Third, the public's understanding of the concept of rights and a corresponding readiness to seek redress has increased.

We are therefore faced with the likelihood of more litigation involving teachers. This section provides the ounce of prevention that may avoid a lawsuit by informing teachers of their liability.

The Principle of *in loco parentis*

The concept that the teacher is acting *in loco parentis* has gradually evolved through legal precedent. This means that the teacher stands, in relation to the student, in the position of a caring parent, as an unofficial guardian. This concept not only allows the teacher some of the privileges of a parent but also brings with it added responsibilities for the protection of pupils. Thus, a teacher could be liable for damage caused to a pupil where the teacher's conduct falls below the standard of care commonly accepted as being reasonable in a parent-child relationship. A teacher may even have to meet a higher standard of care where special knowledge makes the teacher aware of dangers that the normal parent might not appreciate.

This principle affects several aspects of teacher conduct and risk.

The *Criminal Code*

Teachers are governed by Canada's *Criminal Code*, Alberta's *School Act*, Alberta regulations, school board policies and regulations, and school policies and regulations.

Section 43 of the *Criminal Code* states, "Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances."

It is clear from this section that teachers are protected against conviction of an assault as a result of reasonable punishment of students under their care. This is an application of the *in loco parentis* concept.

In the last several years, there have been repeated proposals to remove section 43 from the *Criminal Code*. This stems primarily from a growing opposition to the use of corporal punishment in schools and concern about child abuse. However, loss of the principle of *in loco parentis* would have very serious repercussions for teachers far beyond the question of corporal punishment.

Although section 43 of the *Criminal Code* was recently upheld by the Supreme Court of Canada in *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76, many provinces have banned corporal punishment from schools altogether. This is not the case in Alberta. Therefore, for teachers in Alberta, the Supreme Court of Canada's comments in this and other cases help to provide direction as to what would be considered a reasonable and corrective use of force on a child, pursuant to section 43, in a way that also complies with the Code of Professional Conduct.

Section 43 specifies that force can be used only by way of correction. The Court says that it must be "intended for educative or corrective purposes." Therefore, only sober, reasoned use of force that addresses the actual behaviour of the child and that is designed to restrain, control or express some symbolic disapproval of his or her behaviour is permissible. It is also required that the child be capable of benefiting from the correction.

A second requirement in section 43 is that the force be reasonable under the circumstances. In the guidelines provided by the Court, corporal punishment using objects, a slap to the head or face, or force that is applied in a degrading, inhuman or harmful way would all be considered unreasonable.

What must be recognized is that section 43 of the *Criminal Code* should not be viewed as giving teachers the right to use physical force or the threat of physical force. Indeed, section 43 identifies what the Supreme Court of Canada calls a "risk zone for criminal sanction" and states that "the prudent parent or teacher will refrain from conduct that approaches those boundaries, while law enforcement officers and judges will proceed with them in mind." Teachers are well advised to exercise caution in any physical intervention with students.

Insurance

The *School Act*, in section 60, deals with powers of school boards. Among other matters, this section requires that every board carry liability insurance or make equivalent arrangements to cover its exposure, including the exposure of its employees.

School Act

Section 60

60(1) A board must...

(b) in respect of its operations

(i) keep in force a policy or policies of insurance...

for the purpose of indemnifying the board and its employees and school councils in respect of claims for

(iv) damages for death or personal injury,

(v) damages to property,...

Any claims, including lawsuits, against the board and/or any of its employees would be dealt with by the insurance company (or equivalent agency) providing the coverage required by this legislation.

Negligence

Negligence comes under the broader heading of tort law. The word *tort* means crooked or twisted. Generally speaking, a tort is a wrong committed by one person against another. Some specific types of wrongs are assault, defamation and negligence.

Negligence consists of not doing something a prudent and reasonable person would do or doing something that a prudent and reasonable person would not do. It can be the subject of a lawsuit between persons whenever there is a duty upon one person not to be negligent and when a breach of that duty occurs that causes damage to another person. Negligence exists where the activity or conduct on the part of the teacher creates an unreasonable chance of danger. When teachers ignore the danger or do not see the danger when they should, they may be held negligent if someone is injured as a result.

The law recognizes different degrees of negligence. There is slight negligence which is failure to use great care; ordinary negligence, which is failure to use reasonable care; and gross negligence, which is failure to use any care at all. It should be understood that to warn a pupil of dangerous places and actions is not an adequate defence if a suit is brought for negligence. Likewise, it is not sufficient to put up instructions regarding proper conduct to avoid accidents. Such instructions are valuable from the standpoint of reducing accidents but, when one does occur, they do not remove liability for the teacher who has been otherwise negligent.

Four elements must be present before negligence is established, namely,

- the plaintiff has suffered some damage;
- the damage was caused by some act or omission of the defendant;
- the act or omission was one of which a reasonable person, behaving with ordinary prudence, would not have been guilty; and
- in the circumstances of the case the defendant owes the plaintiff a duty to take care of that act or omission that was in breach.

The extent to which the injured party contributed to that party's own damage would also be an issue in determining the amount of damages to be awarded.

As with punishment, the principle of *in loco parentis* applies; so, too, does the idea that teachers who possess "expert" knowledge must exhibit a higher standard of care than ordinary parents in elements of the subject matter or program that are inherently dangerous. This would apply to the use of chemicals, machinery or apparatus, for example.

Supervision

The teacher will normally be required to ensure that a system of supervision is established in the classroom or wherever an activity takes place to ensure that the warnings or instructions given to the pupils are obeyed. Of course, there is no expectation of having one supervisor for each pupil except in extremely dangerous activities. Teachers' own experiences will normally give them a good idea of what level of supervision is required to ensure an adequate degree of safety.

Teachers and administrators should decide on the amount of supervision they deem adequate for the school. Once a schedule has been decided upon, it is the teacher's responsibility to carry out assigned supervisory duties. Adequate supervision does not mean constant supervision of all students at all times—that is not reasonable. The teacher's duty is to guard against dangers that could reasonably be foreseen, not to keep students under direct observation every moment.

The extent of supervision required depends on the age, mental ability and emotional stability of the students being supervised. If there is a lack of supervision, it would have to be shown that the failure to supervise caused or contributed to the injury. Negligence will be determined by a judgment of what was reasonable in a particular set of circumstances. In any event, if the teacher is performing assigned duties, the school board's liability insurance will provide the necessary protection in the event of a lawsuit to the extent of the limits provided in the policy. Teachers at risk should check the adequacy of coverage.

Student Injury or Illness

If a child appears to be seriously ill or has suffered an injury, the teacher must take all necessary steps to secure medical attention. All decisions ought to be made, if possible, in consultation with the principal. If, in the opinion of the teacher and principal, medical treatment is required, immediate steps must be taken to secure it. Attempts ought to be made to notify the parents and to advise them of the event and the steps proposed to be taken. If the parents cannot be located or if the emergency is such that there is not time to contact them before arranging for medical aid, a physician should be called or the child taken to the hospital as quickly as possible.

The responsibility of the teacher ends as soon as the child enters the care of a qualified doctor or a hospital, and the sole remaining duty is to continue efforts to contact the parents if such had not been done before. It should be noted that teachers' actions will not be measured by the standards applied to a medical doctor but by those of reasonable prudent parents. If you err, make sure it is on the side of getting medical attention.

Transporting Students

The *Insurance Act* provides coverage for teachers who transport students to and from activities conducted as part of an educational program without the necessity of specifically endorsing their own insurance policy. Such trips must be occasional and infrequent. Teachers using their automobiles to transport students should make sure that they have adequate public liability coverage in their own policy.

Some carriers of school board liability insurance do provide excess liability insurance for employees' vehicles, provided they are transporting students on school-sponsored activities. The school board must assume liability for non-owned vehicles for this coverage to be effective. Teachers are advised to check with their employer to determine if coverage is provided. It should be noted that such coverage does not generally include parents driving students or students transporting other students—only school board employees are insured. However, a few policies may cover volunteers. The practice of students driving other students should be discouraged. A good policy to follow is never to permit students to drive other students unless the school has the written consent of the student driver, the student passengers and their parents.

Child Abuse

A teacher who has reasonable and probable grounds for believing that a child has been physically ill-treated or is in need of protection must report the situation to a child welfare director. This requirement is set out in the *Child, Youth and Family Enhancement Act*. To report, call 1-800-387-KIDS. No action can be taken against a teacher for reporting suspected cases of child abuse unless such reporting is done with malice or without grounds. It should be clear that the legislation requires the teacher to report directly to the child welfare director and not to parents, counsellors or administrators. Contact with parents in cases where child abuse is a possibility should be limited to routine factual inquiries about absences or injuries. Discussions with counsellors and/or administrators are best kept to a level of generality that does not entail revealing the identity of the student. No counsellor, administrator or other person can relieve the teacher of the obligation to report to the proper authorities. In any case, repeated interviewing of the student by school authorities is to be avoided as it is likely to do more harm than good. Once a report has been made and a child welfare worker from the Department of Children's Services has been assigned, the teacher's subsequent conduct in the case should be guided by the worker.

Corporal Punishment

In addition to the *Criminal Code* provisions noted earlier, ordinary civil law recognizes the principle of *in loco parentis*. As a result of that legal relationship, teachers are permitted to take reasonable steps as may be required to maintain control of pupils. However, in all cases related to discipline the best protection for teachers is to follow school and board policy.

The *School Act* gives school boards the right to make rules and regulations regarding the operation of schools. These rules and regulations should be made in consultation with teachers. Once the rules have been established, the teacher must apply them scrupulously. If the board makes a rule that prohibits the use of physical force and a teacher disobeys, it could be grounds for employer discipline up to and including termination of contract for disobedience of a lawful order of the board. It could not be grounds for criminal or civil action unless the punishment was shown to be unreasonable.

Some Important Points

- The student's age should be taken into account in arranging supervision. Generally speaking, the older the student the less supervision required.
- Students should be instructed as to the dangers inherent in a given activity, as well as on how to perform the activity.
- If shortcomings have been detected in past practices, they should be rectified.
- If a student is injured, the activity should be terminated.
- In Alberta, if a teacher is assessed for damages in a suit for liability, the damages will be covered by the school board's liability insurance, and as teachers are employees, any suit for negligence would be against the board as well as against the teacher.
- Liability insurance does not cover acts of a teacher's own free will.
- The principle of *in loco parentis* may shield and defend teachers in the performance of duties but also adds to their "duty of care."
- In a matter of dispute concerning exercise of authority over pupils, the courts will judge the teacher's behaviour in light of what they deem to be "reasonable under the circumstances."
- Pupils in attendance in public schools must submit themselves to the reasonable rules and regulations of the school board and to the control of teachers.
- Negligence occurs from (a) taking any action that should not have been taken or (b) failure to do what should have been done.
- In Alberta, a teacher may legally administer punishment if it is justified and not excessive or malicious and if it is in accordance with school board policy and school rules.
- School boards in consultation with teachers should formulate rules and regulations governing punishment.
- The teacher must fulfill assignments; one assigned to supervise must do so or make alternative arrangements.
- Teachers are advised not to make a practice of transporting students in private vehicles unless (a) they are explicitly authorized to do so and (b) the board's insurance includes non-owned automobile coverage. Insurance coverage must be ensured.
- If an accident or injury happens, the teacher, as soon as possible after coping with the emergency itself, must make a complete record of the circumstances and what occurred. Board policy should be respected.
- Negligence should not be admitted in an accident, even if a teacher feels responsible. Such an admission would remove all defence in a subsequent suit.

Field Trips

Teachers should be certain that the activity is school-sponsored, in which case the school board's liability insurance will cover normal liabilities that may arise. Virtually all schools require parents to sign a permission slip. This practice serves as a useful communication device, but it does not eliminate the possibility of liability arising out of untoward events occurring during the field trip. The signed document does not give the teacher the right to commit a negligent act. Students must be instructed in advance on all aspects of safety during the field trip, and all foreseeable dangers should be brought to the students' attention. School board policy must be followed.

More supervision should be provided on a field trip than in the classroom. Adult volunteers may be used to supplement the teacher supervision, and they would qualify for coverage under the board's insurance policy. While on the field trip, teachers should not intentionally expose students to known dangers or even to situations where there is a strong possibility of injury.

4

ASSAULT

Introduction

A trend in society is a much greater readiness to use the legal system both to seek redress for wrongs and to use the force of the law as a means for revenge, ego gratification or even titillation. Obviously, the legal system is appropriately used for the former; unfortunately, the very provisions that exist for this use also permit abuse. There has been an enormous increase in the number of teachers charged with assault and with a variety of sexual offences. While it is possible that there has actually been an increase in the incidence of such criminal behaviour, it is much more likely that the increased number of charges stems from two other factors. First, in society in general and in the schools in particular, there has been a disappearance of the stigma that used to be attached to the victim, the preconception that victims must have been at least partly responsible for being victimized; as a result, victims are much more likely to complain than they were in the past. Second, because such cases are now far more common, more accusations against innocent persons are also being laid, either maliciously or because of mental instability on the part of the accusers. Thus teachers are increasingly at risk of trumped-up or grossly exaggerated accusations. The mere fact that there may be little or no substance to such accusations is of scant comfort. The anguish of a criminal trial is substantial and the risk of conviction of an innocent person is not negligible.

Nonsexual Assault Offences

Common assault _____

The charge that is often laid against a teacher in the employment context is common assault. It is defined by section 265 (1) of the *Criminal Code* (see box that follows). There are three elements of common assault: (a) lack of consent by the victim, (b) intention and (c) an application of force to the victim (or the threat of force that the victim believes will be carried out).

If a person consents to the application of force, any subsequent touching within the scope of that consent cannot amount to an assault. Such consent must be freely given, not coerced by the use of authority or by fraud.

Provocation, such as insulting words or gestures, is not a defence. The application of force must be intentional. Accidental contact does not amount to an assault, whether or not it produces injury. By the same token, if there was any intent at all to make contact, the fact that injury was far more severe than intended is of no significance. It is not strictly necessary that there be an application of force. Mere touching can amount to an assault.

Criminal Code

265(1) A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
- (b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or
- (c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

Other _____

The *Criminal Code* provides for other forms of assault. Each involves all of the elements of common assault plus additional aggravating factors. It is an offence to assault someone with a weapon or cause bodily harm. It is an offence to commit assault resulting in wounding (aggravated assault). It is an offence to assault a peace officer in the execution of the officer's duty.

Sexual Assaults

Sexual assault _____

Sexual assault is defined as conduct that includes all of the elements of common assault plus one additional element. This is that the assault is committed in circumstances of a sexual nature, such that the sexual integrity of the victim is violated and/or so that the accused may gain some sexual gratification thereby. The sexual nature of the assault must be detectable by an objective standard. It is not necessary that contact be made with the victim's sexual organs or that the assaulting party's sexual organs be involved. Even a "pat on the behind" can be a sexual assault if it is done to obtain sexual gratification or if it violates the sexual integrity of the victim.

The court will consider several factors in determining whether or not an assault has been sexual, including

- the parts of each of the bodies involved,
- the nature of the contact,
- the surrounding circumstances,
- any gesture or comments (including threats or the use of force) accompanying the assault, and
- the intent of the assaulting party.

As in the case of common assault, the lack of consent on the part of the victim is an element of sexual assault. However, consent is no defence in a sexual assault charge where the victim is less than 16 years old, nor if it has been obtained by the imposition of authority.

Sexual interference _____

This is a specific form of sexual assault where a person touches a part of the body of a person under 16 years old with a part of the body or an object for a sexual purpose.

Invitation to sexual touching _____

This also applies to persons under 16 who are “invited, counselled or incited” to touch the body of another person. It differs from sexual assault in that only the invitation, not actual touching, need occur.

Sexual exploitation _____

This offence is very similar to the two preceding ones, but applies specifically to any person who is in a position of trust or authority toward a young person. This would certainly include teachers.

Knowingly permitting prohibited sexual activity _____

This applies to an “owner, occupier or manager of premises” permitting such activity involving a person under 18. This opens up many areas where teachers may be at risk but particularly in cocurricular activities such as school dances and extended field trips.

Indecent exposure or act _____

A person doing an indecent act in public or exposing his or her genitals for a sexual purpose to a person under 16 in any place is guilty of an offence.

<h2>Implications for Teachers</h2>

These offences are very broadly defined. It is easy to see how false allegations could be made in a wide variety of innocent student–teacher interactions. This is particularly so where the students and/or parents involved are mentally or emotionally unstable or have some axe to grind with a teacher. Innocence alone will not save one from accusations, nor even necessarily from conviction. Judges trying such cases are human beings and frequently must make a best guess as to which party is lying and which is telling the truth. They will not always be right.

Children are human. They have been known to make up stories to keep themselves out of trouble with their parents or to shift the blame in a situation to a teacher. Some children are unstable. Some have difficulty coming to grips with their own developing sexuality. Often a child who has to face his or her parents with the fact of having been in trouble at school will try to cause the parents to become more interested in the teacher’s conduct. In such scenarios, an accusation that “she hit me” or “he touched me” is made to parents in response to inquiries as to why the pupil is in trouble at school or is not performing up to his or her ability. Once the parents respond with horror and call the police (a response that is often totally unexpected by the untruthful child), children find it difficult to admit their fabrication. They feel they must continue to maintain their story for fear of getting into trouble if they do not.

Parents are also human. They can be expected to react strongly to assertions of teacher assault raised by their children. Any suggestion of sexual assault

is bound to be treated quite seriously by a responsible parent. In some cases, parents have a quarrel with a teacher that is unrelated to school, but will stoop to using any ammunition against the teacher that is available, even unfounded rumours of inappropriate conduct.

Advice

How can teachers avoid the sorts of problems that have been dealt with here? Obviously, they should studiously avoid behaviour that would give rise to legitimate charges. Teachers who feel strong urges to commit assault, sexual or not, should seek professional counselling.

Many authorities, particularly those who frequently deal with cases of this nature, suggest that teachers should refrain from all physical contact with students. This runs counter to the beliefs of many teachers and some educational theorists that hugs and pats are important positive acts. Each individual teacher will have to decide what is the best course of action. This is one case where it seems that one extreme or the other is preferable to some middle ground. That is to say that it is better to do a lot of hugging and patting than to hug or pat only on rare occasions.

Other prudent and useful tips are as follows:

- Be completely familiar with the school board's and the school's policies with respect to student discipline.
- Document your discipline of students. Such documentation should be retained in your permanent personal files as many cases of accusations have been made years later.
- Avoid being alone with individual students, particularly those in the early years of puberty. If you must be alone with an individual student, ensure that the door and window blinds or drapes are open and that the time is kept to a minimum.
- Unless you have special training or assignment in counselling, avoid counselling students who display signs of sexual, emotional or mental instability. At the very least, consult regularly with the teacher counsellor in the school or with someone else with expertise in this area and keep a record of such consultations.

What to Do If You Are Accused

The primary rule in dealing with allegations of assault or sexual assault is **remain silent**. You have the right to do this under the Canadian Charter of Rights and Freedoms. That right is the best available protection for the individual. Do not waive this right until after you have seen a lawyer. You are required to identify yourself (name, address and birthdate) to the police. Beyond that you should not volunteer any information or respond to any questions until you have sought and received legal advice.

As a teacher, you have access to necessary legal advice on matters relating to your work. To get it, contact the Association as soon as possible. In the meantime, avoid discussing the situation with anyone else (other than your legal spouse). Discussing it with other persons may put them in the position of being called to testify against you.

Do not panic. While this may be a terrible experience, staying calm, listening to advice and taking the situation one step at a time will at least avoid making it worse.

5

STUDENTS WITH SPECIAL NEEDS AND MEDICAL REQUIREMENTS

Inclusion

The challenges of inclusive education have been an ongoing concern for a significant period of time.

In 1978, in a landmark decision in what is referred to as the *Carriere* case, the Honourable Justice M J O'Byrne ruled that it is the responsibility of the local school jurisdiction to provide an educational program for all children. A decade later, the revised *School Act* affirmed, in section 8, "Every individual who . . . is 6 years of age or older and younger than 19 years of age . . . is entitled to have access in that school year to an education program . . ."

ATA Policy

Statement of Educational Policy

12. All children have the right in a public education system to an education which will develop their individual potentialities.

Current Directive

17.B.14 BE IT RESOLVED, that the Alberta Teachers' Association urge school boards to ensure that students with special needs are in the most enabling environments and that students and teachers are provided with the supports and resources necessary to ensure success. [2012]

Long-range policy 17.A.1

17.A.1 The Alberta Teachers' Association supports the principle of inclusion of students with special needs, provided that

1. they are placed in programs that meet their special needs; and
2. the following conditions have been met:
 - a) Information about the individual needs of each student is provided to the teacher and staff.
 - b) Students with special needs and other students in the same class have been prepared for inclusion.
 - c) Ongoing professional development is provided to the teacher.
 - d) Professional support services, such as special education consulting services and health support services, are provided.
 - e) Appropriately trained educational assistants are provided, as required.
 - f) Appropriate resources, including assistive technology, are provided.
 - g) Class size is reduced to effectively meet the needs of all students.
 - h) The regular instructional time for the teacher is reduced to allow for effective development, implementation and monitoring of documents and tools such as individual program plans, Success in School plans and the Inclusive Education Planning Tool.

[1982/92/98/2002/11/12]

The act further provides, in section 47, for placement of students in special education programs after consultation with parents and, in section 48, for a process to follow if a board states that it cannot meet a given student's special needs.

Inclusion is about belonging to a community and being accepted in the many levels of community, including the classroom, the school and the broader community. It is about valuing each person and providing equitable opportunities for all. In its broadest sense, the term inclusion applies to the many ways students can be different from one another, including ethnicity, language, sexual orientation and gender. The goal of inclusive education is to instill in students a sense of belonging and to help them achieve their full potential. Association policy uses the term special needs to refer to students who have complex or severe learning or behavioural needs—one aspect of inclusion. This precise language ensures clarity about the students to which the policy refers. The Association recognizes that inclusion is a broad and complex term and that in order to create effective learning environments, it is necessary to raise awareness of the specific challenges related to students with special needs. The Association supports the principle of inclusion of students with special needs, with the proviso that they are placed in the most enabling environments, as determined by teachers in consultation with other professionals. It is also recognized that for some students at points during their schooling, they may need specialized supports and care where there are complex learning, medical, emotional or behavioural needs.

Teacher Position

What should a teacher do in these circumstances? What steps can be taken to minimize teacher liability?

First, the teacher should protest the assignment to the principal and the superintendent. Clause 8 of the Code of Professional Conduct requires that teachers protest assignments and conditions which make it difficult to render professional service. This clause reads, "The teacher protests the assignment of duties for which the teacher is not qualified or conditions that make it difficult to render professional service."

Second, the teacher should insist that medical assistance be provided to fulfill the special needs of students.

Third, if suitable arrangements are not made in response to the first two steps, the teacher should contact the Association for assistance to alleviate the problem.

Finally, if a board insists that the student be placed in a regular classroom, the parents of the pupils should be informed that teachers are not qualified to provide appropriate assistance for the child and do not accept responsibility for the child's medical needs.

However, once a teacher accepts students with medical problems, there is no doubt about the effect on the teacher's legal responsibility. A relatively recent Alberta court case deals with the duty owed by a teacher to a student who was deaf and mute. The court described that duty, in part, as follows.

The fact that this particular school deals with those that are handicapped through being deaf and dumb* undoubtedly increases the degree of care that would be expected because I am sure that a reasonably careful parent of a deaf and dumb* child is going to have to be careful with respect of features that the parent of a child so unhampered would not have to be careful of.

When the case went to the Supreme Court of Canada, that Court said, "The duty of care owed by the instructor, being that of a reasonably careful parent, had to be assessed in the light of the handicaps of the students; . . ."

When a teacher agrees, either explicitly or by not protesting, to accept such students, that teacher is accepting responsibility for a higher standard of care than would be the case for an ordinary student. This higher standard will require that the supervisory care be more vigilant than it would be with an ordinary pupil, both with regard to avoiding circumstances that would give rise to the medical problem and to detecting the medical problem should such arise. This is true in the case of both physical and medical handicaps, for example, epilepsy and diabetes.

The law would not likely require that a teacher be involved in administering a course of treatment involving medicines, but it may impose a duty of supervision on the teacher to ensure that a student takes pills or other treatment as required by the schedule. If teachers become involved in administering a therapeutic regime, an obligation is assumed that might well expose them to liability. Adequate protection for teachers who find themselves in this circumstance will vary from case to case. Teachers should contact the Association for assistance.

Attention is drawn again to section 8 of the *School Act*, which casts a statutory duty upon the board to make attendance possible and appears to include a requirement for appropriate health services. It should be noted that this duty is cast upon the board and not upon its teachers. It is equally clear that teachers are not prepared through their teacher education to carry out medical duties nor are they employed to provide services such as lifting, toileting or feeding of physically handicapped students. Teachers' obligation is restricted to providing adequate educational services for children.

*current terminology is deaf and hearing impaired

6

ASSESSMENT OF STUDENTS

Responsibility for Evaluation

Teacher

Section 18 of the *School Act* says, in part, “A teacher while providing instruction or supervision must ... regularly evaluate students and periodically report the results of the evaluation to the students, the students’ parents and the board; ...”

There is no doubt that the teacher, who as a professional is responsible for the instruction of students, is in a better position than anybody else to make the necessary decisions concerning the promotion of students and the grades they should receive. As was mentioned earlier, the teacher has a responsibility to carry out frequent and fair evaluations of the work of the students and to base decisions regarding promotion and final grades on adequate records of the performance of each student. Where several teachers teach the same student, each must be involved in the decisions made regarding promotion.

It is the right of parents to be informed of the progress of their children. The cooperation of the home must be sought when students are experiencing serious problems, and consultation must occur as early as possible in the school year if it seems likely that the student will be retained in the same grade for a second year.

Principal

The principal is responsible for the total operation of the school and therefore has a right to be informed from time to time of the progress of each student and to be alerted about those students whose achievement indicates that they have serious problems. The principal also has the right to be consulted when students may be assigned a failing grade.

The principal is not normally conversant with the problems and abilities of each student in the way that the student’s teacher is and therefore is not in a position to overrule or change a teacher’s decision, except in unusual cases or when a parent appeals the teacher’s decisions about the child. In any event, the principal and the teacher should resolve such occurrences in cooperation.

Superintendent

The superintendent is even further removed from the basic information used to decide about the promotion and grading of students. However, as the chief executive officer of the school board and the chief educational leader of the system, the superintendent must bear the ultimate responsibility for the decisions made by others about these matters and in the most serious cases must retain the right to make the final decision.

A general summary of the material in this section follows:

- The ultimate responsibility with respect to the promotion and grading of students in the school system must lie with the superintendent.
- The ultimate responsibility within the school must lie with the principal.
- The teacher or teachers involved with the students are professionally and operationally the most competent to make decisions about individual students and that interference with teachers' rights to do so from anybody else must take place only rarely and under circumstances of the greatest justification.

Responsibility for Reporting

It is a major responsibility of the educational system to report on its progress. This obligation must be met by all levels of the system and must take place according to well-articulated plans that are understood in advance. In all contexts, the reporting should touch on both areas of strength and areas needing improvement. The transmittal and discussion of information is a two-way process, and the consideration of follow-up plans is an essential part of reporting.

Teacher and school

The teacher reports to students to provide information about their achievement that will help them plan future activity; this should also encourage students and help them develop the skills of self-evaluation. Each student receives frequent, informal reports, which can be self-initiated or initiated by the teacher. Such reports stress constructive information delivered within the appropriate degree of privacy. Information conveyed to the student in this way must be consistent with information conveyed to the parent.

The teacher reports to the parents to provide information regarding the student's progress relative to (a) potential, motivation, aspirations and other individual differences; (b) program objectives; and (c) appropriate comparison groups.

The elements of reporting between teacher and parent include written reports and interviews in both formal and informal contexts. The teacher conveys information clearly, trying to leave no doubt in the mind of the parent as to the state of the student's progress. Such reporting emphasizes openness of communication. It is often desirable to have the student present at a parent-teacher interview.

The teacher reports to the principal and other teachers to provide the type of information that permits planning a program with continuity and appropriate teaching strategies. Good in-school reporting requires the maintenance of student records. These records should contain current and complete information and the teachers concerned should be allowed to examine and use those data. Open communication within the school and between schools is crucial to good reporting.

The school staff reports to parents, and the principal reports to the superintendent and the school board. To parents, the school staff reports on school and system objectives, school programs and its evaluation procedures. Included in the school staff's reporting system should be provision for receiving parental opinion on the quality of the school's program. To the board, the school staff (through the principal) reports according to board and administrative policies and procedures and relevant provincial acts and regulations.

The *School Act* includes provisions for school councils (section 22). These bodies will play a role in the school reporting process, but this role may vary from one jurisdiction to another. Their creation will provide an opportunity for school staffs to enhance school-community interaction.

School board

The board reports to the public to provide general information on the programs, operations and finance of the board and to provide background information against which the public can interpret data relating to local schools. Good board reporting might involve drawing attention to the perceived needs of the community, a clear articulation of the programs designed to fulfill those needs and an estimate of the progress of those programs in addition to their financial costs and implications.

The board reports to the minister of education to convey its own educational needs and to contribute to a provincial assessment of educational needs, as well as to meet various statutory requirements. This provincial assessment is dependent in part upon reports of local evaluations of the extent to which provincial objectives are being achieved and of the assessments on which these are based.

Education minister

The minister reports to the Legislature, and hence to the public, on the nature and quality of education throughout the province. Such reporting should be based on an evaluation of the extent to which provincial objectives are being achieved, direct assessments by the Department of Education and compilations of local findings as indicated above.

An important component of reporting at the ministerial level should be the discussion of current problems and the preparation of the profession and the public for measures designed to address them. In addition, attention should be paid to publicizing existing programs and objectives of the ministry in forms that are appropriate for the specific audience intended.

7

AUTHORITY AND ROLE OF ADMINISTRATORS

Hierarchy of a School System

Superintendent

The superintendent is the chief executive officer of the board and the educational leader of the school system and, as such, is responsible for the success of all facets of the school operation in the district.

The *School Act* provides that the school board may delegate all but a specified few of its responsibilities to the superintendent. If a board does delegate such responsibilities, the superintendent then acts as the agent of the board in any decisions made or in any rules and regulations formulated. It is inherent, of course, that such decisions may not violate the provisions of the *School Act* or of the collective agreement or any agreement between a board and the teacher made pursuant to section 78 of the *School Act*, and that any orders issued to teachers must be both lawful and reasonable.

Though the powers of a superintendent or any other school administrator derive from the law and from the school board, the manner in which these powers are exercised with respect to personnel will determine the person's ultimate accomplishments. Sympathetic personnel policies and extensive consultation with those affected by the decisions have come to be musts for any successful school administrator and are probably among the more important determinants of tenure.

Supervisors

The designations or titles of teachers operating at various levels in the hierarchy of a school system change so frequently and vary so much from system to system that it is hard to be definitive about the authority of any one of them. It would be reasonable to assume that supervisors would be appointed by the school board and given certain authority to carry out their duties.

Each supervisor may be involved in one subject area only or may be charged with more general duties in many subject areas. The major role of supervisors could well be defined as the improvement of instruction in their fields. The board and superintendent may delegate to them responsibilities to assist in the determination of competence and evaluation of teacher performance. If so, it is obvious that they would have the authority to make judgments in such matters,

but the final decision must remain the responsibility of the board through the superintendent.

Consultants _____

The name suggests that teachers bearing this designation would be available to consult with teachers in the classroom with respect to the carrying out of their teaching duties. It would seem that consultants should be available to help teachers who request help or who are identified as needing help to improve their teaching skills.

If consultants are to be of maximum value, it would follow that they should not be judges and reporters of teaching competence since this relationship would make teachers reluctant to seek their advice and help. The actual authority and role of consultants would be whatever the board, through the superintendent, defined them to be.

Principal _____

Section 20 of the *School Act* defines some of the duties of principals (see box on page 13). The principal has the authority to make decisions and promulgate rules and regulations consistent with legislation, with school board policy and with the authority specifically delegated by the school board. If a principal chooses to give orders to teachers, these must legally be regarded as orders of the school board to the extent that they are consistent with the authority given, they are reasonable and they are lawful.

As with any other administrator, the success of a principal is likely to depend not so much on the authority exercised as on the manner in which it is exercised and the extent of prior consultation with those persons who are affected by the authority.

Assistant principals _____

Though assistant principals are found in most schools, the *School Act* contains no provision that requires the appointment of such administrators. In place of such a requirement, a permissive clause [section 96(1)] allows boards to designate teachers to administrative, supervisory or consultative positions within the school. Some collective agreements require the appointment of assistant principals or other designated personnel in schools.

The duties of an assistant principal are not specified in legislation. Rather, these duties are defined by the school board or assigned by the principal. Where there are assistant principals, they must be considered to be deputies of the principal and to have such authority as the latter delegates. It follows that orders given by an assistant principal to a teacher would be lawful orders of the principal and hence lawful orders of the board, provided they refer to areas in which the assistant principal has been given the authority to make decisions.

Department heads _____

Generally, a department head is considered to be a coordinator of teachers operating in a specific subject area. Teachers, of course, have a responsibility to cooperate with the department head. A department head may have organizational responsibilities within the department in addition to that of helping teachers maintain and improve their teaching efficiency. The department head is, in effect, a type of consultant within the school to whom teachers in the department may go for help and advice when they need it. In the absence of a collective agreement clause, the department head's authority will be whatever the board, through the superintendent and the principal, has delegated.

Other administrative personnel

It is impossible to forecast what other types of administrative or supervisory personnel teachers may have to deal with. In some school systems, department heads or consultants are given different names. The title is not as important as the job description and the manner in which the human relations tasks are carried out.

A fact worthy of note here is that all administrative and consultative personnel in a school system are there for one purpose only—to contribute to the overall benefit of students by facilitating and improving the work of the classroom teacher. There is no other reason for their presence, and their performance will be judged by the contribution they make in this regard.

8

TEACHER PROFESSIONAL GROWTH, SUPERVISION AND EVALUATION

Guiding Beliefs and Principles

Professional growth and supervision are dynamic and ongoing processes. They form the basis for the development of teaching abilities, and should be founded on the Teaching Quality Standard (Ministerial Order # 016/97).

The evaluation process must reflect the central importance of the Teaching Quality Standard and be consistent with Alberta Education Policy 2.1.5 on Teacher Growth, Supervision and Evaluation. Anonymous questionnaires or interviews are not an acceptable part of a fair and ethical evaluation process and may violate the Association's Code of Professional Conduct.

The evaluation process must be reasonable and in keeping with procedural fairness and the rules of natural justice. The rules are based on precise legal concepts that govern the actions of public bodies such as school boards and apply in any situation where an individual's rights may be affected by the actions of the employer. These include the following:

- The teacher knows the expectations of the position.
- The teacher receives written notification that an evaluation of professional practice is to be undertaken and the reason(s) for it.
- The teacher is a full participant in the evaluation process.
- The basis for the evaluation process is identifiable data which is made available to the teacher.
- The teacher is made aware when expectations of the position are not being met.
- If there are performance concerns as a result of information from a source other than the supervisor, the information is provided to the teacher in sufficient detail for him/her to understand the concern and have an opportunity to respond. This includes copies of any notes or letters.
- The teacher is provided with appropriate assistance and time to address any identified performance deficiencies.
- The teacher understands the possible outcomes of a failure to improve performance.

The evaluation process is consistently applied to all teachers recognizing that expectations for the beginning teacher may not be as rigorous as those of an experienced individual. Effective systematic communication is a key component of fairness in any evaluation process, where the evaluation process is conducted in a cooperative and supportive climate that fosters mutual trust. The teacher has the right to consult with the Association during any part of the evaluation process.

Teacher Growth, Supervision and Evaluation Policy

The policy reflects a major change in philosophy about supervision and evaluation. It reflects a professional model based on teacher growth rather than teacher deficiency. The policy takes seriously the professionalization of teaching. All teachers are responsible for students' learning and a model of collegial collaborative work will help change teaching practice and the organization of schools into learning communities.

Basic Positions

- There is an assumption of teacher competence.
- Professional growth is a major focus of the policy. All teachers are required to create individual professional growth plans.
- Principals are required to supervise all teachers and, when there is a concern about a teacher's teaching practice, to conduct an evaluation.
- Teachers who do not hold a continuing contract or permanent certificate will be evaluated.
- Supervision is a fundamental component of the policy and is pivotal to its success.

Growth

- Teacher professional growth means a career-long learning process whereby a teacher annually develops and implements a plan to achieve professional learning objectives or goals that are consistent with the Teaching Quality Standard.
- Teachers employed under probationary or continuing contracts are required to complete an annual growth plan.
- The teacher is required to submit his or her plan for review or approval.
- At the end of the year, the completed plan is reviewed.
- A teacher's annual growth plan shall
 - reflect goals and objectives based on an assessment of learning needs by the individual teacher;
 - show a demonstrable relationship to the Teaching Quality Standard; and
 - take into consideration the educational plans for the school, the school board and Alberta Education.
- Responsibility for receiving and reviewing growth plans may be delegated to a body of teachers.
- Unless a teacher agrees, the content of an annual growth plan shall not be a part of the evaluation process of a teacher.
- Despite this, a principal or superintendent may identify behaviours or practices that require an evaluation provided that the information is based on a source other than the teacher's professional growth plan.
- A teacher who does not complete a plan may be subject to discipline.

Supervision

- Supervision means the ongoing process by which a principal or superintendent exercises instructional leadership and carries out his/her duties with respect to teachers and their teaching, as required under section 20 of the *School Act*.
- A fundamental component of the policy is ongoing supervision of teachers by the principal or superintendent including
 - providing support and guidance to teachers,
 - observing and receiving information from a variety of sources about the quality of education a teacher provides to students and
 - identifying the behaviors or practices of a teacher that are not in keeping with the Teaching Quality Standard.
- When a principal has reason to believe that a teacher's teaching may not meet the standard, the principal may
 - work with the teacher directly, through supervision, to provide assistance to change behaviours or practices or
 - initiate an evaluation
- Throughout the supervision process, the principal should share relevant information with the teacher.
- Through ongoing supervision, the principal or superintendent seeks to be satisfied that a teacher's teaching meets the requirements of the Teaching Quality Standard.
- An important role of the principal is to provide guidance and support to improve the teacher's quality of instruction.
- Teachers should be willing to receive collegial advice and assistance.

Evaluation

Evaluation means the formal process of gathering information or evidence over a period of time and the application of reasoned professional judgment by a principal in determining whether one or more aspects of the teaching of a teacher exceeds, meets or does not meet the Teaching Quality Standard.

- The evaluation of a teacher by a principal or superintendent may be conducted under any of the following circumstances:
 - Upon the written request of a teacher
 - For the purpose of gathering information related to an employment decision
 - For the purpose of assessing the growth of the teacher in specific areas of practice
 - When, on the basis of information received through supervision, the principal has reason to believe that the teaching of the teacher may not meet the standard
- On initiating an evaluation, the principal or superintendent shall communicate explicitly to the teacher the
 - reasons for and purposes of the evaluation;
 - process, criteria and standards to be used;
 - timelines to be applied; and
 - possible outcomes.
- When an evaluation determines the teacher's teaching does not meet the Teaching Quality Standard, the evaluation period may be extended or a notice of remediation may be issued to the teacher.
- The notice of remediation describes the required change in behaviour or practice; strategies the teacher is expected to pursue; how it will be determined whether the required changes have been made; applicable time lines; and the consequences of not achieving the required changes.
- Following the notice of remediation, the following steps are recommended:
 - A program of assistance is offered to the teacher.

- If the teacher's teaching exceeds or meets the standard, the evaluation ceases.
- If the teacher's teaching does not meet the standard at the end of the timeline specified in the notice of remediation, and considering the best interests of the students, teacher, profession and the jurisdiction, then it may be appropriate to
 - offer an additional period of remediation or
 - give the teacher a change of assignment or
 - a combination of the above two or
 - recommend termination of the teacher's contract of employment.

Steps in the Supervision/Evaluation Process

The principal conducts ongoing supervision.

- The principal provides feedback to the teacher on concerns raised during supervision.
- The principal provides guidance, support and assistance to the teacher to address concerns identified through supervision.
- The teacher demonstrates improvement or the teacher seems unable to respond to the assistance and suggestions offered during supervision.
- The principal decides, based on the evidence gained through supervision, that the teacher's teaching may not be meeting the expectations of the Teaching Quality Standard and board policy.
- The principal meets with the teacher to discuss the concern or evidence that the teaching may not meet the Teaching Quality Standard.
- This meeting may result in
 - the teacher continuing under the supervision process or
 - a written notice of evaluation being given to the teacher.
- The principal and teacher meet to discuss and draft an evaluation plan.
- Appropriate time is provided to carry out the evaluation as described in the evaluation plan.
- The principal writes and presents the evaluation to the teacher who has the opportunity to append notes to the report.
- The evaluation report may recommend one of three options:
 - The teacher, having met the expectations of the Teaching Quality Standard, continues in the supervision process.
 - The evaluation timeline is extended with specific actions outlined.
 - The teacher is issued a Notice of Remediation because the evaluation shows that the teacher did not meet the expectations of the Teaching Quality Standard.
- The program of remediation as outlined in the remediation plan is implemented.
- Evaluation at the end of the remediation process may result in:
 - a return to the supervision process (if the teacher has met the expectations of the Teaching Quality Standard) or
 - an extension of the remediation plan or
 - a change of assignment or
 - a recommendation by the superintendent to the board to dismiss.

At any time in the process, the principal and/or the teacher may seek assistance from the Association.

Reasons for the initiation of an evaluation of a teacher on continuing contract can be quite diverse but they should not be frivolous, petty or vindictive. In short, they must first be professionally defensible. A single complaint about a teacher should not, as a matter of course, start an evaluation. A series of complaints or a complaint accompanied by other concerns may be sufficient.

Professional Practice Review Process

The *Teaching Profession Act*, section 4(b)(vii), provides for the Association to assess the professional competence of its members by means of a practice review process provided for in the bylaws of the Association. Under the Practice Review Bylaws, the monitoring and maintaining of practice standards is in accordance with Alberta Education's Teacher Growth, Supervision and Evaluation Policy 2.1.5 and the Teaching Quality Standard (Ministerial Order # 016/97). These documents, as well as the complete text of the bylaws, can be found in the *Members' Handbook* and on the Association's website.

Any individual can make a complaint to the superintendent regarding the practice of a teacher. Before proceeding to a formal investigation, the superintendent must meet with the complainant to determine the nature of the complaint and to ensure that the complainant has made reasonable attempts to address the matter with the teacher and principal concerned. The superintendent must also gather details to determine if the complaint is appropriate to the practice review process and if the actions occurred less than two years prior to the complaint being made.

In many instances, when a concern is raised, the superintendent can resolve the matter informally by meeting with the complainant to discuss possible solutions that would be acceptable to all the parties involved. If the complainant believes that it is necessary to proceed to a formal complaint under the Practice Review Bylaws, he or she must submit a written, signed complaint. In cases where there has been no complaint submitted by another person, but the superintendent has reasonable grounds to question the professional competence of a teacher, he or she may initiate an investigation in accordance with the bylaws.

Making a Complaint

10(1) Any person may make a complaint concerning the professional competence of a teacher with respect to teaching students.

(2) A complaint under section 10(1) may only be made with respect to concerns about the professional competence of a teacher that occurred less than 2 years prior to the complaint.

(3) A complaint shall be in writing and signed by the person making it and submitted to the superintendent of the school board employing the teacher.

(4) Before acting on a complaint, the superintendent shall:

(a) meet with the complainant to discuss the nature of the complaint; and

(b) ensure that the complainant has attempted to address the complaint with the teacher and the principal concerned.

(5) A complaint shall be investigated and dealt with in accordance with these Bylaws.

(6) Despite not receiving a complaint under this section, if a superintendent has reasonable grounds to question the professional competence of a teacher who is an active member of the Association, the superintendent may initiate an investigation in accordance with these Bylaws provided that the investigation is with respect to concerns about the professional competence of a teacher that occurred less than 2 years prior to the initiation of the investigation.

(7) If after a person's membership in the Association lapses or has been suspended or cancelled

(a) a complaint is made about the former member, and

(b) the complaint relates to the professional competence of the teacher before the lapse, suspension or cancellation, the complaint shall be dealt with under these Bylaws as if the lapse, suspension or cancellation had not occurred, if the complaint is made within 2 years after the date of the lapse, suspension or cancellation.

The superintendent will investigate to determine whether the teacher's professional practice is meeting the requirements of the Teaching Quality Standard. The superintendent must also ensure that the provincial Teacher Growth, Supervision and Evaluation Policy 2.1.5 has been followed. This assessment could be based on

- information or evidence from recent evaluations and/or
- information obtained from the principal.

Based on the investigation, the superintendent may decide that the competence of the teacher is not in question or that there is a need to engage in further supervision and evaluation of the teacher's practice. If the superintendent decides that an evaluation is to be conducted, the process for that evaluation must also be in accordance with the provincial Teacher Growth, Supervision and Evaluation Policy 2.1.5.

Investigation

11(1) Subject to section 10(4), upon receiving a complaint under section 10(1) or upon initiating an investigation under section 10(6), the superintendent shall investigate whether the investigated teacher is meeting the Teaching Quality Standard and shall advise the complainant, if any, and the investigated teacher that an investigation is being conducted.

(2) When conducting an investigation under subsection (1), the superintendent shall ensure that the Teacher Growth, Supervision and Evaluation Policy has been followed.

Following an investigation arising out of a complaint, the superintendent will advise the complainant and the investigated teacher of the outcome of the investigation. Should the superintendent determine that the teacher's professional competence will not be assessed by the Professional Practice Review Committee, the complainant may request a review of the superintendent's decision by the Complainant Appeal Committee.

Complainant and Investigated Teacher Advised

13(1) The superintendent shall advise the complainant, if any, and the investigated teacher in writing when the investigation is complete, and that

(a) the investigated teacher's professional competence will be assessed by the Professional Practice Review Committee, or

(b) the investigated teacher's professional competence will not be assessed by the Professional Practice Review Committee and shall provide reasons for the decision. The superintendent shall advise the complainant, if any, that the complainant has the right to request a review by the Complainant Appeal Committee of the superintendent's decision. A copy of the notification to the complainant shall be provided to the Executive Secretary.

Complainant's Request for Review

14(1) The complainant, within 30 days after receiving notice that the investigated teacher's professional competence will not be assessed by the Professional Practice Review Committee, may by notice in writing to the Executive Secretary request a review of the superintendent's decision by the Complainant Appeal Committee.

(2) A request under subsection (1) must include:

(a) reasons why the complainant believes that the superintendent should have made a report under section 12(1) thereby requiring that a hearing be held by the Professional Practice Review Committee, and

(b) a fee in the amount of \$250.

(3) On receiving notice under subsection (1), the Executive Secretary must notify the investigated teacher and the superintendent that the Executive Secretary has received a request for a review and refer the matter to the Complainant Appeal Committee.

(4) At least 15 days before the date set for a review, the Complainant Appeal Committee shall notify the complainant, the investigated teacher and the superintendent:

(a) of the date, time and location of the review, and

(b) of their right to make representations to the Complainant Appeal Committee.

(5) If new information is available to the Complainant Appeal Committee that was not available to the superintendent, the Committee may, in making its decision, consider the information if it is relevant.

(6) The Complainant Appeal Committee shall notify the complainant, the investigated teacher, the Executive Secretary, and the superintendent in writing of its decision with reasons.

(7) The Complainant Appeal Committee may:

(a) affirm the decision not to have the teacher's professional competence assessed by the Professional Practice Review Committee, or

(b) direct that the teacher's professional competence be assessed by the Professional Practice Review Committee.

When the superintendent, whether acting on a complaint or not, concludes that a teacher is not meeting the requirements of the Teaching Quality Standard, that the Teacher Growth, Supervision and Evaluation Policy 2.1.5 has been followed and that the teacher's suitability for certification is in question, he or she may refer the matter to the executive secretary of the Association to order a hearing by the Professional Practice Review Committee. On receiving such a referral, the executive secretary of the Association must order a hearing.

Superintendent's Report Considered

12(1) If on completing an investigation the superintendent concludes that

- (a) the Teaching Quality Standard is not being met by the investigated teacher,
- (b) the Teacher Growth, Supervision and Evaluation Policy has been followed with respect to the investigated teacher, and
- (c) the investigated teacher's suitability for certification is in question,

then the superintendent shall within 30 days make a report to that effect to the Executive Secretary.

(2) Within 30 days of receiving the report under section 12(1), the Executive Secretary shall direct that a hearing take place by the Professional Practice Review Committee to consider the professional competence of the investigated teacher and notify the Registrar.

As is the case during the investigation process conducted by the superintendent, the teacher, if he or she so requests, may be represented at the hearing by the Association in accordance with Association guidelines.

Representation Before the Professional Practice Review Committee

16(1) The investigated teacher, the Association and the hearing committee may each be represented by counsel or an agent at a hearing before the hearing committee.

(2) The Executive Secretary will appoint a professional officer of the Association or legal counsel to represent the Association at the hearing and to present the case against the investigated teacher.

The Practice Review Bylaws provide for the establishment of three committees, which have distinct roles in the process.

The Professional Practice Complainant Appeal Committee is composed of at least three persons—two to four Association members and one member of the public—who receive representations from the complainant on those occasions when the superintendent has determined that the matter should not be referred to the executive secretary for further action.

The Professional Practice Review Committee is composed of not fewer than seven Association members and three public members. For each hearing, a hearing committee of two classroom teachers, one principal or assistant principal, one central office-based administrator and one public member is selected. The hearing committee determines whether the teacher's professional competence meets or does not meet the Teaching Quality Standard and determines penalty if applicable.

The Professional Practice Appeal Committee consists of not fewer than three and not more than five Association members and one public member. The committee hears appeals of decisions by hearing committees.

In the hearing itself, all evidence is taken under oath and must, in general, conform to the rules of evidence as they would apply to other legal proceedings. Witnesses may be subpoenaed and compelled to attend. If the investigated teacher, after having been served an appropriate notice of hearing, fails to attend, the hearing committee may proceed in the absence of

the teacher and act, decide and report on the matter in the same way as if the investigated teacher were in attendance.

Proceedings in Absence of Investigated Teacher

23 A hearing committee, on proof of service in accordance with these Bylaws of the notice of hearing on the investigated teacher may:

- (a) proceed with the hearing in the absence of the investigated teacher, and
- (b) act, decide, and report on the matter being heard in the same way as if the investigated teacher were in attendance.

A teacher may voluntarily request the cancellation of his or her teaching certificate by the registrar. If the certificate is cancelled, the executive secretary shall then cancel the teacher's membership in the Association and any investigation or hearing that may be in progress.

Voluntary Request for Cancellation of Teaching Certificate by Investigated Teacher

24(1) When an investigated teacher requests the cancellation of the teacher's teaching certificate pursuant to section 27 of the *Certification of Teachers Regulation*, the Registrar shall provide a copy of the request to the Executive Secretary and shall advise the Executive Secretary whether the teaching certificate has been cancelled.

(2) If the investigated teacher's teaching certificate is cancelled, then the Executive Secretary shall cancel the investigated teacher's membership in the Association and any investigation by the superintendent, hearing by a hearing committee, or appeal by the Appeal Committee shall be terminated.

The practice review process goes beyond employment. It is a process by which, in the interest of students, the public and the profession, a teacher's membership in the Association may be cancelled or suspended and a recommendation may be made to the minister to suspend or cancel the teacher's certificate, ensuring that the individual can no longer practise in Alberta. If the hearing committee makes any other order and the teacher contravenes the order, the teacher's membership in the Association may be cancelled or suspended.

Implications of the Code of Professional Conduct

Professional judgment may quite properly cause a principal to inform supervisors of a teacher who is encountering serious problems or whose work is below an acceptable level of competence as an individual or as a member of the school's staff. As long as the statements are true and unbiased and the process conforms to clauses 13 and 14 of the code, this situation will not lead to conflict between a principal's duty to the school and employer on the one hand and obligations to the Code of Professional Conduct on the other.

Before finalizing a report, the evaluator should arrange for a discussion with the person concerned. This discussion should be solely between these two people. A copy of a report by any person should be given to the person reported on before it is sent to anyone else. The person about whom a report is written should have the right to comment on it and submit it to the author of the report. The author of the report should file both the original report and the commentary jointly, or subsequently file a copy of the commentary, with all parties who received a copy of the report.

Code of Professional Conduct

14 The teacher, when making a report on the professional performance of another teacher, does so in good faith and, prior to submitting the report, provides the teacher with a copy of the report.

In conclusion, it must be remembered that related policy and relevant clauses of the Code of Professional Conduct make certain demands on a principal with respect to relationships with staff members. They make equivalent demands of a teacher, and principals have every right to expect to receive the same professional courtesies that they are required to extend.

9

PROFESSIONAL RELATIONS

Introduction

In most areas of professional relations, the Code of Professional Conduct prescribes the minimum standard of acceptable conduct for members of the Association.

The majority of serious professional-relations problems that develop within schools are caused by misunderstandings that are allowed to grow until effective communication between the parties concerned breaks down. All teachers have a responsibility to do what they can to prevent this from happening. When a problem arises, the following steps are recommended:

- Assess how the problem arose.
- Analyze your position and list the facts that support it.
- Analyze the position of the other teacher(s) and try to assess why they have taken this position.
- Discover ways, if any, in which you can compromise to find a solution. Few professional-relations problems are entirely one-sided. Most include some common ground.
- Arrange to meet with the other party under conditions in which you have the time and the privacy to discuss the problem thoroughly and to arrive at solutions.
- Do not wait for the other person to act first. It is a sign of strength and maturity to take the initiative.

The above approach could come close to eliminating serious professional-relations problems between teachers.

If a teacher finds it necessary to criticize the professional competence or professional reputation of a colleague, the issues involved centre around the proper procedures as outlined by clause 13 of the Code of Professional Conduct. This clause does not discourage such criticism but, rather, outlines how to do it properly. Three conditions are laid down by this clause: (a) the criticism must be made to proper officials, (b) the criticism must be made in confidence, and (c) the colleague must be informed of the nature of the criticism before it is passed on to anybody.

Without limiting the generality of the application of clause 13, some comments are pertinent. Proper officials are those who have the authority to take action with respect to the complaint or criticisms. The list might include the appropriate supervisor or consultant, the superintendent and the school board through the superintendent.

Much of the tension that arises between members is occasioned by lack of knowledge of the implications of clause 13 in the Code of Professional Conduct discussed in the previous chapter. Proper officials are those who have the authority to take action with respect to the complaint or criticism. The list does not include members of the community or non-administrative colleagues within the school. A teacher should observe administrative channels. After informing the colleague of one's intentions, one approaches the principal or assistant principal. It is improper to bypass these officials or the superintendent by making complaints in the first instance to the school board.

In confidence means just what it says. Such criticisms are to be submitted only to those who may take action but who can be expected to protect the confidential nature of the communication. In confidence does not mean in the staff room when other teachers are present, at social gatherings or on the street.

The requirement that the colleague receive prior notification of the criticism does not spell out that this notification must be in writing. Because oral notification involves the possibility that the recipient may misunderstand or may forget part of what was said, written notification is desirable. When the report deals with professional competence, clause 14 of the code requires a prior written report. It is also desirable to allow the colleague to add comments. This aspect is addressed in Chapter 8 Teacher Professional Growth, Supervision and Evaluation.

Code of Professional Conduct

13 The teacher criticizes the professional competence or professional reputation of another teacher only in confidence to proper officials and after the other teacher has been informed of the criticism.

Any teacher who encounters a serious problem in the area of professional relations would be well advised to consult with a staff officer of the Association. This is recognized by clause 20 of the Code of Professional Conduct.

The Association has available

- one-on-one assistance,
- professional development seminars and workshops,
- the Staff Relations Service (mediation) for school-based assistance to a group of members and
- the Healthy Interactions program for development of positive relationships throughout the school district.

Code of Professional Conduct

20 The teacher submits to the Association disputes arising from professional relationships with other teachers which cannot be resolved by personal discussion.

Discipline Procedure

The Association's responsibility for discipline was reaffirmed and clearly defined by the revisions to the *Teaching Profession Act*, proclaimed September 1, 1996. Procedures are enshrined in statute to provide protection to the public and to the profession. Members have responsibilities for their own conduct and to assist in maintaining proper professional discipline among other members.

Professional conduct hearing committees determine whether or not unprofessional conduct has occurred based on the broad definition provided in the legislation. Unprofessional conduct includes that which contravenes the Code of Professional Conduct but is much broader.

Teaching Profession Act

Definition of Unprofessional Conduct

23(1) Any conduct of a member that, in the opinion of a hearing committee,

- (a) is detrimental to the best interests of
 - (i) students as defined in the *School Act*
 - (ii) the public, or
 - (iii) the teaching profession,
- (b) contravenes sections 16 to 65 or a by-law made under section 8(f) or (g), or
- (c) harms or tends to harm the standing of teachers generally,

whether or not that conduct is disgraceful or dishonourable, may be found by a hearing committee to constitute unprofessional conduct.

(2) If a member has been convicted of an indictable offence,

- (a) the conduct of the member on which the conviction is based is deemed to constitute unprofessional conduct, and
- (b) the member shall forthwith inform the association of the conviction.

Under the guidance of the Executive Secretary of the Association, complaints are received, investigations are conducted and resolutions are determined. The Executive Secretary may choose to refer the matter to a hearing committee or to an alternative dispute-resolution method or to determine that no hearing will be held. Investigations are conducted by Association staff. Three committees have roles in the process. Some committees include public members appointed by the minister after consultation with stakeholders including the Association. Committees include the following:

- The **Complainant Appeal Committee** is a committee of three persons—two ATA members and one member of the public—who receive representations from the complainant(s) on those occasions that the Executive Secretary has determined no hearing is warranted by a complaint. The committee can direct that a hearing be held.
- The **Professional Conduct Committee** is comprised of 17 Association members named by Provincial Executive Council and three public members named by the minister of education. For each hearing, a panel of three to five persons (one of whom is named as chair) is selected by the Executive Secretary from the Professional Conduct Committee. This panel is referred to as a hearing committee. The hearing committee must include a public member when the charge(s) against the accused results from conviction of an indictable offence. The committee determines guilt or innocence on the charge(s) and determines penalty.

- **The Professional Conduct Appeal Committee** consists of four Association members named by Provincial Executive Council and one public member named by the minister. The committee hears appeals of decisions by hearing committees on the matter of guilt and/or penalty.

Complaints may be lodged against an active member at any time during the member's period of service or the five years thereafter. Any person may lodge a complaint by writing to the Executive Secretary of the Association requesting an investigation and specifying briefly the behaviour of concern. On receipt of the request in writing, the Executive Secretary must appoint a member of Association staff to investigate the circumstances of the complaint to determine if sufficient evidence exists to support a *prima facie* case. The investigating officer files a report on the investigation with the Executive Secretary, who may direct that no hearing be held, that a hearing be held or that an alternative dispute-resolution process, as authorized in the bylaws of the Association, be used. If the order is that no hearing be held, the complainant may seek to have the Complainant Appeal Committee order a hearing.

A teacher against whom a complaint is laid has the right to be notified of this fact at the beginning of the investigation. The investigating officer opens the investigation by informing the member. Consultation services regarding process are available to the investigated member from the Coordinator of Member Services. No Association representation is provided to the investigated member.

A provision in the legislation permits the Executive Secretary to temporarily suspend the membership of a teacher pending the conclusion of an investigation or the decision of a hearing committee. Suspension under this section of the act is appealable to the Court of Queen's Bench. This is an extraordinary power that one must expect to be used judiciously.

If a hearing is ordered, the charge is laid by the Association and formulated under the direction of the Executive Secretary. The teacher who is the subject of the charge of unprofessional conduct is notified promptly, informed of the manner in which the proceedings will be conducted and given ample notice of the date of the hearing. It is often in the best interests of the accused to retain legal counsel. Costs of defence are the responsibility of the accused.

In the hearing itself, all evidence is taken under oath and must, in general, conform to the rules of evidence as they would apply to other legal proceedings. Witnesses may be subpoenaed and compelled to attend. **Members may be compelled to attend and testify against their own interests.**

Responsibilities of Members

- Act professionally.
- A member who believes another member to be guilty of unprofessional conduct must make a complaint to the Executive Secretary relating to that conduct.
- A member who is convicted of an indictable offence must inform the Association of that conviction.
- Cooperate with the Association in investigations and hearings regarding professional conduct.

A hearing committee of the Professional Conduct Committee hears all evidence from prosecution and defence and reaches a verdict of guilty or not guilty. If the verdict is guilty, both defence and prosecution have the opportunity to recommend an appropriate penalty before the hearing committee determines the penalty. A decision of guilt or a penalty may be appealed to the Professional Conduct Appeal Committee.

Help Available from the Association

To teachers

Considerable help is available to all members in professional relations and tenure matters. Association policy should be clearly enunciated at this point. There is no differentiation in any way between those members who are engaged entirely as classroom teachers and those employed as administrators or in other capacities. If there is tension between a principal and a teacher, either or both may bring the problem to the Association for help, and its efforts to resolve the problem will be made without regard to the position the member concerned occupies. In cases where both administrator and teacher have sought assistance, confidentiality and separation of the files and assistance is maintained until both parties agree to permit consultation as a step toward resolution.

Some areas in which the Association will help are as follows:

- Provide consultation about professional relations matters and advice as to their resolution.
- Give general and legal advice and assistance where necessary with respect to matters arising from the member's duties as a teacher. This includes, in most cases, the provision of the services of an Association solicitor, without charge, to defend a teacher in a lawsuit or criminal allegation arising out of the teacher's duties.
- Assist and advise teachers in cases of termination of contract or designation and provide representation, in most instances by an Association solicitor, in a Board of Reference appeal.
- Offer advice and assist teachers who have been asked to resign from their positions. Such advice should always be requested before a teacher submits a resignation. Some teachers believe that they must submit their resignations if they are asked to do so. This is completely erroneous.
- Provide advice and assistance and, if necessary in later stages, legal counsel for members facing charges under the Practice Review Bylaws of the Alberta Teachers' Association.
- Assist members requiring representation before the Teacher Salary Qualifications Board, the Certification Appeal Committee, the Alberta School Employee Benefit Plan Executive Committee or Board, or the Extended Disability Benefit Appeal Committee.

To school boards

The Association believes that school boards and teachers have many problems in common. It stands ready to cooperate with school boards and superintendents in many ways such as consulting about teachers who may be having problems, improving professional relations (superintendents as well as teachers may request assistance) and cooperating in attempts to resolve teacher-board disputes.

