Teacher Incompetence, Misconduct and Dismissal in British Columbia: An Archival Analysis (1962–1987)

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Abstract

The assessment of teacher competence and the administrative management of teacher performance are pressing issues of educational accountability. Much is claimed about the putative incompetence of teachers but little systematic data exist to document the extent of this alleged incompetence or to describe incidents of incompetence. This paper reports an archival study of such cases in British Columbia between 1962-1987 and compares these findings with an earlier study from the United States.

There is, perhaps, no more pressing concern of public educational policy than the quality of teaching and the professional competence of teachers in public schools. Yet the assessment of teacher competence and the administrative management of teacher performance, while fundamental matters of educational accountability, are inherently problematic and difficult to handle. The array of problematic issues includes the almost intractable definitional difficulty of ascribing precise meaning to “incompetence” or “misconduct” when legislatively enacted, and when such terms require interpretation and application by school boards, administrators, tribunals, and the judiciary; the

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persisting difficulty of administrative adherence (or non-adherence) to the principles of natural justice in the implementation of legislation and regulations, with the consequent impact upon teachers; and, furthermore, the complications that arise from the political pressures of the community, expressed through the voice of trustees or directly by parents upon the school, respecting the community's expectations for teacher performance.

Yet the issue of teacher competence or alleged incompetence and the putative negative effects of teacher performance on student learning arises frequently in ordinary conversations. In such conversations, claims—often scurrilous and unfounded—about teacher X or Y are made, imputing incompetence in the classroom or unprofessional behavior on or off the job; in the latter cases these allegations are sometimes well-founded. Despite such rampant and often unwarranted public criticism, however, few educational researchers—save Bridges and Gumport (1984)—have paid much attention to the actual incidence of incompetence or dismissal for cause in disciplinary proceedings against teachers. Further, the administrative challenge of managing the relative and varying in/competence of teachers has received scant attention except, again, in the work of Bridges and Groves (1984), and Bridges (1985a & b; 1986a & b).

This paper reports an archival study, conducted in 1994, of British Columbia Board of Reference and Review Commission decisions between 1962–1987. The study was conceptualized following Bridges' (1974) typology of "teacher failure." This typology considers teacher incompetence in terms of five categories of administratively defined failure: technical, bureaucratic, ethical, productive and personal. These categories provided a framework for classifying the B.C. decisions. In addition, the study focused particularly on cases of "bureaucratic" failure to determine whether such cases were managed uniformly and successfully. Broadly considered, then, this study partly replicated the 1984 Bridges and Gumport study.

Accordingly, this paper is organized into five major sections. The first section briefly describes the legislative basis for teacher dismissal to situate the investigation in the appropriate context. The second section identifies the guiding research questions and sketches the typology of teacher failure that provides the governing conceptualization for this study. The third section describes the data collection methods and their attendant limitations. The fourth section displays the findings and compares the present study findings to those of Bridges and Gumport when such comparisons are possible. The paper concludes with a discussion of the findings and some attention to the implications of the findings for practice and for further research.

The Legislative Basis for Teacher Dismissal

In Canada, with the exception of British Columbia, all provincial public school legislation has combined teacher misconduct and incompetence under one section concerned with *cause* for teacher dismissal. British Columbia public school legislation was unique in the provision of a separate statutory procedure for dismissal for the *cause of misconduct*, and for termination of a continuing teacher contract for the *cause of incompetence* (Marshall, 1986, p. 10) (emphasis added).

During the time frame of this study (1962–1987), the legislative basis and grounds for teacher dismissal in British Columbia were laid out in Part 7 of the *British Columbia Public Schools Act* (P.S.A.) (R.S.B.C. 1988, Chap. 375). This section dealt with the appointment and dismissal of teachers, certification of teachers, cancellation of certificates, and salary negotiations. Specifically, section 122 of the P.S.A. provided the statutory procedure for discipline or dismissal of teachers.

122. (1) A board may at any time suspend a teacher with or without pay from the performance of his duties
- (a) for misconduct, neglect of duty or refusal or neglect to obey a lawful order of the board; or
 - (b) where the teacher has been charged with a criminal offence and the board believes the circumstances created by it render it inadvisable for him to continue his duties.

Section 129 specified the procedure for appeal by a teacher of a board decision to the minister of education against a suspension exceeding 10 days, or a dismissal; this section laid out the steps in creating a Board of Reference. Section 130 laid out the process for review of termination of contract through the creation of Review Commissions. Hence, the cases used as the basis for the following archival analysis were either Board of Reference decisions constituted under s.129 or Review Commission decisions constituted under s.130.

The Research Questions and Typology of Teacher Failure

This study of teacher dismissal in B.C. broadly followed the Bridges and Gumport (1984) approach to investigating these kinds of cases, with necessary adaptation to account for differing legislation and data sources. The research questions likewise were based on the Bridges and Gumport (1984, p. 4-5) questions:

1. What is the *incidence* of teacher dismissal?
2. What are the *characteristics* of dismissed teachers?
3. What is the *nature of incompetence* of tenured teachers in British Columbia?
4. What *types of evidence* are used by school officials as proof of incompetence?
5. What is the *success of school districts* with Boards of Reference and Review Commissions?
6. What are the *grounds for reversal* when districts are unsuccessful?
7. What *proportion* and *types of cases* proceed to judicial review?

Similarly, the study used the Bridges' (1974) typology for classifying teacher failure:

1. Technical failure. The teacher's expertise falls short of what the task requires. Technical failure is indicated by deficiencies in one or more of the following: discipline, teaching methods, knowledge of subject matter, explanation of concepts, evaluation of pupil performance, organization, planning, lesson plans, and homework assignments.
2. Bureaucratic failure. The teacher fails to comply with school/district rules and regulations or directives of superiors. Bureaucratic failure is indicated by the teacher's failure to follow suggestions for improving his or her performance, to adhere to the content of the district's curriculum, or to allow supervisors in the classroom for purposes of overseeing the teacher's performance.

3. Ethical failure. The teacher fails to conform to standards of conduct presumably applicable to members of the teaching profession. Violations of these standards commonly take the form of physical or psychological abuse of students, negative attitudes towards students or colleagues, and indifferent performance of one's teaching duties.
4. Productive failure. The teacher fails to obtain certain desirable results in the classroom. Productive failure is indicated by the academic progress of students, the interest of students towards school, the respect of students for the teacher, and the climate of the classroom.
5. Personal failure. The teacher lacks certain cognitive, affective, or physical attributes deemed instrumental in teaching. Indicators of personal deficiencies include poor judgment, emotional instability, lack of self-control, and insufficient strength to withstand the rigors of teaching.

Data Collection Methods and Limitations

Data collection involved four initial research tasks: identifying, locating and obtaining access to the records of cases involving the dismissal of teachers, determining which dismissed cases to include in the analysis, describing the features of the case to be included, and analysing the data for trends, patterns or consistencies.

The Records

Identifying, locating and obtaining access to the records proved to be a major hurdle. Five locations were considered: initially the B.C. College of Teachers was considered but discounted because permission for access would have to be obtained from 80 different school districts. Court Registry records at the Supreme Court of British Columbia were also discounted for lack of sufficient information, as were the Small Teacher Records used by the Ministry of Education prior to 1940. Access to case files on teachers dismissed from B.C. school districts located at the legal office of the British Columbia Teacher's Federation was denied.

The only sufficiently detailed information for this study was on microfiche records kept with the individual teacher's certification files. These files were retained at the Professional Relations Branch, Field Services Division,

of the Ministry of Education in Victoria until 1987. On December 24, 1987, however, new legislation (Bills 19 & 20) shifted responsibility for the discipline and certification/decertification of teachers from the Ministry of Education to the newly formed British Columbia College of Teachers (hereafter the BCCT). The Professional Relations Branch was closed and its files broken up, only some being sent to the BCCT.

It became clear, however, that the information required for the study was available in the microfilmed Board of Reference (misconduct cases) and Review Commission decisions (incompetence cases), stored at both the Ministry and the BCCT. The researcher's request for access was at first politely but firmly turned down by the BCCT, who referred him to the Ministry of Education. After meetings between representatives of the Ministry of Education, the researcher's thesis supervisor, and the researcher, permission to access these files was granted on the condition that the researcher sign a non-disclosure agreement. As a result, this is the first time that confidential information specifically dealing with teacher dismissals in British Columbia has been accessed, providing a unique starting point or frame of reference for the systematic study of issues surrounding teacher dismissals in British Columbia.

Selection and Description of Cases

The Board of Reference and Review Commission decisions were inventoried to classify cases in terms of the Bridges typology of teacher failure. In this process, the researcher interpreted the terms more broadly than Bridges, and took into account, for example, studies being conducted by Manley-Casimir and Piddocke (1991) on instances of unconventional teacher behavior giving rise to conflict between community standards and personal values and a concurrent national study by Piddocke, Magsino and Manley-Casimir (1997), as well as his own personal experiences as a teacher in British Columbia.

This background prompted interpretation of the terms to include not only incompetence but other teacher behaviors defined in teacher tenure laws, such as work site misconduct (ethical failure), misconduct or gross misconduct unrelated to the work site (ethical and personal failure), insubordination (bureaucratic failure), failure or neglect to follow a lawful order of the school board (bureaucratic failure), incompetence (technical and productive failure), and cause for involuntary medical leave until certificate remediated by district medical officer (personal failure). Terms that do not appear to be covered under the Bridges typology such as neglect of duty and breach of contract, shown to be cause for teacher termination in British Columbia, were subsumed under both bureaucratic and personal failure.

Seventy-seven cases containing data of sufficient detail formed the set for analysis. These cases all (a) involved the dismissal of a teacher or administrator, (b) involved dismissal either for misconduct or a minimum of three less than satisfactory reports, or because of declining enrollment, (c) had a paper trail with sufficient detail to code at least six of the seven classes of variables used in the study—variable sets corresponding to the main research questions guiding the study: background features of the case, characteristics of the teacher, grounds for dismissal, nature of the evidence, outcome of the tribunal, possible grounds for reversal, and whether the case proceeded to judicial review.

Analysis

Archival data require the use of non-parametric, descriptive rather than inferential statistics; hence the data were tabulated and analysed using simple descriptive techniques: frequency distributions and cross-tabulations.

Limitations

Archival studies, by their nature, necessarily invoke limitations that need to be acknowledged; this study is no exception and has several noteworthy limitations. The first is that the set of cases selected for investigation is conditioned by the particular dismissal actions that come to a Board of Reference or Review Commission hearing. Not all such cases do so: for example, the set of cases excludes those teachers whose unsatisfactory performance causes them to leave teaching voluntarily, through informal exit counselling, or through a negotiated settlement; in addition, the set does not include those tenured teachers dismissed from their teaching positions but who chose not to challenge the dismissal by appeal to a Board of Reference or Review Commission. The second limitation arises from the conditions attached to access through the Ministry of Education and the College of Teachers non-disclosure agreements. In the Bridges and Gumport study, the reliability of coding was checked by using two different investigators, who rated the cases using the same teacher failure coding system. This was done twice by each investigator, four months apart. Since the cases studied by Bridges and Gumport were in the public domain, such reliability coding was possible. The present study could not do this because the primary researcher had access only to closed files requiring only a single researcher at a specified time when a desk and microfiche reader were

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available for use. The lack of a reliability check on the researcher's coding, therefore, introduces the possibility of error. Finally, the third main limitation is contextual, in that the study is constrained both by addressing only cases adjudicated in British Columbia and by the fact that both the governing legislation in B.C. changed and the B.C. College of Teachers was created. Since January 1, 1988, the appeal of a dismissal became subject to "the grievance provisions of the collective agreement [between a teachers union local and a school board] and Part 6 of the Industrial Relations Act" (s.122[2] R.S.B.C. Chap. 375).

Findings

Incidence of Dismissal for Incompetence or Professional Misconduct

The incidence of dismissal of tenured teachers in British Columbia increased from the mid-1970s and continued through the 1980s. Interestingly, Boards of Reference were convened more frequently towards the middle of the 1970s and 1980s. This may be explained by the public's increasing awareness during this time period of sexual and other forms of abuse in schools. Media coverage, both print and television, gave high profile attention at this time to the apparent epidemic of child molesting cases in B.C., many of which involved teachers or other adults in positions of authority and trust vis-à-vis youngsters and students.

Public awareness became even more pronounced as 1986 dragged on, with the publication of evidence from the trials of school teacher Robert Noyes (June, 1986), William James Cadden (Sept. 1986), Leonard Marchant (Oct. 1986), Allan Wesley Britton (Sept. 1986), and Robert David Galloway (Sept. 1986). The resulting public furore about sexual abuse in B.C. schools would no doubt have caused a number of false accusations as well as legitimate ones to be leveled against teachers at the time; this could account for the dramatic increase in teacher appeals against dismissal for misconduct.

This trend of increasing activity is also reflected in the number of recommendations for suspensions and cancellations of teacher certificates to the Lieutenant-Governor in Council through the Director of Teacher Services from the Certification Advisory Committee of the Ministry of Education (see Figure 1).

Figure 1

While the dramatic increase may have been a political response to increasing public concern, there were also other political factors at work behind the scenes. A confidential memo from the Field Services Division to the Teacher Services Branch, dated October 6, 1986, indicates that there was a “rather significant political problem brewing” which was “intensified by the tabling of the Sullivan Report and the B.C.S.T.A. Task Force on Child Abuse,” necessitating the “urgency to move on decertifying a large number of individuals (approximately 30).” The political problem referred to apparently involved the legislative changes in preparation for enactment by January 1, 1988, to remove the certification/decertification powers from the Ministry of Education and place them into the hands of the BCCT, which as yet did not exist.

Review Commissions were also more frequently requested by teachers during this time. Statistics suggest, however, that one or two school districts stood out as having to defend themselves more frequently for dismissal decisions based on three less than satisfactory reports during 1974 to 1987. Whilst the average school district had only one or two school dismissals to defend, one school district had to defend five teacher dismissals. This statistic might be classed as an anomaly were it not for the fact that this same school

district was required to defend another disciplinary decision in the B.C. Supreme Court (1979) involving suspension of two teachers for insubordination towards their principal and the school board (MacKay, 1984, p. 265).

Comparison to the Bridges Study. The Bridges Study found a rapid increase in the frequency of dismissal cases for incompetence from 1978 to 1984, 77% of which proceeded through the state court system. The B.C. study found a fluctuating pattern with a noticeable increase towards 1987, only 21% of which proceeded to judicial review. This reflects not only the differences in legislation between British Columbia and California, but also the heightened consciousness in British Columbia of sexual abuse at that time.

The Characteristics of Dismissed Teachers

The characteristics of dismissed teachers are strangely similar in both of the quasi-judicial forums examined. This study found that teachers who requested Review Commissions for their dismissal were of two types; those who had been dismissed for three less-than-satisfactory reports (incompetence) constituted 13 out of 15 cases (87%) of the sample set; and those who were dismissed for declining enrollment in the school to which they were assigned (2 out of 15 cases or 13% of the sample set). The gender ratio of the sample, 60% female, and 40% male, broadly reflected the gender balance in the teaching force at that time.

The next series of statistics proved very revealing. These dealt with the teacher's *age* at the time the problem occurred; the number of years teaching in the school where the problem occurred; and, the total number of years' teaching experience that the teacher had accumulated at the time of the problem. The age ranged from 43 - 56 years, with an average of 48 years. This could mean that older teachers, with more at stake in their careers, appeal their dismissals on the basis of incompetence more than do younger ones; or it could mean that older teachers have a greater chance of being given a less than satisfactory evaluation rating. Conversely, it could also mean that younger teachers who are handled with more leniency by administrators have received permanent appointment in the hope that they will improve.

The statistics also seemed to suggest that although teachers are older, their years of teaching in the school where their problem occurs is relatively few, the average being 5 years. The accumulated total teaching experience, however, ranged from 6 to 23 years. A plausible explanation may be that teachers with marginal teaching records may 'move on' from one district to another with the support of district personnel, thereby avoiding

charges of incompetence but simply removing their problematic teaching to another system.

Comparison to the Bridges Study. Both studies found an overrepresentation of male teachers in misconduct cases. The number of years employed at the school where the problem occurred was also similar in both studies. Unlike the Bridges study, however, the B.C. study found that female teachers outnumbered males in Review Commission cases for incompetence in a 3:2 ratio—again this probably reflects the ‘normal’ gender split in the teaching force. Of note, of the British Columbia teachers in the study, 34% were dismissed at the junior high school level, whilst the Bridges study found only 17% dismissed at the junior high level.

The Nature of the Teacher’s Incompetence

The *School Act* largely left the definition of incompetence to the discretion of school boards. Regulations provided some guidance in stating that three less than satisfactory reports were required to warrant dismissal based on incompetence. S. 122(1) allowed termination based on just and reasonable cause, which included misconduct, neglect of duty, refusal or neglect to obey an order of the school board, or criminal charges. The term ‘misconduct,’ although left less to the discretion of school boards, was still open to interpretation with respect to local community standards, neglect of duty and criminal charges. This difference in interpretation is demonstrated in the specific teacher dismissal cases discussed later on in this paper.

Review Commission statistics indicate that 73% of teachers were dismissed for technical failure, 33% for bureaucratic failure, 53% for productive failure, and 20% for personal failure. The most common reasons were a combination of technical, productive, and bureaucratic failure, representing 60% of the sample.

Board of Reference statistics showed 12% were dismissed for technical failure, 31% for bureaucratic failure, 76% for ethical failure, and 6% for productive failure. The most relevant overall statistics obtained from Review Commissions and Boards of Reference indicate 9% technical and bureaucratic failure, 10% technical and productive failure, and 9% for ethical and personal failure.

Comparison to the Bridges Study. A radical difference in the relative numbers of technical, bureaucratic, and productive failure types, with a greater than 100% difference in teachers displaying multiple failure types, was found between the two studies. Once again, this seems to reflect the legislative and

systemic differences between the British Columbia and California school systems.

The Evidentiary Bases Used by School Boards

A plausible conclusion from the Review Commission vs. Board of Reference statistics suggest that it was easier to dismiss a teacher for misconduct than it was for incompetence; certainly the stipulation in regulations requiring a minimum of three less than satisfactory reports made the process of establishing incompetence more deliberate and systematic. In other words, a preponderance of evidence for incompetence had to be established. Conversely, only one act of misconduct, e.g. sexual misconduct, criminal charge, insubordination, neglect of duty, forged reports, physical abuse, had to occur for the school board to substantiate dismissal on that ground.

Comparison to the Bridges Study. Whilst the Bridges study included and largely relied on peer or collegial evaluations, student ratings or surveys, the B.C. study relied on Review Committee decisions based on three less than satisfactory reports to determine incompetence. With respect to misconduct, the Bridges study relied on parental or student complaints, whereas the B.C. study relied on the often quite explicit B.C. statutory requirements even though they did not provide a precise definition for misconduct.

The Success of School Districts in Contested Dismissal Decisions

Using the selected sample set of all Review Commission decisions and Board of Reference decisions, 17% of the cases were overturned (teacher won), 8% were varied (penalty changed), 56% were dismissed (school board won), and 20% were abandoned by the requester during the tribunal (teacher resigned or confidential settlement/agreement was reached between the parties).

Comparison to the Bridges Study. The Bridges study found that nearly 71% of the cases were decided in favor of the school district; similarly, the B.C. study found that 75% were decided in favor of the school district. The differences between the two studies with respect to reversal of school board decisions (Bridges 27% and B.C. study 17%) represents the 8% of British Columbia cases in which the penalty was varied.

The Grounds for Reversal

Grounds for reversal seemed to center around errors of procedure and issues of fundamental fairness. Review Commission statistics indicated that the most

common reasons for upholding teachers' appeals included school board refusal of teachers' requests for leave or transfer; serious factual errors in reporting; lack of support (equipment and resources); lack of understanding; situational incompetence; insufficient or inadequate notice; and poor communication. Board of Reference statistics indicate that teachers' appeals were upheld when the penalty dealt by the school board was too harsh in terms of contemporary standards and the rules of natural justice.

Comparison to the Bridges Study. Both studies found that the grounds for reversal center around errors of procedure and issues of fundamental fairness, indicating the failure of the school board to follow the principles of natural justice, the requirements of the *School Act*, Regulations; district policies, or contractual provisions.

From the case files analyzed it appears that judicial reviews tended to be limited to: (a) adequacy of documented evidence; (b) non-compliance with the *School Act* and its regulations; and (c) whether the action taken by the board was a result of reasoned analysis, arbitrariness, or abuse of discretionary power. Grounds for appeal included lack of jurisdiction; errors of procedure; denial of fundamental fairness (including the presence of bias and absence of fair hearing), or an error of law. Statistics showed that 27% of the Board of Reference decisions were appealed to the courts as opposed to 21% of the Review Commission decisions.

Overall Comparison to the Bridges Study

The two studies differed substantially with respect to judicial review. Making a proper comparison is impossible, however, because the Bridges study included cases at all court levels in the United States, whereas the local study was restricted to quasi-judicial tribunal decisions within British Columbia.

Prior to proceeding with discussion of some specific cases, a final important finding should be noted with respect to the eventual certification status of the teachers. Results indicated that of those who appealed to Review Commissions from dismissal on grounds of incompetence, all retained their teaching certificates, whether they won or lost the appeal. Board of Reference statistics, however (those appealing dismissal on grounds of misconduct), showed that in 20% of cases the teachers' certificates were either suspended for some period of time or permanently cancelled.

Illustrative Cases

The following case summaries illustrate some of the more salient issues and important features of the disputes arising in this study.

Case #1 - Situational Incompetence and Rapid Burnout

The interest of this case is that it illustrates an example of situational incompetence and the emotional deterioration (burnout) that can occur when a teacher is placed in a situation for which he is not suited. This was the only case coded by the researcher into four categories of teacher failure: technical, ethical, productive, and personal failure. The teacher in question had a M.Sc. in zoology and 12 years experience teaching in Singapore and the United States. During this time reports on his teaching abilities were excellent. In 1970 he secured a position teaching science at the grade 8 and 9 level in British Columbia. By 1978 the superintendent's reports indicated a dramatic change. His classrooms were in utter chaos: He demonstrated a total lack of control or motivation, and was confrontational with his students. He was finally dismissed for misconduct when he had two boys pile desks in front of the doors (to prevent a girl from leaving her detention) whilst the teacher chased her around the classroom to prevent her leaving. She escaped through the window. This particular case seemed to fit all of the teacher failure categories except bureaucratic failure. A board of reference appeal was requested on June 8, 1978, and although the board was convened on August 24, 1978, the teacher abandoned the appeal on August 29, 1978.

Case #2 - Misplaced Aspiration and Classroom Stress

This case is an example of the risks an older teacher takes when commencing a new teaching position. Miss J. was a business education teacher with considerable business experience who qualified as a school teacher at age 35. A principal's report on April 30, 1975 indicated satisfaction with her teaching abilities, but noted that she should keep a more formal distance from her students. From May 3, 1978 through to April 11, 1979, a series of complaints of physical and verbal abuse were received from students and parents. She was suspended without pay on April 12, 1979 for misconduct on the basis of a previous warning. The Board of Reference, in a unanimous decision, upheld the suspension for misconduct.

In August, 1980, she was placed on Long Term Disability leave for chronic back problems and mental instability. On November 13, 1984 the School

Board suspended her again based on a School District Officer's medical report, which predicted that a return to the classroom would pose a risk to her mental health and to her students. On August 15, 1985, a physician misinterpreted the requirements of the Public School Act and sent a medical analysis on Miss J. to the Superintendent rather than to the teacher in contravention of the Act (s.107(3)), and the school board was obliged to reinstate her. While the superintendent made every effort to help her back into the profession, her difficulties returned by October, 1985, when she requested a medical leave of absence and a program of professional upgrading. The last document in the case file is correspondence from the Superintendent to Miss J. describing her desire to return to teaching as a "self-destructive dream" (Spetch, 1994, p. 184) and recommending career alternatives.

Cases 1 and 2 suggest that for those teachers who are susceptible to acute physical, emotional, or mental stress, teaching in a public school today can accelerate their deterioration. Teaching today requires the patience of a saint, the reserve of a Supreme Court magistrate, and the caring of Mother Teresa. Moreover, the statistics suggest that older teachers are particularly susceptible to this type of stress, especially at the junior high school level.

Case #3 – Risks of Empathy for Distressed Students

This case illustrates the risk of charges of misconduct associated with overly demonstrative empathy for distressed students. The teacher in this case was consoling a distressed female student in the school library and was alleged to have kissed her on the mouth and to have placed his hands down her pants. Upon being informed of the allegations by the District Superintendent, the school board held a hearing and promptly dismissed the teacher on June 24, 1983. A Board of Reference was requested on June 27, 1983 and was convened on October 3-5, 1983. During cross-examination it was revealed that although "Mr. Q" was overly demonstrative in his style of teaching and that placing his arm around a crying girl in the library was unwise, there were significant contradictions in the evidence. The girl admitted to exaggerating a kiss on the cheek to a kiss on the mouth, and it was demonstrated that to have placed his hand down the girl's pants the angle of "Mr. Q's" arm would have required the dexterity of a contortionist. The girl also did not report the alleged incident to her parents or to the school authorities until late in the school year. The principal's report about "Mr. Q's" level of care and understanding of students was offered in his defense. The Board of Reference overturned the teacher's dismissal and substituted a period of suspension with pay from June 3, 1983

until the end of 1983. The teacher was subsequently cleared of criminal charges due to the unreliability of the witness.

Regardless of the fact that the teacher's dismissal was overturned in due course, this case demonstrates that conducting a careful investigation of the incident is necessary prior to a charge of misconduct.

Case #4 - Insubordination Resulting from Criticism of School Board Directive

This case involves a man selected by the Colombo Plan Teacher Exchange to organize an underprivileged school in Sarawak, Borneo from 1957 to 1960. His first year as a principal was in 1956. The Superintendent's reports on him in 1962 to 1967 are glowing, with statements such as: "strong teacher, able organizer, man of action, his loyalty and co-operation have made it a pleasure to work with him, supervision is good, his work with the Parent Teachers association and basketball and hockey teams is excellent, ...strong principal who works with vigor." (Spetch, 1994, p. 172).

Nevertheless, the provincial accreditation committee recommended the removal of "accredited status" for this principal's school. As a result, on August 1, 1972, the School Board imposed a set of rules to be implemented by the principal to improve the operation of the school. The school board further stated that these rules could only be modified on the recommendation of any two of the Principal, the Director of Instruction, or the Superintendent. The principal then wrote a 17 page memorandum of rebuttal to the school board which included statements such as "most of the rules are: completely unworkable amongst students...intolerable to thinking parents...insulting to the integrity, competence and sophistication of the teaching staff...repressive and unjustified set of Rules..." (Spetch, 1994, p. 173). This memorandum became the basis of a dismissal for insubordination. The school board found the memorandum to be "divisive, inflammatory, and grossly insubordinate" (Spetch, 1994, p. 173). The principal refused to sign a retraction, and this began a series of battles between the school board and the principal, including a demonstration by the parents in support of the principal, and a television appearance by the principal on the C.B.C. program "Hourglass." The B.C.T.F. then blacklisted the former principal's position. In a public statement the school board chairman stated that the former principal had presented a "continuing challenge over a long period of time to the supremacy of the school board." (Spetch, 1994, p. 174). The Minister granted a Board of Reference hearing which upheld the School Board's dismissal. A judicial appeal was launched by the principal in B.C. Supreme Court but was settled out of court.

Case #5 – Misconduct and the Reputational Damage to School Board as Employer

John and Ilze Shewan, husband and wife, were both teachers employed by Abbotsford School District (#34). They started a controversy by winning a subsidiary prize in an amateur photo contest in *Gallery* magazine, for a semi-nude photograph of Ilze Shewan. John Shewan claimed he had submitted the photograph to the magazine to raise his wife's self-image. A local radio station reporter informed the superintendent about the photograph. The superintendent met with the couple, who stated that they felt submission of the photograph fell within the bounds of community standards. The school board did not agree and suspended Mrs. Shewan immediately upon being informed by the superintendent. Mr. Shewan was suspended the next day following Mrs. Shewan's hearing with the Board, and both suspensions were for six weeks with loss of pay.

An appeal to a Board of Reference occurred and both teachers were ordered reinstated with full back pay. The majority of the Board of Reference felt that although the Shewans showed an appalling lack of judgment, their actions fell within contemporary Canadian community standards and did not amount to misconduct within the meaning of s. 122 of the *Public Schools Act*.

The Supreme Court of British Columbia overturned the Board of Reference decision. Justice Bouck, writing for the Supreme Court, found that there was misconduct because the actions of the Shewans offended the moral standards of the community where the Shewans taught and lived, rather than contemporary Canadian standards. He concluded that the majority of the Board of Reference erred in law when they adopted the standards of tolerance test in *Towne Cinema Theatres Ltd. v. R.*, (1985) 1 S.C.R. 494 as a basis for allowing the appeal. Nevertheless, he reduced the penalty from six to four weeks' suspension. The Shewans' appeal to the B.C. Court of Appeal was dismissed on December 21, 1987.

This case is a perfect example of behavior that brings the image and reputation of the employer into disrepute, according to local community values; in labor law this is a classic definition of misconduct (Manley-Casimir & Piddocke, 1991). Historically, American and Canadian teachers began as apprentice clergymen. As Lortie (1975) points out, teachers "had to accept stern inspection of their moral behavior....the status of teachers in colonial America reflected the connection between their activities and the core values of that society" (Lortie, 1975, p. 11). For a teacher, inappropriate or controversial behavior is prohibited both on the job and off the job. Today's teachers are still

viewed as role models who must pass on the core values of their societies through their behavior, even in their personal lives (Piddocke, et al., 1997). As the B.C. Court of Appeal affirmed:

Teachers must maintain the confidence and respect of their superiors, their peers, and in particular, the students, and those who send their children to public schools. Teachers must not only be competent, but they are expected to lead by example. Any loss of confidence or respect will impair the system, and have an adverse effect upon those who participate in or rely upon it. That is why a teacher must maintain a standard of behaviour which most other citizens need not observe because they do not have such public responsibilities to fulfill. *Abbotsford School District 34 v. Shewan* (1987), 21 B.C.L.R. (2d) 93(C.A.) at 98.

Case #6 – The Need to Investigate Teacher Resignation Carefully

This case involved more the actions of a superintendent than those of a teacher. Mr. L., a basketball coach and teacher of physical education voluntarily surrendered himself to police on December 18, 1986 to answer to two counts of indecent assault and one count of sexual intercourse with a 13 year old. These charges dated between June 1978 and September 1978. The teacher was trusted as a great coach in School District #U1. He taught grade 3 and coached girls' basketball from grade 6 to grade 12. In two cases he decided to have sexual intercourse with the teenagers to "bring up their maturity level" (Spetch, 1994, p. 187). This behavior continued during the period from 1978 to 1986, but nothing was done because he was so popular as a coach. Complaints from parents finally led to his resignation under unusual circumstances from School District U#1 and following that, from the coaching position at a local junior college for the same reasons.

On May 31, 1986, Mr. L. was interviewed for a secondary teaching position in another school district (S.D. #Z4), and was offered the position on June 11, 1986. This is where the case takes an interesting turn. The superintendent of the new district began investigating the reasons for Mr. L's dismissal from the previous district. At the Ministry he was told that the teacher resigned rather than go through an investigation for sexual improprieties. At the junior college he was told that there were no problems. It was not until he contacted a former principal of Mr. L. and was led to Miss B. (one of the

teacher's former basketball students) that criminal charges were laid against the teacher in his previous district.

Mr. L. was dismissed from School District #Z4 on November 27, 1986 and he appealed to the Minister on December 12, 1986. He was subsequently charged with one count of sexual intercourse with a minor and three counts of indecent assault in his former town. By March 2, 1987 both parties agreed to adjourn the Board of Reference pending disposition of the criminal charges. On July 14, 1987 he was given an eight-month jail sentence and three years' probation and ordered to attend psychiatric counseling. His teaching certificate was canceled on August 14, 1987.

With respect to this case, the behavior of the teacher is not in question; it was patently illegal. The behavior that needs to be pointed out is that of the superintendent of the first school district and the administrator of the junior college. Without resorting to the old boys' network, the superintendent of the second district would never have been able to discover the cause behind the coerced resignation of the teacher from the first district and from the junior college. Without his persistent investigation, the teacher would simply have moved on from another school district to start all over again somewhere else. A phrase borrowed from Fossey (1990) describes what happened in the first district. "A covenant of non-disclosure is often included in the settlement/agreement between a school district and a teacher accused of sexual molestation or other child abuse" (Spetch, 1994, p. 193). Fossey's use of the term "covenant" is, however, a misnomer. A settlement/agreement such as this is a far cry from the traditional use of the word *covenant*. This type of agreement is a misuse of the powers of the school board and does not take into account possible future ramifications of the agreement, such as injury to current and future victims.

Case #7 - School Boards' Powers to Dismiss Teachers under S. 122 (1)(b) were Narrower than under s.122(1)(a)

Under s. 122 which dealt with suspensions and dismissals of teachers, subsection (2)(c) stated:

- c) where the teacher is suspended under subsection (1)(b) and is acquitted of the charge or given an absolute or conditional discharge, [the School Board shall] reinstate him forthwith after the later of:
 - (i) the expiry of the appeal period, or

(ii) the expiry of the period for appealing from the last court to which an appeal from the decision is taken and in which he is acquitted or given an absolute or conditional discharge.

This case involved a junior high school counselor and guidance teacher. On November 24, 1976 he was charged with possession of marijuana contrary to the provisions of the *Narcotic Control Act*. After a hearing with the school board on December 6, 1976, he was suspended with pay pending the outcome of the charges. On March 29, 1977 he pleaded guilty to the charge and was given a conditional discharge. On June 10, 1977 the probation order was varied, deleting the condition. Following the period for appealing the court's order the school board proceeded to terminate Mr. B's employment based on his guilty plea, on May 2, 1977.

Mr. B. appealed to the Minister on June 3, 1977 and the Board of Reference convened on July 20, 1977. The conclusion of the Board of Reference was that according to s. 662.1(3) of the *Criminal Code of Canada* and s. 130 of the *B.C. Public Schools Act*, the school board could not order the dismissal of Mr. B. after he had received a conditional discharge. Section 662.1(3) of the Criminal Code states:

(3) Where a court directs under subsection (1) that an accused be discharged [absolutely or conditionally], the accused shall be deemed not to have been convicted of the offense to which he pleaded guilty.

A subsequent appeal to the Supreme Court of British Columbia by the school board was dismissed. Following this decision, various school boards facing similar situations asked the Ministry of Education for guidance. In response, the Ministry decided to amend the *School Act* to bring it more in line with the *Criminal Code* amendments introduced in 1972 by the Federal Liberals under Mr. Trudeau. These amendments took place almost 5 years later, in 1977.

The current legislation now only states that a teacher may be dismissed, suspended, or disciplined for criminal offence charges, or for just and reasonable cause, and rather than trying to define a number of causes, now allows school boards to define for themselves what types of cause are just and reasonable. The burden of proof then lies with the union local to demonstrate at an arbitration hearing, that the cause in question is neither just nor reasonable.

Conclusion

The analysis of the array of archival cases reported here permits two kinds of conclusions. One has to do with the correspondence between the Bridges study and the present one and the other with the character of the issues evident in the illustrative cases. The Bridges study drew two major conclusions. First, that the dismissal of tenured teachers for incompetence in the classroom was rare; and second, that this rarity was due to the forced resignation through informal discussions with school administrators. One major difference between the two studies is the information base. While the Bridges study drew its cases from court challenges throughout the United States at all judicial levels; the B.C. study drew its information from quasi-judicial (arbitration level) tribunals within the province of British Columbia. This difference makes specific comparisons regarding the conclusions drawn by the two studies somewhat less meaningful. Hence, the following calculated results are presented not as a comparison between the United States and British Columbia, but merely as a derived statistic that indicates general agreement between the two studies with respect to the first major conclusion of the Bridges Study.

The B.C. study found an average of 1.67 Review Commission cases per year between 1973 and 1987, whereas the Bridges study found an average of 1.95 cases per year between 1939 to 1982 over the entire United States. Accordingly, the two studies seem to concur in their conclusion that dismissal for incompetence is rare. After discussions with British Columbia educators, the researchers also concur with Bridges' second major conclusion: that the rarity of dismissal of teachers for incompetence is due to forced resignation through informal discussions with school administrators, the extent and frequency of which is difficult to establish.

The characteristics of the issues reflected in the illustrative cases document the stability over time of teacher behaviour precipitating censure and prosecution. The cases cited here describe and document the problems of situational incompetence and emotional stress, of job-related mental stress and emotional breakdown, of the dangers inherent in the physical consolation of distressed students, of insubordination, of inappropriate and illegal sexual intercourse and of the community's interests in appropriate role modelling by teachers.

While in this study these cases arose in part from Board of Reference cases and in part from Review Commissions, the line between demonstrated 'incompetence' on the one hand and 'misconduct' on the other is hard to draw clearly. Several cases suggest elements of both incompetence and misconduct

at work, accenting the inherently problematic nature of the normative construction of teacher performance and behaviour.

Furthermore, while these illustrative cases are just that—‘illustrative’ cases—they do not necessarily represent the frequency of these kinds of behaviours in more recent decades. Speculatively, but arguably not without substance, the incidence of prosecution of teachers, *inter alia*, for sexual assault has increased dramatically over the decades given the greater public awareness of and evident rejection of child sexual abuse, especially when perpetrated by those in positions of trust. Frequency of prosecution and several high profile cases across the country have lent force to the call for increasing vigilance in these matters.

Yet the putative problem of alleged teacher incompetence persists. While the inherent limitations of archival data, acknowledged earlier in this paper, are evident, the problem the paper addresses is not as evident as many claim. For example, the recent response in Ontario to the putative problem of teacher incompetence—the scope, extent, and existence of which has yet to be demonstrated—is to institute a massive province-wide initiative in teacher testing. Accountability in education is clearly desirable, but without evidence that teacher incompetence is a serious problem, such provincial initiatives seem wholly unwarranted.

Further research is needed to establish the real extent, character and incidence of teacher incompetence. Such research could include:

- further inter-provincial archival research to establish baseline data on the incidence and character of teacher incompetence;
- examination of the central practice and implementation of disciplinary processes respecting teacher competence across Canada;
- examination of the impact of the interposition of Colleges of Teachers in British Columbia and Ontario in this process in contrast with other administrative regimes in the other provinces.

Ultimately the public trust requires accountability on the part of classroom teachers, not only for appropriate behaviour but also for effective instruction. Clear incompetence can never be tolerated; at the same time, provincial policy initiatives should rest on clear evidence that the problem the proposed policy is planned to address actually exists in scale sufficient to warrant the response. Research could and should provide this evidence.

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