

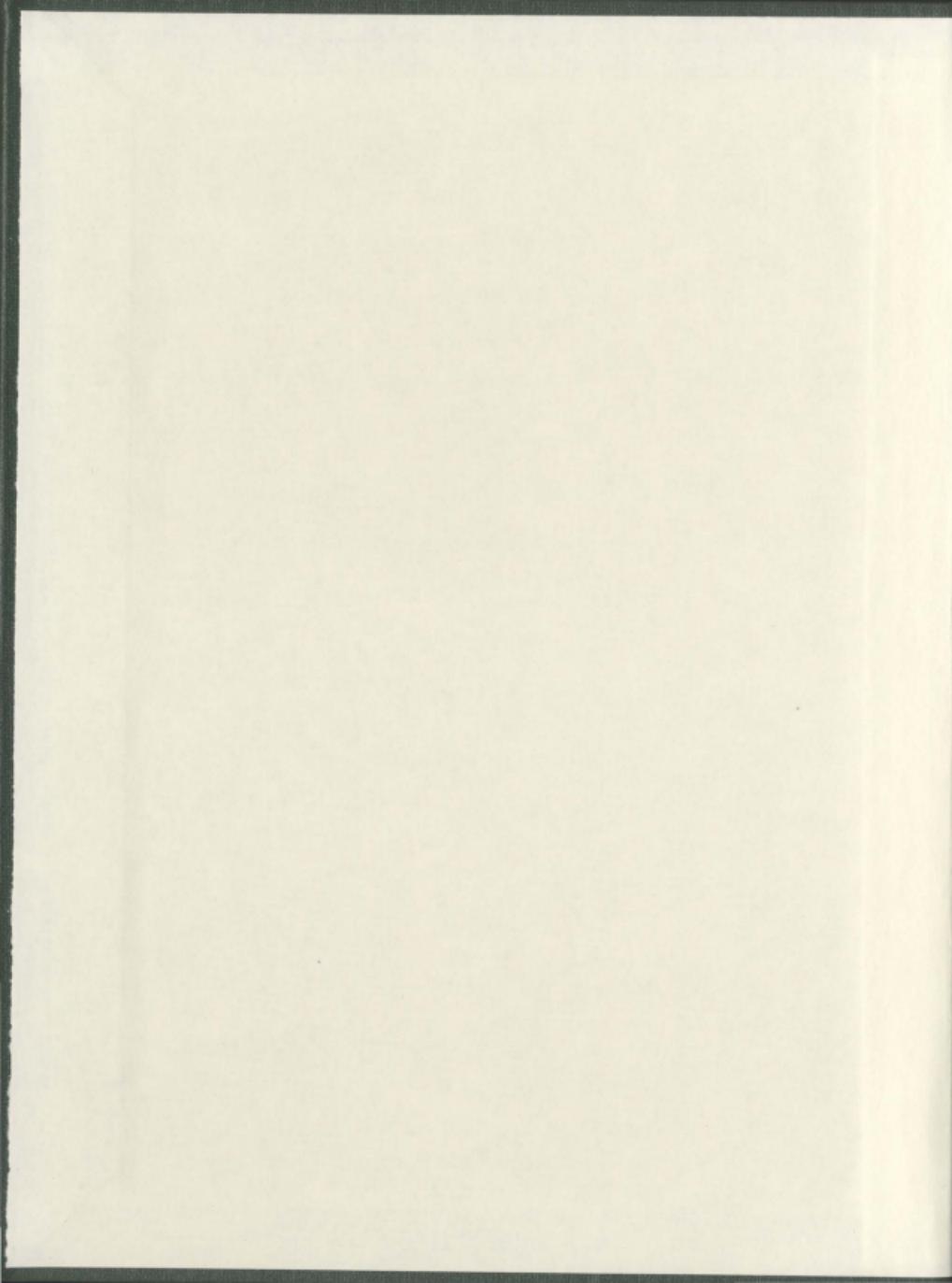
A STUDY OF THE DUE PROCESS RIGHTS OF  
STUDENTS IN MATTERS OF SCHOOL DISCIPLINE

CENTRE FOR NEWFOUNDLAND STUDIES

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A Study of the Due Process Rights of Students in Matters of School Discipline

By

Catherine Gallant

A thesis submitted to the School of Graduate Studies  
in partial fulfilment of the requirements for  
the degree of Master of Education

Department of Education

Memorial University of Newfoundland

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- Dedication -

I am sure that all of my predecessors can attest to the fact that the road to the thesis is not an easy one. For me, this was a journey fraught with many stumbling blocks and detours. For all that I gained throughout the course of this work, there were many difficult losses to contend with along the way. On completion of this thesis, I have experienced many mixed emotions; joy at finally having conquered "the beast", and yet a profound sense of sorrow that not all of those who began this journey with me, survived to see the end result. It is with both pride and sadness that I dedicate this thesis to my mother, Alice Theresa Hamlyn, who passed away on September 19, 1996.

Despite her brief years of formal education, this woman epitomized for me the true meaning of the term "lifelong learning". She was an avid reader who devoured everything she could get her hands on, and was often to be found reading into the wee hours of the morning. Everyday, she anxiously awaited the arrival of the paper carrier and promptly read The Evening Telegram from cover to cover before tuning into "Here and Now". There were few topics that she could not or would not discuss. She preached adamantly to her children the "value" of an education, and was oft to be quoted as saying that "an education is no burden to carry". Through the years, she became for me a model of strength, determination and courage. She was always there with a word of encouragement, and a listening ear.

As her life drew to a close, the pre-planning that she had done demonstrated that she was, as always, a very progressive thinker. Mom died as she had lived; with her children and her rosary close at hand, and with a quiet dignity that even death could not diminish. This is for her. May she rest in peace.

Kate

June 1, 1997.

- Abstract -

Passage of the Charter of Rights and Freedoms (1982) and the Young Offenders Act (1984) have changed the legal status of children in Canada. These doctrines confer rights on children that heretofore had only been afforded to adults. One of the individual rights enshrined in the Charter is the right to "natural justice", more commonly referred to as due process.

The purpose of this study is to investigate the due process rights of students in matters of school discipline. The study was conducted through the participation of five schools in a rural school district in the Province of Newfoundland and Labrador prior to the consolidation of school boards in 1997. Research was accomplished by utilizing qualitative research methodology. The study incorporated a two pronged approach, the first approach being to determine what the due process rights of students are, and secondly to determine to what extent these rights were or were not being addressed in the discipline policies and practices of this school district. Document analysis and semi-structured interviews were used to gather data from ten school administrators, the district superintendent and a number of legal experts.

The majority of participants felt that there has been a dramatic change in parent and student perception of school authority resulting in increased accountability for educators. School administrators felt that they lacked sufficient training in and knowledge of legal educational issues, particularly due process rights. Most administrators were

reluctant to include parents and students in either the development or review of school discipline policy. As well, there was almost total exclusion of any appeals procedure in the schools of this district. Respondents expressed mixed views on allowing students the right to appeal administrative decisions. The majority of participating principals believed that in matters of discipline, their loyalties had to be to the teacher and not to the student. This practice, combined with the absence of a process of appeal, makes due process for students in the schools of this school district highly improbable.

The findings of this study can be better analyzed in terms of amendments to the Schools Act (1996). This legislation recognizes the due process rights of parents and students, and allows for these stakeholders to appeal all administrative decisions. Schools and school districts in the province of Newfoundland and Labrador will now have to develop policies that not only comply with the Charter of Rights and Freedoms, and the Young Offenders Act, but these provincial statutes as well. Obstacles to due process, like those expressed in this study, will have to be removed.

-Acknowledgments-

At this time, I wish to extend sincere appreciation to my thesis supervisor, Dr. Bruce Sheppard, for continuing to have faith in me, when I had lost all faith in myself. Without your unrelenting support and guidance, this work would not have become a reality. I am also indebted to Dr. Rosanna Tite and Dr. Jean Brown for sharing their expertise in qualitative methodology. Special thanks to Jean for serving on my committee. As well, I wish to acknowledge the influence of the late Dr. Austin Harte on my work; for it was he who first sparked my interest in due process rights. Indeed, while I had my sights set on doing a project, his vision was that this would become a thesis. As always, he was right.

Special thanks to all those who participated in this study. I sincerely appreciate your contribution to this work. I thank you for allowing me to share your experiences with the readers of this thesis.

To all of my brothers and sisters, your encouragement and support will never be forgotten. A special thank you to Ann and Mike for the many meals, the advice, unlimited use of the office and the computer, but most of all for believing in me. To Mary, sincere thanks for typing my first papers, and for sharing your computer knowledge with me. To Brenda and Derrick, for always being there. To Jim, who moved house for me more times than either of us could count! You each own a piece of this degree, for without you, none of this could have been possible. You have made the dream a reality.

To my daughters Kelly and Krista, thank you for your patience and understanding

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## CHAPTER 1

### INTRODUCTION

The purpose of this study was to examine the due process rights of students in matters of school discipline. This study was conducted in a small rural school district in the province of Newfoundland and Labrador prior to the consolidation of school districts in 1997.

#### Overview

In Canada, the 1980's signalled a dramatic shift in the legal status of children. No longer were children to be seen as mere chattels of their parents, but they were to be afforded personal rights on a par with those previously held only by adults. The first major event to herald the new found rights of children was the enactment of the Canada Act in 1982. This Act included the Constitution Act which contained the Canadian Charter of Rights and Freedoms (Hogg, 1982). Zucker (1995) maintains that the Charter has "coincided in our era with an emphasis on the rights of the individual" (p. 43).

According to Black - Branch (1994 a) the guarantee of basic rights and freedoms under the Charter of Rights and Freedoms (hereafter referred to as Charter) means that courts now have the power to examine policies and practices which violate human rights. He states that there are two important points that all educators should keep in mind. First, legal rights are recognized under constitutional law which is superior to all federal and

provincial legislation and second, the role of the Canadian judiciary has changed.

Traditionally, the courts decided only on the interpretation and application of the law; however, with the enactment of the Charter, the courts now have the power to judge whether or not laws are constitutional. Because schools operate under government agencies, school policies and procedures may now be open to close scrutiny.

At first glance, the language of the Charter would appear to make it clear that the rights enshrined therein apply to all persons. Use of terms such as "everyone" and "anyone" suggest that the Charter applies to all Canadians. The addition of Section 15, in 1985, gave further weight to such an interpretation. Section 15 reads:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

Section 7 of the Charter has been viewed as the "Canadian version" of the United States "due process" clause (Cruickshank, 1982; MacKay, 1984). It states:

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

All Canadians, it would appear are entitled to due process through the principles of "fundamental" justice. Section 7 of the Charter makes it imperative that educators ensure the due process rights of students. Anderson (1986) has stated that it is likely that Canadian courts will be called upon to invoke the procedural rights of Section 7 in relation to school discipline matters.

The other major event that changed the legal status of children in Canada was the replacement of the Juvenile Delinquent Act with the Young Offenders Act on April 1, 1984. Not only did the Young Offenders Act reaffirm the rights of children under the Charter, but it also specified the right of adolescents to have a voice in decisions that affect them. Section 3(e) of the Act states:

Young persons have rights and freedoms in their own right, including those stated in the Canadian Charter of Rights, or in the Canadian Bill of Rights, and in particular a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them, and young persons should have special guarantees of their rights and freedoms.

Notwithstanding the language of Sections 7 and 15, it is important to point out that all the rights and freedoms set down by the Charter are subject to limitations. Section 1 of the Charter specifies:

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

This section of the Charter makes it clear that no rights are absolute and that all rights and freedoms are subject to "reasonable" interpretation (Cruickshank, 1986; Thistle, 1989). Cox (1984) states that "we must realize that there is no such thing as an absolute freedom or an unconditional right" (p. 11). Therefore, while it is evident that age discrimination is prohibited by the Charter, it is also reasonable that, "a court will not strike down a law which prohibits a ten-year old from having a driving license" (Thistle, 1989, p. 9). Thus within the school setting, it is necessary to find a balance between the rights of students, and the duties and responsibilities of principals and teachers to maintain order and

discipline. It is also evident that where rights are restricted, it is incumbent on the law or rule maker to justify limitations, "prescribed by law," that are justifiable, "in a free and democratic society". For school administrators, this means that school rules must be set down in writing and publicized somehow, in order to meet the "prescribed by law" requirements of Section 1 of the Charter (Mackay & Sutherland, 1992). In the absence of written policy, the courts are unlikely to "entertain arguments under Section 1" that a rule or policy is a reasonable limitation (Mackay & Sutherland, 1992, p. 40). These authors assert that the past tendency of school officials to avoid having written policies will have to change.

In Canada, prior to passage of the Charter and the Young Offenders Act, educational administrators had "virtually a free rein in making discretionary decisions regarding students" (Thistle, 1989, p.10). However, in the wake of these pieces of legislation many schools and school boards across Canada have had their policies and procedures legally challenged as violations of either the Charter, or the Young Offenders Act, or both. Although administrators deal with discipline problems everyday, as Bergen (1982) states, "Practitioners - in this case, school principals, may be unaware of existing theory, or they may in crisis situations revert to ad hoc decisions instead of taking a few moments to deliberate about more adequate solutions" (p.2). In light of this, school board personnel and principals should be aware that they are, "the most likely targets of Charter challenges" (Harte & McDonald, 1994, p.10). It is therefore essential, that existing school discipline policies and procedures reflect the due process rights of students, and that

administrators adopt a proactive rather than a reactive position regarding these rights. As a result of the passage of the Charter and the Young Offenders Act, administrators are urged to review their existing policies to ensure that individual rights are respected, and to revise those that might generate legal action (MacKay & Sutherland, 1992; Zucker, 1988)

Recognizing that the legal status of children has been changed dramatically, researchers contend that traditional doctrines such as in loco parentis, where the teacher is seen as acting in the "place of the parent", no longer reflect the reality of today's school setting. In fact, Hurlbert and Hurlbert (1989; 1992), MacKay (1986), MacKay and Sutherland (1992), Zucker (1988), and Proudfoot and Hutchings (1988) all contend that this doctrine has declined in importance. Both the Charter of Right and Freedoms and the Young Offenders Act envision a much more autonomous child; one with legal rights enshrined in the Constitution; one who is quite capable of having a voice in the decisions that affect him or her. This will necessitate a change in how teachers and administrators treat students.

### **Background for the Study**

In 1975, the Newfoundland Teachers' Association adopted a document outlining a statement on student rights and responsibilities at its Annual Convention. This was perhaps the first recognition of student rights in the province of Newfoundland and Labrador. A study by Magsino (1980) revealed that there were substantial differences between school boards in Newfoundland and boards in the state of Wisconsin in the extent

to which they had drawn up official policies recognizing the rights of students. This study demonstrated that our provincial school boards were seriously deficient in this area. Eastman, Martin, Dawe, Gaulart, and Dillon (1986) in a study assessing knowledge of human rights, found that educators in this province were particularly lacking in knowledge of students' rights to natural justice. Most surprising to the researchers was the fact that school administrators, who constantly make decisions requiring the enforcement of human rights, had no more knowledge in this area than did prospective teachers.

A further study by Warren (1988) sought to determine how knowledgeable Newfoundland educators were about school law. The study showed that there is a need for practitioners in the province of Newfoundland and Labrador to improve their legal knowledge of school related matters. A further study by Penney (1988) determined that school principals needed to acquire greater knowledge of their legal rights and responsibilities. Snelgrove and Warren (1989) found that, "Educators' knowledge of the law seems to be far short of that required to function effectively in the litigious society in which they practice today" (p.81). Harte and McDonald (1994) called for school administrators to examine their school rules for possible Charter violations. All of these studies, have made it evident that school administrators need to not only be aware of the legal rights of students, but that these rights should also be reflected in the formation of subsequent school rules and discipline policies.

On, December 16, 1996, the Government of Newfoundland and Labrador revised the Schools Act. The passage of this piece of legislation will have tremendous impact on

how matters of discipline are handled in the schools of this province. Prior to this time, parents of students in Newfoundland and Labrador only had the right to appeal an expulsion. However, under the new Act, the due process rights of both parents and students have been significantly recognized. Section 22(1) of the Act states:

Where a decision affects a student, the parent of the student, or the student, if the student is 19 years of age or older, may appeal the decision

- (a) of a board employee employed in the school, to the principal and his or her decision may be appealed to the board;
- (b) of the principal to the board; and
- (c) of a board's employee not employed in the school, to the board, and the board's decision on the appeal shall be final.

This means that students and parents now are legally empowered to appeal any decision made by a teacher and/or an administrator. In addition, Section 22(2) specifies:

An appeal commenced under subsection 22(1) shall be commenced within 15 days from the date that the parent or student is informed of the decision.

Section 22(4) states that any decision made under this section is binding on all parties, including decisions that are not appealed. As well, under Section 22 (3) any appeal that is launched must be, "made in accordance with this Act and the by-laws of the board". It is evident from this clause, that school boards in this province who have not already done so, will now have to establish by-laws governing an appeals process.

The addition of this appeals procedure recognizes the right of parents and students to question administrative decisions including decisions to discipline a student through suspension from school. Parents in this province have previously only had the right to

appeal expulsion of a student; however, the right to appeal the suspension of a student was unavailable. Section 37 of the Act outlines the procedure to be followed in the event of a suspension. Under subsection 8(a) when a principal suspends a student, “the principal shall immediately”:

- (a) inform the parent of the suspension;
- (b) report in writing to the student and the parent all the circumstances respecting the suspension; and
- (c) report in writing to the director all the circumstances respecting the suspension.

In accordance with Subsection 9, within three days of receiving this report, the director shall uphold, alter the conditions, or cancel the suspension. If a suspension is cancelled by the director, the suspension may be “struck from the student record”. In addition, under Section 37 (6), the director may approve the extension of a suspension if the school principal can, “demonstrate that the presence of the suspended student, in the school, threatens the safety of board employees or students, or frequently and seriously disrupts the classroom or the school”.

Under Section 38 of the Act, parents retain their right to appeal an expulsion. However, they now have only 15 days to request a review of the expulsion as opposed to 30 days in the previous Act. In addition, the request is now made to the school board instead of to the Minister of Education. It is the school board which must then appoint three members to investigate the circumstances surrounding the expulsion, and to order that it either be upheld or reversed. The decision reached by the review panel shall be binding on all parties.

The Schools Act (1996) reflects an awareness of and a respect for the rights of both students and parents. In particular, Sections 22, 37 and 38 of the Act demonstrate the right of the individual to be treated fairly. Passage of this piece of legislation makes it even more imperative that schools and school boards in this province develop discipline policies and procedures that reflect the due process rights of students.

In Teachers and the Law (1988), Warren made a number of recommendations including the following:

Local school district studies should be conducted to determine whether school board policy statements in such areas as student discipline, student rights ... comply with recent court decisions, provincial statutes and constitutional provisions. These policy statements could be consolidated into a handbook of legal procedures to be made available to all concerned.

(p.109)

Local school boards are therefore encouraged to examine their present policies in order to ascertain whether or not they comply with the provisions of the Schools Act (1996), the Charter, and the Young Offenders Act. In addition, where policies do not meet the requirements set out in these federal and provincial statutes, they should be revised.

### **Definition of Terms**

This thesis will involve examining both the procedural and substantive aspects of due process. The Canadian Charter guarantees "everyone" both procedural and substantive due process under Section 7. Procedural due process is guaranteed in the clause, "in accordance with the principles of fundamental justice"; while substantive rights

are outlined in the phrase, "Everyone has the right to life, liberty and the security of the person (MacKay, 1986, p.22). As well, Section 9 of the Charter guarantees everyone the right not to be "arbitrarily detained or imprisoned".

The legal definition of procedural due process is concerned with "fair procedures". A general interpretation of this requires that before a student is deprived of any "substantial liberty or property interest", adequate notice should be given and a hearing should be held before an impartial body of individuals where the student's side of the story is heard. Substantive due process guarantees that a person will not be deprived of fundamental rights for arbitrary reasons. Actions that are unreasonable, discriminatory, or based on vague rules, violate substantive due process. The majority of Charter cases to date, have emphasized that procedural due process is intended by the phrase "fundamental justice" (Mackay, 1984). It is therefore likely, that the Supreme Court of Canada will adopt a procedural interpretation of the Charter (MacKay, 1984).

#### Legal Terminology

Certiorari refers to an appeal court's review of a lower court's decision. To grant certiorari means to allow an appeal.

De novo means to hear or try a case as if it has not been tried or heard before.

Mandamus is a writ issued by a court ordering a public official to perform an act.

#### **Significance of the Study**

This study identifies the due process rights of students in matters of school

discipline, and outlines the appropriate steps necessary to ensure that these rights are respected. It also has implications for the pre-service and in-service training programs of educators, particularly school administrators.

### **Delimitations of the Study**

The data gathered were from five schools representing one school district in the province of Newfoundland and Labrador, Canada. Data were collected from administrators of schools that had senior high school grades only (Levels I-III). In addition, four legal experts from outside the school district also contributed data to the study.

### **Limitations of the Study**

This study was conducted in one rural school board only. Ideally, it would be valuable to study due process rights in various centres of the province both urban and rural. In addition, participation in this study was limited to school administrators and a select group of legal experts. It would also be desirable, to include the experiences of students, parents, and classroom teachers in a further study of this issue.

### **Organization of the Study**

This thesis is comprised of five chapters. Chapter 1 provides an overview of the study, background information, definition of terms, the significance of the study, and its

limitations. Chapter 2 presents a review of the literature on due process rights, including pertinent American, Canadian, and Newfoundland case law. Chapter 3 includes a description of how the study was administered, the research methodology chosen, as well as the data collection and data analysis procedures used. Chapter 4 presents a narrative description and an analysis of the experiences and opinions of participants. Chapter 5 summarizes the study, draws conclusions about the experiences portrayed, and makes recommendations for further research endeavors.

## CHAPTER 2

### LITERATURE REVIEW

This chapter will outline the current literature on the due process rights of students. In particular, emphasis will be on the historical development of the due process rights of students as well as the pertinent American, Canadian, and Newfoundland case law dealing with this issue.

#### American Case Law

##### In re Gault (1967)

Prior to the mid 1960's, there was little attention paid to the rights of students, and matters of schooling were left to those trained as professional educators. One of the first American cases to highlight the procedural rights of minors was, In re Gault, [387 U.S. 1 (1967)]. The events leading up to this unprecedented decision actually occurred three years before and although this was not a school matter, the child involved was of school age. In 1964, Gerald Gault was arrested on an alleged obscene phone call charge. At the time of his arrest, Gault was on probation for a previous offence. His parents were not informed of his incarceration by the authorities, and consequently learned of his placement in the Juvenile Detention Home from the parents of a boy who was with Gerald at the time of his arrest. A hearing was held the following day; however, the person who had laid charges against Gault was absent from the proceeding and no account of the testimony was recorded. A second hearing was held one week later. At this time Gerald Gault was

declared to be a delinquent and was committed to a State Industrial School for the period of majority which under Arizona law at the time was age 21. The effect upon Gault was a six year sentence for having made an obscene phone call. It is interesting that no appeal was possible and that the same offence would have resulted in a maximum penalty of a fifty dollar fine or two months in jail for an adult offender (Chandler, 1962). The United States Supreme Court later struck down the Arizona Juvenile Code for denial of the following basic rights:

- (a) notice of the charges
- (b) right to counsel
- (c) right to confrontation and cross-examination
- (d) privilege against self incrimination
- (e) right to transcript of the proceedings
- (f) right to appellate review.

(McGhehey, 1982, p.137)

In essence, what In re Gault did for minors in the United States was guarantee them the same due process rights as adults. At the time, educators were concerned about the implications of this ruling on school policies.

#### Tinker v. Des Moines (1969)

Indeed their fears were well founded. Two years later the right to due process was extended to students in Tinker v. Des Moines [393 U.S. 503 (1969)]. In 1965, the American Government decision to increase its war efforts in Vietnam met with a great deal of civilian opposition. In December, one such group of students and parents met at the Eckhardt home in Des Moines, Iowa to discuss a way to voice their opposition to the

war effort. A decision was made to wear black armbands during the holiday season and to fast on December 16 and 31 to mourn those killed in the war and as a sign of support for a truce. The principals of the schools in Des Moines became aware of these plans and made a decision to ban the wearing of black armbands.

Thirteen year-old Mary Beth Tinker, fifteen year-old John F. Tinker and Christopher Eckhardt were subsequently suspended from school for breaching this directive. Their fathers filed action in the United States District Court seeking nominal damages and an injunction preventing the school district from disciplining the children. The District Court dismissed the claim, and the case was appealed (Dickinson & Mackay, 1989). The Court of Appeal upheld the decision of the District Court, and again the decision was appealed; this time to the Supreme Court. Mr. Justice Fortas, in delivering the opinion of the Supreme Court changed precedent dating back fifty years when he said:

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

(Hurlbert & Hurlbert, 1989, p. 42)

The Supreme Court not only overturned the District Court ruling that the action of the school was reasonable and did not deprive students of their rights, but it also overturned the practice of courts all across the United States of allowing school officials broad discretion in applying school discipline (Hurlbert & Hurlbert, 1989; 1992). Up to this point in time, the courts had always allowed school officials wide latitude in dealing with

matters relating to school management. The Supreme Court further held that since schools are responsible for educating future citizens "there should be scrupulous protection of constitutional freedoms" within the school system (Hurlbert & Hurlbert, 1989). The Court also ruled that fear of a disturbance was not a justifiable reason to deny students their constitutional rights.

The Tinker case was a landmark decision that gave student rights recognition which had been previously unheard of. As a result, it has been subsequently referred to in many cases involving student rights since the 1960's. In Tinker, the Court made it clear that students both in and out of school are, "persons" under the constitution. As well, the Court specified the circumstances under which conduct by students is not protected by the constitution. This includes instances where:

that conduct whether it stems from time, place, or type of behaviour - materially disrupts classwork or involves substantial disorder or invasion of the rights of others.

(Hurlbert & Hurlbert, 1989, p. 43)

This interpretation has been regarded in succeeding cases as the, "Tinker threshold test" for determining whether or not school decisions have infringed the constitutional rights of students (Hurlbert & Hurlbert, 1989; 1992). Given the importance of the Tinker decision in American case law, and the practice of the Canadian Courts of looking to other democracies for precedent in interpreting the Charter, it is probable that the Tinker decision may have some relevance to interpreting Section 2 of the Charter (Hurlbert & Hurlbert, 1989, 1992). Magsino (1980) states that in Tinker the Court did much more

than simply guarantee rights of speech. It also made it apparent that:

School officials do not possess absolute authority over their students. Students in schools or out of school are "persons" under our Constitution. They are possessed of fundamental rights which the state must respect.

(p. 12)

**Guzick v. Drebis (1970)**

In a later case, Guzick v. Drebis [431 F.2d 594 U. S. (6th. Cir. 1970)], the test of substantial disruption established in the Tinker case was applied and expanded on.

Thomas Guzick, a student at Shaw High School, claimed that his right of freedom of expression was being infringed by a school rule that prohibited students from wearing buttons, badges and scarves in support of various causes unrelated to education (Hurlbert & Hurlbert, 1989; 1992). Guzick had worn a button soliciting participation in an anti-war demonstration. When asked to remove it, he refused and was subsequently suspended. In this case, the Court of Appeals held that the school rule did not violate students' constitutional rights since the school had documented evidence that in past years buttons, badges, and pins used to identify fraternities had led to major disruptions in the school. As well, unlike the Tinker case, the rule at Shaw was long established and not a spur of the moment decision. The Court therefore ruled that there was a legitimate need for this rule at Shaw High. The Court further held that protection of freedom of speech rights was not the same within the school setting as it would be in a more public place since there was a need to balance the rights of students against the function of the school (Hurlbert & Hurlbert, 1989; 1992).

Goss v. Lopez (1975)

Demonstrations by a group of students in the Columbus, Ohio, school system provided the circumstances for the next ruling on the due process rights of students. In Goss v. Lopez [419 U. S. 565 (1975)], a group of students were suspended for participating in demonstrations in several Columbus high schools. Under an Ohio statute, school administrators had the authority to suspend a student for up to ten days or expel him or her for misconduct. The principal was then required to notify parents within twenty-four hours and state the reasons for the action taken. A student who was expelled, or his parents, could appeal the decision to the Board of Education and had the right to be heard at the board meeting. The Board could reinstate the student following the hearing if circumstances warranted such action. No similar state provisions were made for a student who was suspended. Each of the high schools involved in this case had either formally or informally described the sort of conduct that could result in suspension, however none had issued any written procedure governing suspension. It is interesting to note the similarities between Ohio state law in the 1970's and the Newfoundland suspension procedures that were in effect until 1996.

The suspensions in this case, occurred during a period of widespread student unrest throughout the Columbus Public School System. Six of the nine students who filed action against the Columbus Board of Education attended Marion-Franklin High School. Each student was given a ten day suspension for disruptive or disobedient behavior. Many of these students were demonstrating in the school auditorium while a class was in session

there and when ordered by the principal to leave, refused, and were immediately suspended. None of these students was given a hearing to determine the facts underlying the suspension, however each was invited to attend a conference with his or her parents to discuss the student's future.

Another plaintiff in the case, Dwight Lopez, was attending Central High School. Lopez was suspended in connection with an incident which occurred in the school lunchroom and resulted in some physical damage to school property. Lopez later testified that more than seventy-five students were suspended from his school that same day. He also claimed that he was an innocent bystander in the room at the time and was not party to the alleged destruction. Lopez was not given a hearing at the time of the suspension.

Another of the suspended students, Betty Crome, attended a demonstration at a school other than the one she was enrolled in. During the demonstration she was arrested, along with other students, and taken to the police station. She was later released from custody and no formal charges were laid against her. However, before she left for school the following day, she was informed that she had been suspended for ten days. No one from the school testified with respect to this incident, so there was no record as to how the principal made the decision to suspend Crome, nor was there any indication of what information the decision was based on. No suspension hearing was ever held.

There was no information regarding the suspension of the ninth student, Carl Smith. There was no mention of his suspension in the school files, although in the case of some of the other plaintiffs the files made either direct reference to their suspensions or

contained copies of letters to their parents advising them of the suspension. These nine students filed action against both the Columbus Board of Education and various administrators of the Columbus Public School System. The students claimed that the statute under which school authorities had the power to suspend students was unconstitutional because it allowed administrators to deprive students of their right to an education without a hearing of any kind which was a violation of the procedural due process component of the Fourteenth Amendment. They also sought to prohibit further suspensions under this statute and to have any references to past suspensions removed from their school records.

The United States District Court ruled that the statute in question was unconstitutional because it failed to require a due process hearing. Although school principals had the right to suspend students for up to ten days, Justice White made it clear that, "suspensions may not be imposed without any grounds whatsoever" (Dickinson & MacKay, 1989, p. 307). The Court held that students facing temporary suspension have interests qualifying for protection of the Due Process Clause. Due process in connection with a suspension of ten days or less requires that a student be given written or oral notice of the charges against him or her and, if these charges are denied an explanation of the evidence should be presented and the student should have an opportunity to present his or her side of the story (McGhehey, 1982; Dickinson & MacKay, 1989). The Court emphasized that there need not be a delay between the time that notice is given and a hearing is held. The alleged misconduct could be discussed with the student within

minutes of the occurrence. However, the student must be told what he or she is accused of; be given the basis for the accusation; be given a chance to explain his or her side of the situation; and as a general rule, notice and a hearing should precede removal of the student from the school. The Court also stipulated that a student who poses a danger to other persons or property or threatens to disrupt the academic process, "may be immediately removed from the school" (Dickinson & MacKay, 1989, p. 308). In emergency situations, the necessary notice and hearing should be held as soon as possible. It was the sentiment of the Court at the time that these provisions should not over-burden school administrators. In fact, the Court felt:

we have imposed requirements which are, if anything, less than a fair-minded school principal would impose upon himself in order to avoid unfair suspensions.

(Dickinson & MacKay, 1989, p. 308)

Interestingly, one of the schools involved in this case, Marion-Franklin High School, had an informal suspension procedure in place which was very similar to the one being required by the Court. It is especially noteworthy that the suspension procedure was not followed in this particular incident.

#### Wood v. Strickland (1975)

The legal situation of individual administrators became even more uncomfortable following the Supreme Court decision in Wood v. Strickland [420 U. S. 308 (1975)]. This case, involved the suspension of female students who spiked the punch at a school extracurricular event. The girls, however, were suspended without being afforded their

proper due process rights. Up to this time school boards, like other state agents, were deemed to be immune from civil suit unless they acted with malice. In the Wood case, however, the Court ruled that when a school board member denies a student constitutional rights, of which the member was or reasonably ought to have been aware, then the member is liable for compensation of damages to the student. The decision by the Court resulted in an award of substantial damages against not only the school board in question, but also against the individual board members who had voted in favour of the suspension (MacKay, 1986). If Canada follows the American approach, the Wood ruling might provide added incentive for school board members and school administrators to become more cognizant of student rights guaranteed by the Charter (MacKay, 1986). In any event, it is evident that ignorance of the law is not an acceptable defense for violating protected rights (Proudfoot & Hutchings, 1988; Zucker, 1988).

#### New Jersey v. T.L.O. (1985)

Perhaps the American case which would have the most far reaching effects on school discipline procedures was New Jersey v. T. L. O. [105 U. S. S. Ct. 733 (1985)]. On March 7, 1980, Miss Chen, a teacher at Piscataway High School in New Jersey discovered two girls smoking in a washroom. Because smoking in the washroom violated a school rule, the girls were taken to the Principal's office where they were interviewed by the Assistant Vice Principal, Theodore Choplick. In response to questioning by Mr. Choplick, T. L. O.'s companion admitted that she had violated the school rule. Fourteen year old Terry Lee Owens, however denied smoking claiming that she did not smoke at all

(Eberlein, 1980). Mr. Choplick requested that Terry Lee accompany him to his private office where he demanded to see her purse. On opening the purse, he found a package of cigarettes which he removed from the purse and held in front of Terry Lee. As he reached into the purse, he also noticed a package of rolling papers which in his experience were usually associated with the use of marijuana. Believing that a closer examination of the purse might uncover further evidence of drug use, Mr. Choplick proceeded to thoroughly search the purse. The following items were found:

- (i) a metal pipe used to smoke loose marijuana;
- (ii) a plastic bag containing marijuana;
- (iii) \$40 in one-dollar bills and \$.98 in change;
- (iv) an index card titled People who owe me followed by a list of names and amounts of \$1.00 or \$1.50 by each name;
- (v) two letters, one from T. L. O. to a friend and a return letter, both containing language indicating the sale of marijuana at school.

(Zucker, 1988, p. 74)

Mr. Choplick notified T. L. O.'s mother and the police, and turned the evidence of drug dealing over to the authorities. The police requested that Mrs. Owens bring her daughter to police headquarters where Terry Lee confessed that she had been selling drugs at the high school. Based on her confession and the evidence seized by Mr. Choplick, the State brought delinquency charges against Terry Lee. Contending that Mr. Choplick's search of the purse violated her Fourth Amendment rights, Terry Lee moved to have the evidence found during the search suppressed. She also argued that her confession should be disregarded since it was a consequence of the unlawful search. The Juvenile Court denied

both of these motions. Although the Court concluded that the Fourth Amendment applied to searches carried out by school officials, it ruled:

a school official may properly conduct a search of a student's person if the official has a reasonable suspicion that a crime has been committed or is in the process of being committed, or reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policies.

(Dickinson & MacKay, 1989, p. 371)

It also ruled:

Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives sought and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

(Zucker, 1988, p. 75)

Using this standard, the Court held that the search conducted by the Assistant Principal was reasonable. The Court determined that, the initial decision to open the purse was based on a well founded suspicion that a school rule had been violated. Therefore, the petition to suppress the evidence was denied.

There is little doubt that Canadian Courts will look south of the border for guidance in interpreting constitutional issues. In fact, the Supreme Court of Canada has stated:

The courts in the United States have almost two hundred years of experience at this task and it is with more than passing interest to those concerned with these new developments in Canada to study the experience of the United States courts.

(Sussel & Manley-Casimir, 1986, p. 218)

Since the enactment of the Charter and the Young Offenders Act, issues relating to the due process rights of students have been raised in Canadian courthouses. Given the

litigious times that we live in, Canadian educators would do well to learn from the mistakes of their American colleagues.

### Canadian Case Law

#### R. v. H. (1985)

One of the first Canadian cases to test the new found rights of students under both the Charter and the Young Offenders Act was R. v. H. (1985). On March 22, 1984 thirteen year old "H" and several other boys were involved in an incident at Laurier Heights School in Edmonton, Alberta. The boys in question entered a classroom, opened a filing cabinet and took money from the purse of their homeroom teacher, Heather Field, who was attending a meeting (Anderson, 1986). After the meeting, the teacher discovered that her wallet was gone and sixty-five dollars was missing. The following day, Miss Field informed her class of the theft and advised those present that if the money was returned no further action would be taken. As a result of this assurance, "H" and two other boys admitted their guilt and returned some of the money. Miss Field reported the incident to the vice-principal, but not to the school principal. Sometime later, news of the incident did reach Mr. Powell, the principal, who directed all of the boys involved in the theft to come to his office. During his questioning of the students, admissions were made concerning the theft. On the basis of these admissions, Mr. Powell called the police and "H" was charged with theft. At no time, during questioning in the principal's office, were the boys advised of any rights which they might have under either the Charter or the Young Offenders Act. During the trial, legal counsel for "H" requested that evidence

given by both the principal and the accomplices be excluded on the grounds that sections 10 and 24 of the Charter had been infringed since "H" was not advised of his right to counsel. Section 10 of the Charter reads:

10. Everyone has the right on arrest or detention
  - (a) to be informed promptly of the reasons therefore;
  - (b) to retain and instruct counsel without delay and be informed of that right; and
  - (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

Section 24 of the Charter states:

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.  
(2) Where in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any right or freedom guaranteed by this Charter, that evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceeding would bring the administration of justice into disrepute.

In considering this application, Judge Anne Russell also considered whether Miss Field's testimony should be excluded as well. Judge Russell also raised the question of the relevance of section 56 of the Young Offenders Act to this case. Section 56 states in part that:

56. (1) Subject to this section, the law relating to the admissibility of statements made by persons accused of committing crimes applies in respect to young persons.
- (2) No oral or written statement given by a young person to a peace officer or other person who is, in law, a person in authority is admissible against the young person unless:
- (a) the statement was voluntary;
- (b) the person to whom the statement was given has, before the statement was made clearly explained to the young person, in language appropriate to his age and understanding, that:
- (i) the young person is under no obligation to give a statement,
- (ii) any statement given by him may be used in proceedings against him,
- (iii) the young person has the right to consult another person in accordance with paragraph (c), and
- (iv) any statement made by the young person is required to be made in the presence of the other person consulted unless the young person desires otherwise;

In order to determine the facts of this case, several key issues had to be decided which would have a direct impact on school discipline matters. The first of these issues was whether or not the Charter applied to teachers and principals. Judge Russell ruled that the Charter was intended to apply to bodies such as school boards, and therefore since "teachers and principals are employees of school boards, their actions are governed by the

provisions of the Charter" (Anderson, 1986, p. 20). Another issue of great importance in this case, was whether or not the detention of the boys in the principal's office constituted a detention under section 10 of the Charter. Judge Russell held that although an ordinary school suspension does not usually involve any legal consequences, it is possible that in some circumstances a school detention might result in legal repercussions. Such a possibility makes it necessary for the courts to examine the facts of each individual case.

Having examined the facts in this particular case, Judge Russell ruled:

This was no ordinary disciplinary measure being undertaken by the principal; it was not a typical school detention; the purpose of his interrogation was to determine whether or not to report this matter to the police ... the objective of the detention was not to discipline these students in relation to a school matter but to investigate a criminal offence; this accused was aware of that; the psychological compulsion he was under was all the more compelling because of that.

(Anderson, 1986, p. 20)

The Court also ruled that the evidence of the principal and the accomplices ought to be excluded under section 24 of the Charter, since such evidence would bring the administration of justice into disrepute. In relation to the evidence given by the principal, Judge Russell held that the principal had become involved in the administration of justice by doing the work of the police. It was not necessary for the police to get a statement from the boys since the principal had done their work for them. Once the principal had decided to "get the statement" for the police, he was then required to comply with Section 56 of the Young Offenders Act. In determining whether or not the evidence given to the principal might be excluded under Section 56 alone without invoking the Charter, the

Court held that Section 56 applied to statements made to the principal in that he, "is a person in authority". The Court determined that statements made to Mr. Powell were not voluntary because the promise made by Miss Field, that no further action would be taken if the money was returned, continued to influence "H" and the other boys. Since the principal had failed to comply with Section 56, any evidence given by him was deemed to be inadmissible. The teacher was also found to be a "person in authority" under Section 56, therefore evidence given by her was also inadmissible. Judge Russell held that, "it is reasonable to presume that a 13 year old boy would believe that his teacher would exercise power over him and could make good her promises" (Anderson, 1986, p. 21). It was ruled that the teacher had also violated Section 56 of the Young Offenders Act as follows:

A basic rule governing the voluntariness of statements is that the statement must not have been induced by any fear or hope of favour. Here the statement has been induced by the promise of teacher that there would be no further consequences. This accused and the other boys believed that they would not be prosecuted if they confessed; but for the promise they would not have confessed.

(Anderson, 1986, p. 21)

The Youth Court ruled that the evidence given by the principal, the teacher, and the accomplices was to be excluded from the trial; therefore with no evidence concerning the theft, there could be no conviction. This case clearly demonstrates to school administrators that they have to observe new rights for students when they deal with discipline matters that may have criminal consequences. In fact, administrators are advised to set down guidelines that are consistent with the protections outlined in the

Young Offenders Act. If an administrator is detaining a student in order to enforce an in-school rule, no warning or legal counsel is required. However, if any criminal action is contemplated, the student should be informed as to the nature of the allegation(s), and at the very least be permitted to contact a parent or some other adult before any further investigation of the incident begins (MacKay & Sutherland, 1992, p. 85). The need for school administrators to inform students of their legal rights under the provisions of the Young Offenders Act was recently reconfirmed by Quebec Court Judge Lucie Rondeau in determining the admissibility of evidence in the Toope murder case which involved the beating deaths of former Newfoundland Frank Toope, a retired Anglican Minister and his wife Jocelyn. In ruling on the admissibility of statements made by the thirteen year-old defendant to two school administrators, Judge Rondeau said that although the principal and vice-principal "may have had the boy's best interest at heart, the boy might have felt beholden to answer their questions because he saw them as authority figures" (Western Star, 1996). In addition, since the school administrators "never gave the boy the opportunity to have a lawyer or parent present while they initially talked to him", the content of conversations held with the youth was ruled inadmissible (Western Star, 1996).

#### R. v. J. M. G. (1984)

The next school discipline case to be challenged under both the Charter and the Young Offenders Act occurred just one month later in Thunder Bay, Ontario. On April 13, 1984, a teacher reported to the school principal that 14 year-old James Michael, a

grade seven student had been seen by another student putting drugs in his socks (Anderson, 1987). The principal telephoned a police officer and a high school principal seeking advice on how he should handle the situation. He then went to the classroom of James Michael and requested that the boy accompany him to the office. Once in the office, in the presence of the vice-principal, the principal informed James that he had reason to believe that he [James] was in possession of drugs and asked him to remove his shoes and socks. There was some delay during which the student actually swallowed a rolled cigarette that he had taken out of the cuff of his pants (Dickinson & MacKay, 1989). The principal then removed a piece of tin foil, which contained three butts, from the student's right sock or pant leg. Subsequently, the principal telephoned the police and the student was arrested and charged with possession of a narcotic. The three butts confiscated by the principal later proved to be marijuana (Dickinson & MacKay, 1989). In what was to become Canada's leading case on search and seizure, James Michael was convicted of possession of drugs under the Young Offenders Act and fined twenty-five dollars (Anderson, 1987). An appeal was launched in the Ontario District Court where both the conviction and the sentence were overturned. The Crown later appealed this decision to the Ontario Court of Appeal. In a unanimous decision, the Court of Appeal granted the appeal and restored both the conviction and sentence of the Provincial Court (Anderson, 1987).

The appeal centered on accusations that the principal had violated Sections 8 and 10(b) of the Charter which state:

8. Everyone has the right to be secure against unreasonable search or seizure.

10. Everyone has the right on arrest or detention ...

(b) to retain and instruct counsel without delay and to be informed of that right.

Before considering if the student's Charter rights had been breached, the court had to determine if the Charter applied to the actions of a school principal. Justice J. A. Grange assumed that "the school board directing the affairs of the school and the school itself, including the principal and the other teachers, are subject to the Charter in their actions and dealings with the students under their care" (Dickinson & MacKay, 1989, p. 385).

In considering whether Section 8 had been breached, Justice Grange acknowledged that while there was no Canadian authority on the situation under study in this case, the United States Supreme Court decision in New Jersey v. T. L. O. (1985) could provide direct authority (Dickinson & MacKay, 1989). Based on the precedent set down in the American courts, the Court of Appeal concluded that the search of James Michael was, "not only justified in its inception but indeed was dictated by the circumstances" (Dickinson & MacKay, 1989, p. 386). Since the principal had received information that the student had drugs on his person, and since the principal was required by the Ontario Education Act to, "maintain proper order and discipline in the school", the Court held:

In light of the duty imposed on the principal, it is not unreasonable that the student should be required to remove his socks in order to prove or disprove the allegation. In other words, the search here was reasonably related to the objective of maintaining proper order and discipline. Moreover the search was not

excessively intrusive.

(Anderson, 1987, p. 18)

With respect to the type of information that is required to justify a search, Justice Grange agreed with the sentiment expressed by Justice White in New Jersey v. T. L. O. :

By focusing attention on the question of reasonableness, the standard will spare teachers and administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense.

(Dickinson & MacKay, 1989, p. 386)

The Court also determined that the student had not been detained within the meaning of the Charter; therefore the principal was not under any obligation to advise him of his right to counsel. In fact, Justice Grange went so far as to say:

The accused was already under a detention of a kind throughout his school attendance, ... he was subject to the discipline of the school and required by the nature of his attendance to undergo any reasonable discipline or investigative procedure.

(Zucker, 1988, p. 75)

This case made it clear that school administrators not only have a duty to maintain order and discipline within the school, but also that this duty may at times override the rights of a student. R. v. J. M. G. marked an important decision for school administrators in Canada because by ruling the search legal, the Court characterized "the principal as an agent of the state" (Black-Branch, 1994 b, p. 10). However, administrators should remember that schools do not function only to maintain order and discipline. They also serve as a microcosm of society and, "society would set a dubious example and disenchant many youngsters if children had their rights arbitrarily denied" in the school system

(Hurlbert & Hurlbert, 1989, p. 39).

The decision reached by Justice Grange in R. v. J. M. G. has been criticized on several fronts. First of all, the statement that the accused was, "under a detention of a kind throughout his school attendance", likens the school to a prison. Secondly, this sentiment clearly violates the long established decision in Tinker, that students "do not shed their constitutional rights at the school house gate". As well, this ruling also strips away protection of the rights of the student who must face the same consequences whether a search is conducted by a school principal or a police officer (MacKay & Sutherland, 1987).

#### R. v. L. L. (1985)

In a similar case, R. v. L. L. (1985), a student had been questioned for an hour and a half about a sum of stolen money. From the outset, it had been made clear to the student that no criminal consequences would result from a confession. However, when the student finally admitted to taking the money and buying marijuana out of it, and the drugs were found in his possession, the police were called. At trial, Ontario Provincial Court Judge Michel, excluded the relevant evidence because the student's constitutional rights had been violated. While this decision was reversed at the District Court level, Judge Michel made several suggestions which are of significance to school administrators. He ruled that there should be a clear distinction made between detaining students to enforce a strictly in-house school rule and detaining students regarding investigation of a criminal offence. In the former case, Judge Michel ruled that a principal or teacher would

be acting strictly as an educational agent, therefore there would be no need to be concerned about reading a student his or her Charter rights or involving legal counsel. However, if breach of a school rule could also lead to criminal charges being laid, a student is entitled to Charter protection, whether the investigation is carried out by school personnel or police officials (MacKay & Sutherland, 1992).

#### R. v. Sweet (1986)

The R. v. J. M. G. case was later used to set the precedent in a subsequent case involving a student who was being detained for breaking a school rule. In R. v. Sweet (1986), a student was charged with assaulting a substitute teacher. In this incident, several teachers suspected that 19 year-old Sweet and two other students had been smoking marijuana in the washroom. The teachers told the students to stand against the wall and wait for the vice-principal to arrive. Students were not told why they were to wait. Sweet refused to comply with this directive and attempted to leave. He pushed the complainant, a substitute teacher, aside and walked toward an exit. The teacher followed, and Sweet elbowed him in the mid-section. A struggle ensued during which Sweet bit the teacher's hand. At trial, defense for Sweet argued that his Charter rights had been denied, specifically :

- (a) Section 7: denial of the principles of fundamental justice;
- (b) Section 9: arbitrary detention;
- (c) Section 10(a): failure to be promptly informed as to reason for detention.

(Black-Branch, 1994 b, p. 10)

It was argued by the defense counsel that, because of these violations of his Charter rights,

Sweet was justified in using force to resist being detained. The Ontario District Court upheld the right of "the school master or teacher to discipline his students by detention" (Dickinson & MacKay, 1989, p. 389). The Court once again confirmed the duty imposed on teachers, under the Ontario Education Act, to maintain order and discipline while on duty in school. As well, the Court specified the duty imposed "on pupils to exercise self-discipline and accept such discipline as would be exercised by a kind, firm and judicious parent" (Dickinson & MacKay, 1989, p. 390). The Court ruled that this kind of detention was not detention under Section 10 of the Charter, therefore teachers were not required to inform students of reasons for such detentions. However, the court also stated that, "it would have been reasonable and preferable if they had" (Dickinson & MacKay, 1989, p. 390). Although the accused was found guilty of assault in this case, it is obvious from the comments of the court that school officials would be wise to notify students of the reasons why they are being detained, even if this is not strictly required by law. However, the Court did make it evident that had the teachers not acted on this suspected drug use, it would have constituted "a serious dereliction of duty" (Dickinson & MacKay, 1989, p. 390). Black-Branche (1994 b) states that, "Most administrators are unaware that the courts are willing to uphold the reasonable actions of principals for a safe and secure educational environment" (p. 26). It is therefore critical to ensure that a balance exists between the duty of the principal to keep order and discipline within the school, and the Charter rights of students.

### Taylor v. The Board of Trustees (1984)

In the Fall of 1984, a discipline decision was challenged in yet another Canadian school, this time in British Columbia. On October 18, thirteen year old Christine Taylor and five other students went to a friend's house during the school lunch break. Within this period of time, the students, including Christine, smoked marijuana and later returned to school for afternoon classes. As a result of this incident, Christine and the other students were suspended by the school principal for the remainder of the school year. The Langley School District gave Christine the option of attending another school in the district, but this offer was refused. The parents of the suspended students received written notification from the principal of the suspensions. Mrs. Taylor met with the assistant superintendent and the vice-principal to review the principal's decision to suspend her daughter. The suspension was upheld. Later Mrs. Taylor, Christine, and their attorney attended a school board meeting where the suspension decision was reviewed and again upheld.

The decision to suspend these students was in accordance with the school board's student discipline policy. This policy had just been reviewed the previous year and formally adopted by the school board on November 7, 1983 (Anderson, 1985). The regulation which applied in this case is as follows:

Any pupil using narcotics, or who is, in the opinion of the principal, under the influence of such substances on or off the school premises or at a school function shall be immediately suspended from the parent school. The pupil shall be liable to suspension from the parent school for up to the remainder of the school year or for up to a minimum of five (5) months.

(Anderson, 1985, p. 19; emphasis in original)

These regulations were made known to students by the principal and the vice-principal during student assemblies held at the beginning of each school year. Instruction on the discipline policy was given to students in each grade level with particular emphasis placed on regulations regarding alcohol and drug use. In addition, an article concerning the use of drugs and alcohol was also included in the school newsletter sent home to parents at the beginning of each school year. In Taylor v. The Board of Trustees (1984), the Taylors petitioned the British Columbia Supreme Court to set aside the suspension; to declare that the school board policy encroached on the Young Offenders Act; and that the policy exceeded the powers of discipline given to school boards under the British Columbia School Act (Anderson, 1985; 1986). The Court ruled in favour of the petitioners and ordered that:

- (i) the suspension be terminated;
- (ii) that any reference to the suspension be expunged from Christine Taylor's school record;
- (iii) that the school board policy pertaining to the use of alcohol and/or drugs exceeded the powers of discipline conferred by the School Act and the Regulations pursuant to the Act.

(Anderson, 1985; 1986)

In delivering the judgement of the Court, Justice MacKinnon recognized that although the school had taken steps to notify students and parents of the board policy regarding the use of drugs and/or alcohol, the sessions held with students and the newsletters sent home to parents failed to include the punishment for such offenses. As well, he felt that: /

In any event such announcements, discussions, or insertions are not...the kind of "due warning" contemplated by the legislature but rather it should be a meaningful and personal warning that repetition of certain conduct will not be tolerated and if discovered will result in the serious consequences set out in the appropriate regulations.

(Anderson, 1985, p. 20)

As well, the Court examined section 117(1) of the School Act which stated that a school could suspend a student who failed to comply with the rules of the school and who "does not after due warning make ... any reasonable effort to reform." (Anderson, 1985, p. 21).

The Court felt that this "due warning" had not been given to Christine Taylor. In addition, Regulation 14 of the School Act stipulated:

The discipline in every school shall be similar to that of a kind, firm, and judicious parent.

(Anderson, 1985, p. 21)

The following definitions were quoted in the court proceeding:

Kind - affectionate, loving, fond, on intimate terms.

Firm - constant, steadfast, unwavering, resolute.

Judicious - having or exercising sound judgement; discrete; wise; sensible, especially in relation to practical matters; proceeding from or showing a sound judgement; marked by discretion, or good sense.

(Anderson, 1985, p. 20)

The Court held that, while the school board made the right decision in adopting a "strict" policy, it had erred in drafting its regulation by excluding:

any provision whereby a principal or teacher could exercise wisdom and discretion and compassion without sacrificing or compromising the steadfast aim to control the use of liquor and drugs. There is no provision for due warning. There is no opportunity for suspension for less than five months. The regulation does not

permit a principal or teacher to deal with a pupil in a manner similar to a kind, firm and judicious parent. The regulation is firm. But a discipline policy must be more. It must also be kind and judicious ... The regulation does not permit this. It does not allow fairness.

(Anderson, 1985, p. 2)

The Court concluded that all of the circumstances surrounding the incident that Christine was involved in should have been considered and that the school administrator should have exercised more discretion in his decision to suspend Christine. In fact, the following information was available to the school board at the time, and should have been taken into account:

- (a) There were six children ranging in ages 13 - 16 involved in the incident. Christine was one of the youngest.
- (b) When the first marijuana cigarette was passed around, Christine refused the offer and did not participate.
- (c) When the second cigarette was lit and passed around, Christine again refused. This time when the others insisted that she join in, she took one puff. However, she did not inhale; and could not because she gagged on the smoke.
- (d) Christine had no prior experience with smoking of any kind.
- (e) Christine was one of two students who immediately told the truth when questioned about the incident.

(Anderson, 1985, p. 22)

Justice MacKinnon held that all of these factors were relevant to the decision being made, yet none of these were considered. Because the board policy did not comply with the School Act and its governing Regulations, its decision was overturned. The case was later

appealed and the Court of Appeal overturned the lower courts decision that the school board had to give students "due warning" when disciplining breaches for drug and/or alcohol use. However, the ruling on the board policy was upheld (Anderson, 1986).

The Taylor case makes it apparent that school boards should review their policies in light of Charter provisions. Since the Charter is the "supreme law of Canada" any legislation that is inconsistent with it, is inoperative (Mackay & Sutherland, 1992, p. xii). As this case demonstrates, regardless of where such legislation might originate, ie., Provincial Statute or School Board regulation, if it does not comply with the provisions of the Charter it is null and void.

#### **Peel Board of Education v. W. B. et al. (1987)**

Perhaps one of the most damaging court decisions, for school administrators and school boards, in Canada was Peel Board of Education v. W. B. et al. (1987). This decision of the Ontario Supreme Court, centered around an incident involving a group of male students who were charged under the Young Offenders Act with, "kid-napping, unlawful confinement and sexual assault of a 14-year-old girl" (Dickinson & MacKay, 1989, p. 398). The complainant did not report the incident to the police until twenty-three days after the assault had occurred. The accused boys attended a different school than the victim and the incident did not occur on school property. In addition, all of the boys had "had a clean disciplinary record and had never been in any sort of trouble" prior to the incident (Beatty, 1995, p. 4). The boys pleaded not guilty to the charges. However, on hearing of the charges, the principal of the school immediately suspended each of the boys

involved for ten days and recommended to the school board that they be expelled. The school board upheld the suspension given by the principal, and imposed a further suspension (Dickinson & MacKay, 1989). It was the intention of the school board to hold an expulsion hearing, however there was concern on the part of the school board that such a hearing might violate Section 38 of the Young Offenders Act which states:

No person shall publish by any means any report of any offence committed or alleged to have been committed by a young person or of a hearing, adjudication, disposition or appeal concerning a young person in which the name of the young person is disclosed.

(Earle & Fitzgibbon, 1995, p. 4)

The school board therefore sought a Court decision before proceeding with an expulsion hearing. In Peel Board of Education v. W.B. et al, Mr. Justice Reid considered Section 38 of the Young Offenders Act particularly the scope of the terms "publish" and "report". The Court ruled that since the objective of Section 38 was to protect the privacy of the young offender, the term "publish" should be narrowly interpreted. "Report" was interpreted by the Court to mean, "an incident or an event including gossip or rumour" (Earle & Fitzgibbon, 1995, p. 4). It was felt by the Court that a natural consequence of an expulsion hearing would be the identification of the students involved. In light of this ruling, the Peel Board of Education was barred from holding the hearing. This ruling set a precedent in Ontario that prevented school boards from conducting expulsion hearings where legal charges against students were pending under the Young Offenders Act.

**Re The Board of Education for the City of Scarborough and Faye G. et al (1994)****Scarborough #1**

Prior to 1994, the Peel decision stood as the Canadian precedent on expulsion hearings. However, a recent decision by the Ontario Divisional Court has changed that precedent. In Re The Board of Education for the City of Scarborough and Faye G. et al. (1994) known as "Scarborough #1", the Court dealt specifically with the following questions:

- (i) Does a board of education have the power to extend the suspension of a pupil beyond the twenty days maximum under the Education Act?
- (ii) Does S.38 of the Young Offenders Act effectively prohibit a school board from conducting an expulsion hearing based on facts that are relevant to a charge laid under the Young Offenders Act?

(Earle & Fitzgibbon, 1995, p. 5)

In deciding the first issue, the Court ruled that the board did have the power to extend a suspension and that they did not have to readmit the student until the expulsion hearing had been completed. In deciding the second issue, the Court held that merely conducting an expulsion hearing did not by itself constitute publication of the identity of a young offender. As well, any subsequent expulsion of a student would not constitute publication of guilt of a criminal offence since these were very different proceedings. The Court concluded as follows:

In our opinion, the Young Offenders Act was never intended to deprive principals and school boards of the ability to enforce order and discipline in their schools. To

interfere with the mandate of principals and school boards, in the exercise of disciplinary proceedings, would require very clear and concise language, which is nowhere to be found in the Young Offenders Act. In our view it was never intended by Parliament that the Young Offenders Act would be used as a shield against the enforcement of school discipline.

(Earle & Fitzgibbon, 1995, p. 7)

The Divisional Court held that Justice Reid had erred in Peel Board of Education v. W. B. et al. and that the Young Offenders Act did not prohibit school boards from conducting expulsion hearings. It is interesting that following this ruling, the number of expulsions in the province of Ontario almost tripled during the subsequent school year (Beatty, 1995).

Following the decision in "Scarborough #1", the school board conducted expulsion hearings over a period of four days. In considering the evidence and the submissions of the principal and the school supervisory officer, the board concluded as follows:

Having been satisfied that the alleged assault ... had occurred, and having been made aware of [the student's] five previous suspensions for aggressive behaviour and opposition to authority, it was the finding of the board that ... [his] conduct that was so refractory that his presence was injurious to other pupils or persons, and ... he should be expelled from the Board's schools.

(Earle & Fitzgibbon, 1995, p. 8)

#### Re The Board of Education for the City of Scarborough and Faye G. et al. (1994)

##### Scarborough #2

The student in question then made another application to the Divisional Court to have the decision of the school board overturned. In Re The Board of Education for the City of Scarborough and Faye G. et al. (1994), known as "Scarborough #2", two central issues were to be determined:

- (i) Was the disclosure made to the applicants prior to the expulsion hearing adequate?
- (ii) Was the Board or the Chairman of the Board biased?

This case marked the first time that the Ontario Divisional Court had the opportunity to determine, "the extent of procedural fairness and natural justice required of a school board when conducting an expulsion hearing" (Earle & Fitzgibbon, 1995, p. 9). In "Scarborough # 2", the applicants argued that they had been denied procedural fairness and natural justice because the board had failed to give them sufficient pre-hearing disclosure of the case they had to meet (Earle & Fitzgibbon, 1995). However, prior to the hearing, counsel for the school had provided the petitioners with:

- (a) A summary of the case;
- (b) A summary of the case that would be presented;
- (c) Information gathered through the investigation;
- (d) The recommendations for expulsion from the principal and the school supervisory officer;
- (e) Materials filed with the Court in the "Scarborough #1" case.

(Adapted from Earle & Fitzgibbon, 1995, p. 11)

The Court ruled that the Applicants had received adequate disclosure of the facts of the case and that they had been given ample opportunity to make a meaningful response. In addressing the question of bias, the Court held that comments made by Board personnel "will not give rise to reasonable apprehension of bias unless they demonstrate that the decision maker has prejudiced ... the matters ... he or she must decide" (Earle &

Fitzgibbon, 1995, p. 14).

The "Scarborough # 2" case is of extreme significance to school administrators.

For the first time, Canadian administrators have clear legal direction on what their disclosure obligations are during an expulsion hearing. The Courts have determined that a school board must ensure that the student is fully informed of the case against him or her, and provide an opportunity for the student to respond in a meaningful way to the charges. These obligations can normally be met where the student is provided with a summary of the evidence against him or her. Such a summary should include:

- (i) The date that the incident took place;
- (ii) A description of the incident;
- (iii) A description of where the incident took place;
- (iv) A list of individuals who were present at the time.

(Adapted from Earle & Fitzgibbon, 1995, p. 17)

In addition, the student should be advised that the incident has been or is being investigated, and then he or she should be given the results of such investigation. As well, if the student has been involved in previous incidents that are to be used in recommending expulsion, these should be clearly outlined in the case summary.

These Scarborough cases have clearly outlined the steps that school administrators have to take in order to avoid violating the due process rights of students. They also demonstrate that Canadian courts are prepared to defer to the decisions of educators in matters of school discipline. That is, of course, unless the conduct of the administrators is,

"so fundamentally unfair as to demand intervention by the court" (Earle & Fitzgibbon, 1995, p. 19). Canadian courts also seem to recognize that a public education is not an absolute right but rather a privilege that can be taken away as a result of misconduct. It is interesting to note that in 1995, a number of amendments were enacted with respect to Section 38 of the Young Offenders Act (Hancock, 1995). These amendments provide for the exchange of information to, "any person engaged in the supervision or care of a young person, including a school principal or representative of any educational institution" (Hancock, 1995, p. 19). Information may also be disclosed to "ensure the safety of staff or students" (Hancock, 1995, p. 19). The provisions made through this amendment should do much to alleviate the strife that presently exists between the justice system and the education system in this country regarding the implementation of the Young Offenders Act.

### **Newfoundland Case Law**

Lest we think that we are somehow immune to litigation in this province, it should be noted that Charter challenges with respect to educational issues have been heard in courthouses throughout Newfoundland and Labrador.

#### **R. v. Kind (1984)**

One of the first such Newfoundland cases to use a Charter argument to decide an educational issue was R. v. Kind (1984). In this case, the court was asked to decide

whether a district superintendent had the power to refuse to allow the home-schooling of a student. The accused father, Paul Kind a qualified teacher was teaching his ten-year-old daughter, Deborah, at home (Templeman, 1988). The district superintendent refused to approve of the home instruction, which had been obtained from the Manitoba Department of Education, on the basis of his personal disapproval of home instruction. The father was subsequently charged with neglecting his daughter under Section 11 (1) of the School Attendance Act (Templeman, 1988). The father was convicted in Provincial Court on the grounds that he did not have the superintendent's permission to school his daughter at home. The father later appealed this decision in District Court.

In allowing this appeal, Judge Barry ruled that although the objective of the School Attendance Act requiring that all children of school age attend school was a legitimate goal of government, this could only be achieved through appropriate legislation. However, the Court ruled that such legislation "must comply with the Charter subject, ... to the reasonable limits referred to in S. 1." (Dickinson & MacKay, 1989, p. 330). Judge Barry further stated that, "To be within such limits it is required that the means used by government ... be prescribed by law and that they be such as can be demonstrably justified in a free and democratic society" (Dickinson & MacKay, 1989, p. 330). In this case, Judge Barry stated:

It is repugnant to the spirit and tradition of the rule of law in our society that the determination of citizens' rights in important matters such as the education of his child be relegated to the arbitrary decision of a government official from which there is no right of hearing, appeal, or review.

(Dickinson & MacKay, 1989, p. 330)

The application to teach Deborah Kind at home had to be determined by the district

superintendent, "by virtue of the delegated discretion vested in him", under the School Attendance Act (Dickinson & MacKay, 1989, p. 330). However, the Court found that such a discretion by statute contravenes the natural justice provisions of Section 7 of the Charter when its exercise by the designated public official could result in:

Conviction of the appellant of an offence under Section 11 of the Act without investigation of his application or granting him a hearing; conviction of the appellant because a child was absent from school under circumstances where the child was receiving efficient instruction at home; deprivation of the right to appeal regardless of the merits of the application.

(Adapted from Dickinson & MacKay, 1989, p. 330)

Judge Barry found that, "legislation which provides for enforcement of compulsory education in this manner is contrary to the legal traditions of the free and democratic society existing in this province and in Canada as a whole" (Dickinson & MacKay, 1989, p. 330). The Court held that Section 8 (d) of the School Attendance Act contravened Section 7 of the Charter by placing such "arbitrary power in the hands of the superintendent in the manner it permitted him to deal with and dispose of the appellant's application" (Dickinson & MacKay, 1989, p. 331). The Court held that there was sufficient evidence of efficient home instruction of Deborah Kind to grant an exception to the School Attendance Act. It is evident from this case that courts in the province of Newfoundland and Labrador will not hesitate to strike down statutes that are inconsistent with the provisions of the Charter.

R. v. Samms (1987)

The leading Canadian case on search and seizure, R. v. J.M.G. (1986), has been used to determine the outcome of similar cases in Newfoundland courts. In R. v. Elvis Joseph Samms (1985), the search of a school locker in a Stephenville high school turned up evidence of a knife known to be stolen property. In this case, Provincial Court Judge R. Smith excluded the evidence on the grounds that the search violated Section 8 of the Charter. This decision was later reversed by Judge Woolridge of the Newfoundland Supreme Court. In R. v. Samms (1987), Woolridge found the facts of the Samms case to be very similar to the circumstances cited in R. v. J. M. G. (1986). In particular, Judge Woolridge relied on the following general statement of law:

The test for whether a search by a school authority of a school child violates Section 8 is whether the search is justified at the time of its inception and whether the measures adopted are reasonably related to the objectives of the search and not excessively intrusive.

(Cited in R. v. J. J. W., 1990, p. 6)

It is interesting to note that in R. v. J. M. G., the Ontario court recognized that although it was not necessary for the principal to call police in on this particular occasion, "there might be circumstances where the police should be called in" (as cited in R. v. J. J. W., 1990, p. 6). Administrators today face the challenge of knowing when to call in legal authorities and when to handle the situation themselves.

R. v. J. J. W. (1988; 1990)

The search of a school locker at St. Stephen's High School in Stephenville, Newfoundland, gave rise to yet another Supreme Court decision in 1990. This case

involved two boys, Jason Joseph White and Alvin Donald Barron, who were charged under the Young Offenders Act for possession of a small amount of narcotic found in their school locker. In the original trial (R. v. J. J. W., 1988), the drug evidence was excluded under Section 24 (2) of the Charter on the grounds that the evidence had been obtained as a result of an illegal search, a violation of Section 8 of the Charter. Interestingly, the original case was heard by Judge R. Smith and again the appeal was heard by Judge Woolridge. The events of this case center around an interview that the principal, Mr. Greg Penney, held with a student who was sent to the office regarding a discipline problem. During the course of the conversation, the student alleged that the rules that he was breeching were of a minor nature compared to what other students were getting away with. On hearing this Penney inquired as to what other students were doing that were of a more serious nature. At this point the student told Penney that some students were selling drugs in the school. When questioned further the student told the principal that, "20 papers a day" were being sold, but he refused to identify the pushers. Penney then told the student, "if you don't tell me I can't do anything. If you could give me some info, I can do something" (R. v. J. J. W., 1990, p. 1). At this point, the student named three fellow students, two of whom were Jason White and Alvin Barron. In addition the student told Penney that these boys, "actually had drugs in their locker at that particular time" (R. v. J. J. W., 1990, p. 1). Penney told the court that these names had surfaced before in staff discussions regarding drug use in the school. On the basis of the information that he had been given, Penney "felt he had every right and duty to take action to curb such abuses so

prejudicial to the students for whom he was responsible" (R. v. J. J. W., 1990, p. 3).

Assisted by his vice-principal, Mr. Ryan, Penney had the three students named by the informant open their lockers. Small amounts of drugs were found in two of the three lockers and possession charges were laid against White and Barron.

In the original trial, Judge Robert Smith questioned whether Penney was justified in searching the lockers. Smith concluded:

Penney was informed that the accused young offenders were selling illegal drugs. ... no details were given to when or where or to whom the drugs were sold. The informant never gave his disbelief that they had drugs in their lockers and when did he see them put them there or in fact if he just merely suspected them to be there.

(R. v. J. J. W., 1990, p. 3)

Judge Smith also raised the issue that although three students were named, one of these was found to be completely drug free. The other two were charged not with trafficking as alleged by the informant, but with possession of small amounts of cannabis resin. Judge Smith concluded:

There has to be some standard of evidence that have to protect the young person, whether they be children in a home or children in a school ... nonetheless children in a school must have some minimum level of protection of their rights and in the school situation it seems to me that at least there should be a reasonable suspicion before students should be subject to searches ... I don't think that Mr. Penney or Mr. Ryan had sufficient evidence before them to justify why they were intruding into the lives of Mr. Barron and Mr. White.

(R. v. J. J. W., 1990, p. 4)

On the basis of this finding, Judge Smith excluded the evidence under Section 24 (2) of the Charter on the grounds that accepting it would bring the administration of justice into disrepute. Without the evidence, the case against White and Barron was dismissed. This

case was later appealed by the Crown on the basis of the exclusion of the evidence.

In reversing the decision of the lower court, Judge Woolridge again relied on the Ontario Court decision in R. v. J. M. G. (1986). In the first trial, Judge Smith concluded that the evidence made known to Mr. Penney did not raise "reasonable suspicion" to justify a search of the lockers. However, Judge Woolridge felt:

the evidence made known to Mr. Penney was much more than that. Here was a fellow student not only making known how and where trafficking was taking place within the school but quoting quantities sold and ... naming names. Bearing in mind that this evidence was collaborative of Penney's suspicions as to who was dealing drugs in his school, the search raised more than a 'reasonable suspicion'

(R. v. J. J. W., 1990, p. 7)

In fact, Judge Woolridge found the search to be, "dictated by the circumstances and ... reasonably related to the desirable objective of maintaining proper order and discipline" (R. v. J. M. G., 1986 cited in R. v. J. J. W., 1990, p. 7). As well, based on the precedent set in the American case New Jersey v. T. L. O. (1985), Judge Woolridge concluded that the search was not excessively intrusive; nor did it require prior police authorization. On these grounds, the appeal was allowed and the dismissal of charges in R. v. J. J. W. (1988) was reversed.

#### Healey v. Memorial University of Newfoundland (1992)

Two recent decisions of the Newfoundland Supreme Court will undoubtedly have far reaching implications for school administrators. Both of these cases dealt with denial of the due process rights of students. The first case, Healey v. Memorial University of Newfoundland (1992), hereafter known as Healey v. Memorial, involved the expulsion of

David Healey from the Faculty of Medicine at Memorial University. Healey, a second year medical student, was accused of "physical, emotional, and sexual violence" against his girlfriend, fellow classmate, "N. H." (106 Nfld. & P. E. I. R. 334, p. 307). The events of this case originated with written complaints made by "N. H." to Dr. S. Bethune, an Associate Professor of the Faculty of Medicine. On the basis of these complaints, Dr. Bethune wrote to the Dean of Medicine on April 3, 1991, alleging that Healey's conduct was "unethical and inappropriate for the profession of medicine" (106 Nfld. & P. E. I. R. 334 A.P.R., p. 307). The following day, Assistant Professor Dr. P. Duke wrote an even stronger letter to the Dean accusing Healey of " physical abuse, sexual abuse, manipulative behaviour, lying and psychological abuse" (106 Nfld. & P. E. I. R. 334 A.P.R., p. 307).

In addition, Dr. Duke asserted:

this was unethical and unprofessional conduct which 'makes it impossible for Healey to continue as a medical student and indeed would put his patients at risk, if he were to become a practicing member of our profession'.

(106 Nfld. & P. E. I. R. 334, p. 307)

The Dean of Medicine immediately appointed Dr. C. Mellor to conduct an investigation into the complaints against Healey. On April 8, 1991, David Healey was notified of the investigation and shown copies of the two letters of complaint that had been sent to the Dean. He was not, however, shown the original letter of complaint written by "N. H.". Healey was asked to write a letter to the Dean responding to the charges against him. On April 10, 1991, Healey complied with this request and in his letter he made certain admissions which were later used against him. It should be noted that these events

transpired at the end of the Spring Semester, just prior to the writing of final exams. In fact, Healey wrote his second year finals on April 12-13, 1991.

One week later, Healey met with Dean Hawkins of the Medical School and Ms. Singleton of the Registrar's Office. At this meeting Healey was informed by the Dean that, "if he did not voluntarily withdraw from medical school, he would be expelled" (106 Nfld. & P. E. I. R. 334, p. 307). Two days later, Healey again met with the Dean and at this meeting he was given a draft letter regarding voluntary withdrawal. Faced with expulsion, David Healey signed the letter and returned it to the Dean on April 25, 1991. It is noteworthy that all of these events took place in the span of three calendar weeks.

On July 4, 1991, Healey wrote a letter to the Dean of Medicine retracting "his acknowledgment ... that his withdrawal from the University was voluntary" (106 Nfld. & P. E. I. R. 334, p. 307). Indeed, Healey asserted that his withdrawal was anything but "voluntary" and on February 21, 1992, Judge Lang of the Newfoundland Supreme Court ruled in Healey's favour (106 Nfld. & P. E. I. R. 334, p. 308). Nonetheless, on March 6, 1992, Healey received a letter from the Registrar's Office requiring him to withdraw. On March 26, Healey sought a court injunction seeking re-admission to the university until the matter was resolved. On April 13, 1992, in a hearing before Judge Cameron, Healey's request was denied. Judge Cameron was assured by counsel for the University that:

Healey would have the opportunity for a de novo hearing at every level of appeal where he would be heard in person with all relevant documentation available.

(106 Nfld. & P. E. I. R. 334, p. 308)

The University also put forward an affidavit to the effect that such an appeal process could be concluded before the Senate Executive within six weeks of a request. In handing down her decision, Judge Cameron indicated that this was a matter of great urgency and that a speedy resolution was necessary.

On May 1, 1992, the Student Promotions Committee decided to defer Healey's request for promotion from second to third year. On May 13, 1992, Healey lodged an appeal against this decision and on June 2, 1992, the Executive Committee of the Faculty of Medicine began hearings in the Healey appeal. The Executive Committee conducted hearings for a two week period and heard testimony for a total of sixty-two hours ( 106 Nfld. & P. E. I. R. 334, p. 308). The final result of these hearings was that Healey's appeal was denied. However, on August 17, 1992, the Senate Committee on Undergraduate Studies met and decided that Healey's appeal should be allowed. As well, on September 11, 1992, the Senate Committee reconfirmed this decision that the appeal should be allowed. On November 19, 1992, Healey filed an application to the Newfoundland Supreme Court seeking orders of "certiorari and mandamus to enforce the decision of the Senate Committee" (106 Nfld. & P. E. I. R. 334, p. 308). The parties first met before Judge L. D. Barry on December 7, 1992, and at that time the proceedings were adjourned pending the decision of the University Senate which was due the following day. The Senate decision was to uphold the decision of the Executive Committee of the Faculty of Medicine to deny the appeal, thereby overruling the decision of the Senate Committee. On the basis of the Senate findings, Judge Barry granted Healey's appeal, allowing him to

challenge the Senate decision. Healey launched his appeal on the grounds that:

the Senate had no initial jurisdiction, or alternatively, that it had exceeded its jurisdiction by failing to observe the rules of natural justice in hearing Healey's appeal.

(106 Nfld. & P. E. I. R. 334, p. 306)

In rendering his decision, Judge Barry acknowledged his reluctance to interfere with the authority of University officials. Nevertheless, he cautioned:

There ... are certain minimum standards of fairness which officials at the university must observe in exercising their authority.

(106 Nfld. & P. E. I. R. 334, p. 306)

In particular, Judge Barry stated:

the Medical School has the authority to keep those who abuse and batter their sexual partners out of the profession of medicine. I must avoid any unnecessary interpretation of University regulations that would unduly hamper the Medical School in determining the suitability ... for admission to the profession of medicine.

(106 Nfld. & P. E. I. R. 334, p. 319)

However, Judge Barry also made it apparent that:

The Faculty of Medicine is only entitled to take facts relating to professional competence into account when those facts have been proved in accordance with ... minimum standards of fairness.

(106 Nfld. & P. E. I. R. 334, p. 320)

Judge Barry ruled that the Senate had failed to meet the minimum standards of fairness

when it:

- (i) Denied David Healey the opportunity to see and comment on the reasons given by the Senate Committee on Undergraduate Studies for allowing his appeal. He was not only denied access to these reasons, but was in fact never informed that such reasons existed.
- (ii) Denied Healey a fair and effective opportunity to comment on and criticize

the recommendations outlined in the report of the Ad Hoc Committee to the Senate.

- (iii) Denied Healey the opportunity to see and comment on the contents of the letter written by "N. H."

Judge Barry noted in particular that the University recognizes the importance of such access under the procedure for offenses involving academic dishonesty. In such cases, the report sent to the Senate Committee on Undergraduate Studies must be made available to the person being charged with the offence. The accused is then given the opportunity to comment on the report and make submissions in response to the report to the Committee. It is also significant that Note 1 of the Regulations for Readmission to the University states that a student must be advised of the case against him or her and be provided with an opportunity to answer the case (106 Nfld. & P. E. I. R. 334, p. 321). It is obvious from these regulations that the University is indeed cognizant of the due process rights of students. In fact, the University Discipline Code expressly gives students the right to be present and to examine and cross-examine witnesses and to have access to detailed information covering accusations in hearings against them. In David Healey's case, Judge Barry observed:

It is my impression that, because Healey's case was treated primarily as a matter of academic qualification, the Executive Committee of the Faculty of medicine decided that fewer procedural safeguards were necessary. I do not accept that conclusion. From the unease expressed at all levels concerning the adequacy of the procedures followed, I sense that the University officials themselves were troubled by what was occurring.

(106 Nfld. & P. E. I. R. 334, p. 326)

Judge Barry further stated that where facts are to be established in a University tribunal, "it is necessary to have greater procedural safeguards when the accusations are of a criminal nature with serious repercussions for a person's reputation and future employment prospects, than is needed in less serious cases" (106 Nfld. & P. E. I. R. 334, p. 326). In this case, the consequences to David Healey were considerable; not only would he be prevented from finishing his medical studies and be barred from the medical profession, but the accusations that he faced were criminal in nature. The proceedings against him were also public, resulting in serious impact to his reputation. Reference was made to the high standard of justice required when the right to continue one's profession is at stake which was first established in Kane v. University of British Columbia (1980). In fact, Judge Barry concluded:

I have not been shown another case where the allegations have been as serious and the protections afforded so few as in the present case.

(106 Nfld. & P. E. I. R. 334, p. 335)

The Court also recognized that considerable emphasis was placed on admissions made by Healey in his letter to the Dean dated April 10, 1991. In this letter, Healey admitted to slapping "N. H." twice during their ten month relationship; pushing her at other times; and physically restraining her during fights. Judge Barry noted that while Healey's conduct was unacceptable and deserving of condemnation and sanction, the Faculty of Medicine was obligated to first determine the credibility of the accusations before taking disciplinary action. The Ad Hoc Committee to Senate also noted that Healey had lied to the Dean, in

this letter, when he said that he was continuing to see his counselor. Judge Barry acknowledged that although this reflected badly on Healey's overall credibility it:

does not ... mean that he then loses all right to challenge N. H.'s story. As was stated in Hofer (1992), 'natural justice requires procedural fairness no matter how obvious the decision to be made may be'.

(106 Nfld.& P. E. I. R. 334, p. 323)

Judge Barry also stressed that David Healey should have had access to legal counsel during hearings held by the Executive Committee of the Faculty of Medicine. In this case the Court ruled that David Healey had been denied natural justice and the University was ordered to reinstate him.

#### Fox v. The Royal Newfoundland Constabulary (1994)

A second Newfoundland Supreme Court decision on the due process rights of a student was heard in the Summer of 1994. In Fox v. The Royal Newfoundland Constabulary (1994), hereafter known as Fox v. The R N C, Tonya Fox was dismissed, from the R N C as a special constable, for breaching the Code of Conduct. Fox, a student of the Atlantic Police Academy, entered into an on-the-job training program with the R N C on May 26, 1994. The training program was to continue from May 30 to September 9 at a salary of three hundred dollars a week. Before beginning the program, Fox was required to sign an agreement which contained the following clause:

I will follow and abide by the terms and conditions in the agreement. I further acknowledge that I am subject to the Discipline Code of the Police Force Department and I understand that a breach of the discipline code may result in dismissal from the training program.

(Fox v. The R N C, 1994, p. 2)

The R N C Act (1990) stipulates that:

- (i) The Chief may appoint a special constable;
- (ii) The Chief may suspend or terminate the appointment of a special constable;
- (iii) Before a special constable is terminated, he or she shall be given reasonable information with respect to the reasons for termination and an opportunity to reply orally or in writing to the charges, as the Chief determines.
- (iv) The Chief's decision is final.
- (v) A person appointed to special constable shall, before entering duties ..., take an oath of office and secrecy.

(Fox v. The R N C, 1994, p. 3)

The Code of Conduct of police officers is provided under Regulations enacted in 1993 and includes a provision that a police officer shall not:

divulge any matter or thing that is his or her duty to keep secret; ... without proper authority, disclose, directly or indirectly to a person, information which he or she acquired as a police officer;

(Fox v. The R N C, 1994, p. 3)

When Tonya Fox began her duties as special constable, she came under the supervision of field trainer, Constable Brian Nugent. At that time, Fox was involved in a common-law relationship with Vaughn Slaney. Shortly after Fox began her training, she informed Nugent that he had at one time charged Slaney with assault. On the basis of this information, Nugent made further inquiries into Vaughn Slaney's background. Nugent found that the R N C had received several complaints about Slaney and he confidentially passed this information on to Fox. Nugent also asked civilian employee Alicia Tucker of the R N C Communications Center to run a check on Slaney through the Canadian Police

Information Center (C. P. I. C.) system. As a result of this search, Tucker told Nugent that in addition to being prohibited from operating a motor vehicle, Slaney had other Criminal Code convictions in both Newfoundland and Alberta. Nugent showed the C.P.I.C. report to Fox and informed her that the information given to him by Tucker was confidential and not to be revealed to Slaney. Constable Nugent testified that his purpose in discussing these incidents with Fox was to:

attempt to impress her with the potential seriousness to her career that an intimate association with a person having a criminal record might have upon her future. I also cautioned that Vaughn Slaney having dropped her off at headquarters and having been observed doing so was committing the offence of operating a ... vehicle while prohibited.

(Fox v. The R N C, 1994, p. 5)

As a result of her association with Slaney, the R N C launched an investigation into Fox's conduct. Subsequently, on July 25, 1994, Fox was advised that she was to appear at the office of the Chief of Police on the following day. Upon appearing, Fox faced a gathering of the Chief of Police, the Deputy Chief, three commissioned officers, a staff sergeant, and the recording secretary. Chief Justice Alex Hickman was quick to observe:

One can easily assume that such an array of senior police officers would create an intimidating atmosphere for a new recruit.

(Fox v. The R N C, 1994, p. 22-23)

During this meeting, the Chief informed Tonya Fox that the internal investigation which was held, had demonstrated that she had breached the oath of confidentiality, and that she had been in close association with an individual who had a criminal record. Pursuant to Section 16 (6) of the R N C ACT, she was then given the opportunity to respond orally to

the charges. The end result of this hearing was that Fox was terminated as a special constable. It is noteworthy that this meeting, which would dramatically affect Tonya Fox's future, lasted a total of twenty minutes.

In Fox v. The R N C, the central issue before the Court was whether or not the Chief had failed to comply with Section 16 of the R N C Act in terminating Fox, or alternatively, did he terminate Fox in a manner that constituted a denial of natural justice. Chief Justice Hickman noted that although Tonya Fox was aware of the on-going investigation being conducted by the R N C, she was not informed of the outcome of the investigation or of the recommendations of the investigating officer prior to the meeting. Hickman also observed:

The Applicant was simply told by the Chief ... that based on such investigation, that she had breached the oath ... She was then given immediate opportunity to reply to the findings ... which she did without having the opportunity to carefully consider her position and without knowing the evidence upon which the Chief ... had reached his conclusion to terminate her employment.

(Fox v. The R N C, 1994, p. 24)

Justice Hickman emphasized the fact that Tonya Fox did not have an opportunity to review the report of Chief Investigating Officer Kenny before the meeting. This made it very difficult for her to respond to the findings. The Court ruled:

The minimum that the Applicant was entitled to receive from her accusers was Inspector Kenny's report, with supporting documentation, adequate time to review same and decide whether she wished to confront her accusers, cross-examine them or challenge all or any of the findings contained in the ... report.

(Fox v. The R N C, 1994, p. 25)

Chief Justice Hickman concluded:

Fundamental fairness to the Applicant dictates that before being required to reply to the Chief of Police's definitive pronouncement that she was in breach of the Code of Conduct, that she be afforded the opportunity to review the evidence against her.

(Fox v. The R N C, 1994, p. 25)

As in the Healey v Memorial case, the Supreme Court once again commented on the seriousness of consequences of the decision to the Applicant. The decision of the Police Chief to terminate Tonya Fox's employment had very serious consequences for her future career. In particular, termination meant that:

- (i) Fox would be prevented from completing the required training session with the Constabulary;
- (ii) Fox would therefore be prevented from completing her course at the Atlantic Police Academy.
- (iii) Fox would therefore be prevented from pursuing a career in any police force.

On the basis of these consequences, the Court held:

This administrative decision has very serious results for the Applicant. For that reason, it is essential ... that the Applicant be given ample opportunity to answer all and any charges against her.

(Fox v. The R N C, 1994, p. 22)

Justice Hickman ruled that in this case, Tonya Fox had been denied fundamental fairness. Specifically, he noted that during the meeting of July 25, 1994:

The Chief's statement, 'If you wish to reply, it is my determination that you do so orally. Do you wish to reply?', does not meet the criteria of fairness. Such action constituted an unacceptable breach of the rules of natural justice and also was not in compliance with Section 16 (6) of the Act.

(Fox v. The R N C, 1994, p. 25)

The Chief Justice acknowledged the fact that his decision in this case was not designed to undermine the authority of the Chief of Police, or lessen the seriousness attached to a breach of confidentiality by a police officer. In fact, he reconfirmed the sentiment that an officer who breaches the rules of confidentiality can expect to be dismissed. However, he held that in this case, "the allegations against the Applicant did not meet the standard of proof and fairness required under the circumstances" (Fox v. R N C., 1994, p. 26). Chief Justice Hickman therefore ordered that the decision of the Chief of Police to terminate Fox be quashed, and that she be re-instated as a special constable with the Royal Newfoundland Constabulary.

These recent cases in the Newfoundland Supreme Court seem to indicate that the due process rights of students is somewhat of a "hot topic" in this province at the present time. It is also obvious that the Courts hold the principles of natural justice in very high regard. Perhaps what is most striking about these cases is the fact that both Memorial University and the Royal Newfoundland Constabulary had procedures in place to ensure the due process rights of the individuals involved. However, in both cases, these procedures were either ignored completely or not strictly followed. The wise school administrator will be aware not only of the need for policies and procedures that protect the due process rights of students, but he or she will also ensure that these are adhered to.

In conclusion, the literature on the due process rights of students leaves little doubt as to what the due process rights of students are. It also clearly outlines the steps that

should be taken to ensure that these rights are protected. Reference is also made to the fact that, in the future educators can expect to see more and more school practices and decisions questioned in the Courts. Administrators and teachers are being forewarned that they should be ensuring that school policies and procedures are in keeping with the rights and freedoms outlined in both the Charter and the Young Offenders Act. As well, as is evident from the litigation on the due process rights of students, educators need to keep up-to-date on Court decisions with respect to educational matters. The literature also alludes to the fear that seems to follow in the wake of most court decisions. Teachers and administrators admit to often turning a "blind eye" instead of dealing with discipline problems that arise. It would appear that if practitioners were to increase their knowledge of student rights, this kind of fear would be greatly reduced.

## CHAPTER 3

### METHODOLOGICAL APPROACH AND SAMPLE

This chapter contains a description of the research methodology employed in the study. The methodological framework is outlined. In addition, methods of data collection and analysis are described in detail.

#### Methodological Framework

The methodology used to conduct this study was qualitative in nature. Denzin and Lincoln (1994) define qualitative research as, “multimethod in focus, involving an interpretive, naturalistic approach to its subject matter” (p.2). This method requires that the researcher “study things in their own natural settings, attempting to make sense of, or interpret, phenomena in terms of the meaning people bring to them” (Denzin & Lincoln, 1994, p.2). Eisner (1990) feels that because qualitative studies examine phenomena “intact”, in their “naturalistic” setting, such studies are generally “nonmanipulative” (p.33). Proponents of this methodology believe that no single objective reality exists, instead they propose that there are multiple realities which are socially constructed (Lincoln & Guba, 1985). In fact, as Hammersley (1989) points out, there can be “multiple, non-contradictory and explanatory claims about any phenomena”(as cited in Schwandt, 1994, p.137).

In this type of research design, the researcher becomes the “research instrument” (Eisner, 1990; Glesne & Peshkin, 1992; Janesick, 1994). The researcher becomes the

main research instrument as, "he or she observes, asks questions, and interacts with participants" (Glesne & Peshkin, 1992, p. 7). Punch (1994) states:

much field research is dependent on one person's perception of the field situation at a given point in time, ... that perception is shaped both by personality and by the nature of the interaction with the researched, and ... this makes the researcher his or her own 'research instrument'.

(P. 84)

It is therefore through the eyes of the researcher that the reader will come to know and understand the world of the research participant(s).

### **Methodological Tools**

Qualitative researchers employ a variety of methodological tools in the data collection process. The three data collection techniques that are seen to be most widely used by qualitative researchers are observation, interviewing, and document review and analysis (Greene, 1994; Janesick, 1994; Punch, 1994). The qualitative research techniques employed in this study included the use of interviews and document analysis. Denzin and Lincoln (1994) view interviewing as, "the favorite" tool of the qualitative researcher (p. 353). According to Fontana and Frey (1994), "interviewing is one of the most common and most powerful ways we use to try to understand our fellow human beings" (p. 361). As well, Glesne and Peshkin (1992) believe that, "you cannot ... except through interviewing, get the actor's explanation" (p. 65). Given that the qualitative researcher seeks to understand the world of the participant(s), the preference for interviewing as a data collection tool is quite discernable. In this study, semi-structured interviews were

used as the principal data gathering tool. Greene (1994) contends that regardless of the data collection technique used, it is "the interactional, adaptive, and judgmental abilities of the human inquirer" that are most crucial to the collection of rich data (p. 538).

This quest for rich data or "thick description" is what the qualitative researcher strives to achieve. This term, which was first introduced in 1973 by anthropologist Clifford Geertz, has come to epitomize qualitative research studies. Eisner (1990) sees thick description as, "an effort aimed at interpretation, at getting below the surface" (p. 15). In fact, it is through "the presentation of solid descriptive data...that the researcher leads the reader to ... understand ... the meaning of the experience under study" (Janesick, 1994, p. 215). Denzin (1994) also states that it is this "thick description" that will ultimately enable the researcher to "create thick interpretation" (p. 506). The use of semi-structured interviews was used in this study to illicit the kind of thick detail that might not otherwise be acquired through the use of other research techniques.

### **Design of the Study**

The purpose of this study was to examine the due process rights of high school students in one rural school district in the province of Newfoundland, Canada. Specifically, this study examined due process rights of students in matters of school discipline. Initially, the superintendent of the school board was personally contacted by telephone to determine if any similar study had been previously conducted in this district, and to gauge interest in such a study. The district superintendent was very supportive of

the study and gave tentative permission for the proposed research pending approval of the Ethics Review Committee. Upon request, the district assistant superintendent provided the researcher with a list of all the schools within the school board. This list provided demographics on each school including population, staff size, grade levels , as well as the names of administrators. In all, there were a total of nine schools in this district with students enrolled in senior high school grades (Level 1, 11, and 111). Since most school discipline matters are ultimately dealt with by school administrators, it was decided that both the principal and vice-principal of each of these nine schools would be invited to participate in the study. A formal letter outlining the purpose of the study and inviting active participation was sent to the administrators of each of these nine schools (see Appendix D). As well, a formal letter outlining the purpose of the study, and seeking formal permission to conduct the study was sent to the district superintendent (see Appendix B). In addition, a number of legal experts were invited to participate (see Appendix E). Written "informed" consent was obtained from all participants prior to the commencement of the study (see Appendix C).

There were two components to this research. First of all, in order to determine the extent to which the due process rights of students were being addressed by school administrators in this school district, it was necessary to ascertain what these rights were and how they should be addressed. Thus a number of "local legal experts" were also contacted and invited to participate in the study (see Appendix D). These individuals included Provincial Court Judges who had expert knowledge of the judicial system

pertaining to legal rights of students and young offenders. As well, a former professor of School Law from the Faculty of Education at Memorial University was invited to participate, as was an official from the Provincial Department of Education who was experienced in matters pertaining to students affairs. These individuals brought to the study a broad range of knowledge in a number of legal areas. In addition to an extensive review of the literature on due process, a number of primary sources were studied including course outlines and notes from legal education programs at both Memorial University and the University of Ottawa. These sources provided the researcher with insight as to what should be considered when examining policy on due process rights. The second component of the study involved examining school discipline policies and procedures in order to determine if the due process rights of students were being addressed in the schools within this school district.

Of the nine schools contacted, administrators from five of these, as well as the district superintendent, consented to participate in the study. One week after the mail-out of letters inviting participation, the researcher contacted the administrators who had responded and a suitable interview time and site were agreed upon. In situations where there had been no response, administrators were contacted by telephone and the nature of the study was once again explained. In many cases, the administrator assured the researcher that he/she had every intention of returning the enclosed consent form but had simply not yet found the time to complete the task. From these initial contacts, a total of fifteen participants agreed to participate in the study. Other administrators felt they

merely did not have the time to become involved due to other commitments and obligations. After a further two week period had elapsed, prospective participants who had still not responded were contacted by fax transmittal. Once again an invitation to participate in the study was extended, however, no further responses were gained through this method. It should be noted that this study was conducted just prior to the Easter Holiday recess which may have influenced lack of participation. In addition, at the time of the study, many principals within this district were delegates to a provincial conference and were therefore unavailable for interviews.

Although a series of interview questions were designed and submitted to the Ethics Review Committee prior to approval of the research proposal, the researcher also sought the advice of "expert" qualitative ethnographers in the Education Faculty at Memorial University of Newfoundland, Canada, in order to determine if these tentative questions were indeed targeting the issues which this study sought to address. In order to ensure that both the researcher and the participant shared a common meaning for the term "due process", early in the interview session each participant was asked to explain what came to mind for him/her when the term "due process" was used. This allowed the researcher to gain some insight into whether or not the participant was familiar with the term and if indeed the researcher and the participant were of the same mindset. As well, there were several instances where the proposed interview question was seeking data on two separate issues. In order to alleviate the possibility of gaining information on one issue at the exclusion of another, questions of this nature were reworked into separate

questions so that only one set of data was being elicited by each. In addition, prior to beginning the study, a pilot interview was held to test the interview protocol. Again, this allowed the researcher to reword any questions that might be problematic to the respondent. As a result of the pilot interview, it was decided that each interview session should begin with general questions, as to the participant's number of years of experience, degree (s) held etc., in order to put the participant at ease and to develop some degree of rapport between the researcher and the participant.

### **Data Collection**

Interviews were semi-structured in nature and consisted of a series of open-ended questions. In addition, the researcher often probed and explored other issues that emerged throughout the course of the interview. Although a schedule of research questions was formulated (see Appendix F), questions were not necessarily asked in the same sequence; nor were all participants necessarily asked all the same questions. Interview questions were formulated to answer the following broad research questions which this study was designed to address:

- (I) What are the due process rights of students?
- (II) At present, what policies addressing student discipline currently exist in the high schools in this rural school district?
- (III) To what extent do these policies incorporate the due process rights of students?
- (IV) To what extent do existing policies reflect current literature and thought on

the question of the due process rights of students?

Interviews varied in length from forty-five minutes to approximately two hours in duration. The average interview was approximately ninety minutes long. With the approval and permission of individual participants, all interviews, with the exception of one, were recorded on audio cassette for later transcription. In one instance, the participant requested that the tape recorder not be used. This request was honored and handwritten notes were taken throughout the course of the interview. Most participants seemed very comfortable with the recorder and appeared to be quite at ease with the interview protocol. Participants had total control over where and when the interview would be held. Interviews with school administrators were usually held in the administrator's office within the school building. The majority of these interviews were held after school hours. Without exception, every administrator in this study had teaching duties in addition to administrative duties; this eliminated the possibility of interviews during regular school hours for the majority of participants. Often this necessitated that the researcher travel to the same school on two or three separate occasions in order to conduct interviews with individual administrators. Interviews with other participants were usually conducted at the participant's place of employment during office hours. One interview was held at the researcher's office on campus at Memorial University.

The majority of participants in this study were very articulate in describing their experiences. As well, the researcher used prompts, such as "what do you mean by that?"

and "how did that make you feel?", in order to elicit additional information from the participant. On occasion, the researcher played "devil's advocate" to further probe opinions expressed in interviews. No follow-up interviews were required.

In addition to the semi-structured interview, data collection also involved document analysis. The administrative team from each participating school was asked to provide the researcher with a copy of the school rules and discipline policy that was currently being used in the school. All participants without exception provided documents as requested. As well, a copy of the Principal's Handbook issued to each administrator within the school district was examined and analyzed. In addition, minutes of the district principals' meetings were analyzed. The materials and experiences gained through use of these data collection techniques informed the researcher during analysis.

On completion of the field work, the next research task to be undertaken was the transcription of interview data. Most interviews were partially transcribed so that relevant sections of data could be accessed. However, a large number of interviews were transcribed verbatim since they were judged by the researcher to contain extremely "rich" data. All transcribing was done by the researcher. Following transcription of the tape, the researcher began to analyze the data. As is characteristic of qualitative research, certain themes emerge from the data collected. Data gathered in this study, were analyzed on the basis of the themes and sub-themes that emerged from transcriptions and field notes.

### The Sample

There were a total of fifteen participants in this study, ten school administrators, five principals and five vice-principals; the district superintendent; and four legal experts, two Provincial Court Judges, a representative from the Department of Education, and a former professor of School Law from the Faculty of Education at Memorial University. Of this group, thirteen respondents were male; two were female. In order to ensure confidentiality and to protect the identities of these individuals, for the purpose of reporting all principals will be referred to in the female gender which may or may not be correct. As well, vice-principals, the superintendent and the legal experts will all be referred to in the masculine gender which once again may or may not be correct. As well, for the purpose of clarity of reporting and again to ensure anonymity of respondents, names were divided into three categories. Names of principals were drawn at random in order to determine who would be labeled "Principal One, Principal Two" and so on. The same method was used in labeling vice-principals and legal experts. Any relationship that might exist between the numeric designation of school administrators is purely coincidental.

This chapter has outlined the research methodology used throughout this study as well as the data collection techniques and data analysis methods employed by the researcher. The following chapter will present the data which were collected in this study, and describe the themes which emerged through analysis.

## CHAPTER 4

### PRESENTATION AND ANALYSIS OF DATA

This chapter will present the data which evolved throughout this study. Data were analyzed on the basis of the common themes that emerged through use of document analysis and semi-structured interviews with fifteen participants. Analysis of data revealed five major themes which will be described in this chapter. In addition to the overriding theme, often a number of sub-themes were also evident. The five themes to be discussed here include:

Theme One: The winds of change. This theme encompasses four sub-themes; increased awareness of rights, increased accountability, increase in the number of serious discipline problems, and a decrease in parental support.

Theme Two: The impact of societal changes on administrative practices. This theme examines administrative practices that have and have not been affected by changes in society. Again a number of sub-themes emerged including: increased documentation, increased consultation, the need for thorough investigation into incidents, an absence of voice, an absence of policy, and absence of an appeal's process.

Theme Three : Time plays a tremendous role in due process. A sub-theme to arise from this theme was the impact that declining enrollment has on administrative time.

Theme Four: Lack of knowledge of school law. The impact of pre-service and in-service training will be discussed, as well as overuse of the office as a deterrent to

misbehavior. Participants' general level of knowledge will also be explored.

Theme Five: A question of balance. This theme describes the task of balancing the rights of all stakeholders in the school setting. The sub-theme, supporting the teacher, will also be explored. Theme names used are solely the creation of the researcher, based on evidence evolving from the data. Themes were largely determined by frequency of manifestation.

### **Descriptive Statistics**

This study was conducted through the use of qualitative research methods. Data was collected primarily through use of document analysis and semi-structured interviews. Participants in this research consisted of a district superintendent, and ten school administrators representing one rural school district in the province of Newfoundland and Labrador, as well as, four "legal experts" from other regions of the province. The board is comprised of twenty schools, employs 263 teachers and serves 3650 students. Of the five principals and five vice-principals who participated, eight were male; two were female. All had extensive teaching experience, ranging from 10-29 years. Administrative experience ranged from 2-24 years. Level of education ranged from one degree to three degrees including a graduate degree. Administrators in this study, represented five schools of various size. Of these, one had grades K-12 inclusive; one was a 4-12; another 7-12; yet another was 8-12; and one contained only senior high grades 10-12. The number of teaching units per school ranged from 12-28.

### **Presentation and Analysis of Data**

One of the predominant themes to emerge from this data is that over the years, administrators in this rural school district have witnessed a major change in both parent and student attitude toward the authority of the school. This theme can be further subdivided into four sub-themes each of which reflects the kind of changes that were discussed by participants in this study. These sub-themes include: an increased awareness of rights; increased accountability; an increase in severe discipline problems; and a decrease in parental support.

#### **Theme One: The Winds of Change**

Administrators in this school district have witnessed a dramatic change in parent attitude toward the authority of the school within the last decade. Comments made by Vice-principal Four illustrate this point.

One time you could get away with so much as a school and administration. ... Your authority was almost unquestioned years ago, but that's changed a lot over the last ten years.

This points to a time when the school and those who worked there were held in high esteem by members of the community. School officials were respected because of the position that they held. Comments made by Principal Three demonstrate that this is no longer true of society today. She added, "I find most parents the same way. It's no more because you say so." This comment suggests that administrators in this rural school district feel that the position of school administrator no longer carries as much influence or

power as it once did. Similar sentiments were echoed by Vice-principal Three who remarked:

Years ago when I started teaching, if you contacted the home, the child would be punished in the home, and as principal you were not questioned about how accurate your reporting was ... Now ... you will be questioned about the decisions you make; about the consequences for behaviour, or even about how accurate your decision was ... how you read the situation.

This indicates that parents did not question administrative decisions in the past, and they were supportive of disciplinary actions taken by the school. In many cases, the disciplinary actions taken by the school were not only reinforced in the home, but quite often even harsher sanctions were initiated. Vice-principal One suggested that many problems seen in schools today may actually be the result of a major discrepancy between the culture of the school and the culture of society in general.

And what's acceptable out there ... when they come into school is no longer acceptable ... It is acceptable ... 90% of their time, and for that 10% that they're in school, they've got to adapt to a different culture. And that becomes quite often the source of a problem. Very often kids say things that in school are totally unacceptable, but it's acceptable to their parents. You might even hear the same thing from their parents. You get an indication quite often that students say things and they genuinely don't realize that there's a whole lot wrong with it.

The implication here is that behaviour that is often acceptable in the external environment is not acceptable within the school environment. More specifically, behaviour that is endorsed in the home, is not always what is judged to be permissible or tolerated within the confines of the school. This diversity in what constitutes acceptable behaviour may help explain many of the discipline problems that are evident in schools today. It would appear that the school and the home no longer reflect the same values. In fact, Vice-

principal Three, who had been a former principal in another school in this district, described an experience he had with a group of parents. He related how there had been an increase in the number of breaches of school rules and how in response to this, he decided that it would be a good time to have an open meeting with parents to review the rules. He said that he was shocked at the reaction of some of the parents who exclaimed that the school rules were "baloney." Other parents labeled the rules "bunkum," and "silly." Some parents even remarked, "Make no wonder the children are acting up!". One of the people who responded in this manner was the parent of a student who was on the verge of being expelled. Obviously factors in the external environment influence what is happening within the context of the school. This point was discussed by Principal Four who stated that she felt that much of the disruption that happens within the school is a reflection of the kind of hopelessness that students see in their home community. In particular, she referred to the economic despair that many students are immersed in, and which in her opinion has affected both student achievement and discipline.

Kids are not coming to school as prepared to learn as they were before. We see that all the time. They just don't see the point. I think they see it as 'I'm not gonna get a job' and 'I'm not gonna get a career'. And that's it. Kind of a fatalistic view. The negativity that's out there ... and until they can see some purpose ... that they actually can complete this and there's going to be something at the end. That's all they hear you know, whether it be from the media or from the home. All this negativity is being piled on them, and I think the fallout of that is frustration and then disruption.

This signifies that economic factors such as a high unemployment rate, the close of the fishery, and the rapid outflow of people from communities throughout this province have

impacted on how students view the value of getting an education. A possible consequence of this may be frustration which leads to disruptive behaviour.

However, not all participants viewed the past with the same degree of nostalgia.

For instance, Principal Three discussed how students were often treated in previous years.

You cannot grab a youngster by the hair of the head and stuff like that. See, that was never acceptable, but you could get away with it. It was done and we looked like good disciplinarians. That was discipline for discipline sake. That was power. ... that wasn't authority. And it was never acceptable. It is less acceptable in today's society, and it's good news.

This suggests an awareness that students have sometimes been mistreated by school officials in the course of meting out discipline. Perhaps it is this kind of past indiscretion that has led to today's parents demanding fairer and more humane treatment for their children. There is also recognition here, that times have changed and this kind of discipline will no longer be tolerated by parents.

#### **Sub-theme One: Increased Awareness of Rights**

Comments made by participants in this study also indicate that both parents and students today are more aware of their rights. Principal One stated, "more and more parents .. and more and more students are aware of their rights." Vice-principal One added, that not only do students and parents "know exactly where they stand in terms of their rights, and where they have the right to protest", but also that he suspects, "if the opportunity arises they would quickly use it; readily use it". These comments indicate that today's school administrators are dealing with a well-informed clientele. When asked where student rights come from, the most frequent responses from administrators were

"from the Charter," "board by-laws," and "basic human rights." Given that administrators in this school district have noticed a substantial change in parent and student attitude toward the authority of the school within the last decade, and they believe that these rights originate with the Charter of Rights and Freedoms suggests that the passage of the Charter of Rights and Freedoms in 1984 has led to an increased awareness of rights by the major stakeholders in the education system. In addition, Principal Two stressed that administrators today more frequently find themselves, "dealing with the media." Several administrators made reference to being contacted by the media about incidents that had occurred in their schools. In fact, there was an incident in one of the schools in this district that was actually reported not only in the local newspaper, but also on the news program "Here and Now." Media coverage of school discipline related incidents, has in all probability, contributed to the increase in public awareness of rights.

Not only are parents very aware of their rights and the rights of their children, they also do not hesitate to fight for these rights. Vice-principal Three commented that this awareness has made "due process much more a reality for schools than it was ... years ago." He conceded that administrators today can "no longer dismiss people without hearing them out." Principal Three commented that this increase in student awareness has influenced how he deals with students because in his opinion, they "are not little pawns" that can be manipulated. The Superintendent also remarked that many parents today, "not only require," but "actually demand due process" both for themselves and their children. In fact, he added that, "some people will go to great lengths" to ensure that their demands

for due process are met. To illustrate this point, he described an incident where he was in the middle of a meeting at the District School Board Office when a car pulled up outside and an irate parent stormed right into the meeting room, and demanded to know why his child had been questioned in school, by the police, without his knowledge. This district has a by-law which states that students are not to be questioned by police officers, during school hours, without the consent of a parent or guardian. Administrators in this study also admitted to being subjected to a variety of threats from parents. The usual threat appears to be, that they will go to the "school board", but increasingly there have been threats of legal action. Principal Four expressed the opinion that, "there's more parents that would take a school to court than ever before." Vice-principal One discussed several examples of this phenomenon that had occurred in his school.

We've had a couple of instances this year where parents in effect have issued warnings we'd better not threaten or touch so and so. I'm not sure how much was actually to it, if it actually went as far as the parent tried to make us believe it went. We did have one incident where a parent was threatening court action ... that was one student against another. That particular parent did threaten ... that if ever a teacher in anyway touched or improperly treated his young fellow, they would be immediately taken to court.

The implication here is that parents will not balk when it comes to protecting the rights of their children. The Superintendent also addressed this issue, and he admitted that it has not been unusual in recent years for parents to go to the R.C.M.P. and issue a complaint that their child "has been physically abused by a teacher" or that "something was thrown at" their child. As well, he confessed that he has been contacted by lawyers on a number of occasions in the past three or four years. He also related an incident which seems to

typify the kinds of action(s) that parents are willing to take on behalf of their children.

We've had, as a matter of fact, only recently ... a particular student in one of our schools who was suspended from sports activities because the girl was swearing [when she was] on the floor. Not just once or twice, but continuously. The parent felt that ... the child's views weren't being heard, and that people were lying, and that you know, they didn't like the girl and they wanted to get her off the sports' teams anyway. These kinds of things, that's the approach that he [the father] took, and went to great lengths; even spoke to a lawyer. Now I mean, she wasn't suspended [from school], just suspended from sport's activity [said with amazement]. Even went to a lawyer, didn't get anywhere with it of course, but none the less, felt that well you know she swore once or twice ... from what he understood ... or what he thought, or what the child said I guess. Although, that's not what the case was. He felt that it was being unfair to her to suspend her from all activities for that because all kids do that [curse and swear] in his opinion. And in his conversation with me, he swore viciously on the phone and told me that he'd get me if I didn't change this around.

This demonstrates that some parents will threaten to resort to physical violence if they feel that all other avenues have failed. It also demonstrates that parents often attempt to intimidate school administrators, even those at the highest level.

Legal Expert One, however, stated that educators should not be overly intimidated by threats of court action. He recognized the fact that there are some teachers and administrators who feel that the law does not support them, and as a result of this they feel that they have lost the kind of control that they had in the past. While he did acknowledge that "it is more difficult to teach now," he advised that educators should be conscious that:

The courts will support reasonable action by teachers and administrators. If you look at all the cases ... most of the litigation ... where the teacher acts, and the school, and the principal, the administration acts reasonably, the courts support. It's only when there's a defiance ... of basic human rights; natural justice rights [due process] do you get the courts intervening. They don't want to intervene. They support educators more than they appear to support them in the media ... if you act reasonably, courts will support you and that's all you can ask. /

This data suggests that while educators may feel the courts do not support their actions, the reality is that courts do not want to interfere with school decisions and will only intervene when there has been a violation of basic human rights. It also indicates that the courts will support any reasonable action taken by teachers and administrators. Although Legal Expert One believed that due process rights of students will have a "dramatic" bearing on the role of school administrators, he did not agree that it had or would in anyway decrease their authority.

I don't think that it's taken away all the authority quote, unquote of the administrator. But it certainly requires administrators to operate in much more collegial manner than in the past, and respect the law. And I know it's certainly made it [administration] more challenging ... the most challenging position today has to be administrator in a high school ... and I'm not surprised that some positions are not being filled as easily as they were in the past.

There is cognizance here that school administration is very challenging in today's educational climate, and that this may be impacting on administration as a career option. In addition, it advocates that administrators today need to adopt a more collegial approach than was used in the past.

#### **Sub-theme Two: Increased Accountability**

Not only are parents and students very aware of the rights, but this awareness appears to have led to an increase in accountability for educators. This is most evident in the questioning of administrative decisions and challenges to school policies. While there were minor inconsistencies in responses, the majority of participants in this study felt that both parents and students question school decisions more today than they did in the past.

The superintendent of this school district stated that in his opinion, "the most difficult group of people that principals deal with are parents." He went on to say that, "Parents question everything and they have a right to question everything of course. But, ... I don't think there's a principal out in our school district right now, that's not aware that every decision that he makes or she makes could be questioned by parents." This same sentiment was echoed by Legal Expert Four who added that not only do principals "have to realize ... that their decisions now are open to question," but also that, "everybody has a right to question." Principal One stressed that she is constantly reminding her staff that, "decisions that we make in the school ... aren't settled by me. I don't have the final words, and that it's the right of the student and the parents to make us explain why we've done what we've done." Indeed, as Vice-principal One pointed out:

There are some students who question the whole authority of the school. They question anybody's right to have any type of authority over them. So, they question all the rules, anything.

In fact, Principal Five related an incident where her authority was called into question by a student:

I had a young fellow who jumped on the back of a teacher's pickup and got a run back up the hill on the tailgate. And when I called him in and told him that was totally inappropriate; I mean the teacher really got a fright when he looked back and saw him. He could have had to shove on his brake and he [the student] could have been killed. Right? And he said then, 'I don't think that has anything to do with the school.' And I said, 'From the time that you leave school 'til you get home,' I said, 'you're my responsibility. And this involved a teacher. As it happened, you jumped, as soon as you walked out of the school, you jumped on his truck.' So there was a challenge there, whether I had the right to even impose any punishment for something like that.

Principal Two added that not only are "a lot of parents more challenging of school rules", but that even what at one time "normally would have been a supportive parent" is challenging administrative decisions in today's school climate. She recounted a recent school incident to illustrate this point.

We had a kid that was doing a cake decorating class [ in Home Economics] ... and while the teacher was turned, the student ... put certain bodily hair and spit on the cake, and iced it over. Okay, he witnessed it to the other students that seen [sic] it, that it was a big joke. The cake, unknown to the teacher that it had been contaminated, the teacher took the cake after ... to a class and divided it up and the kids ate it. All this occurred before we were able to know what had happened. Well, when it came to light, you can imagine now, ... word spread like wild fire ... I know the parents quite well. And although all these other kids had seen this go on and come and say, 'You know sir' ... And you say, 'I want you to tell me exactly what you seen [sic] and if you didn't see it, don't tell me what somebody else told you.' And there's no doubt at this point what had happened, and the boy had admitted to me finally what had happened. And yet when he got home, he told the parents that he finally admitted what had happened because I had threatened him so much, and he had done nothing. And his parents came back and accepted that and were willing to start a challenge because they wanted to clear up his name.

This data indicates that even parents, who are normally considered to be supportive in the eyes of the school administration, will accept the word of their child rather than believe the word of school personnel. This appears to be both disappointing and frustrating for administrators. Another example, of this phenomenon of parents supporting their children, was provided by Principal Five who related an incident where a student came to school wearing a tee-shirt advertising beer, which was in violation of the school dress code. In this case, the parents called the school and told the principal that their child was not going to comply with the prescribed consequence. In fact, she related how, "the

parents came in to see me, and they came with beer on the shirt" [referring to shirts with beer advertisements on them]. She felt that, "they were really making a statement." These parents did not agree with the school policy, and their child actually served an out-of-school suspension before the situation was finally resolved. Although the principal pointed out that the student "never wore it [the tee-shirt] after that," the incident demonstrates that parents in this rural school district do not hesitate to express their views on school policy. In fact, as this incident demonstrates, some parents will blatantly flaunt their challenge of school rules and regulations. This also indicates that parents will question both the authority of the principal, and the policies of the school. In addition, comments made by administrators, in this study, denote that they are indeed well aware that their decisions can and quite often will be questioned by parents.

Only a small number of participants thought that there has not been much change in attitude toward authority. For example, Vice-principal One remarked:

I haven't seen a big difference in terms of parents questioning the authority of the school. As a matter of fact, I think what we're starting to see happen with the kind of behaviors that have been going on here, and parents getting concerned about those behaviors, [is that] parents [are] becoming more accepting of the actions taken by the school ... especially parents of what you would refer to as your good students.

These comments are indicative that some parents are becoming alarmed about the kinds of behaviors their children are being exposed to at school. Parents who fit into this category appear to support disciplinary action taken by the school. As well, comments made by Principal Four demonstrate that not all participants agreed that students have changed to

any great extent. She commented:

I honestly don't see any difference in kids in general period. I know there are a lot of people who would say differently. To me, probably it's better in many respects. They're a little more outspoken, and they give their ideas and their opinions about things. But, that's a healthy sign in many ways.

While she recognized that she held the minority opinion, she contended that it is important for administrators to listen to what students have to say.

#### **Sub-theme Three: Increase in Serious Discipline Problems**

Another sub-theme to emerge from the data involved an increase in the number of serious discipline problems that school administrators within this rural school district found themselves having to handle. The Superintendent commented on the increase in the number of serious incidents that he has seen, particularly in the last two years, involving primary and elementary students. He elaborated on one of these cases:

But you know, we've had this year three extremely serious incidents with primary/elementary students in school. And one is particularly serious; like threats, swearing. You know, telling the teacher that he's gonna kick him in the balls; beat his head off, and all this kind of stuff. And this is an elementary student [said with amazement]! So, we've had these kinds of incidents in schools over the last couple of years which I have never come in contact with before, to be quite honest with you.

He wondered whether or not this was a trend, and if so he lamented, "then I don't know what these kids are gonna be like when they get into the high school." This reveals that, over the years, administrators have witnessed an increase in the number of serious incidents involving younger and younger students. Not only has there been an increase in the number of these incidents, but in addition administrators are observing behaviors that

they have never seen before. This same sentiment was echoed by both Principals One and Four. Principal Four commented:

What I do find is that ... the problems that we do have, even though there are fewer, there are more severe problems ... the kind of disruption that we get at times can be really, really severe. And in cases where there are drug problems and so on, they're more severe than we've ever seen before. It's the intensity of the problem itself.

Principal Four further elaborated about an incident that had happened in her school during the previous year.

We had an assault case here in our school ... student on student ... last year. We're talking police, ambulance . . . There were six teachers in the corridor at the time . . . it was the case of one student coming into the building, and there was acid involved. He was out that morning and came in at recess time . . . he walked straight to a classroom and picked up another student and threw him into a bookcase. That kind of thing had never happened before. We had never, in this school, had an incident like that.

These data imply that principals today have to handle situations that are not only extremely serious, but it also demonstrates that they have never had to handle these kinds of situations before. This lack of experience could result in reactive, rather than proactive, action being taken to address the particular problem being presented at the time. It is this kind of situation that could result in some arbitrary punishment being dispensed in the heat of the moment.

Principal Four also emphasized that there were five or six students presently enrolled in her school who had the potential to be violent. She felt that this was in sharp contrast to the past, "ten years ago, you wouldn't have seen anybody [in school] who was potentially violent." She felt that many of these incidents were not only drug related, but

that "there's more evidence of other drugs, drugs that we never saw before". This suggests that school administrators today have to be prepared to handle many unfamiliar potentially volatile situations. Principal Two gave additional evidence to support this sub-theme:

You run into so many different experiences that you haven't had before, and if you haven't got something there to go by, you kind of feel that you're out on a limb by yourself. And some times you make decisions on discipline or you're forced by a situation to make a decision very quickly without a lot of thought and some times with no experience. And yet, you're expected to know what you're doing.

This suggests that administrators are often forced into making decisions with little time to reflect on the situation and even less experience in dealing with the particular problem. It appears that this is increasingly becoming a reality for today's school administrator. One wonders what happens to due process in such situations?

Participants also addressed the issue of the presence of "young offenders" in the school system and the problems being presented by this group. Vice-principal Four noted:

We're dealing with everything today ... from young offenders to people that have done almost everything under the sun. We've got more people signed out to go to court on court days, God, than we've got in class sometimes. We're dealing with those [offenders] on a day to day basis. They're young offenders. They're not the ordinary student. They're troubled kids and there's got to be someway to deal with them, and I don't think that's been thought through.

Apparently, the presence of young offenders in the school system is a major concern for administrators. The implication is that these students require a different kind of treatment. As is suggested by these comments, administrators appear to be unsure of how to address this problem.

In reference to the presence of young offenders, the terminology "sentenced to school" was often used by practitioners to describe the practice of the courts sending offenders back into the school system. The Superintendent described the kinds of difficulties that young offenders are posing for administrators in this rural school district.

I have some problems with the Young Offenders Act ... the whole business of kids getting into trouble in the community ... being charged ... then being sentenced to school becomes a major headache for principals. And the fact of the matter is, that very little or no information comes with the student ... principals have kids come on their doorsteps ... sentenced to school ... and we have no idea whether they are violent, or have potential to be violent, what kinds of problems they've had before. Recently in one of our schools, we had a student and ... from the first minute he was in the school, 'til he finally got arrested and sent away again, there was just no peace. He was just sentenced to school and we just couldn't as much as we tried, we just couldn't get any information on him. So that's had an impact.

This lack of information on young offenders was a common complaint of administrators in this school district. Administrators also discussed the impact that such students have on the other students in the school, particularly the kinds of behaviors to which much younger students are often exposed. Administrators indicated that there is much cause for concern especially where there are "all grade" schools. According to the Superintendent, these young offenders "intimidate" primary and elementary students, and the result is that "parents are very, very concerned." Principal Four expressed the view that what is really needed is "a change in law that says, where probation orders are issued ... the sections that pertain to schools, should be made available to school administrators." He said that the effect of this lack of information means that administrators are faced with a situation where they are "trying to enforce something we don't know about." While administrators

in this study appear to be aware of the typical kind of terms that are stated in probation orders, i.e., that the student is to attend school regularly and be of good behaviour, the problem for administrators is that they are unaware of which students in the school are actually on probation. If the conditions of a probation order are not kept, the young offender is in fact "in breach" of the order which in itself constitutes a further offence. Despite the fact that this is the law, administrators are at a disadvantage in that they do not know which students are on probation, therefore they are unaware that the student has breached the order. Although the Young Offenders Act was amended in 1995 to allow for an exchange of information to school personnel, this data indicates that in actuality this is not happening in practice. According to Vice-principal Four, in cases where school personnel may have some idea that a student is on probation and breeches are reported, "nothing gets done about it." The result of this, in his opinion is that such reporting "is a waste of time". He felt that, "Social services, and the judges and the courts" were simply "dumping" these offenders "back into the school" where they then become "our problem". He also added:

We're not told how to handle them ... never have been. And it's wrong. It's wrong for the judicial system dumping them on our doorstep ... with a no follow up [and] no repercussions for their actions.

These comments are reflective of the frustration and anger that many administrators feel toward the practice of sending young offenders back into the school system. The District Superintendent also expressed the view that in cases where breeches are in fact reported, the offender "is probably hauled back in again and his probation is extended", but "he still

got the same conditions". This means that when breaches of probation are reported, there are in reality few implications for the offender. He felt that, in fact, this has become, "a bit of a joke for the kids". He suggested that perhaps an unintended consequence of this practice has been that young persons do not take the Young Offenders Act as seriously as they should.

There was stark contrast in opinions expressed by participants in the school system compared to the opinions expressed by participants from the legal system, in terms of young offenders. For instance, Legal Expert Three did not agree at all with the use of the term "sentenced to school." In fact, he was quite adamant that this was not the intention of the court system nor of the Young Offenders Act. He put forth the argument that no person involved in the education system could possibly argue against the value of an education, and that the intention of the courts was that these young offenders be given the opportunity to get an education so that they might one day become valuable contributing members of society. He also said that the intention of the Act was that these young offenders be given an opportunity to reform and to change. While he felt that some people might label him a "bleeding heart" he claimed such was not the case. It was interesting to discover that this man had in fact formed a partnership with school administrators from the local school boards within his jurisdiction. At the time of this interview, he had made it a practice to make a copy of his court docket available to school administrators, so that they would know who would be in court on a particular day. As well, he stated that administrators were welcome to come to his office and make /

representation regarding offenders. He also discussed the fact that a joint committee representing both justice and education had been formed, in his area, so that the concerns of both groups could be addressed, and that he is an active member of this group. He seemed to be quite open and honest in his comments on the Young Offenders Act itself and in his acknowledgment of the problems associated with the implementation of it.

Legal Expert One, however felt that young offenders should only be placed back into the school system with the necessary supports in place. While he agreed that the intent of the Young Offenders Act was "not just to punish, but to help reform and also for re-mediation," he stressed that "you've got to provide support for them." He viewed lack of support as one of the major problems associated with putting offenders back in school. He contended:

You can't put all students who offend in institutions. So, what you try to do is, you try to put them back into the school system. But, you've got to do it, integrate with support. The problem is that we haven't had enough support; counseling services; and we haven't been able to hire specialists to help teachers. And so, it is difficult for schools.

This data emphasizes the necessity of placing extra resources in schools. However, in the present age of declining enrollments and reduction in funding for education, the feasibility of these additional resources becoming a reality is remote.

It would appear that there is a wide discrepancy between how those in the education system and those in the legal system view the intentions of the Young Offenders Act. Given that this Act has been a reality in Canada since 1984, one is left to wonder why these issues have not been resolved a long time ago. It is evident that the lines of

communication need to be opened between these two agencies.

#### **Sub-theme Four: Decrease in Parental Support**

Another change which participants in this study addressed was the issue of parental support. In fact, it was a decrease in parental support that the Superintendent commented on as one of the biggest changes that he has seen in education over the years.

I guess one of the things that has amazed me over the last little while, one of the changes that has amazed me is [that] almost always when you get into a discipline problem with a student, that the parent will take the side of the student, and will not ... it seems very difficult to convince a parent that a student could do wrong. Or even share the blame.

He added that he is dealing with one particular situation that "is just a nightmare." In this case, he explained:

The parent would not accept anything, you know. It seems like there was a solid week when he did nothing except go to the school to threaten the principal, or call me, or whoever else he could get hold to. And ... it's just been sort of a nightmare. He's just not been able to accept any disciplinary measures at all.

This suggests that some parents are totally unwilling to accept that their child/children should have to endure any consequences for their actions. The Superintendent expressed the view that the real solution to this kind of problem is to have, "The parent, and the teacher, and whatever other external agencies we can involve work cooperatively and recognize the problems." While the majority of participants felt that in general parents were supportive, others like Vice-principal Three felt that "people will support their children to the hilt." Both Vice-principal Two and Principal Two, who were from different communities and different schools, tended to classify parents into two distinct

groups. Vice-principal Two summarized parents this way:

I've always said parents pretty well fall into two groups. Those who believe that their kids can do no wrong and those who believe their kids can do no right. And, I'm not sure which ones do the most harm.

He added, however, that he felt most of the opposition to administrative decisions was probably coming, "from those who believe their kids can do no wrong." From Principal Two's perspective, parents fit into two extremes. She felt that on one extreme you have parents "who will not accept that their child did anything wrong." However, unlike Vice-principal Two, she felt that on the other extreme you have parents who will admit that their child is at fault, but that these are the parents who say things like, "I'm just giving up; I'm not going to fight him [the child] anymore; I'm just through with it." She expressed the belief that parents in the first category "side with the kid," because they are "in denial" and therefore they want to believe that "there's not a problem." However, she felt that while the other group of parents is willing to accept that there is a problem, they "just can't fight anymore", and so, in essence, they "wash their hands" of the problem altogether. She did add that this "doesn't happen to all parents", but as an administrator she admitted that she is seeing "more of that" kind of attitude. The District Superintendent expressed the view that parents will often oppose school officials and side with their child because it is "easier for them to do that", than it would be to "oppose the child". He also felt that this is a very unfortunate situation since, "the real loser in all of that, is the child".

However, in schools in this school district, where there were some very serious

discipline problems, parental support was strong. One school in this district actually had a student expelled from school in February 1995. In the expulsion case, both the school principal and the Superintendent expounded on how supportive the family was and that the "mother ... came into meetings every time we'd call them." In another case where a student had already been suspended in excess of the maximum fifteen school days allowed, the superintendent explained that the parents, "were extremely reasonable", and that they had agreed to getting psychological help for their child even though they "were not rich people". In other schools, where there had been very serious discipline problems and parent support was strong, the administrators involved tended to equate the support with the fact that the parents were having just as much trouble with the child at home. Vice-principal One's comments are representative of this group.

for the most part, those students are also students that the parents don't know where to go with ... they are at their wit's end as well.

Principal Two related an incident where a student from her school who was serving an out-of-school suspension came to the school to watch a sporting event. On seeing this student in the school, the principal explained that when she went over to escort the young man from the building the student went berserk and started "swearing profoundly [sic], and threatening to assault" her. She said that when she met with the parents to discuss the situation, the mother would make comments like:

When the boys came over the other night to our driveway, I knew they were goin' drinkin'. But I went out and said, 'Now J .., you're not to go drinkin'. I went out to the car and I said to the boys, 'Now boys, don't let J ... go drinkin' tonight'

The principal appeared flabbergasted that:

She [the mother] accepted the fact that all the boys were goin' drinkin', and he was going off with the boys ... drinkin' and poppin' pills, and doing whatever. They are going and she was still prepared to do that, and his father who's 150 pounds more than ... this boy, was prepared to accept this as well.

In this particular case, the parents did not question the action taken by the school. But, as the principal said, "it's more not that the parents don't support what you're doing ... the sad point is that the parents kind of accept that they can't do anything about ... their son's behaviour". The implication here is that while there may be instances where parents do support the actions taken by administrators, often the intrinsic problem is that they have lost control of their child.

#### **Theme Two: Impact of Societal Changes on Administrative Practices**

While there is ample acknowledgment by administrators in this school district that many changes have taken place in society, one wonders what impact, if any, these changes have had on school practices? Comments made by participants in this study indicate that social changes have indeed had an impact on some administrative procedures. In particular, administrators described three practices that had been affected. These practices include: an increase in documentation, an increase in consultation, and the necessity for thorough investigation into incidents. However, there is also evidence in the data to suggest that these changes have not had any effect on other administrative practices. This is most notable in the lack of policy and an absence of student and parent input into the

formation of whatever policy does exist. Practices, that have been affected by societal changes, will be discussed first.

#### **Sub-theme One: Increased Documentation**

One of the greatest effects of these societal changes has been an increase in the amount of documentation that must be done when an incident occurs in school and some disciplinary action is required. The superintendent commented that he felt that principals were “more aware of due process than anybody else in the school system.” He also said that once an administrator has had to deal with a serious incident “then they realize that if they made a mistake, they don’t want to make one next time.” This realization, he said, has impacted on administrators such that “principals now more than ever are keeping good records of what’s happening. And … they are telling their teachers to keep good records; write anecdotal reports” and to put these “in the file.” He also quickly pointed out that a student file containing all negative comments could hurt a school board’s case if it were seeking an expulsion. He also stated that he encourages principals and teachers to include positive comments and information, such as involvement in extracurricular activities, in student files. Principal Three commented that she “tends to keep track of things” and that she is much more demanding of her staff now than she was in the past.

I’m more demanding of staff now, in that everything be documented. Put it in the file no matter how insignificant. Don’t just say it. Don’t just think it. Put it down in writing.

Principal Two added that she has always had a tendency to document incidents especially, “if I got any possibility of knowing that things are gonna be cumulative, and you kind of

sense this. Or if it's a new student, you got a tendency to document." In fact, she said "every time you deal with a student, you document it." Legal Expert Four really put the necessity of detailed documentation into perspective when he explained:

Principals today are more judicious in their note taking and recording so that they will have accurate records because in an appeal ... the parent and the student have a right to see all the information, and hear all the comments the principal used in making the decision. So, the principal would need good records ... hearsay is not going to stand up very far.

Vice-principal Three reinforced this point when he said:

You must have your homework done. You must have things documented. I mean if it comes to expulsion, or a recommendation for that, or an extended suspension, the board will require a lot of documentation.

Clearly administrators realize the necessity of thorough documentation, especially in situations where strong disciplinary measures may be required. Legal Expert Four admitted that although documentation, "requires a lot more work, and a lot more attention to detail" and is "an extra burden on principals," he still maintained that "it pays off in the long run."

Both Principal Two and Principal Three discussed the kind of follow-up that is necessary when an incident occurs. Principal Two related that each incident that occurs is followed with both a phone call and a letter to parents. Principal Four admitted that she writes more letters to parents now than she ever did before. She also added that in cases involving out-of-school suspension, "you got to go to the board"; "meet with parents"; and in cases where the family has no telephone, the principal might even have to make "visits to their houses." Both Principals Three and Five commented that it is frequently

difficult to reach parents at home. They attributed this to the fact that many parents today work outside of the home and are unavailable during school hours. Principal Five viewed this as one of the most time-consuming aspects of administration today. Vice-principal Two felt that working with outside agencies, such as the RCMP and the Department of Social Services, which has been necessitated by the presence of "young offenders" in the school system, has also resulted in increased paper work for administrators. Document analysis of school board by-laws, reveals that much of the documentation practised by these school administrators is mandated by both school board by-laws and government regulation.

#### **Sub-theme Two: Increased Consultation**

A second impact of these societal changes has been in an increase in consultation between administrators before disciplinary measures are taken. This consultation appears to take place on several distinct levels. The first level of consultation occurs between administrators at the school level. Principal Two's comments reflected this practice when she said that in her school, the vice-principal, in charge of discipline matters for the high school section of the school complex, will often come to her when faced with a serious situation and say, "This is happening. Where do you think it should go?" In this case, because the vice-principal is not experienced in administration, the principal commented that, "I kind of read it and say okay, I'll take it from here." There is also evidence, throughout the data, of extensive consultation taking place between principals within this school district. This level of consultation, seems to occur in situations where a principal is

faced with an incident that he or she is not quite sure how to handle. Principal Four's comments illustrate this practice:

I have many times picked up the phone and called another principal and said, 'Look, I'm in this situation; here's what I'm thinking about doing. What do you think?' Well, maybe they'll point out something; 'have you considered?' Because I mean, you could be in violation of this, that or the other thing.

This comment reveals not only an awareness of student rights, but also a fear that these rights might in some way be violated. It also suggests a lack of procedural confidence.

As is evident from Principal Four's comment relating to this practice of having to consult with other administrators: "The fact that we are doing this, is clear enough evidence that we don't truly have a firm handle on what it is exactly we're doing." Others, like Vice-principal Three, viewed this practice in a more positive light. He felt that this networking with other principals in the district permitted a sharing of expertise, since administrators who had experience handling these kinds of problems could help guide others.

Undoubtedly, however, this consultation between administrators, suggests a need for training.

In addition to the networking between administrators, there is also consultation between administrators and the Superintendent. The Superintendent admitted that he is consulted by principals on a regular basis. This consultation is usually done by telephone, and while the Superintendent felt that no principal would hesitate to pick up the phone and consult with him, he admitted that when you are "dealing with twenty principals" things can get to be very hectic particularly if "every principal has an incident" to deal with.

Consultation also occurs on a fourth level in that the Superintendent will seek legal advice on matters that he is unsure of. Although the Superintendent of this school district assured me that, "There's no problem getting legal opinions," he did however, offer these words of advice to principals and teachers:

Don't hesitate to ask a question if you don't know the answer. And if you ask the question and you get an answer, you should be prepared to live with it. I mean, there's an old saying 'Don't ask the question, unless you're prepared to live with the answer.' Sometimes people don't ask the question because they know they're not going to like the answer. But, I think that it's important particularly in these legal matters to ask the question. And make sure that before you start doing something that's gonna get everybody in a lot of trouble, you should be prepared to ask the question. Seek advice, and if it seems like good advice, follow it.

These comments advocate a system of collaboration where teachers and administrators should consult with other persons before they initiate disciplinary measures to sanction student behaviour. It also indicates that when an administrator is given sound advice, he or she should not hesitate to follow it.

The legal experts interviewed, believed that yet another level of consultation should occur. Legal Expert One, for example, stressed the need for school boards to consult with parents.

I think that there's a belief out there now that you got to be consultive. That you got to consult the community. If you're going to close a school for example, we require by regulation a process now. And even if the regulation weren't there, the courts would require a process. So, I think school board members have learned a lot from the litigation and [from] this debate and their obligations. And they've learned it through ... their own experience in school districts ... we have cases in Newfoundland [of school closures] when the courts have ruled that it was done improperly; that there should have been more warning. That's what justice is. If you're gonna close a school, you know, warning, consultation, all of these rights are built into that even. So, I think our boards are much more sensitive to that at

the present time, and their roles have been changed as a result ... of this whole debate on human rights, and changes in litigation and court decisions certainly.

This suggests that school boards in the province of Newfoundland and Labrador have had experiences where the courts have overruled board decisions in cases where due process was not followed. It is interesting that the necessity of consulting parents was not addressed by members of the school community. Conceivably much litigation could be avoided if parents were more involved in the decision-making process.

#### **Sub-theme Three: Need for Thorough Investigation**

Administrators in this district reflected on the necessity of conducting a thorough investigation into incidents before dispensing any disciplinary measures. Vice-principal Three explained, "People are not willing to accept a verdict right off the bat. [That is] ... unless you can substantiate it, support it by maybe other people who have witnessed something." This demonstrates that both parents and students will demand that school personnel have proof of wrong-doing before they will accept any sort of punishment.

The Superintendent felt that due process rights had "certainly impacted" on his role because as soon as something is brought to his attention, it becomes something that he has to "look into right away." Before he can give permission to a principal to take serious disciplinary action against a student, he has to "determine what the facts are in this case, and ... get both sides of it." Principal Five discussed a situation where a student was accused of cheating. When the student was questioned she implicated others which

necessitated the principal having to question other students in order to establish the truth of the matter. Principal One also admitted that some situations require that the other students be questioned in order to determine facts; however, she also confessed that she doesn't do much of that. In discussing this issue, the Superintendent made the following statement:

I guess what it means for us, for me or for principals or vice-principals or whoever happens to be handling a particular situation at the time is ... if you are going to invoke strong disciplinary measures ... whether it's a suspension or recommending expulsion or whatever it might be, that you certainly [need to] have your facts straight. That you investigate it thoroughly; that you've given the student an opportunity to speak his piece or her piece; and the parents have the opportunity to do so as well. Because if you don't, it will come back to haunt you! I guess what it means is that in all cases a thorough investigation has to be carried out.

It appears that regardless of who is investigating an incident, all the facts should be considered and presented before any strong action is initiated. This also reveals the kind of repercussions that administrators can expect if they fail to conduct a meticulous investigation. Every administrator who participated in this research discussed the importance of getting the students' side of an issue.

#### **Sub-theme Four: A Change in Approach**

Administrators in this school district made reference to the fact that the changes in society, discussed previously in this paper, have also influenced how they approach students. Principal Three related that administrators cannot be impulsive in what they do. Both Principal Five and Vice-principal Five confessed that it has made them much more cautious and alert when they are dealing with matters of discipline. Principal Five said that

it has made her, "stop, rather than judge right away." She claimed that it has made her much more judicious when she gets requests from other agencies about students. She is more cautious in respecting the rights of the student.

I think it would make you stop before calling in a student without them having anybody there because they need to have somebody with them. The same when the RCMP comes in, I want to see, 'well do you have a permission slip?' And if they don't, well you say, 'then you can't see him.' I really have to have permission from the parent, or call the parent, and stand in place of the parent. So it makes you more aware of things that you have to keep in mind.

These comments illustrate the need for administrators today to be aware of their legal responsibilities toward the students who are entrusted to their care. They also demonstrate the degree of caution that administrators need to exercise in performing their duties. Vice-principal One also addressed this need for prudence, but from a different perspective.

You have to be very cautious now in dealing with students. To in no way intimidate; be careful not to threaten; never to touch; never to lay a hand on. Careful not to do anything that might be perceived as insulting or in anyway undermining the credibility of the student.

He attributed this need for caution directly to the level of awareness that students have stating, "Those are things kids are aware of." Awareness of rights appears to have had a definite impact on the kind of administrative approach used in this district.

While there is evidence that changes in society have impacted on some administrative practices, the converse is also true. In fact, data gathered throughout this study reveal that many administrative procedures have not been affected at all by such changes. This lack of impact is most evident in two areas - the absence of parent and

student "voice" and lack of policy.

#### **Sub-theme Five: Absence of "Voice"**

While administrators in this school district are cognizant that parents and students are aware of their rights, and that there is less support for administrative decisions, there has been no concerted effort to include or involve either party in the formation or review of school policy. In all five of the schools involved in this study, school rules have almost entirely been formulated by administrators and teachers. Student involvement has been at most perfunctory and has usually involved the school administrator showing a list of rules to the student council and then enquiring if there is anything that they "cannot live" with. In some instances, students have been hand-picked by the principal and invited to a meeting to discuss the school discipline policy. Both Principal Five and Vice-principal Three alluded to conducting these kinds of sessions. Principal Five described how she had on one occasion, "called in a number of students from each grade" to discuss the discipline policy. She disclosed that she had instructed these students:

Now this is a meeting and you can pretend I'm anybody. But whatever is on your mind; what you like and what you don't like, let me know.

As cozy as this sounds, it is difficult to imagine students in any school being able to pretend that the principal is anyone other than the "principal." It seems even more incredulous that they would be able to sit in a room with the school principal and be overly critical of school policy. It is possible, of course, that this principal has an extremely good relationship with the students in her school. Vice-principal Three recounted that when he

worked in a previous school, it was "the more responsible students" who were chosen to discuss school rules. The indication here is that if and when students are given a say in school policy, it is only a "select" group that will be given this opportunity. A similar procedure is also followed in reviewing existing school policies; again input is generally limited to staff discussion. In the majority of schools studied (60%), school policies were reviewed every year. In one school where a new discipline policy was currently being formulated, the policy had been reviewed four or five times by the staff. In another school, a new discipline policy had been adopted two years ago. One school, however, had not reviewed its policy for seven or eight years. In response to why policies were not reviewed more frequently, the principal responded, "We haven't tended to have any major problems anyway. So, we don't want to be seen as trying to fix something that's not broken." She also said that she was, "cautious by nature" and was not "interested in change for change sake." This same administrator had earlier discussed the increase in violent behaviour in the school. In schools where policies were reviewed annually, review was associated with updating the student handbook for publication. In all schools, input on the discipline was limited to staff only. With the exception of Vice-principal Two, no other administrator expressed the view that students and parents should be included on a committee to review policy. He openly admitted, "I'd probably be one of the few in the building" which demonstrates an awareness that he holds the minority opinion in this regard. His next comments spoke volumes about how the school system has traditionally treated students and parents.

This has been a very autonomous system. Empowerment of parents and students has not been high on the list ... It just hasn't traditionally been done.

Perhaps this view of parents and students explains some of the backlash that is presently occurring against administrative decisions and school policies in today's school climate. It, undoubtedly, indicates that parents and students are on the bottom rung of the decision-making ladder. The possibility exists that if parents and students were included in the decision-making loop, they might feel greater ownership of and allegiance to school policies and procedures. Certainly, the exclusion of input from these parties does little to improve the relationship that appears to exist in this district between the school and the home.

Some administrators, such as Principal Three, expressed a degree of apprehension about involving, "too many people." She felt that most parents don't "bother about this stuff until it affects them." Others, like Principal Five, were fearful of parents and students becoming too well informed.

I think some of the things that we've become more aware of in the last few years in terms of student rights ... probably make us stop and think before we do things. And I think that's a positive thing. But, I think it can be carried too far in terms of things that are some times taken out of context and they end up getting teachers or parents in trouble ... that is a concern we have here at the school.

While there is recognition here that student rights have impacted on administrative procedures, there is also clear evidence that there is fear and apprehension associated with this issue. Several administrators exhibited a reluctance to inform parents and students of existing policy. Principal Three admitted that her school had recently formulated a new

discipline policy but it had not been sent home to parents. She conceded that parents, "usually find out about rules when they run into them." It would appear that parents in this community find out about school rules through first hand experience, usually in the form of some conflict in which their child has become involved. This principal boasted that her school had a fairly "extensive parent volunteer program." Perhaps the existence of this program has caused her to believe that the mere presence of parents around the school building suffices as a means of communication thereby negating the necessity of sending information home to parents or holding information sessions with them.

The issue of informing parents and students with respect to existing policy was also addressed by Principal Five. Prior to this study, this school board had introduced a policy on harassment and had circulated it to all the schools in the district so that students and teachers could be made aware of its existence. Principal Five discussed the concerns that her staff had, regarding this policy.

You know when you look at it there were concerns. Some times when you present information like that to students, if they have a bone to pick, it can open up a door for them. It wasn't taken lightly by the staff. Actually it was taken more you know with a deep sigh. You know, like it really opens up a lot of doors if it falls into the wrong hands.

When asked directly if this was the kind of thing that makes teachers afraid, Principal Five replied, "I think so. I think it is, yes". This administrator assured me that this was not because teachers thought that they should be able to harass students and get away with it, but rather:

It's from the point that the interpretation of the policy by the students and whether

it can be used as a tool some times to get back, if they feel they need to get back at a teacher. Whether that will give them, you know, a tool where they can follow it through. And if in the end the conclusion was that nothing has been done [no harassment has occurred], it doesn't matter. Once it's gone through and investigated in a small place, people don't forget. Right?

Although the policy was placed in every classroom in the school and students were encouraged to approach the principal, if they had any questions concerning it, the principal reiterated very softly, "But, that was a concern, making it public knowledge." This suggests that if parents and students are kept ignorant of certain policies, then schools will be able to maintain greater control. Perhaps it is this kind of fear that explains why some schools in this district do not issue handbooks listing all school policies and procedures. This "the less they know the better" type of philosophy was also discussed by Vice-principal Two. When asked if students in his school knew what the consequences would be if they breeched a school rule he replied, "I harped on that one before I became an administrator, and I was told by past administration 'better if they don't know'. However, the majority of participating schools (80%), did list consequences for unacceptable behaviour. It is interesting that 60% of the discipline policies analysed in this investigation did not list expulsion as a possible consequence for behaviour. In one school policy, it was not mentioned at all. In two other schools, consequences for breeches of school rules were listed in steps, however, none of the behaviours listed were linked to the stage where expulsion would be recommended. When questioned about this, Principal Three explained that until the authority to expel was enforceable at the school level, she was not going to attempt to do something that was impossible.

The issue of policy review and who should be involved in such a process was also addressed by Legal Expert One. Although he felt that some school boards in this province had done a thorough review of their policies with respect to student rights, he still felt that overall there has not been "adequate formal review of regulations and school board policies." In most situations where a review had been conducted, he felt that this had been kind of a "one shot" deal and he would much rather see an "ongoing review." In fact, he said that if there was one piece of advice that he could give to school boards in Newfoundland and Labrador, it would be that, "you need an ongoing review of policies and regulations to ensure that these regulations and ... policies reflect the latest in thinking about student rights." He also felt that, "you should have a committee" to do this review, and that this should involve "principals and administrators generally, and teachers and students and parents." He believes that the advent of "school councils" throughout the province of Newfoundland and Labrador would be "useful in helping us to focus on the rights of students and parents more than in the past." He added that, "parents have been the missing link in education" in the province of Newfoundland and Labrador, therefore he felt that the "process of school councils might generate some interest in reviewing school policies" as well as board policies. This data seems to suggest that the emergence of school councils in this province will provide the missing "voice" in the education system, and that the addition of this "voice" may help to focus attention on the rights of parents and students which have been neglected in the past. Traditionally, schools have operated as a "closed system" where input from the external environment was neither welcomed

nor encouraged. The arrival of school councils may be successful in heralding in a new era, one that is characterized by a more “open” school system where all voices are heard.

#### **Sub-theme Six: Absence of Policy**

Despite the changes that have taken place in the external school environment, there is a conspicuous absence of policy within this school district. Both Principal Two and Vice-principal One discussed a lack of school board policy guidelines for dealing with serious discipline problems. In fact, they both stated that they would like to see a district wide discipline policy that would outline steps to be followed in particular situations. Vice-principal One commented that, “Things now are a little ad hoc. All of us are working a bit in isolation and quite often facing situations for the first time.” The Superintendent also addressed the absence of policy. He confessed that most of the enquiries that he gets from administrators involve questions on issues like search and seizure. However, when asked to comment on the lack of policy in the current Principals’ Handbook on issues such as this, the Superintendent admitted, “It’s not addressed properly in our Principals’ Handbook, no.” He qualified this somewhat when he added, “But, all of our principals are aware of it because we’ve discussed this at principals’ meetings and how this should be done.” Document analysis of the agendas for these meetings over the past three years, however, did not support this statement. None the less, the Superintendent was quite frank in his comments about the inefficiency of existing school board policies, and the need to update them.

I think that principals should try to make sure that their teachers are aware of what the school board by-laws are ... And that's not very efficient now Cathy, to be quite honest about it. We need a thorough overhaul of our Principals' Handbook.

When questioned as to how often school board policies are reviewed, he replied:

We did a complete revision in 1989-90 ... since that time we review every year, but every year we always say the same thing you know, 'well here's a policy here that really needs to be revised, it's a little bit out of date'. And every year we might do one or two. But, two years ago we decided that we were going to revise our constitution and by-laws ... we got into it, and then of course we got into all this uncertainty provincially, and people said 'why are we going to spend all this time to review our Constitution and By-laws and then every policy we have as a school board, if a year from now we're not going to have a school board. So, I guess that was a good excuse, so we didn't do it ... But the thing is, it needs to be done, but that's why it hasn't been done more recently.'

These comments suggest that members of the local school board are well aware that many of the board policies are outdated and need to be revised. In this case, there was an open admission that this had not been done in recent years due to the uncertainty that this school board might not exist in another year or two. The district superintendent was referring to the intention of the government of Newfoundland and Labrador to reduce the number of school boards in this province from twenty-seven to ten. The comment, "I guess that was a good excuse," made by the Superintendent suggests that although there was an awareness that board policies needed to be updated, there seems to have been a degree of reluctance to indeed tackle this task. One has to wonder if this might be true for other policies and procedures practised within this school board. Might this board also be reluctant to address other situations that it is aware of? Although this school district was later merged with several other school districts to form a new school board, as was

expected, this board could have shown both great initiative and leadership by having revised its policies to reflect respect for student rights. By not availing of this opportunity, this school board has perhaps missed a prime chance to demonstrate that it might possess progressive, proactive thinking in the realm of student rights. Had this school board formulated such policies, perhaps these might have been adopted and implemented by the "new" board that emerged as a result of the consolidation of school boards in 1997.

Legal Expert Four specified that, since the passage of the Charter and the Young Offenders Act, it has become necessary for both government and school boards to "make sure our legislation conforms with those documents." He also explained that in order for a school board to change its by-laws, it had to have approval from the Minister of Education. Boards in this province who had revised their by-laws in the past four or five years had been asked to build due process rights into their new regulations. The fact that this particular school board had not done any revisions within this time frame, partially explains the absence of such policy.

This lack of district policy appears to lead to some very ad hoc actions being taken by administrators. Such actions, were often referred to by participants in this study as "flying by the seat of your pants." When asked if he thought that administrators within this school board would question students on matters that have criminal potential, the superintendent responded:

They probably do. I would say for the most part, they are flying by the seat of their pants. If there's a criminal investigation of course, or it looks like a criminal investigation, it's not unusual to call in the RCMP, and , we've done that on a

number of occasions. But you know, I guess on a day-to-day basis there's probably these kinds of things happening in all schools. People are flying by the seat of their pants. And I don't know if it works, I guess it works, but it's dangerous. People could get in a lot of trouble. Once again, I think it is an area where we really haven't made our teachers aware of what the circumstances are. Principals should be aware of it. Whether they are or not, I don't know.

These remarks reconfirm awareness that there is a lack of written guidelines or policy, in this school district, to be followed in specific situations. In addition, it recognizes that a consequence of this absence of policy is that administrators and other school personnel sometimes act or react in unpredictable ways. It also suggests cognizance that this kind of unpredictable response is very dangerous and could precipitate a further crisis situation. Principal Four commented that other principals have said to her, "Ah, to hell with it, you don't need that," in reference to the necessity of a set policy on discipline. She has been also advised by other administrators to:

Take each case that comes through the door individually and deal with 'em as you see fit. Administration by the seat of your pants ... you know what I mean. Wing it in other words, right. And that way, you don't have anything on paper. You know what I mean? And you're like a shot in the dark each and every time.

She felt that this was very poor advice given the kind of climate that administrators have to work in today particularly with the threat of legal action from parents. In actual fact, she felt that, "we [administrators] just have to be smart enough and make sure that we have procedures in place to deal with it." This evidences the reality, that today's school climate demands that there be set policies in place within schools and school boards to deal with discipline matters. However, despite this awareness, such policy does not exist.

The Superintendent stated that, in theory, whether there is a policy or not, there should be "no fear of any repercussions" as long as "we do everything properly." However, he did admit that in reality, this is not always the case.

The problem is of course that we don't always do that. You know there are incidents that occur, that we don't do everything properly; whether we don't think properly under the heat of the moment ... we do things wrong.

He added that, "we try to do everything; recognize what students' rights are; what due process is; and proceed under that kind of umbrella." In theory, schools operating under this kind of philosophy should have no conflicts, but as the Superintendent pointed out:

In practical cases, of course, you know that we do [have conflicts] because it doesn't matter if there's a Charter or whatever ... on the spur of the moment ... The first thing comes to [the teacher's] mind, is not necessarily what the charter says or ... what our board by-laws say or anything else. And that's the real problem.

This suggests that regardless of existing laws and/or school board by-laws, in the heat of the moment when dealing with discipline matters, such policies are often disregarded. While this may well be true in some situations, it does little to justify lack of adequate policy.

#### **Sub-theme Seven: Absence of Appeal's Process**

The policy which is most conspicuously absent within these schools and this school district is the lack of any appeal's procedure for students or parents. Although 30% of the administrators interviewed included the right to appeal as part of due process, two of these were from the same school. In fact, the two schools that these three administrators worked in were the only schools in the district that actually issued a student

handbook which outlined the policies of the school with respect to student conduct.

Included in each of these handbooks was a statement on the right of the student to appeal.

One of these schools limits the right of appeal to marks or grades. In the other school, the student handbook outlines a more specific student appeal procedure. The handbook states:

It may happen that a student feels that he or she has been unfairly treated. The issue must not be debated where those not directly involved are present. In such cases the following procedures should be followed:

- (a) Carry out the direction given by the teacher.
- (b) Ask the teacher involved for an appointment to discuss the matter.
- (c) If after (a) and (b) you feel that you have not been fairly treated, you should see one of the administrative personnel, or the guidance counselor and a meeting will be arranged to discuss the matter.
- (d) If satisfaction is still not forthcoming, a further appeal can be made to the School Board Office.

Although on the surface, this seems to be a fairly elaborate appeal's procedure, it does not specify whether or not the appeal has to be made in writing, nor does it outline any specific time frame for making an appeal or for the other party to respond. As well, it does not specify who should be contacted at the board office. While this policy is definitely a step in the right direction, it does need to be amended. In both of these schools, the right to appeal appears to be limited to appealing grades issued by teachers or teacher treatment of a student. Principal Two said, "No one has ever come and asked for an appeal procedure. What happens is, students will come all the time and say, 'I've got a concern with so and so and how they're treating me', but they don't come and say they want to put it in writing." She added, "People are very, very hesitant to put anything in

writing." Indeed, if this is true for adults, it must be even more intimidating for school students. Principal One explained that in her school there are "certain appeal things in place with marks and so on." She felt that whether or not a school actually has an appeal policy on paper or not is of little consequence because both parents and students are well aware of their rights. The implication here is that policy or no policy, rights will be insisted on by parents as well as students. Principal Two added that "more and more" students come in "asking if it is right that a teacher did this particular thing or that particular thing." In both of these schools, the usual practice seems to be that these kinds of issues are, "for the most part worked out here in the office." In fact, Principal Two insinuated that many issues are easier to deal with "behind closed doors." This comment could have several meanings. It may mean that students are easier to persuade or control one on one; it could also mean that the dispute is contained and does not become common knowledge.

In the other three participating schools, principals admitted that students were coming to the office with similar concerns. Principal Three confided that when this happens she will "check it out." However, she felt that "it's very difficult to alter a teacher's discipline in that instance," although she added, "you might correct it the next time." This suggests that there is little point in a student coming in with a complaint since nothing can be done to alter the situation. It also implies, that the most an administrator can exercise in this kind of situation is, "damage control," in hopes that the problem might not surface again. Principal Three also expressed the view that:

I think it's a dangerous precedent to say, based on an appeal that now in a very public fashion or in a work fashion, that this teacher will not do this anymore in this way, you know.

The suggestion here is that teachers would somehow "lose face" if a student or a parent was allowed an appeal and won, and that an appeal process is something to be feared.

Perhaps this fear explains why 80% of the schools in this district do not have any kind of appeals procedure in place for parents or students.

Administrators listed a number of problems which they perceived would be caused by an appeal's procedure. When asked if he thought that there should be a more formal appeal process in place in the district, the Superintendent replied, "I wouldn't object to that, yes." However, the Superintendent acknowledged that, "we haven't built anything into our by-laws that is an appeal process if a student is suspended." He explained that allowing a student or parent to appeal a suspension would cause the suspension to be delayed. He stated:

One of the things I guess, if you're looking at an appeal process, say a student is going to be suspended for three days. All right, he appeals, she appeals, ah then of course that would mean that the suspension would have to be put off until the appeal is heard. So the student is back into the classroom; into the same situation that he may of [sic], just left. And some times getting the student out of class for even a short period of time, like a day, might be the best thing that we could do ... That's one of the problems with the appeal process. You know, you assume there's an appeal, then you have to put the suspension off until the appeal is heard, and unless you have an appeal process in place very, very quickly, which is not always the case, then that might cause these kinds of problems.

These comments suggest that a process of appeal at the local level, although desirable, would be problematic for school administrators. While the Superintendent felt that any

such process would need to be “extradited very, very quickly,” no such policy has ever been drafted by this school board. One would think, that at the very least some initial pilot policy would need to be in place before it could eventually be extradited in a more efficient manner. This seems to suggest that until a policy that is time proficient can be implemented, it is better to have no policy at all. Despite the feelings expressed by these administrators, the Schools Act (1996) gives parents and students the right to appeal administrative decisions. In light of this, both schools and school boards in this province will have to implement procedures that are in accordance with this legislation.

The Legal Experts interviewed, expressed a different opinion on the right to appeal a suspension. Legal Expert One stated that a “very informal process” is adequate for short term suspensions. However, he felt:

Once you start suspending a student for the second or third time, ... or if you’re suspending for a week or so, then ... you need a more formal process of appeal. I’m not sure you’ll ever get to where it’s expected [that] you have legal counsel for these things. Now, ... when I say all these things, I understand the rights of other students and the rights to be fair to teachers. I know you can’t tie up the school system with so many bureaucratic rules and regulations with respect to natural justice [due process] that it becomes unworkable. But, there is a balance there. There is a balance there.

This indicates that while there may very well be some problems with the logistics of an appeal process in situations where the suspension is for a short period of time, in cases where students are suspended repeatedly or suspended for long periods of time, there should be a process of appeal. This Legal Expert also expressed the view that an extended suspension “is a severe reprimand” comparable to expulsion. He felt that there should be

a committee at the school district level to "deal with it; to review it so that you provide parents with some feeling of fairness." He felt that this would provide a way to reassure parents that sanctions meted out, are not merely the result of some "personality conflict in the school." Legal Expert Four explained that, "the Act [the Education Act] doesn't contemplate suspension as a disciplinary action." In his view, it is simply "a way of dealing with a situation where you may need some time for the student to reflect, or to give the teachers a chance to develop an alternate program or an alternate placement for the student, that kind of thing." Like Legal Expert One, he felt that although an appeal process might be problematic for practitioners, "that doesn't change the parent's right to appeal the decision." He added that although the student may have already served the suspension by the time the appeal was heard, and you would not be able to undo the suspension, there would still be some degree of compensation for the parent and the student in that:

What it would do, [is] it would remove the record. You can't remove history, the fact that the student did serve time out of school. But, it would cause a comment to be placed in the record saying that the appeal process was heard and the appeal was allowed, and [that] the suspension was overruled or reversed. You can't say the student was in school when the student wasn't in school ... the purpose of the appeal is to ensure that the student is dealt with fairly. And you have to give principals a right for immediate suspension because sometimes there's a danger to the safety of students or teachers ... You have to deal with things immediately, but you can't say that because I have to deal with them immediately that you don't have the right to appeal.

This proposes that although there is a need for principals' to retain the right to enforce a suspension immediately, this should in no way negate the rights of parents and students to

appeal administrative decisions. As well, these comments emphasize the right to appeal decisions as a vital component of “fair treatment.”

### **Theme Three: Time Plays a Tremendous Role in Due Process**

Another very dominant theme to emerge from this data was that time plays an enormous role in due process. The impact of declining enrollments will also be discussed here as a sub-theme since it has affected administrative time.

According to Principal Five, in order to ensure that some degree of due process is afforded to a student and/or a parent, the most important thing to do is, “stop and think,” and “to give yourself time” before making a decision. Indeed, as previously discussed in this paper, the need to conduct a thorough investigation, to document evidence and to consult with others, suggests that this can be a very time-consuming process. The Superintendent of this rural school board admitted that he spends at “least one day a week” dealing with discipline matters. He considered this to be “a fair bit of time,” and he gave a rough estimate that “about 20%” of his time was tied up with various incidents that occur throughout the district. Principal Four commented that, “Discipline, especially with older students, can be a very demanding, time-consuming task” for school administrators. This remark may be reflective of an awareness that older students have certain legal rights under both the Charter of Rights and Freedoms and the Young Offenders Act. This might also explain why it is a more time-consuming process to investigate incidents involving older students. It could also be that older students may be

involved in more serious incidents or breeches of discipline than are younger students, although this may be changing. Perhaps it is the seriousness of the incident itself, rather than the age of the student, which makes the process so time-consuming. As is evidenced by comments made by participants, the amount of time spent on discipline varies from school to school. However, with the exception of Vice-principal One who spends all of his administrative time handling discipline problems, the majority of administrators in this district admitted spending between 10-20% of their time dealing with discipline matters. Principal One contended that, it is possible though for a student to come into the office and, "probably take up your whole day." Principal Four added, "I might go for a week or two weeks and I don't deal with anybody. But, then you could have a situation that could tie you up for three or four days." Principal One concurred adding, "any day, any week could be consumed with a problem if a major problem came up." This, in fact, appears to happen quite often and Principal Two's comments illustrate a typical situation.

I ended up ... quarter to ten this morning [I] sat down with a student and a teacher which went on to eleven o'clock. About an hour and twenty minutes ... which takes a major chunk out of the morning.

Vice-principal Three pointed out that in situations where parents "persist in opposing the decision," the incident often becomes very time-consuming for the administrator.

Every administrator who participated in this study had teaching duties in addition to his or her administrative duties. The amount of time that principals were teaching ranged from seventeen percent (17%) to fifty percent (50%). Participating vice-principals had far more time assigned to classroom duties and much less time assigned to

administration. Time assigned to classroom duties for this group ranged from fifty percent (50%) to one hundred percent (100%). The majority of principals in this study (60%) felt that they did not have time to complete their administrative duties. In fact, one of them had recently done a presentation to the local school board on the topic of inadequate administrative time. In this presentation, board members were told that a principal is expected to fulfill in excess of seventy-five different duties within a school. Principal Three confided that she was not particularly enjoying administration for this exact reason, "The workload is getting too hard ... too much" with "too many demands" and "too many expectations." In fact, she felt that principals of K-12 schools faced an additional burden.

I think that we have a problem with K-12, and I'm a big fan of a K-12 school, but I think we have a problem in terms of me having the depth of knowledge that I would like to have for the K-12 setting. Also, being the teaching principal, I can't get the time to get that depth of knowledge that I need.

Although she referred specifically to programs like Whole Language that she was not all that familiar with, her comments cover a myriad of issues. This suggests that teaching principals of multi-grade schools do not always have the time to acquire the degree of training and expertise that they need. Principal Four also addressed the issue of school administrators having teaching duties, "I don't see a teaching principal of a school ... I really don't. Not if you're gonna do it right." She maintained:

All that stuff can be done that should be done ... appeals process and so on. I think it's important, but you have to have people in place to do it. Right now ... as a half-time teacher, I mean, ... every night of the week is gone, every night. So, you can't do it. It's just not physically possible.

This insinuates that when a principal has teaching duties to perform, there is little time or physical energy remaining to implement other programs or initiatives within the school. It also suggests that if this administrator had fewer or no teaching duties, then students in this school would have greater recourse to due process. While administrators throughout this study emphasized the importance of investigation and consultation, one wonders what happens to this process when there is a shortage of time?

In addition to identifying how teaching duties interfered with the amount of time available to fulfill their administrative role, the principals and vice-principals in this study also identified how this lack of time impacts on the due process rights of students.

Principal Three remarked:

You know, if you're rushed, if you're rushed, if you're over burdened, it's especially, it's very difficult to be fair at the same time. You tend to be, you act more in haste. You're gonna act more in frustration. And that sober, sensitive, refection, that time is just not around.

Principal Four admitted that she was guilty of doing this.

I find that there's lots of times, and we're all guilty of this ... you know, you've got a bunch of students to see over little nit-picky things ... and you make these kinds of rash decisions sometimes, you know. What I mean is sort of to hell with the policy today. You know what I mean? And that's because of workload. That's where that stuff comes. Whereas, if you were free, if you had the time to do it, you could develop the kinds of policies that you need.

These comments indicate that when administrators are pressed for time, they sometimes make decisions in haste or disregard existing policy because they do not have the time to deal with the situation properly. Vice-principal Three, a former school principal, admitted that in the past, he too had made hasty decisions when dealing with matters of discipline.

There have been times when I've reacted without really stopping to think, only to realize after the fact that maybe things weren't quite the way they appeared first. So, that's why I say it's important that the person dealing with the problem take the time. Take the time to try and make sure that you have the details surrounding the issue before the final decision is made.

This data reveals that when a decision is made in haste, facts may come to light later which indicate that the wrong decision has been made. It would appear that this could have dire consequences for students. Students who are given access to an appeal process will at least have some recourse to rectifying situations where they may have been penalized unfairly by administrative decisions made in haste. Even the District Superintendent admitted that he has had situations where, "all of a sudden the phone rings, and there's the principal, 'what am I gonna do?'. So you make a decision on the spot, which may or may not necessarily be the right one." This demonstrates that even at the highest levels of the education system, decisions may be made on the spur of the moment with little time for reflection or considered thought. This circumstance reinforces the need for district wide policies that deal with the kinds of situations that have become a reality in schools today. In addition, this would appear to make the need for a formal appeal's process, at both the school and the district level, even more conspicuous.

#### **Sub-theme One: Declining Enrollments**

Comparable with many other school districts in the province of Newfoundland and Labrador, this district has experienced a decline in student enrollment. The Superintendent stated that within the past six years, the board has closed seven schools, and laid-off twenty-seven (27) teachers in the last two years. While time appears to be a

scarce commodity in the lives of these individuals, with the continued threat of declining enrollments, it is likely to become even more scarce. This issue was addressed most clearly by Principal Two who commented:

I teach three courses ... but there's the possibility of myself ... having to ... teach more time or ... teach more students in fewer classes ... because next year we are losing at least one teacher. There's always the possibility that ... you lose another unit. But, right now it's quite hectic. I don't think it's healthy that you come into a school and not teach anything. But, no matter what time you come in, in the morning or want to leave in the evening, administration, you can't complete the job. And on top of that, you're teaching. The problem with teaching in a school that is challenging to administer, is that you don't do justice to your teaching.

This suggests that declining enrollments in schools throughout this rural school district will result in increased teaching duties for administrators. It also reveals that when a school is difficult to administer, the principal may not do justice to his or her teaching duties. An increase in teaching duties will no doubt mean a decrease in the amount of time that is available for administration. Principal One also discussed the impact that declining enrollment is having on her school.

Next year, we have to cut two staff members ... therefore we increase the class size; we increase the problems; and we increase the teachers' load; and we increase the guidance counselor's load. It just gets worse all the time.

The implications here are that a decline in enrollment leads to an increase in discipline problems which in turn puts a strain on the remaining resources in the school. She added, "The fact is that when it comes down to the school level; down to where all the students are sitting, ... the people are just not there." As a result of this situation, she felt that, "People are more coping with situations as opposed to solving or modifying behaviors."

Principal Three felt that, "many of our discipline problems are special needs students who are not being addressed." She also expressed the belief that "if their [needs are] addressed, then many of your discipline problems will disappear." This data suggests that many school discipline problems may be the result of particular groups of students not having their needs met by the school system. Principal One also commented:

We don't have the manpower; we don't have the resources, the human resources to deal with some of the problems that we have to deal with; some of the behaviors that we have to deal with. ... You almost need a social worker ... in the school to help deal with ... behaviour ... you should be able to put, to have the resources to provide guidance to help that student change. But, you don't have it and so you're in a bind.

This suggests that schools do not have the human resources to deal with many of the behaviors and discipline problems that are a reality in schools today. This appears to be most evident in the loss of specialized programs which were designed to meet the needs of children who exhibit behavioural problems. In extreme cases where the needs of a child are not met, expulsion may become the final solution. While participants acknowledged that expulsion from school is a very rare occurrence, a student was actually expelled from a school in this district during the winter of 1995. The vice-principal at the school described the student as:

The student himself was very likeable. But, he was such a disruptive student in class you know. Getting up out of his seat, going to another seat. You ask him to sit down and fine he'd sit down. [Then] Probably thirty seconds later, he's over on the other side of the room. This kind of thing constantly, all the time. Making remarks. And now, this has been going on for at least a year, and then this year. I felt that the student was not all that bad ... but no one felt that they could help him. But, I feel that the right decision was made.

This data supports the reality that there are some students in school today who present behaviors that are beyond what the school is capable of addressing. It also indicates that expulsion is a last resort measure that is used only when other possibilities have been exhausted over a long period of time. The school principal also discussed the inability of the school to address the needs of the student, and described the impact that this boy was having on the learning environment in the school.

It was the case of a student, we didn't have what he needed. We weren't equipped to handle his needs. He had deep serious problems; [and] a lot of family problems. And so, I feel that we really didn't do justice [to him], but I don't know what else we could have done. And we just couldn't let classes go on. I mean one teacher had the student for three classes, and that was every day. So, he [the teacher] had three classes where he was totally frustrated; he wasn't covering the material; and other students were complaining that they couldn't get their work done. So, although it [expulsion] wasn't the best answer, it was the only one, I guess, that we had at the time.

Although expulsion may be seen as the only alternative in certain situations, it may not necessarily be the best solution. In fact, those involved in this expulsion expressed very mixed emotions. When asked how he felt about having to expel a student, the District Superintendent said, "I hate it. I think that when we say that we have to expel a student, then we've failed I guess." When asked how he felt about this situation, the vice-principal replied:

I shivers [sic]. That particular day, when that had to be done, there was a little bit of emptiness there [inside]. You know, the student was not really that bad, and he was likeable okay, but the thing was, we couldn't get work done in class. Ya, it was sort of opposite [how I expected to feel]. Maybe I could have done something? What could you [I] have done to have kept him here? And on his' absence, not only he felt bad, or I felt bad, but the [other] students [in the school] also felt bad. Probably even more so. It's not a good feeling.

This suggests that in situations where a student is expelled from school, others left behind often reflect on what they might have done to prevent the situation. It also demonstrates that those left behind often experience a sense of emptiness and loss. This was the first student to be expelled from this school in the more than twenty years that this vice-principal had worked there. Although one might expect that administrators would rejoice at having "gotten rid" of a source of constant disruption and aggravation, in this particular situation, such appears not to have been the case. In the wake of an expulsion, those left behind often experience a profound sense of failure.

The loss of guidance programs has become a sore point for many administrators in this district. This situation was most clearly addressed by the District Superintendent who commented:

I think that most of our schools don't have enough guidance people, and of course we're reducing that all the time. And as we reduce, as we reduce the number of teachers in our schools, then we reduce programs. And one of the programs to go is guidance. I think that guidance is one of the big pluses. If you have a good guidance counselor in the school, it can be a real plus in terms of dealing with discipline problems. And I don't mean that they do the discipline, that's an administrative function. But, I think in heading off problems, and in dealing with the student in difficult situations ... I think, that the guidance counselor is the best single advantage that a principal has in an extremely difficult case. But unfortunately, we have schools where we have no guidance at all.

The suggestion being made here is that a good guidance counselor in a school can be the single greatest ally or advantage that an administrator can have when faced with difficult discipline situations. It also appears that this benefit is being stripped away in school districts as a result of declining enrollments. Principal Four maintained that her school

"could certainly use help" in terms of the guidance program. In her estimation, a counselor in the school for two days of a six-day cycle, "doesn't leave much time to do anything preventive." In this school district of twenty schools, there are fully trained, full-time counselors in only four of the schools. As well, the board has only one Educational Psychologist for the entire district. The Superintendent observed, "And I don't believe that we'll have all of these people [guidance personnel] next year. Certainly not! We may have all the people, but we won't necessarily have as much service." This indicates that there will be a further decrease in guidance services in this school district for the 1995-96 school year as a result of declining enrollment.

Declining enrollments also appear to be a factor in the kinds of disciplinary action that administrators have at their disposal. Administrators in this school district discussed the emergence of in-school suspension as an alternative to the more serious out-of-school suspension. The typical number of out-of-school suspensions issued in these schools was about five per year. In one school where there were an unusual number of serious incidents, the number of suspensions had more than quadrupled compared to previous years. In all five of the schools involved in this study, in-school suspension was being used to some degree. Principal One was a strong advocate for this method of suspension. In her opinion, in-school suspension provides an administrator with, "another step along the way." She feels much more comfortable with using the in-school suspension before invoking the more serious out-of-school suspension. Her preference for this type of suspension is based on the fact that the in-school suspension means that the student does

not "lose very much educational time," since, "you're not depriving the student of an educational environment." She stated that in order for this kind of consequence to be effective and successful, the cooperation of all the staff is required. Vice-principal One also expressed a preference for this kind of suspension over the traditional out-of-school one. He felt that the in-school suspension "probably works better" because that kind of "segregation is much more effective." In schools where this kind of suspension is utilized, a student serving an in-school suspension is usually placed, in some room in the school, in isolation from other students. The student has a later recess and lunch break than the rest of the student body, and during each class, the teacher who would normally be teaching the student, provides work to be done during the period. Several administrators discussed factors that hinder use of this type of suspension. The two major impediments to using this method of suspension appear to be lack of space and inadequate supervision. Vice-principal Three addressed the issue of shortage of space and lack of supervision being a problem especially in "smaller schools." Principal Two also commented that:

You need a good facility to be able to put them ... if you take a kid out of class it's, the question is where are you gonna put 'em. ... it's difficult unless you've got a teacher who can supervise and you've got a place for the kids to go.

Vice-principal One commented on the scarcity of teachers available to supervise students even if adequate space were not a problem.

In schools that are staffed as leanly as ours, our hands are tied to a large degree. Because you've got no staff that can fulfill the role of supervising such an alternate classroom for students who aren't functioning well in the normal classroom and having that ... would be very effective in taking care of a lot of your problems. These remarks indicate that in schools where a decrease in staff has become a reality, in-

school suspension although deemed to be an effective alternative to the traditional out-of-school suspension, cannot be effectively utilized. This, again, illustrates how declining enrollment has impacted on the way discipline is handled by school administrators in this rural school district.

#### **Theme Four: Lack of Knowledge of School Law**

Data gathered throughout this study indicate that administrators in this school district feel that they do not have sufficient knowledge of school law. This phenomenon has been manifested by a lack of adequate in-service and pre-service training programs.

When asked whether or not they felt that they were knowledgeable in school law, the majority of administrators (70%) felt that they were not. Three of the five vice-principals interviewed had received no training in school law at all; one had attended workshops, while the other had completed one course at the graduate level. Despite the fact that three of these administrators had received no formal training in school law, two of them stated that they felt that they were "fairly" knowledgeable about school law. Of the five principals interviewed, four had some training in school law at the graduate level, while the other had "listened to presentations" at various workshops. When questioned as to whether or not they felt that the training that they had received was adequate, the majority of respondents (70%) stated outright that it was not. Another respondent stated that the training was probably adequate at the time, but "not right now." Principal One provided some cautionary advice on the adequacy of training:

You have to be careful in thinking that you're trained for something. I think training is continuous, and everything keeps changing. Society keeps changing and school law and every kind of law keeps changing with it. So, I would like to think that training is continuous in school law ... That's not something that you can do a couple of courses in and say 'okay, I'm an expert on school law now, you know. I don't have to learn anything else'. You sort of constantly have to have refresher courses ... or institutes ... every five years or so. I'm sure every five years things change enough to make the way you handle situations different. There's certain things you could do five years ago that you can't do any more today.

This suggests that administrators can never have too much training in school law. It also advocates the need for administrators to have refresher courses in school legal issues at least every five years. This need for refresher courses was also addressed by Vice-Principals Four and Five. Not only does there seem to be a lack of pre-service legal training for teachers and administrators, but respondents in this study also identified a lack of in-service training on legal issues as well. Only 30% of the administrators who participated in this study, mentioned having attended any kind of in-service sessions on legal issues. However, none of the administrators interviewed, could recall having attended any school board sponsored in-service sessions on school law. Table 1 presents sample comments on in-service programs. The district Superintendent admitted, quite frankly, that the school board needed to provide more in-service to school personnel with respect to school law.

I'd say as a school board we have an obligation to do more with our teachers in terms of in-service and making them more aware of what due process is and how they should be reacting in situations.

Table 1

Selected comments regarding in-service programs on school law

Selected Comments
"I have never that I recall, through the board, attended in-service on issues that relate directly to administrators ... like ... law, due process in particular. I think they are sadly, sadly lacking."
"The only thing we've gotten are directives from the N T A [N L T A] or board policy that say you can't do this or you can't do that. We've never been in-serviced ... with somebody who came to you and said, 'here are the finer points.' Not necessarily all the finer points of the law, but here's where the law stands on all these things"
"I think there is more need right now for it [in-service training] ... you need to be updated on new laws, rules, regulations, and policies that change. And we are not always aware of them."
"There's a lot of things happening with the <u>Y O A</u> [Young Offenders Act] ... but nobody's made a conscious effort to get into schools. Somebody might come in and say, 'well this is changed now and you have to do this instead of doing something else.' But there's not enough."
"With school administration and with teaching, ... a continuous program ... in due process and school law that kind of thing is something that boards and the Department [of Education], and the university should be worried about. [They] should make sure that teachers and administrators are well up on what's happening"

Legal Expert One also addressed the issue of pre-service and in-service training for educators. It was his contention that:

Every teacher who goes through university, should have a course in human rights. I would broaden it from student rights to human rights. Now a course doesn't guarantee everything, but I think it at least provides an opportunity for people to study.

These comments reflect the necessity of legal training for all prospective educators. Furthermore, they also suggest that courses in law alone will not guarantee that student rights will be respected. Legal Expert One conveyed the view that, "the key is preventive law," and in his opinion, pre-service and in-service programs are essential components of this.

I mean the key is not ... once an action is taken, using the law to penalize. That's not the approach. The approach is that you know the law, and [that] you treat people reasonably and fairly, and respect human beings as human beings. That way you'll avoid a lot of the conflict and confrontation that results ... this is the approach of preventive school law. And if teachers and administrators are aware of some of these basic principles ... then I think that you can avoid a lot of problems for a long time.

These comments imply that knowledge is the key to preventing confrontation, and that knowledge of the law that will enable educators to ensure fair treatment. They also suggest that school personnel, who treat their clients with dignity and respect, may encounter fewer problems than those who do not. Legal Expert One maintained that:

A handbook is part of this idea of preventive school law, trying to ensure that people [students] know about their rights and know their responsibilities.

Although the legal community views a student handbook as part of preventive school law, only forty percent (2 of 5) of the schools that participated in this study issued a student

handbook. A third school was in the process of trying to have a handbook in place for the following school year. Both Principal Three and Vice-principal Three cited reasons for the absence of student handbooks in small schools. Principal Three declared that the “numbers” in the school “just don’t warrant it”, which suggests that small schools do not need policy manuals by virtue of their size. Vice-principal One cited cost as the overriding factor. However, he conceded that this was no excuse not to have a “school generated” handbook. This absence of handbooks seems to indicate that few schools throughout this school district are practicing preventive legal measures. This may be a reflection of the lack of training in legal issues evident in this data.

#### **Sub-theme One: Pre-service Programs**

The District Superintendent had much to say about pre-service training programs in this province. Although he conceded that the teacher training program at Memorial University has been changed in recent years to allow for student interns to spend a semester practice-teaching in schools, the Superintendent stated:

I believe that they are going out into situations which may not necessarily set up the actual, practical kinds of situations like they’re not going into a lot of the rural schools. They, in some cases, are assigned to people who might not be the best examples [of how to handle discipline]. And you know, that is where they get a lot of their training in discipline.

While he felt that, “the Internship program is a plus” and, it is “great to teach them [education interns] how they should teach a particular subject area and so on,” he again stressed:

The practical part of this is that when they get out into the classroom, and they got

25 or 30 kids to deal with, they need some really practical ideas as to the best way of handling discipline. And sending them to the principal's office is not an answer. But, you know, they have been told that.

This data suggests that the present teacher training program in the province of Newfoundland and Labrador does not adequately prepare prospective teachers for handling discipline problems that might arise in actual classroom situations. It also insinuates that prospective teachers are being advised to take or send students who might present such problems, "to the principal's office." If indeed this is occurring, it might help to explain why administrators in this study suggested that many of the discipline situations that they are asked to handle should, in their estimation, never reach the office.

#### **Sub-theme Two: Overuse of the Office as a Deterrent**

Fifty percent (50%) of the school administrators who participated in this study (5 of 10) felt that many situations which were brought to the office should never have reached there. Three of these commented that this was due to the fact that "some teachers believe that discipline is the responsibility of the administration." Vice-principal One expressed the view that although only a small percentage of a staff might hold this view, "that percentage of staff is such that they are a full time job for an administrator." He stated that fifty percent of the situations that were brought to him should never have reached his office. Indeed, he felt that there are a number of teachers in his school who: perceive that their job is to teach, as in dispensing information and dealing with students on any kind of personal level is not their problem. And if the kid is not there [in the classroom] to do what they [the teacher] want in their classroom, then they [the student] shouldn't be there.

This data suggests that there may be a number of teachers on a school staff who believe that it is the role of the school administration to handle all discipline problems within the school, and that the teacher's role is simply to deliver the curriculum. This same sentiment was expressed by Vice-principal Two who commented:

In a few isolated teachers' cases, they will pile it on in here [the office] in terms of bull shit that should never reach here ... I can say to you that sixty percent of my discipline problems ... are such and such a teacher.

These comments appear to support the Superintendent's claim that reliance on the school administration, with respect to discipline, is a reflection of advice given in pre-training programs. Obviously, if more than half of the situations administrators have to deal with should never be brought to them, then this must also impact on the amount of time that administrators spend dealing with discipline problems. Principal One, however, made the point that not all teachers utilize this form of discipline.

To be fair, the majority of teachers handle things quite well and you never hear from them. And when you do hear from them, you know that you got a problem. But you do get certain things that should never reach the office.

This indicates that most teachers on a school staff handle their own discipline situations and rarely bring students to the office. The majority of teachers appear to only bring problems to the administration that are of a serious nature. However, Vice-principal One elaborated that it was a "totally unrealistic expectation" for teachers to hold the view that discipline is not their problem, and that such a perception was different from his perception of "what their role is, as an educator." He felt that "this should have been taken care of long before they got tenure." This concept of some teachers having

unrealistic expectations within the classroom was also addressed by Principal One who commented:

Teachers have to realize that when they go teaching, that they are not teaching in a perfect world with perfect students. That you [teachers] have to expect to come across problems, and you have to expect to deal with these problems. It is not a reasonable expectation to go into a classroom and think that you are going to teach for thirty years and every student is going to be perfect; is going to learn; is going to be motivated; is not going to be upset and so on. I mean that is absolutely impossible! So, I think that more teachers have to accept the fact that there are going to be discipline problems, and ask 'How can I help?' You know, a teacher has to expect that there's going to be behaviour problems.

This suggests that some teachers do, indeed, have the expectation that they will not have to face any discipline problems in the classroom. Other administrators felt that several factors such as, "personality traits," "inexperience," and "lack of classroom management," might also be contributing to this expectation. The Superintendent expressed the belief that teacher training programs at Memorial University may be responsible for some of this occurring. He asserted:

I think it's unfortunate that the university kids are coming out, people are graduating from university and I don't think that they have enough knowledge of what student rights are ... and how they should be handling discipline. These are two areas I think ... where new teachers have not been fully trained. You know, I don't think that the university should be graduating anybody who has not had extensive training in how to handle discipline problems.

When asked what he considered to be extensive training, he replied:

Extensive training in terms of being able to handle all kinds of situations that arise [in the classroom] besides sending them to the principal's office because I don't think that's an answer. They're given some ideas of how to handle discipline, but in a lot of situations, they don't have a clue how to go about doing it. I looked through some of the courses that ... the new teachers have done at the university

and I really don't see much that gives them a real good idea of handling discipline problems.

This data indicates that teacher training programs in the province of Newfoundland and Labrador need to place greater emphasis on effective methods of handling student discipline problems.

Several administrators suggested that this practice of sending students to the principal's office results in a decrease of administrative authority. This sentiment was expressed by both Principal One and Vice-principal Three. Vice-principal Three admitted to often wondering if this practice, "diluted the authority of the office." Principal One, on the other hand, commented with much more conviction that, "it takes away from the authority of the office ... when you have to visit for every little thing that you do," and that:

You're more effective when a student is walked in here [the office], and he or she realizes 'Oh, oh' they've crossed a certain line ... students just build up a resistance ... it's almost like going to court. You know the tenth time you're in court, it's not very painful at all 'cause you get to know the people well and you start to get to know what might happen. That's an unfortunate thing, when minor things are brought to the office.

This data suggests that when the office is overused as a deterrent to discipline problems, the authority and effectiveness of the school administration may be reduced. It also demonstrates that it is not only the external societal changes, discussed earlier in this paper, that have led to a decrease in the authority of school administrators, but that internal practices may be a contributing factor as well. Perhaps, it is also the overuse of

the office as a deterrent to discipline problems in the classroom, that prompted the District Superintendent to comment that suspension from school, "doesn't seem to be viewed as seriously as it did even five years ago." He speculated that this might have resulted because, "we've used it too much." In his opinion, students have come to view suspension as a way "to get a day off school kind of thing" rather than as a repercussion of their behaviour. This data would seem to suggest that out-of school-suspension may have lost its effectiveness as a result of being overused as a consequence for breaching school rules. Conceivably, this loss of effectiveness might help explain the use of in-school suspensions in many of the schools in this district as an alternative to the traditional out-of-school suspension.

#### **Sub-theme Three: General Level of Knowledge of "Due Process"**

When asked what came to mind when the term "due process" was used, typical responses included "fairness" and "rights under the Charter of Rights" (see Table 2 for a summary of sample comments). Comments demonstrate that all participants were familiar with the terminology. In most cases, principals had much more to say in response to this question than did vice-principals. This may be reflective of the Superintendent's comment with respect to principals being more aware of due process rights than anyone else in the school system. Most vice-principals were very brief in their response to this question. In fact, one vice-principal was extremely hesitant in his remarks which indicated a lack of confidence regarding the topic. Of all the administrators interviewed, Principal One expressed the strongest conviction on due process rights for students. She stated that not

Table 2

<b>Summary of sample comments on due process</b>
I guess fairness of students. Information about discipline before hand, before they are disciplined. Going over the school rules before hand.
The right to appeal.
All students have the right to have their side of the story heard.
You are the students' advocate in a law enforcement encounter.
Natural justice ... that people are informed as to what the consequences are as well as what the expectations are.
Students' rights ... protection of an individual's rights.
It means that justice has got to follow through ... people got to understand, they haven't got to agree, but they got to understand the reason for what happens, and if they don't agree ... they got to have some recourse to an appeal ... if due process is to follow through.
Basically everyone's rights.
Fairness ... it's a basic component of our justice system ... the issue of fairness and treatment of people.

only should students be given due process, but also that a higher level of due process was needed for students than for adults. She also added that due process policies need steps built into them, in order to allow students time to modify their behaviour. She was adamant that:

In a due process policy, there's got to be steps. There's got to be help for the student to modify behaviour. That's got to be there. I mean we're not dealing with adults, and therefore the due process for students would have to be different than what it is for adults. They're [students] are going through a learning situation and you have to make sure that you know, the student is given every opportunity to change and reform.

These comments indicate an awareness that since students are still in the process of learning, they are in need of a higher level of due process than are adults.

In this school board, issues involving legal matters, school discipline, discipline policies, suspension, and expulsion are discussed at Principals' meetings which are held, for the most part, at the district board office. These meetings are attended only by school principals, while vice-principals are excluded. Analysis of agendas from these meetings indicated that over a three-year period, vice-principals were only included in one such session. This exclusion was a source of great annoyance for Vice-principal Two who referred to the fact that vice-principals were "not allowed to go" to these meetings.

Exclusion of vice-principals from sessions where legal issues might be discussed, obviously does little to enhance their level of knowledge. As well, in the schools in this study, discipline matters are usually dealt with by the principal. The question of who handles discipline is dictated largely by the percentage of time each administrator is

teaching. As discussed previously in this paper, every administrator who participated in this study had teaching duties. As described by participants, the usual practice is that the administrator who is "off", that is, not assigned to the classroom at the time that an incident occurs, will deal with the problem. In all five schools studied, the principal had fewer classroom duties than did the vice-principal, therefore, it was the principal who typically handled discipline problems. Also, in this province the Schools Act states that one of the duties of a school principal is to "maintain order and discipline in the school." In view of this, any serious incident that occurs in a school, that is likely to result in suspension or expulsion from school, will automatically be dealt with by the principal. Perhaps, it is this kind of legislation that accounts for the fact that when people call the school they will usually ask to speak with the principal. This practice was referred to Principal Three who said:

I'm the first one they'll call. If anybody wants something - phone the principal; phone the principal. You know it's, it always seems to come to me anyway.

This comment emphasizes that it is the principal who is ultimately responsible for what happens within the school. All of these factors appear to be impacting on who will handle matters of discipline. None the less, there are times, in the principal's absence, when it is the vice-principal who is in charge of the school. This eventuality makes it necessary that both administrators be well trained in school law.

Although comments made by school administrators indicated that they were familiar with the concept of due process, when asked specifically if they felt that they were

knowledgeable in the area of due process rights of students, (70%) responded that they felt they lacked adequate knowledge. In response to this question Vice-principal Two commented that this was a "tricky" question because although he felt that he was, "definitely fair," he also felt that, "do I know or do I do, are two different things." This data seems to suggest that while administrators might well possess knowledge of student rights, this knowledge may not necessarily translate into actions which recognize or respect these rights. Principal One expressed the view that whatever knowledge she had of due process rights of students was gained "by way of fear." She attributed this to the fact that:

I guess in administration today, you always try and think of where things can go and how far they can go ... You don't ever want to have egg on your face, a lot of times you do. I'm not overly familiar, I guess, with due process and rights, but I am familiar enough to have a feeling as to what worries me. And some things I'm comfortable with and some other things I'm not.

Principal Two stated that she was not knowledgeable in this area, nor did she think that "anybody is." She attributed this to the fact that these rights have not yet been outlined and therefore "until they are outlined as to what they are, you are sort of always skirting the great parameters." She also made the point that, "due process, even in a course on law, is more or less given as a definition in terms of another student right." This suggests that due process rights of students do not exist outside of the context of a legal definition. In fact, in her opinion, due process rights "impact only as far as the school has kind of said the due process rights are there." This comment would leave one to believe that whether or not students have any right to due process is solely at the discretion of the school.

Contrary to claims made by these educators, 50% of the legal experts interviewed felt that present day administrators are much more knowledgeable of due process rights than were their predecessors. Legal Expert Four's comments are reflective of this belief. He claimed that principals are "a lot more knowledgeable than they were just a few years ago." It was his contention that this change was a result of the efforts of a number of agencies in particular:

The school boards have taken some pains to bring them [principals] up to scratch through some workshops and seminars. There's an increased emphasis at the University on some of this stuff. The N T A [N L T A] Special Interest Councils have had a number of seminars to provide opportunities for principals to deal with legal issues. [As a result] They are a lot more knowledgeable than they were. Whether or not there are individual principals up to scratch on it, I don't know. But, they're very much aware of it.

It is obvious from this data that while this school board may not have conducted any in-service for administrators, other agencies are providing such opportunities. Conceivably, administrators from this school district could be availing of training sessions sponsored by these other agencies. Legal Expert One cautioned that it is procedural rather than substantive due process that is focused on by the courts. In light of this, he felt that educators have to be cognizant of the fact that, "if you are going to deny a person or a group of people their rights, you've got to do it fairly." This suggests that although schools have the right to limit rights to some degree, this must be done in the spirit of fair play. Legal Expert Two characterized some administrators, that he had encountered, who seemed not to share this perspective.

There was something wrong with the way they regarded the students, and the

enforcement of rules. It was just in my view bizarre. I don't think they have any regard for due process or levels of punishment. It seemed to me that if they could behead some of the students, that's what they would order.

Evidently this person has encountered some administrators who display an unequivocal deficiency in the field of school law, and the concept of "fair treatment."

Participating administrators did not simply acknowledge their lack of expertise of legal issues, they also outlined the kind of legal information they were most in need of. Principal Four alleged, "I'm looking for ... what the legal limits are. Most definitely. Cause we don't [know them] right now." Vice-principal Three also shared this view and felt that "it would be worthwhile knowing what kinds of things you could expect to have fly in your face." Especially, "Kinds of decisions that someone could protest and carry to the ultimate end." Others like, Vice-principal Four, wanted more information on specific legal issues such as the Young Offenders Act. Vice-principal One was seeking information on the types of student behaviors that would constitute breaking the law, and the mechanism that schools would have to implement in order to lay formal charges. He was also interested in how an appeal board could operate at the school level, and how students could access this. Data gathered in this study highlights the acute necessity for both in-service and pre-service training in school legal matters. One would hope that it also signals a willingness to acquire such expertise.

#### Theme Five : A Question of Balance

Thirty percent of administrators (3 of 10) saw this balancing of rights within the school as a very difficult task. Statements made by Principal One best demonstrate this

sentiment:

I'm having a lot of problems, I guess, when the rights of an individual override the rights of the group. And you know, it's a very difficult line to walk ... and my rule of thumb, if you like, is that when a behaviour interferes with the learning of others on a constant basis; on a regular basis so that a teacher has to spend most of his or her time with a particular student, then you wonder about the rights of the individual at that point.

This suggests that administrators sometimes wonder whether an individual's right to an education should supercede the educational rights of other students. While Principal One did acknowledge that, "There are times when the rights of the individual, can and do, override the rights of the group," the problem seems to surface when the individual has clearly demonstrated that he or she is interfering with the rights of the majority. She added, "That's my biggest problem; that's my biggest concern." This comment indicates that school administrators are often concerned when individual rights interfere with the rights of the majority of other students in the school. Principal One also commented that in her opinion this is "the biggest problem that administrators have, you know, that balance of sometimes a student's individual rights might have to suffer so others can learn." This advocates that when an individual student interferes with the learning of others, then that student may have some of his or her individual rights denied. This same sentiment was echoed by Vice-principal One who questioned whether students who were disruptive to the learning environment of others had any right to be in school at all.

As callous as it might sound, you have a certain segment of students in school who are doing nothing academically. Who very likely will do nothing. Have no intention of doing anything academically. And their only contribution to school is a disruptive one. Under our present circumstances, and the ability we have to do

anything for those students, then I question whether they have a right to be here because their being here is inflicting on the rights of all the other students. And you question whether the rights of those three or four would extend to be in anyway a detriment to the education of the masses. And that to a large degree is what's happening.

This implies that some administrators feel that students who behave in ways that are detrimental to the education of others should not be permitted to attend normal school.

This administrator also suggested that perhaps there should be some "alternate school" for students who are not interested or who are unable to cope within the normal school setting. This issue, of balancing rights, was also addressed by Vice-principal Four although from a slightly different perspective. While he agreed, "That all the rights and privileges that everybody's got those [these] days need to be there," he felt strongly that, "there's got to be a line drawn somewhere where the rights of that individual ... got to be seen as infringing on the rights of ... other people." He expressed the view that this balance is often lost. Legal Expert One also commented on this theme. He conveyed the hope that this issue of balancing rights is being "looked at in a more balanced way" in today's educational climate than it was in the past. He explained this to mean that hopefully there is an attempt to strike a balance between "the rights of students, the rights of teachers, the rights of all." He acknowledged that this balance is "very challenging" for administrators, but also "very important." Indeed, he stressed that for any school administrator, "the whole challenge ... is to balance the rights of students; one student with another; students with parents." He did however, temper his comments with the caution that, "if you go to the extreme with ... rights of any one group, then society breaks down."

This indicates that while school administrators face a challenging task in trying to balance the rights of all members of the school community, it is a balance that appears to be of vital importance to the survival of the school community.

#### **Sub-theme One: Supporting the Teacher**

Although administrators in this district are aware of the need to balance rights, 80% of the principals who participated in this study expressed the view, that in matters of discipline, they felt that they had to be perceived as supporting the teacher. Although it is the principal who usually handles discipline matters, vice-principals also admit to this same practice. In fact, Vice-principal One said that although the effort is made to provide due process to students, he felt that he has to be careful “not to undermine the authority of the teacher.” He commented:

There have been times when students have been ... listened to; they've been talked to; things have been explained to them, and an effort has been made to explain to them why things are as they are, but for the most part as an administrator, I feel that I've got to stand behind the teacher. Even in a situation where I might think that the teacher is clearly in the wrong ... because you might undermine that teacher's authority and thus undermine his effectiveness ... and thus I guess finish his role as an authority in his classroom.

This data suggests that although administrators are willing to give students an opportunity to give their side of the story, they feel that they have to be on the teacher's side even in situations where it is the teacher who is at fault and not the student. One has to question where the due process is in all of this? It would appear that if the administrator has to support the teacher, then the student actually has little chance of getting full due process. Although the students' side of the issue may be heard, can there be true due process if the

administrator feels that he or she must support the teacher? Does this constitute a fair hearing before an unbiased decision-maker? The problem seems to be further aggravated by the fact that students in most of the schools in this study (80%) do not have access to any appeal process which leaves them limited recourse to right possible injustices. If there is any attempt at balancing rights in this district, then the scales appear to be tipped in one direction only. The only principal to state an opposing point of view was Principal Three. She contended:

Teachers sometimes do things that are not acceptable. You cannot support all decisions that teachers make. You expect people to make sensible, prudent decisions. But, their idea of what is sensible and prudent is not always the same as yours.

Principal Two suggested that if an administrator is perceived by the staff as not supporting teachers, "then that becomes a spin off morale-type problem." She commented that because these are very "insidious types of things," the administration often ends up handling situations that they might otherwise not get involved in. Both Vice-principal One and Principal Three discussed the concept that failure to support the teacher would result in the teacher losing authority and/or control in the classroom. Both of these administrators implied that this would somehow become a dangerous situation. Vice-principal One remarked:

If you allow that type of thing to be perceived as happening by the students, the parent, in other words the student got the upper hand ... there is a bit of a power struggle going on ... you've got to be careful.

This comment suggests a fear that if the administrator does not support the teacher, then

students would somehow have scored some kind of victory, and that "control" would be lost within the school. It also portrays a kind of "us against them" mentality as if the students and the parents are in some way the enemy. Perhaps this philosophy helps explain the jaundiced eyes through which some parents view administrative policies and decisions. This need to be perceived as supporting the teacher might also be explained by the notion that teachers often define a "good" administrator as one who "supports" his or her staff. Perhaps, it is simply the desire of the administrator to be viewed as a "good administrator" that perpetuates this conviction. This in turn, might be attributed to the esteem needs of the particular administrator. Vice-principal One admitted that he sometimes experiences pangs of guilt over how he has handled certain situations.

Some times I've questioned myself in terms of fairness. And those were the instances when I can see that there's something to be said for the student's side of the issue; for the student's perception. And having to do things that I don't normally feel comfortable with.

This suggests that administrators often find themselves in situations where they feel they have to support teachers at the expense of the student. Notwithstanding the fact that this may result in feelings of guilt, the practice continues. These feelings of guilt appear to indicate an awareness that there is something wrong or immoral about the action being taken by the administrator. Principal One also made reference to getting "caught in a bind" when "the teacher doesn't have a good sense of due process and what's right and wrong." Although administrators appear to recognize that teachers are sometimes more at fault than students in some situations, there appears to be a reluctance to do anything to

alter the circumstance. Vice-principal One expressed the view that the Collective Agreement rights of teachers are partly responsible for this situation. He commented that, "for the most part given the contract that we've got, given the grievance rights that teachers have, there's not a lot that we can do about it." It would appear that the Collective Agreement rights of teachers often negate the due process rights of students. Perhaps when students in this province start to exercise their recently recognized right to appeal administrative decisions, a more equal balance of rights will become evident within the school setting.

### **Summary**

As is typical of qualitative research methodology, through analysis certain themes will emerge from the data. In this study, five overriding themes emerged during data analysis. In addition to the dominant theme, a number of sub-themes were often also evident. The five themes discussed in this chapter were:

Theme One: The winds of change which included four sub-themes: increased awareness of rights, increased accountability, an increase in the number of serious discipline problems, and a decrease in parental support.

Theme Two: The impact of societal changes on administrative practices. Again several sub-themes were evident including: increased documentation, increased consultation, the need for a thorough investigation into incidents, an absence of "voice", an absence of policy, and absence of a process of appeal.

Theme Three: Time plays a tremendous role in due process. The impact of declining enrollment on administrative time was also discussed as a sub-theme.

Theme Four: Lack of knowledge of school law. The impact of pre-service and in-service training, overuse of the office as a deterrent to misbehavior, and the general level of knowledge of due process possessed by participants were also discussed as sub-themes.

Theme Five: A question of balance. The sub-theme supporting the teacher was also explored.

Chapter 5 will present a summary of this study, draw conclusions about the findings and make recommendations for further research.

## CHAPTER 5

### SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

This chapter contains a summary of the study, the research findings, pertinent information from the literature, outlines conclusions drawn from the study, and delineates recommendations for future studies.

#### Summary of the Study

In Canada, passage of the Charter of Rights and Freedoms (1982) and the Young Offenders Act (1984) have conferred legal rights on children that previously had been the sole domain of adults. For educators, this has meant a change in how schools are to be administered. While school administrators retain the right to maintain "order and discipline", school policies and practices must infringe on constitutional rights as little as possible. In light of this, schools and school boards across Canada are urged to review all existing policies and regulations to ensure that these are in keeping with legal responsibilities set out in legislation. Both the Charter and the Young Offenders Act specifically guarantee students the right to due process in matters that affect them.

The aim of this study is to determine the due process rights of students in matters of school discipline, and through investigation of the existing policies of one rural school district in the province of Newfoundland and Labrador, determine if these rights are adequately addressed. Through the use of qualitative research methodology, the researcher gathered data from the superintendent and ten school administrators

representing five schools in one school district. In addition, the researcher interviewed a number of individuals who possessed legal expertise. Data collection consisted of semi-structured interviews and document analysis. The researcher conducted a thematic analysis of the data presented.

Findings in this study, indicate a number of trends that have taken place in the educational arena in the last two decades. Respondents in this school district identified the following changes in society that have impacted on the educational climate:

1. Parents and students are much more aware of their rights than they were in the past. Participants related this to a number of factors including the Charter of Rights, as well as, media reports of school incidents.
2. Parents and students increasingly question administrative decisions and school policies which has resulted in an increase in accountability for educators. Respondents attribute this to the increase in awareness of rights. There is a general feeling that such challenges have resulted in a decrease of administrative authority.
3. There has been an increase in the number of serious discipline problems. Respondents felt that the presence of young offenders in the school setting, increase in drug use, and economic factors such as high unemployment rates have impacted on the kinds of discipline problems faced by administrators. There was diversity in opinions expressed by members of the school community and members of the legal community in respect to

young offenders being "sentenced to school". In general, participants felt that although the number of discipline problems had decreased, there was a corresponding increase in intensity. Administrators admit to being confronted with problems and behaviors that they lack experience handling.

4. There has been a decrease in parental support of school policy and administrative decisions. Respondents felt that there has been a shift in parental support from the school to the child. They felt that most parents today side with the child and refuse to acknowledge that their child/children could be guilty of any transgression. Some felt that this was characteristic of a refusal to admit that there might be a problem. Others felt that this was an easier route for parents to take since opposing the school was less stressful than opposing the child.

This study also demonstrates that these changes in society have impacted on some administrative practices. Participants associated increased documentation and consultation as a direct result of changes in public perception of schools. Increased challenges of administrative decisions has also necessitated that matters of discipline be thoroughly investigated before any serious consequences are enforced. Changes in society have also caused a change in how administrators approach students and parents. The majority opinion is that it is no longer possible to dismiss people, you have to hear them out. Conversely, not all administrative practices, however, have been altered by changes in society. There is a decided absence of input from parents and students into the /

development and review of school policies and regulations. The traditional view of the school as a closed system has been maintained in the schools in this district. Parental involvement appears to be limited to volunteer activities within schools. Student input is rarely sought and where it does exist, is confined to a select group and is superficial at best. Some respondents expressed fear of involving "too many people" in policy development.

This research also indicates an absence of policy on sensitive legal matters such as search and seizure. While the superintendent admits to getting many enquiries on this, it is not addressed in the school board by-laws. In the absence of policy, administrators often resort to ad hoc solutions to difficult problems. In addition, neither the school board nor school policies adequately address the due process rights of students. This is most evident in the fact that 80% of the schools in this district do not allow students any process of appeal. A number of respondents associated fear and apprehension with giving students and parents the right to appeal administrative decisions. This absence of an appeal's process makes true due process a distant possibility for students in this district.

Findings from this research also demonstrate that 70% of administrators, in this district, lack knowledge of legal educational issues. While respondents demonstrated general knowledge of the concept of due process, the majority (70%) felt that they lacked specific information on this topic. Insufficient in-service and inadequate pre-service training were identified by participants as factors influencing their level of knowledge. All agreed that training should be a continuous process.

This study also illustrates that time is a vital factor in ensuring that due process rights are protected. Respondents repeatedly emphasized the importance of taking time to investigate, consulting with other individuals, and documenting facts before making any decision on corrective measures. Paradoxically, time is the one resource that administrators felt was being continuously eroded. Declining enrollments have resulted in the loss of human resources in this school district. Consequently, there has been an increase in teaching duties for school administrators which in turn has been coupled with a decrease in administrative time. This has had very serious repercussions on the due process rights of students. In the absence of adequate time, respondents tended to make decisions without reflecting on whether or not they were making the correct decision. In a system that does not allow for a process of appeal, students and parents have limited recourse to right injustices.

It was revealed in this study that while respondents were cognizant of the need to balance rights within the school setting, this balance is restricted in scope. Respondents discussed that balancing rights is a difficult task; however, their comments centered on the impact of disruptive students on the educational rights of the other students in the school. In this district, where the majority of discipline is handled by the school principal, 80% of principals said that, in matters of discipline, they felt that they had to support the teacher. This convention is seen as a means of maintaining the authority of the classroom teacher. This practice violates the tenets of natural justice on several levels; the right to a fair hearing, and the right to be heard by an unbiased decision-maker.

### Conclusions

Based on the findings of this study, the researcher concludes that in this school district there are more impediments to due process in existence, than there are supports. The literature on due process specifies that minimum requirements of due process dictate that:

1. Students know the case against them.
2. Students be given an opportunity to present their side of an issue.
3. Students have the right to a fair hearing before an impartial decision-maker.
4. Students have the right to appeal.

In this school district, the only one of these conditions that appears to be consistently adhered to is that students have an opportunity to present their side of a dispute. Even this, however, is not guaranteed under conditions where the administrator is hampered by time restraints, and the urge to protect the authority of the teacher. Due process, where it exists at all, is at this level only.

While there has not been a myriad of litigation in this province on violations of due process rights, that is not a justification for apathy. The literature on due process contends that the best means of avoiding possible litigation is for educators to practise preventative strategies to avoid possible court challenges (Zucker, 1988). These strategies include acquiring adequate knowledge of the law, revising policies so that they reflect respect for individual rights, and ensuring that all policies and procedures are clearly set out in writing (Hurlbert & Hurlbet, 1989; MacKay & Sutherland, 1992; Proudfoot &

Hutchings, 1988). As Dickinson & MacKay (1989) contend, a "victory in the courts is no substitute for avoiding a violation of rights in the first place" (p. 41). Not only are educators legally bound to respect the due process rights of students, they may also be morally bound to protect these rights. As Proudfoot & Hutchings (1988) postulate:

We suggest ... that a teacher's duty to protect ... students from harm while at school should not be confined only to protection from physical harm, but should also extend to other types of harm as well. When we as teachers, have become so careful to protect students from physical harm, should we not be equally protective of the students' legal rights ... their right to legal safety?

(p. 159)

Given the philosophical thrust of the current educational reform in the province of Newfoundland and Labrador, if indeed "Our Children" are "Our Future", surely they deserve nothing less.

### **Recommendations**

The researcher makes the following recommendations based on the results and conclusions of this study:

1. That all schools in this school district review and revise their policies to reflect due process rights of students. The researcher specifically recommends that there be a committee, representing all major stakeholders, in place to perform this task. The School Council might be an appropriate mechanism to undertake this task.
2. That schools in this district utilize a Student Handbook to inform parents and students of current policy. At minimum this should be school generated.

3. That this school district and its member schools put appeal's committees in place at both the district level and the school level.
4. That this school district, the NLTA, and the School Administrator's Council provide training for **all** administrators on legal issues pertaining to education. The researcher recommends that this be an on-going process as opposed to a "one-shot" workshop/seminar approach.
5. That the undergraduate teacher training program at Memorial University place greater emphasis on issues relating to classroom management, school discipline, and legal issues in education.
6. That the Graduate Program at Memorial University make courses in legal education a required component of the Leadership Program.
7. That further research into the due process rights of students be conducted in other school districts of Newfoundland and Labrador to determine if the findings in this study can be replicated.
8. This study focused on the due process rights of students primarily from the perspective of school administrators. It is recommended that further studies be conducted, focusing on due process rights, from parent and student perspectives.
9. That the Departments of Justice and Education work in partnership to surmount difficulties with the implementation of the Young Offenders Act.

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## Appendices

**Appendix A**  
**Permission to Conduct Research**

FACULTY OF EDUCATION

Memorial University of Newfoundland

176

Faculty Committee for Ethical Review of  
Research Involving Human Subjects

Certificate of Approval

---

Investigator: *Mrs. C. Gallant*

Investigator's Workplace: Faculty of Education, MUN

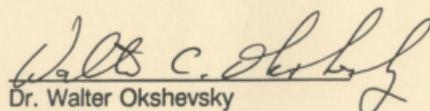
Supervisor: *Dr. Dustin Haste*

Title of Research: "Due process: student rights"

Approval Date: *March, 1995*

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The Ethics Review Committee has reviewed the protocol and procedures as described in this research proposal and we conclude that they conform to the University's guidelines for research involving human subjects.



Dr. Walter Okshevsky  
Chairperson  
Ethics Review Committee

Members: Dr. Walter Okshevsky  
Dr. Tim Seifert  
Dr. Dennis Sharpe  
Dr. Amarjit Singh  
Dr. Patricia Canning

Appendix B  
Letter to District Superintendent

18 Harvard Drive  
Mount Pearl, NF  
A1N 2P6  
February 6, 1995

Mr. G. Smith  
Superintendent  
Progressive School Board  
Clam Cove, NF

Dear Mr. Smith,

My name is Catherine Gallant. I am a graduate student studying Educational Leadership at Memorial University of Newfoundland. The purpose of this letter is to seek permission to conduct a research project in the nine high schools in your school district.

This project is under the supervision of Dr. Bruce Sheppard of the Faculty of Education, Memorial University of Newfoundland. It has received approval by the Ethics Review Committee.

The purpose of the project is to determine the extent to which the due process rights of students are ensured in matters of school discipline. The project will culminate in the production of a Master's Thesis on the Due Process Rights of Students.

The research procedure will involve both document analysis and semi-structured interviews. Interviews of approximately sixty to ninety minutes duration will be held with you, as well as the principal and vice - principal of each high school in the district. Interviews will also be held with individuals who possess expertise in the area of student rights. Interviews will be recorded on audio-cassette tapes which will be destroyed at the end of the project. Documents to be analysed include school board by-laws and individual school rules/discipline policies. All documents will be returned upon completion of the study.

Matters of school discipline can be very sensitive, therefore issues will be discussed in terms of general cases only. At no time in this study will either you, individual students, the school board, or participating schools be identified. Each participant will have the right to withdraw from the study at any time, or to refrain from answering questions which he or she would prefer to omit. Letters of consent will be requested for all interviews.

A copy of the research findings and a copy of the thesis will be available to you upon completion of the study.

Further information concerning this project can be obtained from Dr. Patricia Canning, Associate Dean of Research, Memorial University of Newfoundland at 737-3402.

Consent for this project consists of your signature on the form attached to this letter.

I thank you in advance for your cooperation in this matter.

Sincerely yours,

Catherine Gallant

Appendix C

Consent Form

Please complete the following form and return it to the researcher at your earliest convenience.

I -----, give permission to Catherine Gallant to conduct a study on due process within the high schools in the progressive School Board as outlined in her letter dated February 6, 1995. I understand that neither my identity, nor that of the school board, participating schools, individual students or administrators will be disclosed. The school board also reserves the right to withdraw from the study at any time.

-----  
Date

-----  
Signature

Given that you have a very busy work schedule, it would be very much appreciated if you could suggest some possible interview dates and times in the space provided.

-----  
-----  
-----  
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Thank you.

Appendix D  
Letter to School Administrators

18 Harvard Drive  
Mount Pearl, NF.  
A1N 2P6  
February 6, 1995

Dear Interviewee,

My name is Catherine Gallant and I am a graduate student studying Educational Leadership at Memorial University of Newfoundland. The purpose of this letter is to request your participation in a research project which will be conducted on the due process rights of students. This project will culminate in the production of a Master's Thesis on the Due Process Rights of Students in matters of discipline.

The project is under the supervision of Dr. Bruce Sheppard of the Faculty of Education, Memorial University of Newfoundland, and has been approved by the Ethics Review Committee. Permission to conduct this project has also been given by Mr. G. Smith, Superintendent of the Progressive School Board District.

Your participation will involve one interview of approximately sixty to ninety minutes duration during the month of March 1995. This interview will be semi-structured in that although there will be specific questions to answer, other questions may arise from the conversation of the interview. For the sake of convenience and with your permission, I would like to record the interview on an audio cassette tape. All tapes used will be destroyed upon completion of the project. As well a copy of your school rules/discipline policy will be requested for analysis. These documents will be returned at the end of the project.

Your participation, which would be very much appreciated, is strictly voluntary. You reserve the right to withdraw from the study at any time and/or refrain from answering any question(s) which you would prefer to omit. At no time during this project will you, your school board, or your school be identified.

Upon completion of the study, a copy of the thesis will be available at the School Board Office. Research findings will also be available to you on request.

Further information regarding this project can be obtained from Dr. Patricia Canning, Associate Dean of Research, Memorial University of Newfoundland at 737 - 3402.

Consent for participation will consist of your signature on the form attached to this letter. I thank you in advance for your cooperation in this matter, and I look forward to working with you.

Sincerely yours,

Catherine Gallant

Please complete the following consent form and return it to the researcher at your earliest convenience.

I -----, consent to an interview with Catherine Gallant as part of her study on the due process rights of students described in her letter dated February 6, 1995. I understand that neither my identity, nor the identity of the school or the school board will be disclosed. I also reserve the right to withdraw from the study at any time.

-----  
Date

-----  
Signature

Appendix E  
Letter to Other Participants

18 Harvard Drive  
Mount Pearl, NF  
A1N 2P6  
February 6, 1995

Dear Other Participant,

My name is Catherine Gallant and I am a graduate student studying Educational Leadership at Memorial University of Newfoundland. The purpose of this letter is to request your participation in a research project which will be conducted on the due process rights of students. This project will culminate in the production of a Master's Thesis on the Due Process Rights of Students.

This project is under the supervision of Dr. Bruce Sheppard of the Faculty of Education, Memorial University of Newfoundland. It has been approved by the Ethics Review Committee.

Your participation will involve one interview of approximately sixty to ninety minutes duration during the month of March 1995. This interview will be semi-structured in that although there will be specific questions to answer, other questions may arise from the conversation of the interview. For the sake of convenience, and with your permission, I would like to record the interview on an audio cassette tape. All tapes will be destroyed upon completion of the project. At no time in this study will your identity be revealed. You reserve the right to withdraw from the study at any time, or to refrain from answering any question(s) that you would prefer to omit. Letters of consent will be required for all interviews.

A copy of the research findings and a draft copy of the thesis will be available, upon request, at the end of the project.

Further information regarding this project can be obtained from Dr. Patricia Canning, Associate Dean of Research, Memorial University of Newfoundland at 737 - 3402.

I thank you in advance for your cooperation in this matter, and I look forward to working with you.

Sincerely yours,

Catherine Gallant

Please complete the following form and return it to the researcher at your earliest convenience.

I -----, consent to an interview with Catherine Gallant as part of her study on the due process rights of students, as outlined in her letter dated February 6, 1995. I understand that at no time in this study will my identity be disclosed. I also reserve the right to withdraw from the study at any time.

-----  
Date

-----  
Signature

## Appendix F

### Interview Questions - School Administrators

## INTERVIEW QUESTIONS

### Principal/Vice-principal Sessions

1. Who handles discipline matters in this school?  
How is this decided?
2. At present is there a written policy used in this school which addresses the due process rights of students?
3. How are students and parents made aware of existing school rules/ discipline policies and procedures?
4. What groups are/were involved in formulating existing school rules?
5. How often are school rules/discipline policies re - examined and changed if necessary?
6. If such a process exists who is involved?
7. Do you believe that all existing rules, in this school, governing student behaviour have a rational educational or discipline basis?
8. If you became aware that a rule(s) did not meet such criteria, would you rescind it?
9. Do you feel that you are knowledgeable in the area of due process rights of students?

Have you had training in school law?

10. What impact will student rights have on your role as an administrator?
11. Have students in this school ever challenged a school rule? If so, what were the circumstances?
12. To the best of your knowledge, are students in this school particularly unhappy with an existing school rule? If so, what are the circumstances?
13. What aspect of student discipline occupies most of your time?
14. Does your school issue a student handbook?

If so, does it list the school rules?

Does the handbook list the consequences that will result if a rule is breached?

Does the handbook outline the procedure to be followed if a rule is breached?

15. What should a district policy on due process include?

Other questions as indicated by the interview.

Appendix G  
Interview Questions - Legal Experts

## INTERVIEW QUESTIONS

## Sessions with Legal Experts.

1. To what extent will the Charter of Rights and Freedoms impact on school discipline?
2. To what extent will the Young Offenders Act impact on school discipline?
3. Will one have more impact than the other? Why?
4. Do you see this impact as being positive or negative?
5. Are you aware of any discipline cases, in Newfoundland, that have been challenged under the Charter or the Young Offenders Act?
6. How do you think the following educators feel about ensuring due process for students?

School board personnel:

School administrators:

Teachers:

7. How aware do you think the following educators are of the due process rights of students?

School board personnel:

School administrators:

Teachers:

8. What impact do you foresee student rights having on the role of:

School board personnel?

School administrators?

Teachers?

9. How knowledgeable do you think school principals are of student rights?

10. What should a district policy on due process include?

11. What kind of procedure(s) would you like to see implemented?

Other questions as indicated by the interview.



