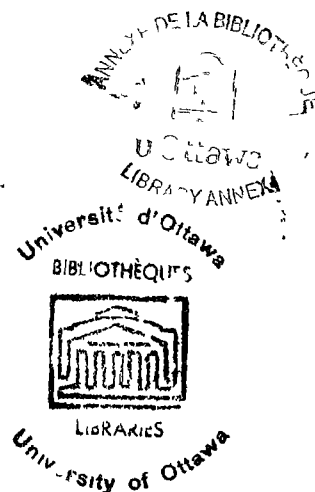


THE LEGAL STATUS OF THE SCHOOL BOARD
IN THE PROVINCE OF NEW BRUNSWICK

by M. Virginia Keith

Thesis presented to the School of
Psychology and Education of the
University of Ottawa as partial
fulfillment of the requirements
for the degree of Doctor of
Philosophy



Ottawa, Canada, 1961

UMI Number: DC53377

INFORMATION TO USERS

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleed-through, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

UMI[®]

UMI Microform DC53377

Copyright 2011 by ProQuest LLC

All rights reserved. This microform edition is protected against
unauthorized copying under Title 17, United States Code.

ProQuest LLC
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106-1346

ACKNOWLEDGMENTS

This thesis was prepared under the supervision of Professor Lionel-P. Desjarlais, Ph.D., of the School of Psychology and Education of the University of Ottawa, to whom the writer is indebted for his interest and advice.

The writer also wishes to acknowledge the advice and encouragement given by Rev. R.H. Shevenell, Dean, during the planning and organization of this study.

CURRICULUM STUDIORUM

M. Virginia Keith was born February 23, 1915, in Havelock, New Brunswick. She received a Bachelor of Arts degree from the University of New Brunswick, in 1934, and a Master of Arts degree in Mathematics from Acadia University, in 1938. The title of her thesis was Determinants and Matrices. She received a Master of Education degree from Harvard University in 1959.

TABLE OF CONTENTS

Chapter	page
INTRODUCTION	v
I.- CONSTITUTION AND TENURE OF THE LOCAL SCHOOL BOARD. .	1
1. Type of Corporation	2
2. Office of Trustee	6
3. Corporate Acts of the Trustees	10
4. The Office of Secretary	16
5. Choice of School Board Members	20
6. The Trustee's Declaration of Office	26
7. Vacancies in the School Board	29
II.- THE SCHOOL BOARD'S RESPONSIBILITY TO RATEPAYERS AND TEACHERS	39
1. School sites	40
2. School Property	44
3. School Meetings	47
4. The Teacher's Contract	53
5. Dismissal	61
III.- THE SCHOOL BOARD'S RESPONSIBILITY TO THE CHILDREN. .	73
1. Free Schooling	74
2. Accommodation	77
3. Conveyance	83
4. Discipline of the Children	86
5. Safety of the Children	90
IV.- POWERS OF THE SCHOOL BOARD IN CONTRACTING AND FINANCING.	109
1. Statutory Authority in Contracting	110
2. Formalities of Contracting	117
3. School Board Financing	121
4. Relations with the Town Council or Finance Board	125
5. Borrowing	131
V.- THE SCHOOL BOARD'S LIABILITIES AND RIGHTS IN ACTION	142
1. Overview of Liabilities	143
2. Personal Liability	146
3. Corporate Liability	152
4. Overview of Action by and against the Board	156
5. Rights in Action by the Board	159
6. Rights in Action against the Board	163
SUMMARY AND CONCLUSIONS	174
BIBLIOGRAPHY	183

INTRODUCTION

In 1942 the New Brunswick government passed the County Schools Finance Act,¹ which was permissive legislation allowing the formation of county finance boards. These boards were designed to bring some degree of equalization of educational cost and opportunity within the counties. With their creation, the responsibilities of the local school boards were somewhat diminished.

In the course of a few years fourteen of the fifteen counties elected to establish county finance boards and the results were, in general, as the government had hoped.

Although this was a step towards better financing, much still remained to be done towards the achievement of an adequate provincial system of education.

With the aim of further improvement in educational finance, the government, in 1953, appointed a commission of enquiry. This commission presented its report in 1955.

Embodied in the report are findings of public satisfaction regarding the achievement of the county finance boards and dissatisfaction regarding the administration, as a whole, of the schools within the counties.

¹ County Schools Finance Act, Revised Statutes of New Brunswick, 1952, cap. 47.

The commission stated,

At the present time the administration of schools at the county and local level is going through a sort of transition stage. Obviously the grafting of the county unit on the district system has brought certain strains that are wearing the structure rather thin.²

One suggested solution lay in giving more authority to the county finance boards. But, in this connection, the commission remarked, "The tradition of the small school with its own board of trustees runs deep in our way of doing things."³

With the division of administrative responsibilities under possible consideration, it would seem timely to examine the exact status of the local school board as it functions now. This is the object of the research reported here. Involved is a study of the legal basis of the board's duties, powers and authority in the local school district.

In preparation for the research, Reamlein's The Law of Local Public School Administration⁴ was studied.

Although the status of the American school board is different from that of its Canadian counterpart, this book focused

² Province of New Brunswick, Report of the Royal Commission on the Financing of Schools in New Brunswick, Fredericton, Queen's Printer, 1955, p. 59.

³ Ibid., p. 56.

⁴ Reamlein, M.K., The Law of Local Public School Administration, Toronto, McGraw-Hill, 1953, xi-271 p.

attention on important determinants of authority and responsibility.

Mort's Public School Finance⁵ showed the increasing importance of local control and the necessity of able administration in seeking for a better fiscal policy and a more equitable system of education. It stressed the importance of such factors as flexibility, stability, and adaptability, much of the latter being obtained through proper organization and administration at the local level.

Argue's Wealth, Children and Education in Canada⁶ dealt with the same factors in Canadian education and emphasized the importance of local initiative, leadership and administration in the attainment of adaptability.

H.P. Moffatt, in Educational Finance in Canada,⁷ gave a picture of the administration of educational finance in Canada. His point of view is that administration at the school district level is a determiner of educational results.

While these studies focused attention on the importance of local control by the representatives of the

⁵ Mort, P.R., and W.C. Reusser, Public School Finance, Toronto, McGraw-Hill, 1951, xxii-639 p.

⁶ Argue, K.F., Wealth, Children and Education in Canada, Shawinigan Falls, Canadian Teachers' Federation, 1945, 32 p.

⁷ Moffatt, H.P., Educational Finance in Canada, Toronto, Gage, 1957, 95 p.

people, only the actual statutes and regulations of the department of education supplied a picture of the local school board as it operates.

Principles of School Administration,⁸ by Mort and Ross, stressed decentralization within the larger unit of administration; also, the importance of flexibility in legal structure. The final chapter dealt with the legal theory of education as unifying statutory provisions and court decisions.

With this unification in mind, the plan of research was formulated.

It was determined to use the educational cases listed in the abridgement of all Canadian cases. Those decisions based on laws similar to the New Brunswick counterparts were studied in relation to New Brunswick educational laws. Thus, the exact meaning of the statutes could be determined in order to make more precise the legal status of the local school board.

In any case which was appealed, only the appeal decision was used.

It was mentioned above that fourteen of the fifteen counties, soon after 1942, elected to adopt the county

⁸ Mort, P.R., and D.E. Ross, Principles of School Administration, Toronto, McGraw-Hill, 1957, xv-451 p.

finance board plan. The fifteenth county still has not done so. Since it was generally agreed by the finance commission that this step must eventually be taken, it was decided to omit any consideration of the status of the local school board in that one county.

Since the county superintendent is a fairly recent name for what was once called the inspector of schools and the term "inspector" is often used in court decisions, the two designations of the same official will be used interchangeably. Likewise, the local school board may be referred to as the trustees, the school corporation or the board of trustees.

The county superintendent is the official appointed by the Minister of education to assist in seeing that the laws and regulations concerning education are carried out in the schools. As well as his inspection duties, he must advise and help the teachers, trustees, the finance board and any organization working for the good of education in his county.

The county finance board is appointed partly by the county council and partly by the Lieutenant-Governor in council. It is a corporation formed to administer educational finance in the county and, as such, has the power to approve, revise or reject the ordinary and supplementary budgets presented by the local school boards. It pays the

educational expenses of the county and transacts all business in this connection.

In general, there are three types of school districts administered by boards of trustees, the rural district, the consolidated district and the town district.

The rural district is the basic unit into which the province is divided for the purpose of school administration. Two or more rural districts may join together and form a consolidated district with one school board. The cities and some incorporated towns have the third type of district. This latter type is usually independent of the county finance board. But it may choose to unite with the county and form what is known as a joint school finance board.

The report contains six chapters, including five sections of the legal structure studied and a summary and conclusions.

The constitution and tenure of the school board will be studied in the first chapter. This will involve defining the type of corporation that is the board and examination of the offices of trustee and secretary, through their acts, meetings, election or appointment, and retirement from office.

The second chapter will show the board's relations with and responsibilities to the ratepayers and teachers of the district. Concerning the ratepayers, a study will be

made of the board's rights and powers with respect to school property. This will be followed by a consideration of their duties regarding school meetings with the people to whom they are responsible. Concerning the teachers, their engagement and dismissal will be examined.

The third chapter will deal with the legal powers and duties of the trustees with respect to the children, for whose education they are responsible. This will include such aspects of the right of free schooling as the provision of accommodation, assignment of the children to school departments and conveyance or payment of board for those who live far from the school. Also, it will include the trustees' responsibility for school discipline and the safety of the children.

The fourth chapter will define the authority and rights of the school board in contracting and financing. This involves a clear distinction between intra vires and ultra vires contracts, determination of the statutory authority for borrowing and an examination of the board's budgetary responsibilities.

Chapter five will show the general, specific and personal liabilities of the board, as well as the types and conditions of legal action that may be brought by and against it.

Finally, the summary and conclusions must condense, from the above, the actual legal status of the school board and define the limits of its authority and responsibility.

CHAPTER I

CONSTITUTION AND TENURE OF THE LOCAL SCHOOL BOARD

The purpose of this chapter is to study the legal basis of the constitution and tenure of the local school board. To do this, one must carefully consider the following: the type of corporation a school board stands for, the office of trustee, the corporate acts of trustees, the office of secretary, the choice of school board members, the trustee's declaration of office and vacancies in the school board.

In the first section of this chapter the writer will examine the duties, powers, and responsibilities of the school board and, in the light of these, define the type of corporation that a local school board constitutes. A second section will deal with the office of trustee. Here, the qualifications required for the position, the purpose and the limitations of same will be clarified. A third section will involve a discussion of board meetings and resolutions. This section will help determine what constitutes a corporate act of the school board. In the fourth section, an attempt will be made to determine the statutory basis of the office of secretary. This can be established by a study of his appointment, duties, and responsibilities. How and by whom school board members are chosen will follow in the

fifth section, thus providing a better understanding of the nature of the school board and its members. The following section will study the trustee's declaration of office which constitutes a guarantee of the faithful performance of statutory duties. The object of the final section will be the creation of vacancies in the school board. This last point will contribute to a more complete understanding of the constitution and tenure of the corporation.

A summary of the main findings will conclude the chapter.

1. Type of Corporation.

Since the school law of New Brunswick does not define the type of corporation that the school board is, case decisions will be used to describe the board and compare it with a somewhat similar type of corporation, the municipal corporation.

The Schools Act¹ defines the board of trustees as a body corporate under a given name and consisting of members, the number of which is fixed according to the type of district.

¹ New Brunswick Schools Act, 1960, secs. 47, 96, 116.

The supreme court of New Brunswick, in Provincial Bank v The Trustees of School District No. 2,² specifies that the board of trustees is a non-trading corporation having only the powers given by the statute creating it.

In Clarkson v Town of Alliston,³ the supreme court of Ontario notes the distinction between a municipal corporation and a school board. Not only are they distinct and separate but each is supreme in its own field. This is exemplified by the fact that when annual rates are collected by a municipal board and paid to the school board, it is not a payment by the municipal board but rather, a transfer to the school board of funds which are already its own. They are,

(...) its own in the sense that the school board is the corporate body authorized by law to receive and disburse school moneys for school purposes. And even if the municipal corporation had been paid the money it would still hold the money as trustee for the school board and not as its own.⁴

A municipal corporation consists of all ratepayers; whereas, the school corporation consists of the trustees. This distinction leads to the conclusion that the school

² Provincial Bank v The Trustees of School District No. 2, (1955) 35 Maritime Provinces Reports 161.

³ Clarkson v Town of Alliston, (1928) 62 Ontario Law Reports 149.

⁴ Ibid., (1928) 62 Ontario Law Reports 149.

board is a unique type of corporation. Being neither private nor public, it could be called a quasi-corporation.

In the decision of Rex ex rel. Martin v Jacques, the judge said,

The municipal council and the school board are two administrative bodies charged with the care of different departments of municipal affairs; but the school board is, after all, one of the governing bodies of the municipality.⁵

Thus the school board and the municipal corporation are similar in their governing purposes. However, the school board is precisely limited in its acts to statutory authority. Therefore it might be termed a quasi-municipal corporation.

The supreme court of New Brunswick, in Gunter v Trustees of School District No. 3 et al.,⁶ states that the corporation has perpetual existence and acts from time to time through its members, the individual trustees elected to represent the ratepayers. This decision has reference to rural school trustees. Actually, the board members of cities and incorporated towns are appointed, partly by the town council and partly by the Lieutenant-Governor in council.⁷

⁵ Rex ex rel. Martin v Jacques, (1913) 24 Ontario Weekly Reporter 457.

⁶ Gunter v Trustees of School District No. 3 et al., (1934) 8 Maritime Provinces Reports 113.

⁷ New Brunswick Schools Act, 1960, sec. 96(2).

The members of the corporation, according to the supreme court of Canada in Pictou County School Trustees v Cameron,² are not constituent parts but only the elements which form one artificial body. They are entirely distinct from the body endowed with corporate powers.

In summary, the school board is a non-trading corporation with perpetual existence and having only the powers conferred on it by its creating statute. Being neither a public nor a private corporation it could be called a quasi-corporation. It is an artificial body which acts through members which are distinct from the body, but, at the same time, are the elements forming the corporation.

The municipal corporation and the school corporation are separate and distinct, each being supreme in its own field. For example, in raising money for school purposes, the municipal corporation is acting as trustee for the school corporation which has the sole right to hold and disburse school money.

Although these two corporations are similar in their purpose of managing different departments of municipal affairs, they differ as to make-up and powers. The municipal corporation is a corporation of the ratepayers

² Pictou County School Trustees v Cameron, (1879)
2 Supreme Court Reports 690.

while the school board is a corporation of the trustees. The school board is more limited in its powers, being exactly confined to statutory authority.

From the similarity and differences, the school board could be considered a quasi-municipal corporation.

2. Office of Trustee.

In order to know about the office of trustee, one must study the qualifications, the purpose and the limitations of the position.

According to school law, the trustees shall be qualified voters, British subjects, and residents of the school district.⁹

As to their purpose, the decision of Pictou County School Trustees v Cameron¹⁰ states that they are to act for the corporation. Also, their acts are only the acts of the corporation insofar as they have authority from the statutory powers conferred on them.

The decision establishes further that the trustees, as public officers, cannot be accused of trespass if they act in good faith, even though they are wrong. In such case, they cannot be held personally responsible.

⁹ New Brunswick Schools Act, 1960, sec. 47.

¹⁰ Pictou County School Trustees v Cameron, (1879)
² Supreme Court Reports 690.

One limitation to the assumption of the office of trustee is that no teacher can become a trustee in the district in which he is employed.¹¹

This is strictly interpreted in Re East York Public School Board and Mackenzie.¹² Here, the York County court held that although the trustee in question was only acting temporarily as a teacher, the seat must be declared vacant. Moreover, at the cessation of teaching, the former trustee might not resume his office until re-elected to it.

This limitation is based on the fact that trustees of rural districts are not to be interested in school contracts except with the consent of the inspector or a majority of the ratepayers of the district.¹³ In the case of trustees of city or incorporated town boards, there is no exception to the rule.¹⁴

In Re School Ordinance,¹⁵ the district court held that this does not apply when the contract is with an incorporated society of which a trustee is a member.

11 New Brunswick Schools Act, 1960, sec. 58(1).

12 Re East York Public School Board and Mackenzie, (1931) 2 Dominion Law Reports 558.

13 New Brunswick Schools Act, 1960, sec. 59.

14 Ibid., sec. 96(4).

15 Re School Ordinance, (1914) 5 Western Weekly Reports 1268.

The above decision partly followed Lee v The Public School Board of the City of Toronto,¹⁶ where the court of common pleas ruled that contracts of the school board with firms of which a trustee was a shareholder, did not cause the latter to vacate his seat.

The reasoning was that this was not a contract with individuals and there was no pecuniary interest, profit or expected benefit to any individual.

A similar limitation to the office of trustee is found in the clause stating that all trustees must serve without remuneration.¹⁷

In Rex ex rel. McArthur v Maycock,¹⁸ a trustee was disqualified for receiving pay for delegated services of the school board. Similarly, in Muirhead v Bullhead Butte School District,¹⁹ the trustees became liable to be ousted because they had helped to build the new school and had taken pay for the work.

¹⁶ Lee v The Public School Board of the City of Toronto, (1881) 32 Upper Canada Court of Common Pleas 78.

¹⁷ New Brunswick Schools Act, 1960, sec. 48.

¹⁸ Rex ex rel. McArthur v Maycock, (1924) 4 Dominion Law Reports 1222.

¹⁹ Muirhead v Bullhead Butte School District, (1911) 1 Western Weekly Reports 253.

The Saskatchewan court of appeal, in McNabb and Jarnagin v Findlay,²⁰ ruled that money paid to a trustee by the board for work concerning which the board may contract, cannot be recovered. The trustee, however, lays himself open to action if he does not ipso facto vacate his seat.

A final limitation is that no trustee may be an auditor of the corporation accounts while he holds such office.²¹

In summary, trustees must be qualified voters, British subjects, and residents of the school district. Their purpose is to act for the corporation. Hence their acts are limited to statutory authority and so long as they act in good faith within these limits, they cannot be accused of trespass even though wrong.

No trustee can be a teacher, even temporarily, while holding office. If he becomes a teacher, he ipso facto vacates his seat as trustee and cannot be reinstated after relinquishing the teaching position, except by re-election.

No trustee can be interested in school contracts without the proper consent. This does not include contracts with an incorporated society of which he is a member or

²⁰ McNabb and Jarnagin v Findlay, (1932) 3 Western Weekly Reports 255.

²¹ New Brunswick Schools Act, 1960, sec. 34.

contracts with a company of which he is a shareholder, since no pecuniary interest or benefit would in these cases accrue to him.

No trustee can be remunerated for any services of the board, even those delegated to him by the corporation, and retain his seat. If he does accept pay for any such services, this money cannot be recovered.

No trustee can be an auditor of school accounts while he holds his office.

3. Corporate Acts of the Trustees.

One must go to case decisions in order to try to determine what constitutes a corporate act of the school board. Since there is no consensus of opinion in this respect, the stricter view will be presented first and then the more lenient point of view.

Concerning acts of the trustees, the supreme court of Canada, in Pictou County School Trustees v Cameron,²² declares that an act done in corporate capacity must be authorized by a resolution passed at a lawful meeting. Otherwise the trustees perform personal acts.

²² Pictou County School Trustees v Cameron, (1879)
2 Supreme Court Reports 690.

The supreme court of Ontario, in Law v Ottawa Public School Board,²³ further elaborates that a resolution of the trustees must be the decision of a majority of them; and no such resolution can be declared ultra vires if the board is acting under statutory authority. Any rule which restricts the power or ties the hands of the majority is not well founded.

The supreme court of New Brunswick, in Provincial Bank v The Trustees of School District No. 2,²⁴ also emphasizes this point. It states that the acts of the corporate body must result from deliberation of the trustees when they get together collectively. They cannot separately and individually give their consent if they are to oblige themselves as a corporation. It is only at a lawful meeting of the corporate body that they can act.

This fact is also borne out in Sparling v Spring Coulee School Trustees,²⁵ where the supreme court held that a teacher's agreement was invalid because it was not adopted at a meeting of the board.

²³ Law v Ottawa Public School Board, (1928)
4 Dominion Law Reports 483.

²⁴ Provincial Bank v The Trustees of School District No. 2, (1955) 35 Maritime Provinces Reports 161.

²⁵ Sparling v Spring Coulee School Trustees, (1900)
4 Territorial Law Reports 366.

Concerning meetings of the school board, one of the regulations says the trustees are to transact the business of the school district at regular monthly meetings. Also they may hold special meetings after proper notice has been given. Records of all meetings are to be kept by the secretary.²⁶

Minor irregularities in board meetings will not invalidate the business transacted. In Olive School District v Northern Crown Bank, the defendant pleaded irregularities in calling and holding a school meeting as defence against the plaintiff's charge. The Alberta supreme court decreed that the fact that no waiver of notice appeared in the minutes, is not enough to invalidate the meeting. The decision says, in part, "Those provisions designed merely for the information or direction of officers to secure methodical and systematic modes of proceeding are merely directory."²⁷

An adjourned meeting must be one adjourned to a specific time, as shown in Re the School Act and Lacombe School District and Stewart.²⁸ The district court decided that the adjourned meeting of the trustees was invalid as it

²⁶ Regulations Respecting the New Brunswick Schools Act, 1959, regulation 3.

²⁷ Olive School District v Northern Crown Bank, (1917) 34 Dominion Law Reports 16.

²⁸ Re the School Act and Lacombe School District and Stewart, (1942) 3 Western Weekly Reports 269.

was not adjourned to a special date. In consequence, the business conducted was void.

Contracts not adopted at a corporate meeting may be declared void. In Waterman-Waterbury Mfg. Co. v South Arcola School District, a contract was declared void because it was not adopted at a meeting of the board of trustees. The fact that the work had been done and the benefits of it accepted did not entitle the contractor to recover the amount due. The Saskatchewan court of appeal, in its decision, stated, "Persons entering into contracts with school boards should be careful to see that the statutory provisions are strictly observed."²⁹

On the other hand, the appeal division of New Brunswick's supreme court has not always been so strict in this respect. In Desrosiers v Balmoral and Dalhousie School Trustees,³⁰ the evidence showed that an applicant for the position of teacher met and agreed with two of the trustees. The latter then consulted with the third trustee who refused to sign the contract. When, in September, the teacher was not allowed to assume the position, she sued the school board for damages. The court held that there was a contract that could be sued upon. All the trustees had been

²⁹ Waterman-Waterbury Mfg. Co. v South Arcola School District, (1928) 3 Western Weekly Reports 690.

³⁰ Desrosiers v Balmoral and Dalhousie School Trustees, (1927) 3 Dominion Law Reports 505.

consulted and the majority may engage a teacher. The decision stated further,

In the remote districts of this province it is scarcely to be expected that the same formality would be found to obtain in the making of contracts of this nature as takes place in the city or town districts, but there was evident intention and bona fide intention on the part of the trustees to make the contract.³⁰

Again, in McDonald v Eldon School Trustees,³¹ the supreme court of New Brunswick held that while the full board of trustees must be consulted, it is not necessary to have them all together and the consultation can take place anywhere.

There is a note attached to one of the regulations which reads,

The entering into or the giving notice of terminating a contract with a teacher should be decided upon at a meeting of the board of school trustees, regularly called.³²

It is to be noted that the word "should" is used in this regulation, whereas "shall" is the customary word used in the corresponding position in most of the regulations. This might explain the more lenient attitude of the

³⁰ Desrosiers v Balmoral and Dalhousie School Trustees, (1927) 3 Dominion Law Reports 505.

³¹ McDonald v Eldon School Trustees, (1929) 1 Maritime Provinces Reports 253.

³² Regulations Respecting the New Brunswick Schools Act, 1959, regulation 6.

New Brunswick supreme court regarding corporate acts issuing from a resolution passed at a meeting of the board; at least, in the case of engaging teachers.

Even in Ontario, where the courts are very strict in declaring void those contracts that do not result from decision at a corporate meeting, there are two cases where the court has held that lack of minutes of such a meeting does not invalidate a contract. One of these is McPherson v Usborne School Trustees.³³

In summary, a corporate act is one which results from a resolution passed at a corporate regular or special meeting of the board. All other acts are personal and may be declared void; for example, a corporate contract not adopted at a meeting.

A resolution is the decision of the majority of the trustees, deciding within the limits of statutory authority. It is a decision which results from collective deliberation, not from separate or individual consent of the trustees.

A corporate meeting of the board is one held under statutory authority, at which the business of the school district is transacted. At all such meetings records are to be kept by the secretary.

³³ McPherson v Usborne School Trustees, (1901)
1 Ontario Law Reports 261.

Some regulations concerning board meetings are considered to be directory. For example, the lack of a record of waiver of notice does not invalidate the business transacted at a special meeting. Even the lack of minutes of a meeting may not make the business void. When an adjourned meeting is not one adjourned to a special date, the business transacted may be declared void.

In New Brunswick, contracts have been termed valid when not adopted at a corporate meeting, since rural trustees are not expected to maintain the same formality as their city or town counterparts. The New Brunswick regulations do not order the adoption of a teacher's contract at a corporate meeting in imperative terms.

4. The Office of Secretary.

Since the secretary is a very important officer of the board, one must study his duties, what constitutes his appointment, the responsibility of the trustees for bonding him and the remedies available when they neglect to do this.

The secretary keeps the records and accounts of all corporate proceedings. He has charge of the school property and performs any duties which the board may prescribe. His appointment, qualifications and remuneration are described in the statutes.³⁴

³⁴ New Brunswick Schools Act, 1960, sec. 64, 96(5).

The responsibility of the trustees to take a bond for the faithful performance of the secretary is mandatory. If they fail to do so, they become liable for any default on his part, to the extent of the amount for which the bond should have been taken.³⁵

The trustees, in Hamilton School Trustees v Neil,³⁶ sought to make the township responsible for money absconded by their secretary, on the ground that he had not been legally appointed and, hence, money paid to him did not get into the proper hands.

The court held that there is a presumption of regular appointment when one acts as the appointee and is recognized by the corporation as such officer. His acts bind the corporation even if there is no written proof of his appointment. It was held also that the clause which provides for compliance of the majority of the trustees in order to bind the corporation, does not apply to acts of duty of the secretary.

Since the trustees had not bonded the secretary they became liable for the missing money.

The law provides a remedy for recovery of school money or property by giving the inspector the right to

³⁵ New Brunswick Schools Act, 1960, secs. 64(1), 64(3).

³⁶ Hamilton School Trustees v Neil, (1881) 28 Grant's Chancery Reports 408.

demand the same. If his order is not obeyed, a county court judge may issue a summons to the person charged.³⁷

In West v The Trustees of School District No. 5, Parish of Johnston,³⁸ the trustees applied for a mandatory injunction to force the dismissed secretary to surrender the books and records. The supreme court held that, since the act had provided the above-mentioned remedy, that course should have been pursued first.

However, it was also held that there might be cases where this remedy would be inadequate, as where the secretary had a considerable sum of money which he refused to account for or give up.

Being a corporation, the school board is not confined to this remedy. The trustees can bring a suit in equity to have their rights declared, or for discovery or account of moneys belonging to them, or for an injunction to restrain the keeping or destruction of them.

In this particular case, the remedy was inadequate since a common law court has no power to force the disclosure of the state of accounts. This was necessary in order to allow the respondents to do their duty. Therefore the appeal was allowed without costs.

³⁷ New Brunswick Schools Act, 1960, sec. 69.

³⁸ West v The Trustees of School District No. 5, Parish of Johnston, (1822) 22 New Brunswick Reports 56.

In The Canada Surety Company v Leo J. Doucette,³⁹ a bonding company brought an action of larceny and embezzlement against the secretary. The supreme court of New Brunswick averred that larceny and embezzlement are now included under theft, so this was improper action. Loss of money through conversion was proved, although the defendant showed that his accounts had been audited.

The court held that there is nothing in the laws making any such audit final, whether approved by a school meeting or not.

In summary, the secretary keeps all records and accounts of corporate proceedings, has charge of school property and performs acts of duty assigned by the trustees. These acts of duty do not require the agreement of a majority of the school board.

No written proof of appointment as secretary is necessary. When he acts as such and is recognized as secretary by the board, this confirms his appointment and his acts bind the corporation.

The trustees must take a bond for the faithful performance of the secretary and any neglect to do so makes them liable to the extent of the amount for which he should have been bonded.

³⁹ The Canada Surety Company v Leo J. Doucett, (1936) 10 Maritime Provinces Reports 403.

The law provides a remedy for recovery of school money or property held by the secretary, by appeal to the superintendent to demand the same. If this is not obeyed a county court judge may issue a summons.

The law courts have decided that this remedy is not always adequate in cases where large sums of money are wrongfully retained or where it is necessary to force a disclosure of the state of accounts.

In these cases, the trustees may bring a suit in equity for declaration of their rights, for discovery or account of their money, or for an injunction to restrain the keeping or destruction of money or accounts.

The remedy of the bonding company is to bring a suit for loss of money through conversion. In such case, a secretary cannot plead that an audit of the accounts has taken place or been approved by the school meeting, since no audit is final.

5. Choice of School Board Members.

This section determines how and by whom school board members are chosen.

Regarding the election of trustees, one must study the qualifications of the electors, the two types of vacancies to be thus filled and the remedy for irregularities in elections.

Concerning the appointment of trustees, the appointing bodies, the conditions and means of appointment will be presented.

Some trustees are elected others are appointed. The boards of cities and incorporated towns are appointed, partly by the municipal council and partly by the Lieutenant-Governor in council.⁴⁰

Consolidated district boards are selected according to the order of the Lieutenant-Governor in council.⁴¹

The trustees of rural districts are elected by qualified voters,⁴² that is, resident ratepayers.⁴³

According to the decision of McGuaig v Hinds,

The word "residence" is ambiguous. It has been given judicial interpretations during the last century according to the intent of the particular document or legislation wherein it was found. (...) It is not only possible but of sufficiently common practice to be well recognized in law, for a person to have more than one bona fide residence.⁴⁴

Therefore, the common law interpretation must be given to the terms "residence" and "resident ratepayer".

⁴⁰ New Brunswick Schools Act, 1960, sec. 96(2).

⁴¹ Ibid., sec. 116(7).

⁴² Ibid., secs. 34(1), 49.

⁴³ Ibid., secs. 41, 42.

⁴⁴ McGuaig v Hinds, (1909) 11 Western Law Reports

If the statute does not clearly define such expressions, the recognized judicial interpretation must be accepted.

In the decision of Curren v McEachen,⁴⁵ a distinction is made between residence and domicile. A person can have several residences but only one domicile.

If voters are found to be unqualified, an election may be declared invalid. Rex ex rel. Andrews v Wright⁴⁶ concerned the election of a trustee. Seven voters were not qualified and the election was close enough so that it might have been affected. Therefore, it was set aside.

There are two types of school board vacancies that may occur, periodical and occasional vacancies. These are defined in the decision of Regina ex rel. Moore v Nagle.⁴⁷ The former are those regularly occurring when the appointment is ended, while the latter are caused by death, resignation, etc.

Periodical vacancies in the rural boards are filled by election at the annual school meeting,⁴⁸ whereas

⁴⁵ Curren v McEachen, (1902) 5 Territorial Law Reports 333.

⁴⁶ Rex ex rel. Andrews v Wright, (1947) 1 Western Weekly Reports 606.

⁴⁷ Regina ex rel. Moore v Nagle, (1895) 26 Ontario Reports 249.

⁴⁸ New Brunswick Schools Act, 1960, sec. 49.

occasional vacancies are filled at special meetings called by the trustees for this purpose.⁴⁹

The latter clause is declared to be merely directory in the decision of Meisner v Meisner et al.⁵⁰ This was a case where a vacancy was created shortly before the annual meeting. The two remaining trustees left the vacancy to be filled at the annual meeting. On this ground, the plaintiff wished the business of the meeting declared void. The supreme court of Nova Scotia held that it was not necessary to fill the vacancy earlier. Special meetings are authorized but not necessary.

Lacourse v McLellan and deGraw⁵¹ was another case concerning the election of two trustees at the annual meeting. In this instance, the minutes did not show which of the appointees was the temporary one. Therefore one election was declared valid and the other not.

According to New Brunswick law, irregularities in elections and meetings, in general, are to be investigated by the inspector, subject to a written appeal within fourteen

⁴⁹ New Brunswick Schools Act, 1960, sec. 37.

⁵⁰ Meisner v Meisner et al., (1899) 32 Nova Scotia Reports 320.

⁵¹ Lacourse v McLellan and deGraw, (1929) 3 Dominion Law Reports 73.

days. His decision may be appealed to the deputy Minister of education but not to any court.⁵²

In referring to the Manitoba equivalent of this remedy, the decision of The School District of Youville No. 942 v Bellemere⁵³ states that such power as the inspector has in this respect is statutory judicial power. Therefore, the clauses must be strictly construed.

If a meeting fails to elect a trustee, a requisition by seven ratepayers will authorize the county superintendent to appoint one,⁵⁴ and even without the requisition, the Minister of education may direct the superintendent to make an appointment.⁵⁵

The Minister of education may also authorize the county superintendent to act as an official trustee.⁵⁶

One case, Regina ex rel Moore v Nagle,⁵⁷ bears on the appointment of trustees by the town council. The Ontario court of common pleas held that an appointment once formally and properly made, remains until a vacancy is created in due

52 New Brunswick Schools Act, 1960, sec. 88.

53 The School District of Youville No. 942 v Bellemere. (1904) 14 Manitoba Reports 511.

54 New Brunswick Schools Act, 1960, sec. 55.

55 Ibid., sec. 57.

56 Ibid., sec. 4(4b).

57 Regina ex rel. Moore v Nagle, (1895) 26 Ontario Reports 249.

course of law. The body which appoints cannot, in such a case, arbitrarily change what has been done.

In the decision of the Ontario court of appeal, in Port Arthur High School Board v Fort William,⁵⁸ it was decreed that a by-law is not necessary for the appointment of trustees by the municipal council. Since such appointments are made yearly or regularly they may be manifested in the form of a resolution, which is one of the recognized forms of corporate expression.

In summary, the members of rural school boards are elected by resident ratepayers. Since the term, resident, is not exactly defined by the school law, one must accept the judicial interpretation according to the circumstances of each individual case. The only general common law conclusion found was that while a person can have but one domicile, he may have more than one residence.

If the electors are not qualified and if this fact could possibly influence the result of the election, the latter will be set aside.

Periodical or regularly occurring vacancies are filled by election at the annual school meeting. Occasional vacancies, caused by death, resignation, etc., are to be filled by election at a special school meeting. This latter clause may be considered directory by the courts, in

⁵⁸ Port Arthur High School Board v Fort William, (1898) 25 Ontario Law Reports 522.

the case of the vacancy occurring just previous to the annual meeting.

Irregularities in elections are to be investigated by the inspector, whose decision may be appealed to the deputy Minister of education, but not to any court. Since this is a statutory judicial power of the inspector, the clauses concerning it are to be strictly construed.

When a school meeting fails to elect a trustee, the inspector, on a requisition of seven ratepayers or on order of the Minister of education, may make an appointment. In some special cases the inspector, himself, may become an official trustee, on the order of the Minister of education.

The board members of cities and incorporated towns are partly appointed by the Lieutenant-Governor in council and partly by resolution of the town council. Such appointments, once made, cannot be revoked or changed while the trustee acts within statutory authority.

6. The Trustee's Declaration of Office.

Since the trustee's declaration of office is a guarantee of faithful performance of statutory duties, its omission gives rise to questions concerning the status of the board member. Therefore, the statutory basis of the declaration will be given and the meaning of failure to make such declaration will be studied.

Every new appointee to the board of trustees must make a declaration of office within ten days of his election or appointment.⁵⁹

As a result of failure to do this the legality of trustees' acts has been questioned and settled in many courts.

In Gunter v Trustees of School District No. 3 et al.,⁶⁰ the supreme court of New Brunswick held that the trustees were not disqualified by failure to make the declaration. There were de facto trustees and, as such, their acts were valid and binding.

It was maintained that disqualifying a trustee on this account, after two years, would raise serious questions concerning all the acts of the board during that time.

Also it was stated that the de facto doctrine is a guarantee that public business will go on, free from the dangers and disturbances resulting from mere technicalities. This is most necessary in a school system where the business is carried on by many who have little training or appreciation of the value of technical or formal requirements.

⁵⁹ New Brunswick Schools Act, 1960, sec. 53.

⁶⁰ Gunter v Trustees of School District No. 3 et al., (1934) 8 Maritime Provinces Reports 113.

Failure to make a declaration shall be evidence of failure to serve in case the appointee does not act as trustee. When he does act as such, he has all the responsibilities of the office and is liable for the consequences of his acts. That is, an appointee may act as trustee without making the declaration but when he does so, he is bound to perform all the duties and is clothed with all the responsibilities of the office.

The court of King's Bench, in The School District of Youville No. 942 v Bellemere,⁶¹ stated that the action of making the declaration is directory only, and not an inherent part of the election. Therefore, the inspector, who is authorized to investigate irregularities in elections, cannot appoint a new trustee on this basis alone.

In summary, the law provides that every trustee will make a declaration of faithful performance within ten days of his selection.

If an appointee fails to make the declaration but proceeds to act as trustee, he is a de facto trustee and is as liable for his acts as any other member of the board.

The de facto doctrine is a guarantee that business will go on unhindered by technicalities. The courts have

⁶¹ The School District of Youville No. 942 v Bellemere, (1904) 14 Manitoba Reports 511.

developed no set rules concerning when a trustee is or is not a de facto officer, but are simply guided by what is in the best interests of the public welfare.

If an appointee fails to make the declaration and does not act as trustee, the lack of declaration serves as evidence of unwillingness to act and allows for an appointment by the inspector to fill the office.

Since the order to make the declaration is directory and not an inherent part of the election, the inspector is not authorized to make an appointment on this basis alone.

7. Creation of Vacancies in the School Board.

In order to study the creation of school board vacancies one must first give the statutory provisions for resignation of a trustee. This will be followed by a discussion of what is meant by declining to act and, finally, the means of creating a vacancy will be dealt with.

The statutes give the procedure for resignation of a trustee.⁶² He must obtain the consent in writing of his fellow trustees and the inspector.

⁶² New Brunswick Schools Act, 1960, sec. 52.

The law defines a declining to act as follows:

Failure or refusal to make the declaration, refusal or failure to attend three consecutive meetings of the board of school trustees without sufficient cause, in the opinion of the inspector, to justify such failure, failure or refusal to call the annual meeting, or special meetings, or post proper notice thereof, and failure or refusal to perform the duties, or exercise the powers imposed and conferred upon him as a trustee, after written request has been made upon him by the inspector to perform and exercise the same, shall, amongst other things, constitute a declining to act under section 55.⁶³

The supreme court of New Brunswick contradicts part of this definition. From the decision of Gunter v Trustees of School District No. 3 et al.,⁶⁴ related in the previous section, it has already been noted that a failure to make the declaration does not necessarily constitute a declining to act. Also, there is another decision of the same court that specifically defines a declining to act without including a failure to make the declaration as a condition of this. This is the case of Ex parte Kilby and McLane et al.,⁶⁵ which arose as the result of a refusal to act as trustee. McLane could not agree with the other trustees and, therefore, applied for consent to his resignation. The

⁶³ New Brunswick Schools Act, 1960, sec. 56.

⁶⁴ Gunter v Trustees of School District No. 3 et al. (1934) 8 Maritime Provinces Reports 113.

⁶⁵ Ex parte Kilby and McLane et al. (1873) 14 New Brunswick Reports 219.

inspector refused but, following this, McLane was not notified of meetings or called upon to act. After a time, the inspector, on requisition by ten ratepayers, appointed Kilby to fill the vacancy. The latter did not qualify and refused to act. Still another appointment was made.

This resulted in a writ of certiorari based on the fact that those acting on the board were not legally appointed.

The supreme court of New Brunswick held that it makes no difference whether the trustee has refused to make the declaration of qualification, or whether he has accepted the office, acted for a time and then refused to serve any longer. In either case he declines to act, the office becomes vacant and the inspector has the right to make an appointment.

In rural districts a trustee's seat becomes vacant when seven ratepayers requisition the inspector to make an appointment.⁶⁶ In consolidated and town districts the selecting body, on the recommendation of the board, revokes the appointment, thus declaring a vacancy.⁶⁷

⁶⁶ New Brunswick Schools Act, 1960, sec. 55.

⁶⁷ Ibid., secs. 96(4A), 116(7A).

The decision of The School District of Youville No. 942 v Bellemere⁶⁸ specifies that the seat does not become vacant until the statutory provisions for declaring it vacant have been complied with or until it is so declared in quo warranto proceedings.

Also, the court held that if the declaration is taken after the stated time but before the seat has been declared vacant the trustee cannot be ousted on this basis.

Several cases show that if statutory procedure is not used for ousting a trustee, the ultimate means is by quo warranto proceedings.

The decision, in Rex ex rel. Boudret v Johnston, stated that in quo warranto proceedings the court must be "regulated by a regard for all the circumstances which attend the application and all the consequences likely to follow."⁶⁹

In this case, although the election of the trustee had been illegal, he had been recognized by the inspector and had been acting for nearly two years. Hence, the court held that it could best serve the public interest by refusing to grant the order.

⁶⁸ The School District of Youville No. 942 v Bellemere, (1904) 14 Manitoba Reports 511.

⁶⁹ Rex ex rel. Boudret v Johnston, (1923) 2 Dominion Law Reports 278.

The district court, in Re School Ordinance,⁷⁰ held that a trustee cannot be ousted for any cause arising during a former term of office, particularly where it was something discoverable during the previous term.

In another case, Rex ex rel. McArthur v Maycock,⁷¹ the Manitoba King's Bench held that quo warranto proceedings will not lie if there is another procedure provided and it is adequate for the situation; in other words, if the inspector's right to act will produce the required results.

The decision of Rex ex rel. Chutskoff v Riwny⁷² emphasized the fact that petitioners for proceedings must be ratepayers, namely, those with names appearing on the last assessment roll. Because this court ruling had not been complied with, the trustees could not be removed, although there had been neglect of duty.

In Rex ex rel. Tuttle v Quesnel,⁷³ the application for quo warranto was dismissed because Tuttle had been put forward as a nominal relator by the real prosecutor who could not qualify to be the relator.

⁷⁰ Re School Ordinance, (1914) 5 Western Weekly Reports 1268.

⁷¹ Rex ex rel. McArthur v Maycock, (1924) 4 Dominion Law Reports 1222.

⁷² Rex ex rel. Chutskoff v Riwny, (1929) 2 Dominion Law Reports 347.

⁷³ Rex ex rel. Tuttle v Quesnel, (1909) 10 Western Law Reports 722.

The Saskatchewan court of appeal, in Chaplin v Woodstock Public School Board,⁷⁴ reiterates other decisions by saying that quo warranto proceedings are the court's only means of declaring a seat vacant. It adds, however, that courts may by injunction restrain claimants to the seats from preventing the holder from acting, even though the latter holds it improperly.

In summary, the statutes specify the method of resignation from the office of trustee. Also they state that declining to act consists of failure or refusal to make the declaration, absence from three consecutive meetings without sufficient cause, or failure to perform the statutory duties of trustees after written request by the inspector.

The supreme court of New Brunswick has decided that failure to make the declaration, in itself, is not sufficient evidence of declining to act. Instead, the trustee declines to act when he refuses to make the declaration or when he accepts the position, acts for a time and then refuses to perform the duties of the office. In such case, the inspector has the right to fill the vacancy by appointment.

The seat becomes vacant when the statutory provisions have been complied with or when it is declared so by

⁷⁴ Chaplin v Woodstock Public School Board, (1889) 18 Ontario Reports 728.

quo warranto proceedings. This method of the court for declaring a vacancy is not to be used unless the statutory provisions prove inadequate.

The courts decide such cases according to the circumstances in each instance and the probable consequences of declaring the vacancy. They will not oust any school board member for acts done in a previous term.

Petitioners for quo warranto proceedings must be ratepayers and no nominal relator can be substituted for a prosecutor who does not qualify.

Although quo warranto proceedings are the court's only method of declaring a vacancy, it may grant a writ of injunction to restrain claimants to the seat from preventing the holder from acting, even though the latter holds it wrongly.

To sum up the findings concerning the constitution and tenure of the local School board, the following facts are presented.

The school board is a non-trading corporation having perpetual existence. It possesses only those powers granted it by the statutes and pertaining to the transaction of the school business of the district. It is an artificial body whose elements, the trustees, act for it under legal authority. Although it is one of the governing bodies of

the municipality and supreme in its own field, it is distinct from and more limited in power than the municipal corporation.

The trustees, who must be qualified voters, British subjects, and residents of the district, perform corporate acts resulting from resolutions passed at authorized meetings. These resolutions represent the decision of the majority after collective deliberation.

School board members cannot teach, cannot be interested in corporate contracts, cannot receive remuneration for any act of office and cannot audit the school accounts.

The secretary keeps all records of corporate proceedings, has charge of school property and performs acts of duty prescribed by the trustees. When he acts as such and his services are recognized by the corporation, his appointment is confirmed, even though it may not be an official one in writing.

Failure to take a bond for the faithful performance of the secretary, makes the trustees liable for any loss incurred, up to the amount of the bond.

Remedies for recovery of school money or property are demand by the inspector or, this failing, demand by a county court judge. In cases where large sums of money are

wrongfully withheld or a disclosure of the state of the accounts must be forced, a suit in equity may be brought. The remedy of the bonding company is a suit for loss through conversion.

Rural trustees are elected by resident ratepayers, those of cities and towns are appointed and the selection of consolidated boards is determined by the Lieutenant-Governor in council.

Periodical vacancies on rural boards are filled at annual school meetings, while occasional vacancies are filled at special school meetings, unless such vacancies occur just previous to the annual meeting.

Irregularities in elections may be investigated by the inspector and the decision can be appealed to the deputy Minister, but not to any court.

When trustees of town boards are appointed by the municipal council, such appointment results from a resolution of the town council and may not be changed or revoked.

Each trustee must make a declaration within ten days of his selection. If he fails to do so but acts as a corporate member he is a de facto trustee and liable for the consequences of his acts. Cases concerning de facto trustees are decided not by rule but according to the public interest.

A vacancy is created by resignation or declining to act. The latter results from refusal to make the declaration, failure to make the declaration and refusal to act, acceptance of the position for a time and later refusal to act, absence from three consecutive meetings without good cause, or failure to perform statutory acts after written request by the inspector.

A vacancy may occur when the statutory provisions have been complied with, or it may be declared as the result of quo warranto proceedings. Although this is the court's only means of declaring a vacancy, it may issue an injunction, restraining anyone from preventing the holder from acting.

Having studied the constitution and tenure of the school board through the selection of its members, their statutory acts and the occurrence of vacancies, one has laid the basis for further study of its duties and authority. Since the board represents and acts for the ratepayers and its chief duty is the hiring of teachers, these responsibilities will now be considered.

CHAPTER II

THE SCHOOL BOARD'S RESPONSIBILITY TO RATEPAYERS AND TEACHERS

The purpose of this chapter is to study the legal basis of the school board's responsibility to those whom they represent and those whom they engage to do the teaching. This will be done by a consideration of the board's rights with respect to school sites and property and their responsibilities concerning school meetings, teachers' contracts and the dismissal of teachers.

In order to conduct schools, the corporation must have the power to choose sites, buy property and erect buildings. Hence, the basis of these powers will be examined. The ratepayers, on behalf of whom they transact such business, must have reports of the transactions and some voice in the spending of their money. School meetings, being the means of such interchange, must therefore be studied. Another and more important factor in conducting schools is the obtaining of good teachers. Hence, the rights of the trustees in contracting with and dismissing teachers will be carefully considered.

1. Sites.

In order to examine the school board's responsibility regarding the acquisition of school sites, the statutory provisions and conditions of acquiring them will be discussed. This will be followed by a setting forth of the board's rights in expropriation of property.

The school board has the authority, subject to the sanction of the inspector, to determine the sites of school buildings, when a new school is to be built or the old one is to be moved to a more accessible place.¹ The boards of cities and incorporated towns do not have to have the inspector's sanction.²

This authority of the trustees is illustrated in Meisner v Meisner et al.,³ a case which arose out of a dispute between the ratepayers and trustees over the site for a school. The old school had been condemned and the trustees, with the sanction of the inspector, chose a new one. Many of the ratepayers wanted the old site to be used and the plaintiff resisted payment of rates on this basis. The Nova Scotia supreme court held that the choice of site was

1 New Brunswick Schools Act, 1960, sec. 61(5).

2 Ibid., sec. 96(6).

3 Meisner v Meisner et al., (1899) 32 Nova Scotia Reports 320.

vested in the trustees and that this was a good illustration of the necessity for such a law.

In Olatead et al v Coal Valley School Trustees,⁴ some of the ratepayers had obtained an ex parte order to restrain the trustees from moving the school building and the trustees appealed to have the order dissolved. The Alberta supreme court held that the acquisition of a site for a school, by the trustees, is a mandate which must be obeyed. The board does not offend against this when, having acquired one site, it acquires another. When the board is given the power to acquire a site and to build, repair and keep in order school buildings, this is an authority to acquire as many sites as the district needs. It also has the power, subject to the proper authority, to dispose of school property. The combined effect authorizes purchase of a new site, removal of the building to it and the sale of the old site.

Not only does the school board have this right, but it is the sole right of the board.

In an Ontario municipality the council passed a by-law concerning money for a new school. Since the choice of site was determined by the town council in the by-law, the

⁴ Olatead et al v Coal Valley School Trustees, (1924)
1 Western Weekly Reports 211.

case, Re McGleghlon and Town of Dresden,⁵ resulted. The Ontario supreme court declared the by-law invalid. The school board and not the town council should have the choice of site.

The board of trustees has the right to expropriate land for a site and, as the statute reads, "It shall expropriate such land in accordance with subsection (5) of section 61."⁶ The latter says,

When a location (...) has been so selected or when it is found necessary to enlarge the site so selected, and the board of school trustees are unable to agree with the owner thereof for the purchase, they may lay out a school lot and cause the same to be appraised in the manner following (...).⁷

This is followed by the procedure for choosing an arbitration board, notice of inquisition and payment or tender of the damages; after which, the board may take and hold the land.

When the size of lot exceeds a stated amount, the owners may appeal and then the decision is subject to the sanction of the Lieutenant-Governor in council.

In such a matter, the statutory provisions must be followed very carefully. Otherwise the arbitration will be declared void.

⁵ Re McGleghlon and Town of Dresden, (1909),
1 Ontario Weekly Notes 74.

⁶ New Brunswick Schools Act, 1960, sec. 116(15).

⁷ Ibid., sec. 61(5).

Re North York Public School Board and Duff⁸ was an appeal by a landowner from expropriation of his land. The Ontario supreme court held that since the county court judge had acted as arbitrator and was not the official arbitrator, the award of compensation was invalid for lack of jurisdiction.

Expropriation does not apply to crown lands. This was decided by the Alberta supreme court in the case Re the School Act; Re Ballas and Minister of Education.⁹

In New Brunswick, the Crown Lands Act¹⁰ permits the granting of ten acres of land for a school site.

In summary, the board is responsible for acquiring school sites. The choice of site, subject to the sanction of the inspector, is necessarily a right of the board because of the dissension that would result amongst the ratepayers if the selection were left to the school meeting.

In cities and towns, the municipal board has no right to interfere with this prerogative of the trustees.

⁸ Re North York Public School Board and Duff, (1931) 1 Dominion Law Reports 198.

⁹ Re the School Act; Re Ballas and Minister of Education, (1931) 1 Western Weekly Reports 290.

¹⁰ Crown Lands Act, Revised Statutes of New Brunswick, 1952, cap. 53, sec. 53(1b).

Not only may the board acquire a site for a new school but it may acquire a new site for an old school, have the latter removed and sell the old site.

In acquiring a school site, if the board cannot agree with the owner over the purchase, an appraisalment of the property, according to statutory procedure, may be made and the land can then be expropriated.

Arbitrators chosen according to the statutes make the decision and no county court judge may interfere with the arbitration board.

Although crown lands may not be expropriated, they may be granted for a school site.

2. School Property.

This section will include the school board's rights to hold, to purchase, to sell and to rent school property.

The school board has the right to acquire, take and hold personal or real property.¹¹ That this includes the custody of the school house, is proved in Monaghan v Ferguson et al.¹² The court held that the trustees do not part with possession by hiring a teacher to teach in the building and the teacher is not a tenant. In the words of

¹¹ New Brunswick Schools Act, 1960, sec. 61(1).

¹² Monaghan v Ferguson et al., (1847) 3 Upper Canada Queen's Bench 484.

the judge,

The constructive possession was in the trustees, which places the building in their keeping. (...) They might have given to their teacher that kind of interest in the building beyond his mere liberty to occupy it during the day for the purpose of teaching which would have constituted a tenancy but nothing of that kind is shown.¹³

One may conclude that when a teacher's residence is attached to a school, teachers may become tenants of the school board. However, they never have the legal custody of that part of the building where they teach only. Moreover, in an action for trespass to a school house, the teacher is not to be made plaintiff.

The school board may purchase or rent lands of buildings when authorized by a school meeting.¹⁴ This involves the legal right of the board to build a second school or to build two schools simultaneously.

In Garr v Casey Public School Board,¹⁵ the court upheld the legal right of the trustees to build a second school house; and in Re Medora School Section No. 4,¹⁶ their right to build two schools at the same time was upheld.

¹³ Monaghan v Ferguson et al., (1847) 3 Upper Canada Queen's Bench 484.

¹⁴ New Brunswick Schools Act, 1960, sec. 61(2).

¹⁵ Garr v Casey Public School Board, (1919) 17 Ontario Weekly Notes 27.

¹⁶ Re Medora School Section No. 4, (1911) 23 Ontario Law Reports 523.

The right to rent when extra classrooms are needed is a very important right of the trustees. The decision of the supreme court of Nova Scotia, in Thurgood v Vigneau et al.,¹⁷ confirms this right when more rooms or buildings are necessary for the accommodation of all the pupils. This is deemed to be a discretionary right of the trustees since their decision regarding the necessity of such action is final.

Also the trustees may sell or dispose of school property with authorization of the district.¹⁸

In Re Hamilton Board of Education and McNichol,¹⁹ the court held that boards of consolidated districts, on having the property of the separate districts vested in them, may sell the same when it is deemed to be no longer needed.

No property can be seized or sold under lien. The decision of the New Brunswick supreme court, in Havelock School District v Connolly,²⁰ held that school property is not crown property but nevertheless it cannot be sold in the case of a lien on the property. School buildings are never liable to seizure under execution.

¹⁷ Thurgood v Vigneau et al., (1929) 4 Dominion Law Reports 857.

¹⁸ New Brunswick Schools Act, 1960, sec. 61(1).

¹⁹ Re Hamilton Board of Education and McNichol, (1908) 12 Ontario Weekly Reporter 1015.

²⁰ Havelock School District v Connolly, (1912) 9 Dominion Law Reports 875.

In summary, the school board has the right to acquire, take and hold school property. It is not the teacher but the trustees that have the legal custody of the school property. Neither are the teachers tenants of that part of the school which they occupy for the sole purpose of teaching. It follows that in an action of trespass to the school, the trustees must be the plaintiff.

The school board may purchase school property on authority of the school district. This includes the right to build a second school or to build two schools simultaneously.

The trustees may sell or dispose of school property, on authorization of a school meeting. This means that a consolidated board may sell local schools no longer needed. No school, however, may be seized or sold under lien.

In case of necessity, the school board has a discretionary right to rent extra rooms or a building to provide sufficient accommodation.

3. School Meetings.

The school board's authority to call meetings will be considered first. Then, the effect of holding meetings at other than the set time will be given. This will be followed by a discussion of the necessity for trustees to call special meetings at the desire of the ratepayers. The contents of

the board's report to the meeting will be given and, finally, some directives concerning irregularities of school meetings will be mentioned.

The trustees have the right to call annual and special meetings and post notices of them, except in the case of the first meeting of the district²¹ or a meeting to consider plans and estimates of cost of a consolidated school.²²

The Alberta supreme court, in Rex ex rel. Anderson v Gainer,²³ remarked on the importance of the law which authorizes the inspector to call a meeting for consideration of estimates, concerning consolidation. The importance lies in the fact that there may be possible dissension amongst the districts over the proposal of consolidation.

The annual school meetings are to be held regularly on the date set by law or on a date authorized by the inspector in writing.²⁴

The case, Price v Erb et al,²⁵ concerned the holding of the annual school meeting on an unauthorized day. The

²¹ New Brunswick Schools Act, 1960, sec. 39(1).

²² Ibid., sec. 116(11).

²³ Rex ex rel. Anderson v Gainer, (1919) 1 Western Weekly Reports 801.

²⁴ New Brunswick Schools Act, 1960, sec. 35(1).

²⁵ Price v Erb et al, (1878) 17 New Brunswick Reports 708.

supreme court of New Brunswick held that,

The school law does not allow for meetings other than at the prescribed time. If this is done it ceases to be a meeting under the school act; it becomes a mere nullity, and a matter which no inspector could entertain and examine into or cancel, or any other authority make valid.²⁶

The hour of the meeting, as well as the day, is set by the notice but the court decided, in Meisner v Meisner et al.,²⁷ that starting the meeting two or three hours late was not of enough consequence to invalidate the meeting. The provision of the notice was said to be directory. Also the fact that the meeting had been called by two of the three trustees did not invalidate it.

According to school law, the trustees may call special meetings. A question arises over the necessity of this. In Ex parte Gilbert et al.,²⁸ the dispute concerned whether trustees have to call special meetings on receiving a requisition from the ratepayers or whether such an act is discretionary with the trustees. The New Brunswick supreme court held that, "Where a statute says a thing may be done which is for the public benefit, it shall be construed

²⁶ Price v Erb et al., (1878) 17 New Brunswick Reports 708.

²⁷ Meisner v Meisner et al., (1899) 32 Nova Scotia Reports 320.

²⁸ Ex parte Gilbert et al., (1873) 14 New Brunswick Reports 231.

that it must be done; the word 'may' is held to be imperative."²⁹

At the annual meeting, the trustees must present a written report on the educational conditions of the district, the supplementary budget and an estimate of the requirements and needs of the district for the following year.³⁰

Re Trustees School Section No. 19, Richmond County³¹ was a case resulting from an omission in the estimates presented to an annual meeting by the trustees. The latter had not included an estimate of a sum required by an order of mandamus to pay off a judgment recovered against the trustees in their corporate capacity. The supreme court of Nova Scotia held that the report should contain an estimate of all financial requirements, not just the amount necessary for running the school.

As stated previously, the New Brunswick Schools Act provides its own remedy for investigation into irregularities at school meetings without recourse to the courts.³²

²⁹ Ex parte Gilbert et al., (1873) 14 New Brunswick Reports 231.

³⁰ Regulations Respecting the New Brunswick Schools Act, 1959, regulation 5(2).

³¹ Re Trustees School Section No. 19, Richmond County, (1939) 14 Maritime Provinces Reports 203.

³² New Brunswick Schools Act, 1960, sec. 68.

However, there are two cases which should serve as a guide to procedure in investigations.

Rex ex rel. Montgomerie v Mantz³³ was such a case. The plaintiff attempted to prove a school meeting invalid because of irregularities. The Alberta supreme court held that none of them was a sufficient breach of the act to set aside the election and the effect of many minor irregularities was not cumulative.

If the vote of a school meeting is under misapprehension a new one may be ordered. In Robertson v Springbank School Trustees,³⁴ the Saskatchewan supreme court held that a new vote was necessary since many of the ratepayers had voted under a misapprehension caused by the trustees.

In summary, the trustees have the responsibility of calling annual and special school meetings except the first meeting and any meeting for considering estimates involved in consolidation. The inspector has the right in the case of the first meeting or one for submission of consolidation estimates. In the latter case, his right stems from the dissension which is apt to arise among the districts involved.

³³ Rex ex rel. Montgomerie v Mantz, (1948) 2 Western Weekly Reports 143.

³⁴ Robertson v Springbank School Trustees, (1917) 36 Dominion Law Reports 777.

A regular date is set for annual meetings and it is mandatory that this be observed. Any such meeting held at another time is absolutely void and may not be investigated by the inspector.

The hour of the meeting is set by the notice. But, since the provision of the notice is directory, a late commencement will not invalidate the proceedings. Also, the fact that only two of the trustees give the notice will not make the meeting void.

The trustees have to call special meetings on requisition of a majority of the ratepayers, since this is an act for the public benefit and, therefore, the word "may" in the statutes is considered to be imperative.

It is the trustees' responsibility to present a report of the educational state of the district, a report of the school accounts and a report of the estimate of expenditures for the coming school year. Such estimate is to include not only the cost of running the school but any other expenses incurred by the trustees.

A directive for consideration of school meeting irregularities is that they are to be examined individually and not accumulatively. If many ratepayers vote under misapprehension at a meeting, a new vote may be ordered.

4. The Teacher's Contract.

This section will include a study of the adoption and types of teachers' contracts, contracts within and without statutory authority and the effect of omitting any of the formalities of contracting. Also to be considered are the liabilities of the corporation beyond the usual contract of service and liabilities respecting payment of salary.

One of the regulations states that the hiring of a teacher should be decided upon by the trustees at a meeting regularly called. At such a meeting, a majority of the board may engage a teacher or give notice of dismissal.³⁵

The decision of Johnson v McEwen School District and Pestell reads in part,

The engagement of a teacher is probably, almost certainly, the most important function of the board of trustees. The whole scheme of organization, taxation and election leads up to the chief purpose to be attained, viz: to get the children taught by a competent teacher.³⁶

This leads to the declaration by the supreme court of Alberta that a secretary cannot contract with a teacher, as an agent of the board. There was no enforceable contract

³⁵ Regulations Respecting the New Brunswick Schools Act, 1959, regulation 6.

³⁶ Johnson v McEwen School District and Pestell, (1923) 1 Dominion Law Reports 175.

and therefore no recovery for breach of implied warranty of authority. It is stated moreover, that persons entering into contracts with municipal corporations must at their peril inquire into the statutory power of the corporation or of its officers to make the contract.

The board of trustees may employ a teacher on probation for not less than one year and not more than three years. During the probationary period, the teacher may be dismissed without stated reason, providing notice is given before April 30. After the probationary period, the teacher is employed on a continuing contract.³⁷

The contract is to be made in accordance with the approved form to be found in the register.³⁸

The district court of Saskatchewan, in Hayes v Loyola School District,³⁹ ruled that the teacher's contract must be in the form prescribed and may only be altered or amended if such changes are consistent with the provisions of the school law.

³⁷ New Brunswick Schools Act, 1960, sec. 63A.

³⁸ Regulations Respecting the New Brunswick Schools Act, 1959, regulation 6.

³⁹ Hayes v Loyola School District, (1916) 34 Western Law Reporter 799.

If the teacher is unlicensed then the contract is void. In Bright School Trustees v Yerxa,⁴⁰ the supreme court held the contract ultra vires because the teacher was unlicensed. In contracting for work to be done, the work must be within the purposes for which the corporation was created. Otherwise, the trustees are not liable. Thus, not even remuneration on quantum meruit was maintainable.

Many cases, claiming breach of contract for various reasons, have been tried in the courts.

In Albrecht v Milk River Consolidated School District,⁴¹ the plaintiff's contract was not in statutory form but he had taught in the district for three years. Therefore, he could sue for breach of contract. The Alberta supreme court awarded damages.

Clipsman v Grand Prairie School District⁴² was a case in which there was a proper contract but no meeting, according to the plea. The North West Provinces full court ruled that there was not sufficient evidence of this omission to invalidate the contract.

⁴⁰ Bright School Trustees v Yerxa, (1910) 10 Eastern Law Reporter 1.

⁴¹ Albrecht v Milk River Consolidated School District, (1937) 3 Western Weekly Reports 34.

⁴² Clipsman v Grand Prairie School District, (1907) 6 Western Law Reporter 95.

The New Brunswick supreme court, as mentioned above, has taken a rather lenient view with respect to teachers' contracts. The decision of Desrosiers v Balmoral and Dalhousie School Trustees reads in part,

A board in a remote district cannot disaffirm a contract entered into with a teacher on the ground that all the formalities of such a contract were not complied with, where there is an evident and bona fide intention on both sides to make a binding contract.⁴³

The contract in this case was not adopted at a corporate meeting, but it was held to be enforceable.

Also, in McDonald v Eldon School Trustees,⁴⁴ the supreme court held that all trustees must be consulted. But the lack of a meeting did not invalidate the contract.

If a teacher's agreement, made to supersede a previous one, is invalid, then the parties are bound by the first agreement. This was decided by an Ontario divisional court in McPherson v Trustees School Section No. 7 Usborne.⁴⁵ The decision stated that when an agreement is valid on the face of it, the onus is on the appellants to prove invalidity. Neither the absence of minutes relating to the signing

⁴³ Desrosiers v Balmoral and Dalhousie School Trustees, (1927) 3 Dominion Law Reports 505.

⁴⁴ McDonald v Eldon School Trustees, (1929) 1 Maritime Provinces Reports 253.

⁴⁵ McPherson v Trustees School Section No. 7 Usborne, (1901) 1 Ontario Law Reports 261.

of the contract nor the omission of the corporate seal were sufficient to invalidate the agreement.

There is disagreement as to the necessity of a contract for extra services.

In Garrow v Brandon School District,⁴⁶ the teacher undertook extra work for the school board. No remuneration could be claimed, since there was no signed and sealed agreement, concerning this work.

On the other hand, the Saskatchewan court of appeal stated in Leclerc v Trustees of Perigord School District No. 650,⁴⁷ that a teacher could collect salary for night school work since no formal contract was required for this class of teaching.

No board may agree with more than one teacher for a position. Morrison v Board of Trustees of Cassell Hill School District et al⁴⁸ was a test case to settle the question of some boards accepting applications from several teachers and then only contracting with one. The Alberta supreme court held that the trustees were liable as a

⁴⁶ Garrow v Brandon School District, (1923) 3 Western Weekly Reports 442.

⁴⁷ Leclerc v Trustees of Perigord School District No. 650, (1925) 3 Dominion Law Reports 578.

⁴⁸ Morrison v Board of Trustees of Cassell Hill School District et al, (1925) 1 Western Weekly Reports 526.

corporation, and not personally, in damages for misrepresentation. The action was grounded on deceit.

Trustees are liable for a teacher's salary and a mandamus will issue to compel them to raise the money. This is mandatory for the boards of cities and incorporated towns. In rural districts the liability of the trustees extends to budgeting for such salaries. If they contract with a teacher for salary over and above the minimum set amount, this extra sum is entered in the supplementary budget.

In Munson v Municipality of Collingwood,⁴⁹ the Upper Canada court of common pleas held that the treasurer of the municipality is not authorized to accept orders for payment on salary.

Trustees are liable for salary paid to a teacher on an invalid contract. In Evans and Baird v O'Connor and Theaker,⁵⁰ two ratepayers sought to recover the amount of salary paid to a teacher for the first two weeks of school. She had been ill with scarlet fever during this time and since her contract was invalid, the money was said to have been appropriated for purposes other than those provided for by the statutes. Hence, the ratepayers could succeed in their claim.

⁴⁹ Munson v Municipality of Collingwood, (1860)
9 Upper Canada Common Pleas 497.

⁵⁰ Evans and Baird v O'Connor and Theaker, (1934)
2 Western Weekly Reports 452.

The board must keep the school in operation and pay the teacher for every available teaching day.

The case, Peterson et al v Youngstown School Trustees,⁵¹ emphasizes the point that the school board is legally obliged to place at the disposal of the teacher every available teaching day, without deduction, except as provided by statute. As long as there is no default on the part of the teacher, he should be paid for every available day.

In the case of a school being destroyed by fire, the Alberta supreme court, in Rowbottom v Bellis School Trustees,⁵² held that where work is done for the corporation at its request, in respect of matters for the doing of which it was created and the benefit of the work is accepted, then a contract to pay is implied. This was an executed contract and the trustees were liable for the teacher's salary during the time there was no school.

In summary, this most important function of the board, the making of contracts with teachers, should result from corporate decision at a regular board meeting. Probationary

⁵¹ Peterson et al v Youngstown School Trustees, (1928) 1 Dominion Law Reports 344.

⁵² Rowbottom v Bellis School Trustees, (1934) 3 Dominion Law Reports 43.

contracts for one to three years, and continuing contracts for longer service, are the two types.

Since contracts are a control of the profession, it is most important that they be within statutory authority and this entails a knowledge of the powers of the school corporation in contracting.

A secretary cannot contract on behalf of the board as its agent. Any contract of the board with an unlicensed teacher is invalid because that is not a contract for work within the purposes of the corporation. Therefore, not even damages on quantum meruit can be awarded, in a suit.

A contract not in statutory form, but which has been an executed contract for three years may be considered valid and may allow one of the parties to bring a suit for breach of contract.

If, after a period of service, a teacher's contract is superseded by an invalid contract, then the parties are bound by the original one.

Lack of the formalities in adoption of a teacher's contract may be overlooked in proving validity. The lack of minutes will not invalidate a contract and even the lack of a meeting for its adoption may be overlooked in New Brunswick, if there is evident and bona fide intention on both sides. Also the lack of a seal may not make a contract void. When a contract is valid on the face of it, the onus is on the appellant to prove invalidity.

If the trustees accept more than one application to a teaching position and contract formally with only one teacher, they are liable as a corporation for the salary of all acceptees.

In some cases, a separate contract for extra work is necessary and in others it is not. In the latter situation, remuneration on quantum meruit may be collected.

Trustees are liable for the teacher's salary and a writ of mandamus will be issued to force them to fulfill their obligation. No one else is liable in this respect and a municipal treasurer may not accept orders for payment of salary. In New Brunswick where the county finance board pays the salary of rural district teachers, the trustees are responsible for budgeting this amount.

The trustees are liable for any amount of salary paid to a teacher on an invalid contract. On the other hand, they must place at the disposal of the teacher all statutory teaching days and they are liable to pay salary when accommodation ceases to be available.

5. Dismissal.

This section will include the conditions of dismissal, examples of dismissal within and without statutory authority, agreements of the school board with teachers' federations concerning dismissal, and boards of reference.

Teachers on a probationary contract may be dismissed without reason if notice is given before April 30. Dismissal on a continuing contract may require a reason and may be subject to review by a board of reference.⁵³

Suits for wrongful dismissal may be brought to the courts. This is illustrated in MacLeod v Board of School Commissioners of Town of Dominion,⁵⁴ a suit by a teacher for damages. The plaintiff had been hired for a year. In February, the board sent out a notice asking if the teacher would be available for the next year and she replied that she would be. Later, the teacher got a notice of dismissal and brought this suit. The supreme court of Nova Scotia held that the contract in question was made for a fixed period of one year and there was no implied term as to employment from year to year, on termination by notice before the fixed date. If, by its letter of February, the board represented that there was such an implied term, then it was a representation of law and not of fact. It was not a representation sufficient for estoppel. Instead, the representation was in the nature of a promissory estoppel. The board's letter in February and the plaintiff's reply did not constitute a

⁵³ New Brunswick Schools Act, 1960, sec. 63A.

⁵⁴ MacLeod v Board of School Commissioners of Town of Dominion, (1958) 16 Dominion Law Reports (2d) 587.

new contract. Neither had she been engaged on a continuing contract. Therefore the case was dismissed.

Wright v San Antonio School District⁵⁵ was a case where the teacher was dismissed without notice because of complaints. The Manitoba county court held that this did not constitute an emergency and that the complaints were unfounded. Therefore, damages were awarded.

In Hilkewich v Laniwei School District,⁵⁶ the teacher had been hired at an irregularly called board meeting and dismissed without notice. As to dismissal, the inspector had instructed the secretary to call a meeting which was attended by himself, the three trustees, the secretary and teacher. The required notice of the meeting was not given, but at it the teacher was dismissed. The Saskatchewan court of appeal awarded one month's salary in lieu of notice.

In Robertson v Durham School Trustees,⁵⁷ a teacher was dismissed by two out of the three trustees. The notice was not proper, since it was not a notice of the trustees acting in corporate capacity. Instead it was the result

⁵⁵ Wright v San Antonio School District, (1939) 3 Western Weekly Reports 280.

⁵⁶ Hilkewich v Laniwei School District, (1937) 2 Western Weekly Reports 386.

⁵⁷ Robertson v Durham School Trustees, (1896) 34 New Brunswick Reports 103.

of a petition organized by one of the trustees. Hence, the New Brunswick supreme court ruled in favor of the plaintiff.

In Metcalf v Moose Jaw Public School District No.

1,⁵⁸ the Saskatchewan court of appeal awarded damages for wrongful dismissal to a teacher who was dismissed during the summer vacation.

The decision of Bryson v Glenlawn School District⁵⁹

was that the dismissal of the plaintiff was according to statutory provisions, if not according to an agreement of the board with the local teachers' federation. The latter agreement was held to be not legally binding, so there was no wrongful dismissal.

In the case of Wagstaffe v Public School Board of

Section 8 of Raglan,⁶⁰ the trustees had closed the school and dismissed the teacher without cause. When she sued for damages, the board pleaded that there was no written contract. Actually, she had urged the signing of one but the board had maintained that they had no forms. The Ontario court of appeal awarded damages to the plaintiff and

⁵⁸ Metcalf v Moose Jaw Public School District No. 1, (1938) 2 Dominion Law Reports 726.

⁵⁹ Bryson v Glenlawn School District, (1944) 3 Dominion Law Reports 636.

⁶⁰ Wagstaffe v Public School Board of Section 8 of Raglan, (1948) Ontario Weekly Notes 120.

stated that the act pertaining to boards of reference did not remove the right to sue in case of dismissal.

The School Trustees' and Teachers' Boards of Reference Act⁶¹ allows an appeal, from termination of a continuing contract, to an impartial board of reference chosen according to statutory procedure.

In both the Ontario⁶² and corresponding New Brunswick acts it is stated that the finding of the board of reference shall be binding on the teacher and board of trustees. Nothing is said concerning appeal from the decision. Two Ontario cases have been appealed, one to the supreme court of Canada. Therefore, the decision of the board of reference is not final.

Re Clarke and Board of Education of Toronto⁶³ is an appeal from a decision of a board of reference in Ontario. A principal of a collegiate institute was assigned to teaching duties at another collegiate institute and maintained that this amounted to dismissal. The board of reference found no dismissal had been made. The Ontario court of appeal dismissed the case because, as a teacher,

⁶¹ School Trustees' and Teachers' Boards of Reference Act, New Brunswick Acts, 1956, cap. 12, sec. 8(1).

⁶² Teachers' Boards of Reference Act, Ontario Acts, 1946, cap. 97.

⁶³ Re Clarke and Board of Education of Toronto, (1947) Ontario Weekly Notes 878.

he had not been dismissed and the board of reference applied only to teachers.

Lacarte v Board of Education of Toronto was an appeal to the supreme court of Canada from a board of reference decision. The board of education set out the grounds of dismissal in a letter and the teacher claimed damages for libel. The board alleged qualified privilege without malice. The decision stated:

The applicable principle of law is that where a corporation is under a duty to publish a statement about a person and in the statement relies on information furnished by one of its employees whose employment extends to furnishing defamatory information which is made part of the statement published by the corporation will in law be treated as the malice of the corporation although members of the board of trustees authorizing the publication are individually free of malice.⁶⁴

The plaintiff has to prove malice and, in this case, it could not be proved. The court also held that a teacher employed by a board is in a contractual relationship with the board and does not hold a public office so as to enjoy tenure terminable only after hearing. While the boards of reference act gives some security to a teacher in requiring reasons for dismissal and enables a teacher to invoke a hearing before an independent tripartite board which reports to the Minister, it is enough if the reasons set out a statement of substance, as for example in this case, lack

⁶⁴ Lacarte v Board of Education of Toronto, (1959) 17 Dominion Law Reports (2d) 609.

of co-operation with certain staff members. It is unnecessary to give a strict specification of minor particulars.

In summary, a teacher with a probationary contract may be dismissed without reason if notice is given before April 30. Dismissal on a continuing contract requires a reason and may be appealed.

A letter asking about the teacher's availability for the following year together with an affirmative reply does not constitute a re-engagement when the teacher is working on a probationary contract.

It is imperative that notice be given unless complaints against a teacher are extremely serious and well founded.

The dismissal must result from a resolution of the board at a regularly called meeting and the notice must come from the trustees as a corporation.

There cannot be a dismissal for non-availability of accommodation and notice may not be given during the summer holidays.

Agreements of the board with teachers' federations concerning dismissals must be according to the statutory provisions, otherwise they are not legally binding.

Boards of reference do not remove the right to sue in case of dismissal but they do furnish a means of appeal

from dismissal on a continuing contract. Their decision is not final.

A change from the position of principal to that of teacher does not constitute a dismissal. In a case of libel over the statement of reason for dismissal, the corporation assumes the malice of the employee informant but the malice must be proved.

Although the teacher does not hold a public office and enjoy termination of tenure only after a hearing, the boards of reference statutes give some security through their demand for reason and the possibility of a hearing. The reasons set forth do not have to include a strict specification of particulars.

In this chapter, the writer set out to study the legal basis of the school board's responsibility to those whom they represent and towards those whom they engage to do the teaching. A summary of the findings pertaining to this study follows.

The school board has the sole right in acquiring a site for a new school or a new site for an old school. In the latter case, it has the authorization to move the old school to the new site and sell the old one.

Expropriation and appraisalment of property according to statutory provisions, are allowed when there is lack of

agreement with the land owner. Crown lands may not be expropriated but may be granted.

The school board has the right to acquire, take and hold all school property and since it has legal custody of it, the board must be the plaintiff in an action of trespass to the school.

The trustees may buy or sell school property on the authorization of the district. This includes the right to build a second school or to build two schools simultaneously or the right of a consolidated board to sell the local schools no longer necessary. No school may be seized or sold under lien. The board also has the right to rent extra accommodation when it is needed.

The trustees have the right to call school meetings, except the first one and any special meeting for considering estimates of consolidation.

The regular date set for meetings must be observed, otherwise the meeting is void. The hour of the meeting, being set by notice, is directory. Neither a late commencement of the meeting or a notice posted by two of the three trustees will be sufficient cause to invalidate the meeting.

The trustees must call any special meeting that is requisitioned by a majority of the ratepayers and they must give a full report at each annual meeting. This report is on the educational condition of the district, the state of

accounts and an estimate of all corporate expenditures for the coming year.

Irregularities at meetings should not be considered cumulatively and any vote under misapprehension may be declared invalid.

The board's most important function is that of contracting with teachers. Both probationary and continuing contracts should result from corporate decision at regularly called board meetings. Since contracts are a control of an important profession, it is very important that they be within statutory authority.

No secretary can contract on behalf of the board. No contract with an unlicensed teacher is valid. An executed contract for a period of years may be considered valid although not in statutory form. If a superseding contract is invalid, the parties are to be bound by the original one. Lack of formalities in contracting, such as lack of minutes, lack of meeting or lack of seal, may be overlooked when there is evident and bona fide intention on both sides. When a contract is valid on the face of it, the appellants must prove invalidity.

Trustees accepting more than one teacher's application are liable to all and they may be liable to pay for night school work when there is no contract at all.

The rural trustees are responsible for budgeting for all salaries and city or town boards are liable for payment of salary. School boards become liable for salary paid on an invalid contract. Also they are liable for payment of salary to teachers for all statutory teaching days, even if accommodation is temporarily unavailable.

Teachers on probationary contracts may be dismissed without reason, on proper notice. Those on continuing contracts may demand reason and a hearing.

A letter enquiring about availability plus an affirmative reply does not constitute a contract for re-engagement.

Notice of dismissal is imperative unless complaints are extremely serious and well founded. The dismissal itself must issue from a regular board meeting and notice must be given by the corporation within statutory time limits. There can be no dismissal for lack of accommodation.

Agreements of the board with teachers' federations concerning dismissals must be according to statutory provisions.

Boards of reference offer some security to teachers by allowing a demand for reason and a hearing, which may be appealed to a supreme court. Such reason may be stated generally and demotion of position does not constitute dismissal.

Through the acquisition of sites and school property and through the calling and reporting to school meetings, the board fulfills an important part of its responsibility to the ratepayers. By contracting with and dismissing teachers it makes the education of the ratepayers' children possible.

With this exploration of the legal basis of the board's representative and managerial functions, the next step is a study of its responsibility to those for whom the educational process is necessary.

CHAPTER III

THE SCHOOL BOARD'S RESPONSIBILITY TO THE CHILDREN

In order to determine the legal basis of the school board's responsibility to the children of the community, one must study the child's right to free schooling, adequate accommodation and conveyance or the cost of education in another district, where this is necessary. Also, the board's responsibility for the discipline and safety of the children must be considered.

The children's right to free schooling, being the reason for the school board's existence, must be studied carefully to decide the limits of the board's responsibility. This involves the provision of adequate accommodation so that there will be no discrimination against any child. Also it involves conveyance or the cost of education outside the district, so that the child who does not live within walking distance of the school may receive free education. Once provision has been made for accommodating the children one must study the ultimate responsibility for their discipline and safety in order that the purposes of free schooling may best be fulfilled.

1. Free Schooling.

The right of all children to free schooling is studied by considering the school board's responsibility, the lack of an accurate definition of the word "resident", the right of the child to free education and the importance of this right as illustrated in special cases.

The school law orders the board of trustees to provide free schooling for children of residents and rate-payers in the district, between certain ages. For other children the district receives tuition.¹

The right of free schooling is the right of every child and not a matter dependent on the decision of any person. The Saskatchewan King's Bench, in Wilkinson v Thomas et al, emphasized this when it stated that the right of free schooling is the right of the child itself and not something to be left to the discretion of its parents or the school board. The court stated further,

I think it should be very clearly laid down that in matters of law, matters so vital as the right of a child to receive education in the school and such matters as that, school trustees should not undertake to proceed without consulting their solicitor and counsel, and if they wish to do so, they must take the risk of having to pay costs if they are wrong.²

1 New Brunswick Schools Act, 1960, sec. 63.

2 Wilkinson v Thomas et al, (1928) 2 Western Weekly Reports 700.

The word "resident" in the statutes has given rise to much disagreement in spite of the fact that one clause defines it negatively by saying that a child is not a resident if he lives in the district during the school term only and for the purpose of attending school.³

In Ex parte H. Murray Lambert, the supreme court of New Brunswick says that, "The child may have a residence sufficient to entitle it to school privileges independent of the residence of the parent."⁴

Also the decision of Ex parte Miller⁵ emphasizes the importance of the residence of the child. It states that while a child has only one domicile, he may have more than one residence. In this case the father had moved his family to town for the purpose of schooling. Although he established a home in town, he himself lived part of the time there and part of the time on his farm. The court held that a child may have a residence entitling it to school privileges, independent of the residence of the parent.

To illustrate the importance attached to the administration of the right of free schooling, there is a suit

³ New Brunswick Schools Act, 1960, sec. 63(11).

⁴ Ex parte H. Murray Lambert, (1930) 1 Maritime Provinces Reports 12.

⁵ Ex parte Miller, (1897) 34 New Brunswick Reports 318.

for damages brought by parents against a school board for excluding their unvaccinated children from the schools. In this case, Yarwood v Smith's Falls Board of Education, the decision reads, in part,

Parents have a prima facie right, in general to have their school age children admitted to the public schools. The children who have not been vaccinated may be lawfully excluded from the schools if the provisions of the statutes in that behalf are complied with, and since exclusion involves denial of a prima facie right, the statutory proceedings must be rigidly followed.⁶

Here, the statutes had not been followed so damages were granted.

Again, in cases of children being excluded for refusal to salute the flag, such as in Donald v Hamilton Board of Education⁷ and Ruman v Lethbridge School Board Trustees,⁸ the supreme courts of Ontario and Alberta held that the children were entitled to attend and refrain from patriotic exercises. The latter decision held that the right of the board to require patriotic exercises is directory, not imperative, in that the permissive word "may" is used.

⁶ Yarwood v Smith's Falls Board of Education, (1922) 23 Ontario Weekly Notes 38.

⁷ Donald v Hamilton Board of Education, (1945) 3 Dominion Law Reports 424.

⁸ Ruman v Lethbridge School Board Trustees, (1943) 3 Western Weekly Reports 340.

In summary, the school board is responsible for providing free schooling to children of residents and ratepayers. The right of free schooling is the right of the child itself and not a discretionary power of the trustees or parents. Furthermore, it is considered to be such an important right that school boards are advised to employ counsel in cases where there is any doubt.

The term "resident" has led to much disagreement. The courts have decided that, for the purposes of schooling, the child's residence may be independent of that of the parents, that the child may have more than one residence and that residence in the district only during school term for the purpose of schooling does not entitle him to this right.

Unvaccinated children may be excluded from school if and only if the statutory provisions are carefully followed. On the other hand, refusal to participate in patriotic exercises is not sufficient grounds for exclusion from school, since the statute concerned is directive, not imperative.

2. Accommodation.

Since the provision of accommodation is a necessary adjunct to the right of free schooling, therefore a discussion of this subject must follow.

A study of it will include the school board's right to provide accommodation, the ultimate responsibility of the province in this respect, the power of the trustees to assign pupils to departments and schools and, finally, the board's power of forwarding applications of district children for accommodation in vocational schools.

It is the duty of the board of trustees to provide accommodation for all who are eligible for free schooling.

Ex parte Gallagher⁹ is a case where one, Gallagher, sought to have the trustees provide accommodation and grant permits for school admission to certain children residing in the town for whom he was acting as guardian. The New Brunswick supreme court held that if this was not done a mandamus would lie.

Re McLeod and Tay School Trustees¹⁰ resulted in a mandamus issued by the supreme court to compel the trustees to provide a school house.

The decision of R~~e~~ Medora School Section No. 4¹¹ affirmed the power of the board of trustees to establish

⁹ Ex parte Gallagher, (1892) 31 New Brunswick Reports 472.

¹⁰ Re McLeod and Tay School Trustees, (1907) 10 Ontario Weekly Reporter 649.

¹¹ Re Medora School Section No. 4, (1911) 23 Ontario Law Reports 523.

more than one school in a district in order to supply accommodation to all the children.

The case, Henchel v Board of Medicine Hat School Division No. 4,¹² arose because the plaintiff's children were refused schooling on the grounds that the mother had established residence in town for the purpose of educating her children while the father remained on his farm in the country. The court held that after a year in Medicine Hat, residence had been established and the school board must provide accommodation. The decision states that since there is no statutory method of enforcing this right of the children, the common law can be resorted to for the appropriate remedy.

The ultimate responsibility for provision of accommodation and free schooling lies in the province. This is illustrated in the case of McLeod v The Board of School Trustees of School District No. 20 (Salmon Arm)¹³ which arose out of a dispute between the school board and the municipal council. The plea of the school board was impossibility of free schooling for some, because of lack of funds. The British Columbia court of appeal held that,

¹² Henchel v Board of Medicine Hat School Division No. 4, (1950) 2 Western Weekly Reports 369.

¹³ McLeod v The Board of School Trustees of School District No. 20 (Salmon Arm), (1952) 2 Dominion Law Reports 562.

The major responsibility for the education of the children rests upon the province. Therefore in case of an impasse there is a duty upon the school board to act in the interest of the children, in a manner that would enable the province to assume its major responsibility. The trustees should have resigned and let the province appoint an official trustee. In its discriminative actions and failure to carry out the statutes it is subject to mandamus.¹⁴

While the appointment of an official trustee in New Brunswick is different from the appointment in British Columbia, this case emphasizes the focus of responsibility and the importance which the courts attach to free schooling and the provision of accommodation.

The statutes state,

The board of school trustees shall regulate from time to time with the aid of the teachers, the attendance of the pupils in the several departments according to attainments (...)¹⁵

This is a discretionary responsibility, as may be seen in Thurgood v Vigneau et al.¹⁶ In this case, an action for damages was brought against the trustees for failure to provide school privileges. Actually, because of overcrowding, the trustees had rented rooms in a neighboring convent and engaged members of the order, who were qualified

¹⁴ McLeod v The Board of School Trustees of School District No. 20 (Salmon Arm), (1952) 2 Dominion Law Reports 562.

¹⁵ New Brunswick Schools Act, 1960, sec. 63(13).

¹⁶ Thurgood v Vigneau et al., (1929) 4 Dominion Law Reports 857.

teachers, to instruct the pupils in these rooms. The daughter of the plaintiff was assigned to one of these classes whereupon the suit arose. The supreme court of Nova Scotia held that the rooms were rented because it was necessary and the word "necessary" means "necessary in the judgment of the trustees". Moreover, the court stated that this was a matter of internal management to be left to the discretion of the trustees and the court had no right to interfere.

In Patrick and Yorkton School District Trustees,¹⁷

a parent maintained the right of his child to attend the nearer of two schools in the district. The trustees had passed a by-law assigning certain children to each of the two schools, thus determining the school which the plaintiff's children must attend. The Saskatchewan supreme court decreed that the statutes give the trustees the right to provide accommodation and the management of the school. This implies the decision as to who shall attend which school.

One discretionary power of the trustees in a district without a vocational school is to send the application of a child, who wants a vocational education, to such a school in another district.¹⁸

¹⁷ Patrick and Yorkton School District Trustees, (1914) 6 Western Weekly Reports 1107.

¹⁸ Vocational Education Act, New Brunswick Revised Statutes, 1952, cap. 243, sec. 13.

Where a local board refused to send such an application, the vocational board authorized attendance at one of the Fredericton schools. In Fredericton School Trustees v Kingsclear School Trustees,¹⁹ the supreme court ruled that the authorization of the vocational board was without jurisdiction. Therefore, the local board was not responsible for paying the tuition.

In summary, it is mandatory that the school board supply accommodation for all eligible to attend school. A mandamus will be issued to compel this or to force the building of a school for this purpose. The board has the legal right to build more than one school if such is needed. Since there is no statutory method of enforcing this duty, all disputes must be settled in court.

The ultimate responsibility for accommodation and free schooling lies in the province and in cases where the trustees cannot fulfill their obligations, they should make it possible for the province to assume this responsibility.

This can be done by the appointment of an official trustee to administer the right of free schooling, for example, where discrimination arises from lack of funds.

¹⁹ Fredericton School Trustees v Kingsclear School Trustees, (1928) 4 Dominion Law Reports 13.

It is a discretionary power of the trustees to assign pupils to departments and schools. Since the statutes order the provision of accommodation and give them the management of the schools, this makes the assignment of pupils a matter of internal management in which the courts will not interfere. Another discretionary power of the trustees is to forward applications of children for accommodation in vocational schools, where none exist in the district.

3. Conveyance.

Since conveyance is assumed as a necessary part of providing accommodation and free schooling, it will be discussed under the following headings: the responsibilities of the school board with respect to conveyance; two rules concerning distance limits; and the responsibility of the trustees for the cost of schooling where conveyance is not possible or practical.

Conveyance, where necessary, is understood as part of the right of free schooling. The board's responsibilities in this respect are emphasized in Tyler et al v Ardath School Trustees.²⁰ In this case, the Saskatchewan court

²⁰ Tyler et al v Ardath School Trustees, (1935) 2 Dominion Law Reports 814.

held that the board controlled the route, that the contract could not be assigned by the driver without consent and that the performance of the contract was subject to departmental rule.

The board is responsible for seeing that pupils will be carried with safety. Hence it is responsible for any neglect by its employees in effecting such conveyal.

Two courts have set rules concerning distance limits. Rex ex rel. Wells v Green²¹ was a case in which the plaintiff wished to have his children conveyed to school. The Manitoba King's Bench ruled that the distance be measured from door to door. On such measurement, it was found that the children in question lived two feet short of the required distance. Since the trustees had acted with ill-will the court held that the children be conveyed, even if the distance was short.

The same court held, in Rex ex rel. Kowalski v Oak Bluff School District,²² that it is not the intention of the statute to provide transportation from the very door of the pupil's home. The judge stated that merely because the children had to walk ninety rods to reach the school

²¹ Rex ex rel. Wells v Green, (1913) 10 Dominion Law Reports 111.

²² Rex ex rel. Kowalski v Oak Bluff School District, (1937) 3 Dominion Law Reports 500.

bus was no ground for requiring provision of additional transportation, so they could be picked up directly in front of their home.

Where conveyance is not feasible, the school board is responsible for the education of the children concerned at a school outside the district.

The court of Queen's Bench, in Perreault v Kininiste School Unit No. 55,²³ held that where conveyance is impossible it is the trustees' duty to provide education outside the district at their expense. This is not a matter of discretion but a right of the parent or guardian in return for the taxes he must pay. Since the father was obliged to send his children outside the district for education, he was entitled to damages and also to a declaration that he was to have his children educated outside the district at the expense of the school board as long as the present conditions prevailed.

In Ridings v Elmhurst School Trustees,²⁴ the plaintiff's children attended Elmhurst school until it was closed. All of the children except those of the plaintiff were conveyed to the next district; the exception being on the ground

²³ Perrault v Kininiste School Unit No. 55, (1956) 20 Western Weekly Reports 145.

²⁴ Ridings v Elmhurst School Trustees, (1927) 3 Dominion Law Reports 173.

that Mrs. Ridings owned property and paid taxes in the next district. The latter conveyed the children herself and sued for cost of transportation. The Saskatchewan court of appeal issued a mandamus compelling the defendant to pay the costs since the provision of education includes conveyance.

In summary, the school board is responsible for conveyance of all children living beyond the legal distance. It has control of the route and must see that all departmental rules with respect to conveyance are carried out. No contract can be assigned by the driver without proper authority and the school board is responsible for any neglect of the driver.

In determining whether children may be conveyed, the distance may be measured from door to door but they must not expect to be transported from door to door or even from gate to gate.

The trustees are responsible for the cost of education in another district when conveyance is impossible. This is a right of the parents in return for the taxes they pay.

4. Discipline of the Children.

Since the trustees are ultimately responsible for discipline in the school, their rights and those of the teacher must be studied. This section includes the rights

of the trustees and teachers with respect to suspension or expulsion of pupils, the attitude of the courts in cases concerning this and the right of the teacher when ordered to suspend a pupil.

According to school law,

The board of school trustees shall suspend or expel any pupil from school whom the teacher may report to the trustees as persistently disobedient persistently refusing to do assigned school work or addicted to any vice likely to affect injuriously the character of other pupils, until the trustees and teacher shall receive from such pupil assurance of reform.²⁵

Also one of the regulations concerning the practise of discipline of the teacher says,

The teacher, or in the case of a graded school, the principal, shall have power to suspend any pupil guilty of flagrant misconduct or gross disobedience. Any suspension shall be at once reported in writing to the board of school trustees, who may confirm, modify or remove such suspension.²⁶

Thus a teacher may either suspend a pupil and hope for confirmation of such action by the trustees or report the matter to the trustees, leaving them to take action. In either case, the trustees have the ultimate authority.

The courts take a very strict attitude towards the trustees' rights in the matter of expulsion or suspension.

²⁵ New Brunswick Schools Act, 1960, sec. 63(13a).

²⁶ Regulations Respecting the New Brunswick Schools Act, 1959, regulation 17(8).

In Re McCallum and Board of Public School Trustees of Section 6, Township of Brant,²⁷ the court of Queen's Bench held that the mandamus to compel the trustees and teacher to readmit the pupil, although the suspension was illegal, must be refused, since it would probably result in breaking down the authority of the teacher.

In this case the court followed, in part, an unreported case, Re Yuill,²⁸ which maintained that an application for mandamus would not lie to correct a supposed error of the teacher or trustees in a matter of discipline. Such an application was practically an appeal from the decision of the teacher and trustees.

In Finlayson et al v Powell et al,²⁹ when two boys stayed away from school because they did not like the teacher's method, the appellate division of the supreme court of Alberta called this wilful opposition to authority and maintained that it was not only the teacher's right but his duty to suspend them even if their conduct amounted to truancy as defined by law.

²⁷ Re McCallum and Board of Public School Trustees of Section 6, Township of Brant, (1889) 17 Ontario Reports 451.

²⁸ Re Yuill, cited in Re McCallum and Board of Public School Trustees of Section 6, Township of Brant, (1889) 17 Ontario Reports 451.

²⁹ Finlayson et al v Powell et al, (1926) 1 Western Weekly Reports 939.

The teacher must abide by the board's decision with respect to suspension and teach the child when he is allowed to return. The common pleas division of the Ontario supreme court, in Re Minister of Education and McIntyre v Blanchard Public School Trustees et al,³⁰ dismissed the action against the trustees because the teacher had not acted under their direction with respect to the return of the suspended pupil.

It was decided that the trustees had the right to suspend the pupil and their action could not be questioned unless malice could be shown. The court also decreed that this is a judicial function of the trustees and the proper remedy is by mandamus, not by a suit for damages.

The teacher does not have to suspend a pupil on order of the trustees if he has no cause to do so. In Leclerc v Trustees of Perigord School District No. 850,³¹ the trustees ordered the teacher to suspend a pupil and the teacher, having no reason, refused. As a result, the Saskatchewan court of appeal held that the teacher's action was justified. It was the duty of the defendant to suspend or expel a child if there was a good reason for it.

³⁰ Re Minister of Education and McIntyre v Blanchard Public School Trustees et al, (1886) 11 Ontario Reports 439.

³¹ Leclerc v Trustees of Perigord School District No. 850, (1925) 3 Dominion Law Reports 578.

In summary, the trustees may suspend or expel any child from school for persistent disobedience or flagrant misconduct. The teacher or principal may suspend a pupil for the same reasons and then report the same to the school board who will confirm or set aside the suspension.

Parents may seek a writ of mandamus to have the suspension overruled but may not bring a suit for damages. The courts consider this as practically an appeal from the authority of the trustees and teacher, and as a threat to the teacher's authority. Therefore, they take a very strict view of such a case and practically never comply with the plaintiff's desire.

Continued absence of a child from school because of his feelings towards the teacher is considered not as truancy but as grounds for suspension.

Since the right of the trustees to suspend or expel is a judicial right it cannot be questioned unless malice can be shown.

The teacher cannot be compelled by the trustees to suspend a pupil if he has no cause to do so.

5. Safety of the Children.

The school board's responsibility for the pupils extends in a very important way to their safety while in attendance at school. This responsibility will be studied

by considering cases involving accidents outside the school grounds, on the grounds, at games, in the gymnasium and from the use of faulty apparatus. The standard of care of the children and the legal liability of the school board will be determined.

The regulations provide for the teacher's supervision of children and care and repair of all school property that might cause an injury to them.³² Nevertheless, the care of children at school is the ultimate responsibility of the school board, as can be seen from the many suits for damages resulting from injuries to the children.

The trustees, as public officers, have a certain statutory protection in such cases. The clause reads,

No action shall be brought (...) for anything done by virtue of the office of trustees or secretary unless within three months after the act committed, and upon one month's previous notice thereof in writing.³³

A study of more than twenty cases in the supreme courts of Canada depicts certain limits to the board's responsibilities. First, cases concerning injuries to children on the way to and from school will be considered.

³² Regulations Respecting the New Brunswick Schools Act, 1959, regulation 17.

³³ New Brunswick Schools Act, 1960, sec. 71.

In Patterson v Board of School Trustees of North Vancouver,³⁴ the British Columbia court of appeal held that the school board is not liable for injuries caused to a pupil while on the highway close to but outside the school grounds, by the falling of a dead tree which stood on the property of a third person. The only control retained over children beyond the school grounds is disciplinary.

Pearson v Vancouver Board of School Trustees et al³⁵ is a similar case and the decision includes the fact that an informal notice sent to the solicitor of the school board is adequate notice of action. It is sufficient if the notice fairly and reasonably discloses the ground of complaint.

The decision of Edmondson v Moose Jaw School Trustees³⁶ concerning an injury on the grounds after school, carries the point further. The Saskatchewan court of appeal stated that the trustees are not insurers of the safety of children going to or returning from school. The respondent's duty was to go home and he had no right to be on the school grounds.

³⁴ Patterson v Board of School Trustees of North Vancouver, (1929) 2 Western Weekly Reports 181.

³⁵ Pearson v Vancouver Board of School Trustees et al, (1941) 3 Western Weekly Reports 874.

³⁶ Edmondson v Moose Jaw School Trustees, (1920) 55 Dominion Law Reports 563.

The pole which caused the injury to the onlooker was not dangerous for the purpose for which it was supposed to be used.

The reason that the board was not liable is embodied in the principle that school children are not licensees but, at least, invitees. The responsibility of an occupier of premises towards invitees is to take reasonable care to prevent injuries from possibly hidden causes, of which the occupier is aware or ought to be aware.

Many cases concerning injuries acquired in games and gymnasium exercises have been decided in the courts. The questions of negligence and supervision are involved here.

The case of Levine v Board of Education of the City of Toronto³⁷ concerns an injury contracted during a game. The Ontario court of appeal decided that the board was acting virtute officii, in that it was authorized to hold games. The judge stated that education includes exercise of the body as well as of the mind. The board was not guilty of negligence and, moreover, the action was not brought within the required time.

The decision of Murray et al v Belleville Board of Education³⁸ decreed that the board of trustees is not liable

³⁷ Levine v Board of Education of the City of Toronto, (1933) Ontario Weekly Notes 238.

³⁸ Murray et al v Belleville Board of Education, (1943) 1 Dominion Law Reports 494.

for accidents in a gymnasium when the instructor is competent and the pupil has been coached in the exercise. It is not negligence to permit a pupil to take part in an exercise in which there is an element of danger if he has been progressively trained to avoid such danger and the exercise is one reasonably suitable to his age and condition, physical and mental.

The British Columbia court of appeal in Gard v Board of School Trustees of Duncan³⁹ stated that an injury from playing games will not establish breach of duty unless it can be proved that more adequate supervision would have prevented the injury. This would be difficult to prove.

Hall et al v Thompson et al,⁴⁰ resulting from an injury in wrestling, followed the preceding decision with respect to supervision and established that if there were liability it would lie in the board of trustees, not the teacher.

Cases involving injuries to children on the playgrounds will next be considered.

³⁹ Gard v Board of School Trustees of Duncan, (1946) 2 Dominion Law Reports 441.

⁴⁰ Hall et al v Thompson et al, (1952) 4 Dominion Law Reports 139.

Dyer v Halifax School Commissioners,⁴¹ regarding an injury in the school yard, followed the above reasoning concerning supervision, too. The accident was not of a foreseeable character so that greater supervision would have prevented it.

Concerning an accident sustained while playing with lumber in the school yard, the decision of Longphee v Shediac Board of Trustees⁴² included the necessity of notice not only in cases involving mis-feasance but also in non-feasance on the part of the trustees.

The plaintiff pleaded that the necessity of notice did not apply when the corporation was sued and that the Limitation of Actions Act⁴³ extends the limitation period in the case of infancy. The court ruled the former plea unstatutory and the latter plea not applicable since the school law excludes this act.

Where a child was injured on the grounds before presenting himself to the teacher in the morning, the Saskatchewan King's Bench, in Koch et al v Stonefarm

⁴¹ Dyer v Halifax School Commissioners, (1956)
2 Dominion Law Reports (2d) 394.

⁴² Longphee v Shediac Board of Trustees, (1957)
24 Dominion Law Reports (2d) 723.

⁴³ Limitation of Actions Act, Revised Statutes of New Brunswick, 1952, cap. 133, sec. 18.

School District, stated,

No claim for damages will lie against a board in cases of mere non-feasance except where it is established that they negligently failed to perform a duty to the plaintiff which the act imposes on them.⁴⁴

Thus, in non-feasance, negligence must be proved.

Another injury on school premises led to the case of Durham et al v Public School Board of Township School Area of North Oxford.⁴⁵ The decision of the court of appeal distinguished between inherent and potential danger. In the case of the latter the defendant is responsible only if the consequences are reasonably foreseeable. Potential danger was involved here but the board of trustees did not become liable even though the grounds were in an untidy condition through the presence of debris. This was due to the fact that there was no causal connection between the condition of the yard and the injury.

In Wiggins v Colchester South Public School Board,⁴⁶ although the school premises were proved to be unsanitary, the board did not become liable since the resulting

⁴⁴ Koch et al v Stonefarm School District, (1940) 2 Dominion Law Reports 602.

⁴⁵ Durham et al v Public School Board of Township School Area of North Oxford, (1960) 23 Dominion Law Reports (2d) 711.

⁴⁶ Wiggins v Colchester South Public School Board, (1922) 23 Ontario Weekly Notes 157.

illness of a child could not be proved to stem from this cause.

The standard of care of the children will next be studied.

Many case decisions, such as in Butterworth et al v Ottawa Collegiate Institute Board,⁴⁷ Ellis et al v Moose Jaw Public School District Trustees and Blondin Roofing Products L't'd,⁴⁸ and Adams v Board of School Commissioners for the City of Halifax,⁴⁹ reiterate the standard of care established in Williams v Eady. In this case Lord Esher said, "The schoolmaster is bound to take such care of his boys as a careful father would take of his boys (...)." ⁵⁰ This involves supervision according to age, with teen-age children being responsible for exercising reasonable intelligence and care for their own safety.

In proving negligence it must be shown that with more supervision, the injury would not have been sustained

⁴⁷ Butterworth et al v Ottawa Collegiate Institute Board, (1940) Ontario Weekly Notes 332.

⁴⁸ Ellis et al v Moose Jaw Public School District Trustees and Blondin Roofing Products L't'd, (1946) 2 Dominion Law Reports 697.

⁴⁹ Adams v Board of School Commissioners for the City of Halifax, (1951) 27 Maritime Provinces Reports 232.

⁵⁰ Williams v Eady, (1893) 10 T L R 41, cited in Butterworth et al v Ottawa Collegiate Institute Board, (1940) Ontario Weekly Notes 332.

and that the danger is one of which the master knows or ought to know. Moreover, the responsibility of the school board cannot be delegated.

In Ritchie v Gale and Vancouver School Trustees,⁵¹ a child on the school grounds backed into an on-coming car proceeding up the drive. The British Columbia court of appeal distinguished among original, contributory and ultimate negligence. Since the plaintiff was guilty of ultimate negligence and the defendant, Gale, was guilty of contributory negligence, the damages were split and Gale made responsible for half the sum sought. Action against the board of trustees was dismissed.

A recent case shows the court's attitude of the present day, concerning supervision. The decision of the Manitoba court of appeal, in Schade and Schade v Winnipeg School District No. 1 and Ducharme,⁵² contains the following statement,

⁵¹ Ritchie v Gale and Vancouver School Trustees, (1935) 1 Dominion Law Reports 362.

⁵² Schade and Schade v Winnipeg School District No. 1 and Ducharme, (1959) 28 Western Weekly Reports 577.

The court's realization of the necessity of developing a sense of responsibility in children has led to a changing attitude and a more practical approach to the question of supervision by school authorities. While there is a duty to supervise certain activities, such duty bears some relation to the age of the pupils, the special circumstances of each case and, particularly, the type of activity. (...) One of the most important aims of education is to develop a sense of responsibility on the part of pupils, personal responsibility for their individual actions and a realization of the personal consequences of such actions.⁵³

With this attitude of the court the distinction between contributory and ultimate negligence on the part of the plaintiff, becomes increasingly important.

One rule of the courts involved in the establishment of liability is that of res ipsa loquitur.

In Seringeour v Board of Management of Canadian District of the American Lutheran Church⁵⁴ and in Ellis et al v Moose Jaw Public School District Trustees and Blondin Roofing Products L't'd⁵⁵ the courts held that the rule of res ipsa loquitur did not apply. The rule applies when the injurious agency is under the sole management of

⁵³ Schade and Schade v Winnipeg School District No. 1 and Ducharme, (1959) 28 Western Weekly Reports 577.

⁵⁴ Seringeour v Board of Management of Canadian District of the American Lutheran Church, (1947) 1 Western Weekly Reports 120.

⁵⁵ Ellis et al v Moose Jaw Public School District Trustees and Blondin Roofing Products L't'd, (1946) 2 Dominion Law Reports 697.

the defendant and the accident would not result if those who have the management used proper care.

When the rule does apply, the onus is on the defendant to satisfy the court that he has not been negligent.

In Brost and Brost v Tilley School District,⁵⁶ although the doctrine of res ipsa loquitur did not apply, still the evidence was sufficient to shift to the defendants the burden of showing reasonable supervision. The Alberta supreme court held that the standard of care is of a higher degree than that of an invitee since the child is compelled to go to school. If there is a foreseeable risk which is a real one, there is a duty on the part of those responsible to guard against it even though the actual damage cannot be foreseen.

Although the school board is not ordinarily responsible for acts of contractors, its responsibility cannot be completely delegated where acts of the contractor affect the children's safety. This is seen in Ellis et al v Moose Jaw Public School District Trustees and Blondin Roofing Products L't'd⁵⁷ where a contractor was involved. Both the

⁵⁶ Brost and Brost v Tilley School District, (1955) 3 Dominion Law Reports 159.

⁵⁷ Ellis et al v Moose Jaw Public School District Trustees and Blondin Roofing Products L't'd, (1946) 2 Dominion Law Reports 697.

board and the contractor were made responsible for an accident caused by a boy swinging on a rope which had been attached to the roof of the school by the contractor.

The board is responsible for any accident caused by apparatus in need of repair. In Schultz v Grasswold School Trustees,⁵⁸ the board was responsible because play ground equipment in need of repair was the cause of an accident. The board attempted, but in vain, to shift the responsibility by producing the inspector's report.

Inspection of dangerous articles is involved in the next case. Walton v Vancouver School Trustees⁵⁹ resulted from a shooting accident. The British Columbia court of appeal held the board responsible because the teacher in charge of the competition had allowed the use of a gun without inspection and competent supervision. The decision stated that in the case of articles dangerous in themselves, there is a peculiar duty to take precaution imposed on those who send forth or instal such articles when it is necessarily the case that other parties will come within their proximity.

⁵⁸ Schultz v Grasswold School Trustees, (1930)
3 Dominion Law Reports 600.

⁵⁹ Walton v Vancouver School Trustees, (1924)
2 Dominion Law Reports 387.

There were only two of the more than twenty cases where a teacher was held liable for injuries to school children.

Gray et al v McGonegal and Trustees of Leeds and Lansdowne Front Township School Area⁶⁰ resulted when a child was badly burned in trying to light a gas stove for the purpose of heating soup for the teacher's lunch. The Ontario high court held the trustees responsible for authorizing the serving of hot lunches. But the teacher was also responsible since she was the one who wanted the soup on this particular day. Hence it was a private act, under a private authority. Also, since it was not a statutory act, the plea of the defendants, of lack of notice, was not allowed.

In Beauparlant et al v Appleby School Section Board of Trustees et al,⁶¹ action was brought for damages when a child was injured on a bus trip taken by the school under the supervision of a teacher. Since the half-holiday was unauthorized by the trustees and negligence was proved, the Ontario high court held the teacher responsible.

In summary, while the teacher has the care and supervision of the children at school, the school board is

⁶⁰ Gray et al v McGonegal and Trustees of Leeds and Lansdowne Front Township School Area, (1949) 4 Dominion Law Reports 344.

⁶¹ Beauparlant et al v Appleby School Section Board of Trustees et al, (1955) Ontario Weekly Notes 286.

legally responsible for their safety. The only exception is that the teacher assumes the responsibility when acting outside statutory authority.

As public officers, the board members have the right of notice in case of court action and the suit for damages must be brought within a certain time. This holds in the case of non-feasance as well as misfeasance. The Limitations of Actions Act does not remove the necessity of bringing action within the time set by the Schools Act. The notice may be an informal one written to their solicitor as long as it sets forth the grounds of the complaint.

The board is not responsible for accidents occurring outside the school grounds, on the way to and from school or on the school grounds after school hours.

It is not responsible for accidents due to games, provided there is adequate supervision. Neither is it liable for accidents from exercises in the gymnasium if the children have been progressively trained and the exercise is suitable to the age level.

The board is liable for accidents resulting from faulty apparatus or from those occurring on the school grounds and due to lack of supervision or inadequate supervision.

The standard of care is that of a careful father and the responsibility is somewhat greater than that of an occupier to an invitee; that is, reasonable care from causes of which the occupier is or ought to be aware. This involves supervision according to the age of the pupil, the type of activity and the circumstances of the case. All children are expected to assume some responsibility for their own safety, the amount depending on age. If they are guilty of ultimate negligence the damages will, at least, be reduced.

In deciding cases, the court considers whether the injury was due to inherent or potential danger. In the case of the latter, it must be proved that the consequences were foreseeable. The court also decides according to whether the principle of res ipsa loquitur applies. If it does, this means that the injurious agency was under the sole management of the defendant and the accident would not have occurred with proper care. When the principle applies the defendant has to prove lack of negligence.

The defendant will be proved guilty in the case of misfeasance and may be proved so in the case of non-feasance, if negligence is involved.

To sum up the legal basis of the trustees' responsibility to the children, the following facts may be given.

Every child of a resident or ratepayer has the right to free schooling and the school board is responsible for providing it. The term "resident" has no set definition but it has been decided that the child may for the purposes of schooling have a residence independent of the parent's residence. Also he may have more than one residence.

The right of free schooling is so important that the board must seek counsel when uncertain. Unvaccinated children can be excluded only under statutory procedure and refusal to partake in patriotic exercises will not exclude one.

The board must provide sufficient accommodation or be subject to a writ of mandamus forcing the building of a school or renting extra rooms.

The ultimate responsibility for free schooling and accommodation lies in the province and the latter should be given the chance to assume this when discrimination occurs and the board is unable to cope with it. A solution, in such a case, is the appointment of an official trustee.

The right of the trustees to assign pupils to departments and schools is a discretionary right and the courts will not interfere. Another such right is that of forwarding applications of those wishing a vocational education to a district where such is provided.

The board's responsibility for conveyance of children living a set distance from the school involves control of the route, seeing that departmental rules are obeyed and liability for any negligence of the driver. Conveyal distance may be measured from door to door but actual conveyance may not even be from gate to gate. If conveyance is impossible or impractical the board will become financially responsible for schooling in another district.

The teacher or principal may suspend a child for persistent disobedience or flagrant misconduct. Such a decision must be confirmed by the trustees, or the teacher may leave the suspension to the trustees who have a judicial right in such cases. The court's method of overruling such action is by writ of mandamus. But since this almost amounts to an appeal from the trustees' and teachers' authority, the courts will not grant such an order unless malice can be shown.

Continued absence from school because of the child's attitude to the teacher should bring suspension rather than being considered as truancy. The teacher cannot be compelled to suspend without experiencing cause to do so.

The board is legally responsible for the safety of school children except where the teacher has acted without statutory authority and this responsibility cannot be delegated to agent or contractor. If action is brought, it

must be within a set time and the trustees have the right of notice, either in a case of misfeasance or non-feasance. The notice may be informal and sent to their solicitor. It must state the grounds for action.

The trustees are not responsible for injury outside the school grounds, on the grounds after school or on the grounds when supervision is not authorized. Also they are not liable for injuries due to games that are adequately supervised or due to gymnasium exercises where proper training has been given. They are responsible for injuries due to faulty apparatus or inadequate supervision.

The standard of care is that of a careful father and the responsibility is somewhat more than that due an invitee by an occupier. Supervision and the responsibility of the child must both be according to age and the type of activity.

In the case of potential danger it must be proved that the defendant should have foreseen the outcome. If the principle of res ipsa loquitur applies, lack of negligence must be proved. Also, in a case of non-feasance, negligence must be proved.

Having studied the responsibility of the trustees for provision of free schooling, adequate accommodation, conveyance where necessary, the discipline of the school and safety of the children, the legal foundation of their

duties and rights in this respect has been determined. With the basis of the board's responsibility to ratepayers and children set forth, their powers in contracting and financing for the duties thus involved must now be considered.

CHAPTER IV

POWERS OF THE SCHOOL BOARD IN CONTRACTING AND FINANCING

In order to study the school board's responsibility in contracting and financing, it is necessary to consider statutory authority in contracting, the formalities of contracting, legal authority in financing, relations of the board with the municipal council or county finance board and the statutory right to borrow.

Since the board is a non-trading corporation its authority in contracting is exactly limited to power derived from the school law. Therefore, it is important to distinguish carefully between ultra vires and intra vires contracts. Again, since a lack of some of the formalities may invalidate a school board contract, one must determine which of these are merely directory and which are imperative. One must also explore the legal authority of the board in financing for the expenses of operating the schools. Evolving from this is a study of the board's relations with that particular corporation which makes the money available. In borrowing, as in contracting, the board's authority is determined by statutory power. Thus, the limits and authority in this respect must be exactly determined.

1. Statutory Authority in Contracting.

A study of the board's authority in contracting must include a determination of that for which it may legally contract, the necessity of money to cover the obligation involved in the contract, when recovery may be made on an ultra vires contract, a limitation on the trustee's right to contract and rules concerning the bond offered by a contractor.

Besides the right to contract with teachers and other personnel, trustees may contract for the erection, repair and furnishing of school buildings.¹ This is the extent of their power in contracting.

According to the statutes, trustees will become personally liable for any non-fulfillment of contracts.²

All contracts must be within statutory authority. If they are not they will be ruled ultra vires and void.

In York Public School Board v Toronto Board of Education,³ a county school section made an agreement with the city board concerning the admission of children of the former to schools of the latter. The Ontario supreme court

1 New Brunswick Schools Act, 1960, sec. 61(2).

2 Ibid., sec. 60.

3 York Public School Board v Toronto Board of Education, (1925) 23 Ontario Weekly Notes 284.

held that such an agreement was not authorized and the fact that it was approved by the Minister of education did not make valid that which was invalid.

In McNabb and Jarnagin v Findlay,⁴ two of the trustees agreed to work on the repair of the school building. In this case, the work was such as the board may contract for, so the money paid for the services could not be recovered. The court remarked that if the board had spent money for purposes other than those allowed by the statutes, the members of the board who voted for the same and sanctioned the illegal action would be liable for the same. Since trustees may not be remunerated, those who did the work leave themselves open to quo warranto proceedings.

It is most important that no contract be made for work until there is money to cover the obligation.

The decision of the Ontario chancery division, in Smith v Fort William School Board et al,⁵ held that any contract for building a school house is ultra vires until the necessary funds have been provided according to the statutes and no school board can contract for any work involving a greater sum than that provided. Hence, an

⁴ McNabb and Jarnagin v Findlay, (1932) 3 Western Weekly Reports 255.

⁵ Smith v Fort William School Board et al, (1893) 24 Ontario Reports 366.

injunction was granted against the trustees to restrain them from building and they were ordered to repay the sums already paid to the contractors. The judge said,

I think it highly necessary that none of the safeguards which the legislature has thought fit to interpose between the zeal or the possible extravagance of school boards, and the public which is to find the money shall be disregarded.⁶

In Forbes v Grimsby Public School Board,⁷ on the other hand, the Ontario weekly court held the contract for purchase of a site to be intra vires although the money raised by debentures did not cover the necessary sum. This was due to the fact that the board would be receiving extra money from the sale of the old school house.

Recovery may in some cases be made on ultra vires contracts, although in most cases this is not so.

In Provincial Bank of Canada v Trustees of School District No. 2,⁸ the New Brunswick supreme court held that an ultra vires contract is in the same category as an illegal contract and there can be no recovery on it except

⁶ Smith v Fort William School Board et al, (1893) 24 Ontario Reports 366.

⁷ Forbes v Grimsby Public School Board, (1903) 6 Ontario Law Reports 539.

⁸ Provincial Bank of Canada v Trustees of School District No. 2, (1955) 35 Maritime Provinces Reports 161.

where money is involved and this money is used to pay existing or future liabilities of the defendant corporation.

Where a school board contracted with an architect for plans for a school house and later the building proposal was defeated by the ratepayers, the supreme court, in Hutton v Barton School Trustees,⁹ entitled the architect to recover upon a quantum meruit. The damages were limited to a sum covering work necessary for the purposes in respect of which the defendants at the time had power to obligate themselves. The trustees had not acted within statutory powers in hiring the architect because no meeting of the ratepayers had made a decision to build.

In Vassar School District Corporation v Spicer,¹⁰ previous trustees had awarded an \$800 contract for building a school. When it was partly finished, the contractor defaulted and the building was finished by one of the trustees who used school funds for this purpose, without authorization. The present board sued to recover the funds. It was held by the court that,

⁹ Hutton v Barton School Trustees, (1926) 31 Ontario Weekly Notes 358.

¹⁰ Vassar School District Corporation v Spicer, (1911) 18 Western Law Reporter 147.

Officers of corporations who advance money for necessary corporate expenses, though the transaction is ultra vires, in the sense that it is not authorized, may be subrogated to the rights of the creditors whose claims are paid out of the money so advanced.¹¹

The plaintiffs could not recover, as they had ratified and adopted the work done by the defendant.

The bond of the contractor, accepted by the school board, must be according to the terms of the contract.

Greenwood v Estevan School Trustees¹² was a case brought by a contractor for damages against the school board because he was not allowed to build, after signing a contract to do so. The board objected to the bond offered by the contractor because it was not that of a bonding company. Also the style and title of the school board were incorrectly stated in the bond.

The Saskatchewan supreme court held that the bond was not invalidated by this irregularity and that the plaintiff must prove the bond to be in compliance with the terms of the contract. He did so and was awarded damages for loss of profit and loss due to incurring liabilities in preparation for the construction.

¹¹ Yassar School District Corporation v Spicer, (1911) 18 Western Law Reporter 147.

¹² Greenwood v Estevan School Trustees, (1910) 15 Western Law Reporter 568.

Trustees are not to have a personal interest in any corporate agreement.¹³ Otherwise, the contract is invalid.

In Lee v Toronto Public School Board,¹⁴ the court of common pleas held that if a trustee is personally interested in a contract of the corporation it is ultra vires. In this case, a member of the board was a shareholder in three companies having contracts with the board. Since there was no financial benefit to the trustee these contracts were deemed intra vires.

In summary, all school board contracts which are not within statutory authority will be declared ultra vires and void. In order to be within such authority they must be contracts with school personnel or contracts for construction, repair or furnishing of school buildings.

In the case of non-fulfillment of contracts, the trustees become personally liable.

No approval of an invalid contract by the Minister of education will render it valid.

Although trustees may not be personally interested in school board contracts, if they do work for which the board may contract they may rightfully be paid but they forfeit the trusteeship.

¹³ New Brunswick School Act, 1960, secs.59, 96(4).

¹⁴ Lee v Toronto Public School Board, (1881) 32 Upper Canada Common Pleas 78.

Those on the board who sanction illegal contracts, become liable for the same.

No contract may be made for work on the buildings or grounds until the trustees have been authorized to spend an amount of money sufficient to cover the obligation. If they attempt to contract without such authorization, an injunction may be issued to prevent them from doing so and they may be compelled to repay the sums already spent.

Contracts without financial authorization may be intra vires if there is an adequate amount of money forthcoming in the future, from the sale of property.

Recovery on an ultra vires contract may be made against the board if the money involved was used to pay existing or future liabilities of the corporation.

Recovery on quantum meruit may be ordered to cover that part of the work done for which the board had authority to contract.

Trustees who advance board money for corporate expenses, although the transaction is not authorized, may not be forced to repay the same if the benefits are received and accepted.

The bond of any body, with whom the school board contracts, must be in compliance with the terms of the contract, if it is to be intra vires.

Any contract, in which a trustee is personally interested, is ultra vires. This does not apply to contracts with companies of which a trustee is a shareholder.

2. Formalities of Contracting.

The formalities of contracting include the issuance of a contract from corporate decision in a board meeting and the necessity for a contract to be in writing, signed and sealed.

Since contracts must be the result of corporate decision, they cannot be made by an agent and still be binding on the board.

The supreme court of Canada, in Pietou County School Trustees v Cameron et al,¹⁵ stated that while acts of a corporation must be done by an agent, a corporation aggregate may bind itself directly and without an agent when it contracts. Contracting should be an action taken by the corporate body at a lawful meeting.

In Waterman-Waterbury Mfg. Co. v South Arcola School District,¹⁶ the Saskatchewan court of appeal ruled that the fact that work had been done for the district and the

¹⁵ Pietou County School Trustees v Cameron et al, (1879) 2 Supreme Court Reports 690.

¹⁶ Waterman-Waterbury Mfg. Co. v South Arcola School District, (1928) 3 Western Weekly Reports 690.

benefits of it received, did not entitle the contractor to recover the amount due because the contract was not adopted at a lawful meeting.

Any contract not signed by all members of the corporation is invalid. This is proved in Kelly v Grimmer School District.¹⁷ In this case, the trustees were authorized to borrow money for construction of a school. One of the board borrowed the money in the name of the corporation and then disappeared with it. The New Brunswick supreme court ruled the trustees' certificate of indebtedness was not a proper one since one of the corporation was not present at the signing and knew nothing about it. As this meant that no meeting had been held the certificate was invalid and the plaintiff could not collect the money owing.

On the other hand, the omission of date and plans of the construction may not invalidate an agreement.

In Coghlan v The School Trustees of Tilbury East in the County of Kent,¹⁸ a contract for building a school was inartificially drawn, since neither date nor plans were included. Also the parties to the contract were not named. However, it had been signed and sealed by the trustees. Also,

¹⁷ Kelly v Grimmer School District, (1927) 3 Dominion Law Reports 704.

¹⁸ Coghlan v The School Trustees of Tilbury East in the County of Kent, (1874) 35 Upper Canada Queen's Bench 575.

the latter had made part payment, thus recognizing the contract. Therefore, it was held to be valid and the trustees were liable for payment.

Some courts hold the sealing of the contract by the trustees to be imperative. The Ontario divisional court, in McMurray v East Nissouri Public School Board,¹⁹ held that agreements shall be in writing, signed and sealed. This is imperative and no damages can be recovered otherwise.

Marshall v The School Trustees of School Section No. 11, Township of Kitley²⁰ is another case where the board was exempt since the contract was not under seal. Although a school had been built for the board under this agreement, the trustees did not have to pay for it.

In the case of Alexander v Trustees of School District No. 7 Parishes of Bathurst and Beresford,²¹ the court held that a seal is not necessary to create a valid contract, this regulation being in conflict with a clause of the New Brunswick Corporations Act.²²

¹⁹ McMurray v East Nissouri Public School Board, (1910) 21 Ontario Law Reports 46.

²⁰ Marshall v The School Trustees of School Section No. 11, Township of Kitley, (1855) 4 Upper Canada Common Pleas 373.

²¹ Alexander v Trustees of School District No. 7 Parishes of Bathurst and Beresford, (1891) 30 New Brunswick Reports 597.

²² Corporations Act, Revised Statutes of New Brunswick, 1952, cap. 42, sec. 6(1).

This clause reads as follows,

Every contract made or entered into by a corporation within the scope of its charter or act of incorporation, under such conditions and circumstances and in such manner that the same would be valid and binding if the corporate seal were affixed thereto, shall be valid and binding notwithstanding the omission to affix the seal.²³

The court also states unequivocally that contracts are not authenticated by a seal. Thus school contracts need not be sealed, in New Brunswick.

In Quinlan v Saint John County School Trustees,²⁴ a New Brunswick county court held that a teacher's contract in this province is not to be considered invalid because it has no corporate seal.

In summary, all contracts must result from corporate decision at an authorized board meeting and cannot be made by an agent in the name of the board. The trustees are not liable for contracts which are not so adopted.

Every school board contract must be signed by all the trustees and not just by a majority. If the date, names of contracting parties or construction plans are omitted, this may not invalidate the contract providing the above-mentioned regulations are fulfilled.

²³ Corporations Act, Revised Statutes of New Brunswick, 1952, cap. 42, sec. 6(1).

²⁴ Quinlan v Saint John County School Trustees, (1913) 14 Dominion Law Reports 376.

While some courts insist that a contract have the corporate seal, twice the New Brunswick courts have ruled this to be a contradiction of the Corporations Act and, hence, unnecessary.

3. School Board Financing.

In this section school board financing will be studied under the topics: statutory authority, surpluses, use of the courts and corporation expenses.

All financing must be under statutory authority. This is decided in Eltham School District Trustees v Langston²⁵ where the court held that in order to justify drawing upon the funds of the district, express authority must be found in the statutes or the expenditure must be necessarily incidental to the exercise of some power possessed by the trustees.

When school revenue exceeds disbursements the school board is entitled to the surplus.

In Nottawasaga Public School Trustees v Nottawasaga²⁶ the court ruled that, since the estimates were bona fide, the trustees are entitled to the surplus.

²⁵ Eltham School District Trustees v Langston, (1923) 3 Western Weekly Reports 641.

²⁶ Nottawasaga Public School Trustees v Nottawasaga, (1888) 15 Ontario Appeal Reports 310.

In New Brunswick this applies to city and town boards. In other districts, extra money in the hands of the trustees is to be transferred to the county finance board and later applied towards the reduction of the supplementary school budget.²⁷

The trustees of consolidated districts are to prepare estimates of the cost of establishing and operating new schools to be presented to the school meeting for authorization of the raising of the sum of money needed.²⁸

The rural boards also present estimates of the cost of any proposed building project to the district meeting for authorization.²⁹

If a board does not prepare an estimate of the cost of extra accommodation when it should, the court will compel the same.

The case of Re West Missouri Continuation School³⁰ resulted from a difference of opinion over renting or building a school. The court held that this was a decision of the school board but that a writ of mandamus could be

²⁷ New Brunswick Schools Act, 1960, sec. 61(9A).

²⁸ Ibid., sec. 116(10).

²⁹ Ibid., sec. 61.

³⁰ Re West Missouri Continuation School, (1912)
²² Ontario Weekly Reporter 842.

served to compel the trustees to requisition the municipal council for the necessary expense.

The courts will also settle differences concerning assets and liabilities of districts on consolidation or change of boundaries, if necessary. This is authorized by school law.³¹

In the case of Re Hamilton and Saltfleet,³² part of a district was annexed to the city of Hamilton. The assets of the annexed portion became vested in the city board, leaving the unannexed portion without assets. The court held that there should be an adjustment of assets and liabilities, according to the assessment valuation in each part.

Another case, The Village of Crystal Beach v The Township of Bertie,³³ resulted from the formation of a new school district by incorporation of parts of two other districts and later, the enlargement of the new district by annexation of another part of one of the two other districts. In this instance, no agreement over the assets could be reached. Therefore, an arbitrator was appointed to decide upon the situation.

³¹ New Brunswick Schools Act, 1960, sec. 4(7).

³² Re Hamilton and Saltfleet, (1953) Ontario Weekly Notes 11.

³³ The Village of Crystal Beach v The Township of Bertie, (1954) Ontario Weekly Notes 441.

The trustees must include in their estimates the cost of court action, when it has been held that they acted within statutory authority.

In Re Tiernan and the Municipality of Nepean,³⁴ the court of Queen's Bench held that when the trustees defend themselves in a groundless action they can be reimbursed out of district moneys. Such cost can be classified as expenses of the school. The court stated that this is a right of all corporations.

On the other hand, in Stark v Montague et al.,³⁵ the court held that the trustees have no right to be reimbursed in an action against them which they defended unsuccessfully. Otherwise there would be no point in withstanding the illegal proceeding. It would be better to submit to what has been illegally done than to oppose it even with certainty of success.

In summary, the trustees may not expend any money unless there is express statutory authority for it or it is necessarily incidental to some statutory power. This authority includes operational costs, building costs and the cost of execution of corporate powers.

³⁴ Re Tiernan and the Municipality of Nepean, (1857) 15 Upper Canada Queen's Bench 87.

³⁵ Stark v Montague et al., (1857) 14 Upper Canada Queen's Bench 473.

When revenue exceeds disbursements the city or town boards may retain such money, providing they have made bona fide estimates. Other boards must transfer the excess to the county finance board to be applied to the supplementary budget of the district.

Estimates of building costs are to be prepared by the trustees for the consideration of the ratepayers at school meetings.

The courts will compel the making of such estimates where necessary accommodation is involved. Also the courts will settle differences between districts over distribution of assets and liabilities, when school district changes are involved. Such adjustment is made according to assessed valuation as much as possible.

The trustees may budget for the cost of a groundless court action when they defend themselves successfully. But they may not budget for the expense of an action against them which they defended unsuccessfully.

4. Relations with the Town Council or Finance Board.

In order to explore the relations between the school board and the municipal council or county finance board, the legal status of each of these corporations, with respect to the handling of school money, must be studied. Also

there must be an understanding of how school money is budgeted and requisitioned; and the importance of the number and time of the presentations of estimates must be mentioned.

The financial relations of the school board and town council are explicitly stated in the case, Re Almonte Board of Education and Almonte.³⁶ Here, the court stated that school boards have plenary power. They are given this power that they may carry out their operations. Instead of giving them the power to raise the money themselves, they have the right to requisition the municipal council to levy the rates as part of the general levy for municipal purposes. This does not confer on the municipal council any power to review the action of the requisitioning board. If however the school board goes beyond its statutory jurisdiction and does or plans to do something ultra vires, the municipal council may refuse to act and in such case, no court will issue a writ of mandamus against it. Moreover, the council is justified in making such inquiry as is necessary to assure it that the demand is for something within the jurisdiction of the demanding board.

³⁶ Re Almonte Board of Education and Almonte, (1930) 1 Dominion Law Reports 568.

The supreme court of Ontario, in Clarkson v Town of Alliston,³⁷ stated that money paid to the board is not a payment of council funds but rather, a transfer to the board of funds which are already its own.

In Re West Nissouri Continuation School,³⁸ the court decreed that school money is not treated as a debt owing by the council to the board but it is rather money held in trust by the council for the school board. The council has no right of set-off because set-off is available only between the same parties and in the same right as the claim.

The municipal council has no right to question the estimates presented by the school board. In Toronto Public School Board v Toronto,³⁹ it was stated by the court that the council is without authority to question any requisition that is intra vires.

This power of the trustees to requisition money from the municipal council applies in the case of city and town boards in New Brunswick.

³⁷ Clarkson v Town of Alliston, (1928) 62 Ontario Law Reports 149.

³⁸ Re West Nissouri Continuation School, (1912) 4 Dominion Law Reports 847.

³⁹ Toronto Public School Board v Toronto, (1902) 4 Ontario Law Reports 468.

The statutes state that the boards of cities and incorporated towns are to make yearly estimates of the sum needed for the support and maintenance of schools and for the execution of the various powers vested in the board.⁴⁰

The trustees of rural and consolidated districts are to furnish the secretary of the county finance board with a yearly budget of ordinary expenses before September fifteenth. If the trustees fail to do this the county finance board has the right to prepare and fix the amount of same.⁴¹ Also the trustees must prepare an annual supplementary budget of all expenses over and above the ordinary expenses, and present this to the county finance board.⁴²

The county finance board, being an educational corporation with primarily plenary powers, has the power of revision in the case of both the ordinary and supplementary budgets.⁴³

The ordinary budgets contain an estimate of expenses that are common to all the districts of the county. Whereas the supplementary budget contains an estimate of expenses

⁴⁰ New Brunswick Schools Act, 1960, sec. 96(11).

⁴¹ County Schools Finance Act, Revised Statutes of New Brunswick, 1952, cap. 47, sec. 6.

⁴² Ibid., sec. 16.

⁴³ Ibid., secs. 6(2), 16(3).

over and above the ordinary expenses. For example, any amount of teacher's salary more than the statutory minimum is included in this budget.

The supplementary budget must be approved by the district at the annual meeting.⁴⁴

Only one estimate per year is to be presented by the school board to the town council or county finance board.

In Re Beaverton Public School Trustees and Thora,⁴⁵ the court decreed that one estimate, not a partial estimate or two or more estimates, but only one, containing all school expenses, is to be presented to the council every year. Until the presentation of the estimate, the school board is not entitled to any payment by the municipal council.

Also, a set time for presentation of the estimate is most important. In Ex parte Carvill⁴⁶ the court decreed that the time of presenting the estimate is imperative.

In summary, school corporations have plenary power but not the right to raise the money themselves. Municipal corporations have the duty of levying school rates as part

⁴⁴ Regulations Respecting the New Brunswick Schools Act, 1959, regulation 5(2).

⁴⁵ Re Beaverton Public School Trustees and Thora. (1932) 4 Dominion Law Reports 458.

⁴⁶ Ex parte Carvill, (1873) 14 New Brunswick Reports 222.

of the general municipal levy and they pay such sums to the school board on requisition. The county finance boards are corporations with plenary powers but, like the school boards, without the right to levy rates. They receive the ordinary and supplementary budgets of the school boards. The ordinary budget contains all expenses common to every district of the county. The supplementary budget contains all extra expenses not contained in the ordinary budget and must be authorized by the school meeting.

The municipal council has no power to review the requisition of the school board other than to determine whether all items are for expenses within the statutory authority of the school board. If an item were unauthorized the municipal council could refuse to act.

The county finance board has the right of revision of estimates presented by the school district, both in the case of the ordinary budget and the supplementary budget.

When school money is raised by the municipal council it is not paid to the school board as a debt owing to the latter, but rather as money belonging to the school board and held in trust for it by the council. In consequence, the council has no right of set-off because school money and other municipal money have different claims on them.

One annual estimate, and one only, is prepared by the school board; and until it is presented to the council

the school board is not entitled to any payment. The time of presentation of the estimates of expenditure is imperative.

5. Borrowing.

In order to understand the borrowing powers of the school board, one must study the borrowing authority of such a corporation, the statutes conferring the right to borrow, restrictions on the type of borrowing, the issuance of debentures and borrowing for current expenses.

School boards can only borrow for purposes authorized by the statutes and according to statutory procedure.

The supreme court of New Brunswick, in Provincial Bank v The Trustees of School District No. 2,⁴⁷ stated that the school board, being a non-trading corporation, has no inherent power to borrow money. Its borrowing powers are limited to the authority conferred upon it by the school act; that is, such powers are restricted by expressed terms or by necessary implication in its constitution. Thus one who lends to such a corporation any amount, in excess of that authorized, does so at his own risk.

In rural districts, the school board may borrow, when authorized by the school meeting and with the consent

⁴⁷ Provincial Bank v The Trustees of School District No. 2, (1955) 35 Maritime Provinces Reports 161.

of the Lieutenant-Governor in council, for the purchase or improvement of grounds and for the purchase, building or furnishing of school houses.⁴⁸

City and town boards may borrow, with the consent of the Lieutenant-Governor in council, money for the purchase of lands or buildings or for the erection of buildings. Also they may borrow, with the consent of the city or town council, money for the permanent repair or furnishing of school buildings.⁴⁹

Consolidated district boards may borrow, when authorized by the ratepayers and with the approval of the Lieutenant-Governor in council money for the purchase of buses, lands and buildings and for the building and equipping of school houses.⁵⁰

The procedure for the borrowing of amounts small enough to be obtained in one sum as cash is outlined in Kelly v Grimmer School District.⁵¹ It describes the special meeting which authorized the raising of money to build a school, the obtaining of authorization through the department

⁴⁸ New Brunswick Schools Act, 1960, sec. 61(3).

⁴⁹ Ibid., sec. 96(7).

⁵⁰ Ibid., sec. 116(16).

⁵¹ Kelly v Grimmer School District, (1927) 3 Dominion Law Reports 704.

of education and the signing of the certificate of indebtedness.

In the instance where more than the authorized amount is needed, for example, in building a school, nothing should restrict the trustees from attempting to obtain authorization to borrow the extra sum.

In Lawrence v Beaver Valley School District Trustees,⁵² the Saskatchewan court of appeal held that an injunction should not be granted restraining the trustees from paying the contractor money which the board had been authorized to borrow for that purpose, or from borrowing with authority additional money necessary to complete the building.

There are certain restrictions on the way in which borrowing can be effected. Provincial Bank of Canada v The Trustees of School District No. 2⁵³ establishes the fact that there is no authority for giving a demand note.

In Stephens v North Battleford School District,⁵⁴ the supreme court decided that a school board has no right

⁵² Lawrence v Beaver Valley School District Trustees, (1918) 43 Dominion Law Reports 318.

⁵³ Provincial Bank of Canada v The Trustees of School District No. 2, (1935) 35 Maritime Provinces Reports 161.

⁵⁴ Stephens v North Battleford School District, (1908) 9 Western Law Reporter 501.

to accept or to make a bill of exchange. Promissory notes are permissible for temporary borrowing but not otherwise.

Borrowing for construction and acquiring of property by the sale of debentures is authorized in the statutes.⁵⁵

Any irregularities in the steps preceding an issue of debentures will be overruled if they are officially authorized.

Molison v Woodlands⁵⁶ is a case concerning irregularities in the proceedings antecedent to the issuance of debentures. The Manitoba court of appeal ruled that the official signature and seal on the debentures is conclusive evidence that all formalities in respect to the loan and the debenture issue have been complied with. The legality of such debentures has thus been conclusively established and they should, to the extent of the revenues of the issuing district, be a good and indefeasible security in the hands of any bona fide holder thereof.

The authorization of a debenture issue need not necessarily be granted unless the preceding steps of the school board, such as the choice of site, the contract and authorization of the district, have official approval.

⁵⁵ New Brunswick Schools Act, 1960, secs. 61(3), 96(7), 116(10).

⁵⁶ Molison v Woodlands, (1915) 25 Dominion Law Reports 30.

Oven School District v Boyle (Minister of education)⁵⁷ was an order of mandamus to compel the Minister to sign certain school debentures. The supreme court refused the application, saying that the official signature can be refused if the site selected and contract have not been approved.

In New Brunswick debentures are signed by the Lieutenant-Governor in council.

Debentures circulated without the authority of the school board must even so be considered a liability of the board.

Robinson v Saint John School Trustees⁵⁸ is a case where a debenture got circulated and sold without the authority of the board and without trace of the proceeds. The supreme court ruled that there was negligence on the part of the board and the holder should recover.

Temporary borrowing for current expenses is not necessary in the case of rural or consolidated districts since the institution of the county finance boards.

City and town boards may be authorized by the Lieutenant-Governor in council or the town council, depending

⁵⁷ Oven School District v Boyle (Minister of Education), (1917) 34 Dominion Law Reports 78.

⁵⁸ Robinson v Saint John School Trustees, (1898) 34 New Brunswick Reports 503.

on the purpose of borrowing, to make a temporary loan at a chartered bank on a promissory note or overdraft.⁵⁹

In summary, the school board has no inherent power to borrow, but only the power given by the statutes in express terms or necessarily implied.

Rural and consolidated school boards may borrow in acquiring a building or land, with the authorization of the district and the consent of the Lieutenant-Governor in council. City and town boards may borrow for the same purpose, with the consent of the Lieutenant-Governor in council. Also they may borrow for the permanent repair or furnishing of schools, with the consent of the municipal council.

Where the authorization of the district is necessary, this must be obtained at a school meeting. Then application is made for official consent and finally the certificate of indebtedness must be signed by the corporation.

Where more than the authorized amount becomes necessary, the courts will not interfere with any attempt of the corporation to get authorization for borrowing an extra sum.

A school corporation cannot give a demand note and cannot make or receive a bill of exchange. Most borrowing

⁵⁹ New Brunswick Schools Act, 1960, sec. 96(7A).

is done by an issue of debentures. Once such an issue is authorized officially, any antecedent irregularities in procedure are overruled and the legality of the issue is established. The official authorization may not be given, however, unless the preceding steps are approved.

If debentures get circulated without the authority of the school board, this constitutes neglect and the board becomes liable.

Temporary borrowing may be done by city and town boards with the authorization of the Lieutenant-Governor in council or the town council, depending on the purpose of the borrowing.

In this chapter, a study of the legal basis of the school board's powers in contracting and financing has been made. A summary of the ascertained facts will now be given.

Being limited to statutory authority in contracting, the school board may make agreements with school personnel or agreements concerning the purchase, construction, repair or furnishing of school property. The trustees are responsible for the fulfillment of all contracts. Otherwise, they become personally liable. Any sanction of illegal contracts also makes them liable.

No board can make a contract in which any one of its members is personally interested.

Any contract for work must be covered by an authorization to spend a sufficient amount to pay for the same. If such financial obligation is not authorized, an injunction may be issued to prevent contracting; and the trustees are liable for sums already spent. Without financial authorization, contracts may still be valid if there is money forthcoming from the sale of property, sufficient to cover the obligation.

There may be recovery against the board on an ultra vires contract if money involved has been used to defray existing or future liabilities. Also recovery on quantum meruit may be ordered to pay for that part of the work which was intra vires.

Trustees who use school money for corporate expenses, without authorization, may not have to repay it if the benefits are received and accepted.

The bond of a contractor must be according to the terms of the contract.

All contracts must be the result of corporate decision, adopted at a lawful meeting and signed by all the trustees. They cannot be made by an agent in the name of a board. Otherwise, the trustees are not liable. The omission of date, plans or seal may not invalidate the contract.

Since school boards are limited to statutory authority in financing, they may spend money only for operational costs, building costs and the cost of executing corporate powers.

Any revenue exceeding disbursements is the property of the board in cities and incorporated towns. In rural districts such excess is transferred to the county finance board to be used for defraying the costs of the supplementary budget.

Trustees must prepare building estimates for the consideration of the district and any failure to do so may result in a mandamus, if extra accommodation is needed.

The courts have the power to settle differences between school boards concerning assets and liabilities, which result from school district changes.

The cost to the board of a groundless court action, successfully defended, is classed as lawful corporate expenditure.

School boards have plenary power but not the right to levy rates. Municipal corporations have the power to levy rates and hold such money as trustee for the school board, with no power of set-off. This money is paid on requisition and the municipal corporation has no power of revision over school budgets other than to ascertain whether all items are intra vires of the school board. The

county finance boards have primarily plenary powers but not the right to levy rates. They receive and have the power of revision of the ordinary and supplementary budgets. The former include costs common to all districts and the latter include costs over and above those of the ordinary budget.

One, and only one, annual estimate is prepared by the school board and the time of presentation to the municipal council is imperative.

School board borrowing is limited to statutory authority. This includes money for buying, building and equipping school property. Rural and consolidated boards must have the sanction of the Lieutenant-Governor in council, as well as the authorization of the district. City and town boards must have the consent of the Lieutenant-Governor in council for borrowing for the acquisition of land or buildings. Also, with the consent of the municipal council, they may borrow for permanent repair or furnishing of schools.

The authorization of the district is obtained at a school meeting. Then the official sanction is obtained.

The courts will not interfere with any attempt to gain authorization for borrowing an extra amount to meet liabilities.

Borrowing powers do not include demand notes or bills of exchange. The authorized method is by an issue of

debentures. The official sanction for such an issue overrules any antecedent irregularities in procedure but sanction may not be given if the preceding steps are not approved.

If debentures get circulated without the authority of the board, the trustees, nevertheless, become liable for them.

Temporary borrowing is authorized for city and town boards on the sanction of the Lieutenant-Governor in council or municipal council, according to the purpose of the borrowing.

With this study of the school board's responsibility and authority in contracting and financing, the legal basis for the operation of the school system is now entire. For the trustees' protection in such an important undertaking, there must be an exploration of corporate and personal liability, as well as the board's legal position in court action. This will complete the statutory basis of the powers and responsibilities of the school board.

CHAPTER V

THE SCHOOL BOARD'S LIABILITIES AND RIGHTS IN ACTION

The legal status of the school board's liabilities and rights in action will be determined by an overview of the board's liability as shown in previous chapters and found in the statutes, personal liability of the trustees, corporate liability, an overview of the board's rights in action from previous chapters, rights in action by the board and rights in action against the board.

Since the preceding chapters have brought to light many liabilities of the trustees, these must be reviewed first. Also since the statutes reveal general liabilities not specified in court cases, these must be discussed. Because the members of the school board are personally liable in some circumstances and corporatively liable in others, these distinguishing circumstances must be studied by reference to court cases. The board's rights in many types of action have been brought to light heretofore. Therefore, these will be reviewed and the general rights found in the statutes will be mentioned. For the trustees' protection, rights in action both by and against the board will be explored in court cases.

1. Overview of Liabilities.

In the preceding chapters, certain liabilities of the trustees have already been determined. These will be reviewed and others added from the statutes.

It has been learned that the trustees are liable for the proper hiring of teachers and must not accept more than one application for a position. They are either liable for payment of the teacher's salary or for budgeting for the necessary amount.

They are liable for school discipline and any injuries to children on the grounds or in the buildings during school hours, which are caused by negligence or lack of supervision, unless such injury is due to an unstatutory act of the teacher; in which case, the latter is liable.

The school board is responsible for seeing that the school attendance act is enforced. In a large enough district this involves the appointment of an attendance officer. It is to be noted that this does not necessarily mean the attendance of every child at school. The primary right of the parents in education is recognized in one clause which says,

The child shall not be required to attend school (...) if the child is in the opinion of the school attendance officer or the inspector, under efficient instruction at home or elsewhere.¹

Thus the liability of the board in this respect is lightened by the discretionary powers of the attendance officer or inspector.

The trustees are liable for seeing that the regulations of the health statutes, which pertain to school children, are enforced;² and it is their responsibility to see that those who are mentally defective are kept from the regular classes.³

The trustees are responsible for calling and giving notice of most school meetings. Also they must report to the annual meetings and gain authorization for the spending of money. They are liable for the collection of penalties for false declarations given at such meetings.⁴

They are liable for the school property, for providing accommodation and conveyance where necessary. Also they are responsible for borrowing money for acquiring school property and they are liable for the making of all

¹ School Attendance Act, Revised Statutes of New Brunswick, 1952, cap. 202, sec. 4(a).

² New Brunswick Schools Act, 1960, sec. 63(15).

³ Ibid., sec. 63(14).

⁴ Ibid., sec. 42(2).

necessary contracts. Any negligence or refusal to fulfill contracts makes them personally liable.⁵

The trustees are liable for exercising all corporate powers vested in them and for seeing that the school act and regulations are carried out. To this end, they are responsible for making monthly visitations to the schools under their jurisdiction to inspect the same⁶ and for conducting school business in corporate meetings.

In summary, the trustees are liable for the engagement and salaries of teachers. They are responsible for the children's attendance, discipline and safety at school or for seeing that they obtain an adequate education elsewhere. Also they must see that the health regulations are enforced.

The board is liable for calling and reporting to school meetings, for gaining authorization to spend money and for collection of penalties when false declarations are made.

The holding and acquiring of school property, the provision of accommodation and conveyance, the borrowing of money to pay for the same and the necessary contracting involved, are further liabilities of the board which may bring court action if neglected. In fact, the trustees are

⁵ New Brunswick Schools Act, 1960, sec. 60.

⁶ Ibid., sec. 63(13c).

liable for exercising all corporate powers and for seeing that all school statutes are complied with. As a necessary adjunct to this they must inspect the schools regularly and conduct school business corporatively.

2. Personal Liability.

In order to study the personal liability of the board members it is necessary to consider the types of acts which result in this, the trustees' liability for loss of money, liability for non-fulfillment of contract and, finally, the personal liability of the secretary.

The trustees are personally liable for acting in bad faith. In Bowman et al v Faber et al.,⁷ an application was made for a writ of injunction to prevent the trustees from moving the school. The Saskatchewan King's Bench in dismissing the action, stated that trustees should not be held responsible as individuals, but as a board, unless they had acted in bad faith or at least wilfully.

Where trustees showed personal ill-will, as in Rex ex rel. Wells v Green,⁸ the Manitoba King's Bench issued a mandamus with costs against them. In this case,

⁷ Bowman et al v Faber et al., (1919) 3 Western Weekly Reports 755.

⁸ Rex ex rel. Wells v Green, (1913) 10 Dominion Law Reports 111.

the trustees, having had a difference of opinion with a ratepayer, prohibited his children from being conveyed, on the grounds that the road distance was two feet short of the legal distance.

Also, in Muirhead v Bullhead Butte School District,⁹ where the trustees had acted in bad faith, a personal judgment was given against them with costs to the plaintiff. It was held that the plaintiff was entitled to an injunction restraining the district from levying taxes against his property because the trustees had acted wilfully regarding a previous judgment against them, concerning taxes of the plaintiff.

A trustee is also liable for sanctioning the spending of money for unauthorized purposes. This was decided in McNabb and Jarnagin v Findlay,¹⁰ which arose from a trustee accepting money for services. Since the services were authorized, the trustee was not liable on this account but subject to quo warranto proceedings.

Trustees are also responsible for loss of money by their secretary. The decision of the Ontario supreme court,

⁹ Muirhead v Bullhead Butte School District, (1911) 1 Western Weekly Reports 255.

¹⁰ McNabb and Jarnagin v Findlay, (1932) 3 Western Weekly Reports 255.

in School Section 24 Vaughan v Scott, reads in part,

The statute imposed a public duty to act as reasonable business men and to take elementary precautions against loss of money. On these two factors combining there was a cause of action upon which the trustees might be responsible personally. In other words, their liability then arose.¹¹

Thus, conducting school business in a reasonable way and taking basic precautions rules out personal liability.

Trustees are personally liable for non-fulfillment of a contract when such non-fulfillment is due to neglect or refusal to act. This is stated in Morrison v Cassell Hill School Trustees.¹² Otherwise non-fulfillment of contracts leads to corporate action.

On the other hand, it was held in Anderson v Vansittart et al¹³ that trustees could not be held personally liable because the contract that was broken was within their statutory powers and the non-fulfillment concerned them as a body. Hence they must be sued corporatively.

¹¹ School Section 24 Vaughan v Scott, (1932) 41 Ontario Weekly Notes 149.

¹² Morrison v Cassell Hill School Trustees, (1925) 1 Western Weekly Reports 526.

¹³ Anderson v Vansittart et al. (1849) 5 Upper Canada Queen's Bench 335.

The court of common pleas, in Ryland v King et al.,¹⁴ held that in ordinary non-fulfillment of a sealed contract, there can be no personal liability.

It is illegal for two trustees to contract with a third. On doing so, they contract as individuals. This was proved in Livingstone v Boularderie School Trustees,¹⁵ where two trustees contracted as the board, with the third trustee, to build a school.

The liability of any individual trustee is well shown in Cupar School Board v Jaremecki. In this case the school board erected a building on land to which it had no title. Subsequently, the title was acquired by one of the trustees who removed the buildings. The Saskatchewan court of appeal stated his liability in explicit terms,

If on becoming a trustee he had performed the duties imposed upon him by the school act, he would soon have learned that the district had no title and he could not better his position by neglecting his duty and acquiring title without knowledge. Therefore he is liable to the district in damages if he, without having a valid agreement with the district entitling him to do so, removes and appropriates the building.¹⁶

¹⁴ Ryland v King et al., (1862) 12 Upper Canada Common Pleas 198.

¹⁵ Livingstone v Boularderie School Trustees, (1880) 13 Nova Scotia Reports 535.

¹⁶ Cupar School Board v Jaremecki, (1951) 4 Dominion Law Reports 679.

The trustee's liability for corporation property comes before his own personal interest. It was his duty to know about the title and procure it for the school board.

Money loaned to the trustees and used for corporate purposes cannot be recovered in an action against the trustees personally. This was decided in Toronto Township v McBride et al.¹⁷ when the township sought to recover money loaned to the trustees. Even though the trustees had no authority to borrow, they were not personally liable.

The secretary of the board is not personally liable for anything signed in his official capacity. This is shown in Muirhead v Bullhead Butte School District.¹⁸

The secretary of the board is personally responsible for loss of money or for withholding books, money or other school property. This was decided in Ferris v Chesterfield et al.¹⁹ where the secretary-treasurer's annual expenditure report was unsatisfactory and showed money withheld.

In summary, trustees are personally liable when they act in bad faith or with personal ill-will. In such instances, writs of mandamus or injunction may be issued

¹⁷ Toronto Township v McBride et al., (1869) 29 Upper Canada Queen's Bench 13.

¹⁸ Muirhead v Bullhead Butte School District. (1911) 1 Western Weekly Reports 253.

¹⁹ Ferris v Chesterfield et al., (1860) 10 Upper Canada Common Pleas 272.

against them with costs of the action. They become personally liable for spending money for unauthorized purposes or for loss of money, in which case the loss to the district must be made good.

Board members are personally responsible for non-fulfillment of contract when such is due to neglect or refusal. Otherwise, non-fulfillment of contract creates corporate liability; for example, when the contract concerns that which is within their statutory powers. A non-fulfilled sealed contract means corporate liability unless there is neglect or refusal involved.

Two trustees cannot make a corporate contract with the third trustee.

Trustees are never personally responsible for repayment of loans used for corporate purposes even though borrowed without authority.

The individual responsibility of the trustees to the welfare of the board must come before personal interest. Otherwise, they become personally liable for damages.

The secretary of the board is not personally liable for anything signed in his official capacity. But he is liable for loss of money or withholding school property.

3. Corporate Liability.

Most of the board's responsibilities, studied in previous chapters, have involved corporate liability. To these one must add such topics as their responsibility in the case of agents and contractors, their responsibility for providing non-denominational education and the question of responsibility for children's clothes.

Trustees are liable for acts of agents. This was proved in Renwick v Vermillion Centre School District No. 1446.²⁰ In this case the school board was sued because of damages caused by contractors working on an excavation for a new school. When earth was placed in such a way as to stop a natural watercourse, the defendant's cellar filled with water, causing damage. The overseer of the work had been appointed by the board and was acting as its agent. Therefore the board was declared liable.

In Smith v Belleville School Trustees,²¹ one of the trustees was delegated by the others to buy a school site. He paid for it, signed his own name and the board recognized the purchase. When a later school board refused

²⁰ Renwick v Vermillion Centre School District No. 1446, (1910) 15 Western Law Reporter 244.

²¹ Smith v Belleville School Trustees, (1869) 16 Grant's Chancery Reports 130.

to continue payments to the defendant, the court held that he was entitled to relief. It appeared that the chairman had gone with the agent trustee and that the latter was acting as agent in order to acquire the land at a lower price.

The liability for injuries to agents and the distinction between an agent and a contractor are shown in Stuart v Pennant School District.²² The Saskatchewan court of appeal stated that an independent contractor retains control of the manner of doing the work whereas the agent does not. In this case a workman had been hired by the secretary without authority of the board. Thus, although the workman was an agent, the school board was not liable for an injury received by him.

A school board is not liable for acts of an independent contractor, except that there may be partial liability when the contractor's acts endanger those in the school. This was proved in a previous chapter, in the case of Ellis et al v Moose Jaw Public School District Trustees and Blondin Roofing Products L't'd.²³ It concerned a child

²² Stuart v Pennant School District, (1927) 2 Dominion Law Reports 940.

²³ Ellis et al v Moose Jaw Public School District Trustees and Blondin Roofing Products L't'd, (1946) 2 Dominion Law Reports 697.

who was injured on a rope attached to the school by the contractor. The board and contractor were jointly liable.

The trustees may be held liable if the schools are not conducted non-denominationally. Many cases have been brought over this question, one of which is often cited. That is Rogers et al v The Trustees of School District No. 2 of Bathurst. The equity division of the supreme court of New Brunswick held that the giving of religious instruction and the holding of religious exercises by a member of a religious order of the Roman Catholic Church in a public school after the regular school hours was not a violation of the law. This case is often cited when classes taught by members of orders are charged with providing sectarian education. The judge's final statement, which follows, is explicit,

I concede great possibilities to the system of teaching by object lessons, but to ask me to hold that the sectarian doctrines and tenets of the Roman Catholic church are being inculcated in the minds of Protestant school children simply by their looking upon the garb of the sister who is teaching them, is asking much more than my belief in the system will warrant.²⁴

Since this case was settled, the trustees in New Brunswick have seldom been held liable for allowing sectarian education.

²⁴ Rogers et al v The Trustees of School District No. 2 of Bathurst, (1896) 1 New Brunswick Equity Reports 266.

Trustees are not liable for loss of children's clothing. This was proved in Stevenson v Toronto Board of Education.²⁵ The supreme court of Ontario held that the board is not an insurer of clothes and thus not liable except where it can be shown that they have been negligent in not exercising reasonable care.

In summary, the school board is liable for all acts of agents, whether the agent be one of their own body or someone hired as such. They are even liable for debts contracted in such manner. They are liable too for injuries to agents hired under their authority. On the other hand, they are not generally liable for acts of contractors who are distinguished from agents by the fact that they retain control over the manner of acting. However, they may be jointly liable with a contractor when acts of the latter are injurious to those in the school.

The trustees are responsible for carrying on a non-sectarian system of education but are not liable for violation of this statute by the mere fact that some children are taught in classes conducted by members of orders.

The school board is not liable for loss of children's clothing unless negligence can be proved.

²⁵ Stevenson v Toronto Board of Education, (1919) 49 Dominion Law Reports 673.

4. Overview of Action by and Against the Board.

In the study, heretofore, it has been shown that various types of action may be brought by and against the school board. These will be recalled before other types are studied.

Action may be brought by the board in the protection of school property. Trustees may appeal to the inspector to recover money or property withheld by anyone. If this proves inadequate, court action may be brought against the offender. Also the school board may bring action of trespass to school property. The statutes provide for appointment of an arbitration board in the expropriation of property.

Boards of districts, whose boundaries have been altered by the Lieutenant-Governor in council, have the right to bring action to settle differences concerning liabilities created by such changes.

The trustees can also bring action to force the fulfillment of a contract; and it has been shown that they may protect corporation interests by appealing court decisions.

Action may be brought against a trustee individually if he fails or refuses to act. In such a case, appeal may be made by the ratepayers to the inspector to appoint

another trustee, or quo warranto proceedings may be brought in court. Also the court may issue an injunction against anyone who prevents the holder of the trusteeship from acting. Irregularities in the election of a trustee may be investigated by the inspector and the decision may be appealed by application to the Minister of education.

Action may be brought against the school board in the form of a mandamus if it fails to provide sufficient accommodation, or if it fails to provide for the salary of a teacher, or if it suspends a child from school wrongfully and with malice. In the case of wrongful dismissal of a teacher on a continuing contract, the law allows the appointment of a board of reference, the decision of which may be appealed in the courts. Wrongful dismissal of other teachers may be settled by a suit for damages.

A suit for damages may also be brought against the trustees as a result of injuries to children or in the case of non-fulfillment of a contract.

In all cases of action against the trustees, with the exception of cases concerning contracts, notice must be given and the action must be brought within three months' time.

It is to be noted that in some instances, differences are settled by statutory remedy, without court action.

The supreme court of New Brunswick remarked on this, in West v The Trustees of School District No. 5 Parish of Johnston, as follows,

The purpose of the school law is designed to establish a complete system of public schools and to provide machinery within itself for carrying into effect, with as little recourse as possible to the ordinary courts of justice. (...) The court of equity is to be used where ordinary recourse does not work.²⁶

In this particular case, application to the inspector for recovery of school property, withheld by the secretary, would have been inadequate.

In summary, trustees may protect school property by appeal to the inspector for recovery of the same, or this being inadequate, court action may be sought. Also they may bring action of trespass to school property and they may expropriate property according to statutory procedure.

District changes that make one district liable to another may result in court action for settlement.

The school board may protect corporation interests by suing for fulfillment of contracts and appealing court decisions.

Action may be brought against trustees individually for failure or refusal to act by appealing to the inspector

²⁶ West v The Trustees of School District No. 5 Parish of Johnston, (1882) 22 New Brunswick Reports 56.

to make an appointment or, if this is inadequate, by unseating the trustee in quo warranto proceedings. A court injunction will be issued to prevent anyone from hindering the office holder from acting.

Election irregularities may be investigated by the inspector, with appeal to the Minister.

A mandamus will compel the board to provide accommodation, a teacher's salary or readmission of a child to school after suspension.

Boards of reference may settle teacher-board disputes over dismissal, as may also the law courts.

A suit for damages may be brought against the trustees for injuries to pupils and for non-fulfillment of a contract.

All court action, except that concerning contracts, must be brought within three months time and with proper notice.

The school law provides its own remedy in many cases and this should be pursued wherever possible, with recourse to the courts when the remedy is inadequate.

5. Rights in Action by the Board.

In order to study the trustee's rights in action brought by them, one must consider their right to appeal certain decisions, the corporation's right to sue members

of the board and the right to bring action against a previous board.

Not only do trustees have the right to protect school property but they have the right to defend the acts of the corporation or individual acts of the trustees.

In Rex v Tucker,²⁷ the Ontario court of appeal held that a trustee who has been fined for alleged refusal to perform the duties of his office has the right to appeal to the general sessions, if he expresses his intention to appeal when paying the fine.

Boutin et al v Mackie²⁸ was a case where a school had been conducted in French and action was brought against the trustees for allowing something contrary to the law. The trustees appealed the summary conviction on the grounds that to perform any act of duty is limited to a positive act and not an omission. There were only five ratepayers in the suffering minority so action could not be brought by the ratepayers as a body and the school law does not justify a private individual in championing a public cause, even if there is a violation of the act. Hence the conviction against the trustees was not upheld. The court suggested

²⁷ Rex v Tucker, (1905) 10 Ontario Law Reports 506.

²⁸ Boutin et al v Mackie, (1922) 2 Western Weekly Reports 1197.

that appeal would have to be made to the Minister of education to appoint an official trustee.

Where the board brings action to recover school property, the attorney general may be a party to the action. In Richmond School Trustees v Landry,²⁹ the school board was attempting to recover property from Landry. Later Landry was elected trustee and the board then wished to discontinue action. When a ratepayer, Morrison, applied to be added as plaintiff, the Nova Scotia supreme court held that the amendment should be granted and that if consent were obtained, the attorney general should be made plaintiff on the relation of Morrison.

A corporation may sue its members. This was proved in Pietou County School Trustees v Cameron. According to the supreme court of Canada,

In their corporate representative capacity, the plaintiffs, after their appointment, can maintain trespass for any wrong done to the corporate property by an individual, whether at the time of the wrong done such individual happened to be a member of the corporation or not.³⁰

This follows from the fact that the title of the property is in the corporation and not in the members. The trustees

²⁹ Richmond School Trustees v Landry, (1909) 7 Eastern Law Reporter 446.

³⁰ Pietou County School Trustees v Cameron, (1879) 2 Supreme Court Reports 690.

change but the corporation continues and the title and possession continue in the corporation. With this responsibility for the school district property, the corporation may well have to bring action to protect the public interests.

Trustees may bring action against previous trustees to recover money lost through neglect. This is proved in School Section 24 Vaughan v Scott,³¹ where trustees brought action against previous members for loss of money through failure to take a bond for their secretary. It was held that estoppel did not apply although the plaintiffs had been at the meeting where the situation had been disclosed. Nothing had been done or said at the meeting to create an estoppel. Moreover, the previous board had failed to act as reasonable business men and take elementary precautions. Therefore, they should be personally responsible. But the action was brought outside the statutory time limit and had to be dismissed with costs.

In summary, school board members have the right to appeal when charged with refusing to act, providing the intention is expressed on payment of the fine. They may also appeal as a body, when charged with neglecting to act

³¹ School Section 24 Vaughan v Scott, (1932) 41 Ontario Weekly Notes 149.

by a majority of the ratepayers. But whether mere omission to act would be classed as neglect is doubtful. Such a case should be taken to the Minister of education for clarification of what constitutes neglect in the school law.

In seeking recovery of school lands, the attorney general may properly be a party to the action.

A school corporation may sue its members in order to protect corporate interests and it may bring action against previous trustees to recover money lost through neglect.

6. Rights in Action Against the Board.

In order to examine the rights of the board in action against them, one must understand the following topics: the right of the attorney general in certain court cases; instances when a writ of mandamus will be issued; what constitutes class action; the board's rights in the internal management of the school; and other types of action that may be brought.

In cases where action is brought against the board in seeking to recover school property or money, the attorney general may again be a necessary party to the action. In Thurgood v Vigneau et al.,³² the board was being

³² Thurgood v Vigneau et al., (1929) 4 Dominion Law Reports 857.

sued for recovery of alleged illegal payment of moneys to teachers. In fact, the board had provided extra accommodation by having some children taught in rented rooms of a convent by members of the order. The plaintiff maintained that was denominational education. The court stated that while it thought the plaintiff had no right to relief, the attorney general should be a necessary party to the action.

Mandamus may be used to compel the trustees to perform any ministerial act, such as providing accommodation or paying a debt. Re West Nissouri Continuation School³³ was such a case, in which the Ontario high court stated that a mandamus would be issued to force the trustees to act in the provision of necessary accommodation.

In Scott v The School Trustees of Burgess and Bathurst,³⁴ the court of common pleas issued a mandamus compelling the trustees to levy a rate to pay a contractor. The plea was that the board was not responsible, this being a debt contracted by previous members in a district which later had its boundaries changed. The court held that the present trustees were enjoying the fruits of the labor and must pay for it. To rule otherwise would be to say that any

³³ Re West Nissouri Continuation School, (1912) 4 Dominion Law Reports 847.

³⁴ Scott v The School Trustees of Burgess and Bathurst, (1871) 21 Upper Canada Common Pleas 398.

time there is a change of boundaries, the district is not liable for debts.

Also in Ex parte Devoe³⁵ the court issued a mandamus to compel the payment of a judgment in a previous term, when a rule nisi had been obtained. Now the rule was made absolute.

If the trustees perform an illegal action the court will also issue a mandamus, as in Re Minister of Education; McIntyre v Blanchard Public School Trustees.³⁶ Here, the court held that the proper way to obtain redress in the case of an illegal action, such as denying the right of attendance at school, is by mandamus and not by action.

In any action against the trustees by the rate-payers, a majority of the latter must bring action. Bowman et al v Faber et al³⁷ was an action by the ratepayers but since the plaintiffs did not constitute a majority of all ratepayers, the case was dismissed. The Saskatchewan King's Bench stated that this was not proper class action; they should plead as individuals.

The court will not interfere with the internal management of the board's affairs, such as the assignment

³⁵ Ex parte Devoe, (1877) 17 New Brunswick Reports 513.

³⁶ Re Minister of Education; McIntyre v Blanchard Public School Trustees, (1886) 11 Ontario Reports 439.

³⁷ Bowman et al v Faber et al, (1919) 3 Western Weekly Reports 755.

of pupils to schools and the appointment of a teacher. In Howard v Toronto Board of Education,³⁸ the supreme court of Ontario declared that the minority have no right of action against the majority regarding proceedings of which they do not approve, when the act complained of, is an action which the majority is entitled to do. Hence the court had no jurisdiction to interfere in the board's appointment of a teacher.

In some contract cases, a plaintiff may recover on quantum meruit. This applies when the contract is within statutory authority, although improperly drawn. Bright School Trustees v Yerxa³⁹ was a case in which the New Brunswick supreme court refused such recovery since it was payment for services of an unlicensed teacher; thus the work performed was not within the purposes for which the corporation was created. If the work had been that allowed by the statutes, the teacher could have recovered.

An action of assumpsit could be brought against the school board in New Brunswick since sealed contracts have been ruled unnecessary. In Quin v School Trustees⁴⁰

³⁸ Howard v Toronto Board of Education, (1920) 18 Ontario Weekly Notes 350.

³⁹ Bright School Trustees v Yerxa, (1910) 10 Eastern Law Reporter 1.

⁴⁰ Quin v School Trustees, (1850) 7 Upper Canada Queen's Bench 130.

the Upper Canada court of Queen's Bench ruled the action of assumpsit improper. But Ontario courts maintain that school contracts must be sealed.

The courts upheld the right of garnishment of school board moneys. This was stated in Royal Bank v Acadia School Division,⁴¹ which was an application to set aside a garnishee summons. The Alberta supreme court held that the fact the moneys attached by such a garnishee summons are being held for public purposes, does not prevent their garnishment.

The principle of mechanics' lien applies to school property. This has been proved in several cases. In Havelock School District v Connolly⁴² the supreme court of New Brunswick held that since school property is not crown land, it is subject to lien, although it would not be liable to be sold under execution. An order for payment could be enforced in the same way as a judgment compelling the trustees to levy a rate. The present day equivalent would be to make the sum an item of the supplementary budget.

The decision of Benson v Smith and Son; A.B. Ormsby Co. v the same⁴³ decreed that school property is subject to

⁴¹ Royal Bank v Acadia School Division, (1943) 1 Western Weekly Reports 236.

⁴² Havelock School District v Connolly, (1912) 9 Dominion Law Reports 875.

⁴³ Benson v Smith and Son; A.B. Ormsby Co. v the same, (1916) 31 Dominion Law Reports 416.

lien but cannot be sold under an execution. The court held that in case of wilful neglect to pay debts, the trustees become personally liable upon their contract. Lien is a specific provision intended to secure payment to wage-earners who have no direct contract with the trustees.

In summary, the attorney general may also be a party to action against the board for the recovery of school property or money.

Mandamus can be used to compel ministerial acts such as provision of accommodation and to compel the trustees to pay debts, even those of a previous board and in a district somewhat different from the present one. The same means can be used to compel the payment of a judgment in a previous term or to obtain redress in case of illegal action by the trustees. An example of the latter is forcing the readmission to school of a child denied the right of attendance.

Action by the ratepayers against the trustees must be class action; that is, the majority of them must sue. Otherwise action must be brought individually.

The court will not interfere with the internal management of the board; for example, in the engagement of a teacher.

Recovery on quantum meruit is possible if the contract was for work allowed by the statutes, although the contract is improperly drawn.

An action of assumpsit would be possible in New Brunswick. Also, the right of garnishment of school moneys and the principle of mechanics' lien are allowed by the courts. A lien on school property does not mean that it can be sold under execution. It is merely a provision for compelling payment to wage-earners not under contract.

In this chapter, a study of the school board's liabilities and rights in action has led to the following facts.

With respect to the teachers, the board is liable for their engagement and salary. Concerning the children, the board is liable for their safety, discipline and the enforcement of the health regulations pertaining to them.

The trustees are responsible for calling and reporting to school meetings. Also they must gain authorization for spending money and collect penalties at meetings.

The board is liable for holding and acquiring school property in order to provide accommodation for the pupils. In order to do this, they become liable for financing and contracting.

In short, the trustees are liable for enforcing the school law and regulations, by inspection, corporate meetings

or any necessary means; and any neglect of these duties may result in action against them.

The trustees become personally liable for acting in bad faith or with personal ill-will and in such case, a mandamus or injunction may be issued against them with costs. Also they are similarly liable for spending money for unauthorized purposes, for loss of money, for refusal or neglect in fulfilling contracts. Non-fulfillment of contracts for other reasons creates corporate liability.

When two trustees contract with a third member, they make a personal contract. Trustees are not personally liable for repayment of a loan which is used for corporate purposes, even though borrowed without authority.

The individual trustee's liability to the corporation comes before personal interest. Otherwise, he is subject to payment of damages.

The secretary is not personally liable for anything signed in his official capacity but is liable for loss of money or withholding school property.

The board is liable for acts of agents, for debts contracted by agents and for injuries to agents. There is not the same liability for contractors; but the board may be jointly liable with them for injuries caused to children by acts of the contractors.

The trustees become liable if the system of education is denominational but this does not bar education conducted by members of orders.

Trustees are not liable for loss of children's clothing unless due to negligence on the part of the school.

The board may appeal to the inspector for recovery of school property or, in instances where this remedy is inadequate, they may bring court action. They may also bring court action for trespass to school property and for settling differences between school boards caused by changes of districts. They may expropriate property for school purposes. They may sue for fulfillment of contracts and appeal court decisions.

Action may be brought against the trustees individually for failure or refusal to act. Where the remedy of the inspector's authority is inadequate, quo warranto proceedings may be brought or an injunction may prohibit any interference with the office holder's performance of duty. Election proceedings may be investigated by the inspector, subject to possible appeal to the Minister.

A mandamus will compel provision of accommodation, money for teacher's salary or readmission of a suspended child. Boards of reference or the courts may be used by teachers in wrongful dismissal. A suit of damages may be

brought against the trustees for injuries to children or non-fulfillment of contract.

All court action except that concerning contracts, requires notice and must be brought within a certain time. Also court action should be brought only when the remedy of the school law is inadequate.

Trustees have the right of appeal when charged with refusal to act, if intention to do so is expressed, on paying the fine. Also they may appeal as a body any charge of neglecting to act, brought by the ratepayers. But whether omission to act constitutes neglect is a matter best left to the decision of the Minister.

A school corporation may sue its present or past members for recovery of lost money. In seeking recovery of school property or money, the attorney general may be a party to action, either by or against the board.

A mandamus will be issued against the corporation to compel payment of a debt of present or past boards or payment for a judgment in a previous term.

Class action of a district against the board must be brought by a majority of the ratepayers. In such case, the courts will not interfere with the internal management of the board.

Recovery on quantum meruit may be ordered of the trustees when a contract is within their statutory authority

but improperly drawn. An action of assumpsit against the board is possible. Also the right of garnishment of school board moneys and the right of subjecting school property to lien are generally used.

With this examination of the trustees' liabilities and rights in action, the legal status of their powers and responsibilities has been determined according to the statutes and court decisions. There now remains the necessity of summarizing the findings and drawing conclusions concerning this study of the school board.

SUMMARY AND CONCLUSIONS

The aim of this study was to determine the legal status of the New Brunswick school board. The plan of procedure was to examine the educational statutes and regulations in the light of relevant court decisions in order to specify the legal standing or position of the board. To do this, court decisions of all cases based either on New Brunswick laws or on similar laws of other provinces were used.

The statutes, pertaining in any way to the school board, were classified according to five aspects of the school board's status. They were: the constitution and tenure of the school board, the board's responsibility to ratepayers and teachers, responsibility to the children, powers in contracting and financing and, finally, liabilities and rights in action. These formed the five chapters of the study.

A similar division of the case decisions with cross references was made so that the statutes and regulations could be studied in the light of cases based on them.

In the first chapter, the constitution and tenure of the school board were studied. The constitution of the board was determined as follows:

The school board is an artificial body which is a non-trading corporation created for administration of the

schools. Its powers are exactly limited to those deriving from the statutes. Although it has perpetual existence, its elements, the trustees, change periodically and each board acts for the corporation by effecting majority decisions made at regular corporate meetings in the form of resolutions. It is distinct from and more limited in power than the municipal corporation.

The members of the corporation must be resident rate-payers and British subjects. They cannot teach, even temporarily, while holding office; cannot be personally interested in school board contracts; cannot receive remuneration and cannot audit the corporation accounts.

The trustees appoint a secretary to perform acts of duty, keep records of all corporate proceedings and have charge of school property. They are responsible for taking a bond for the secretary's faithful performance and once his acts have been recognized by them, his appointment is confirmed, even though not officially in writing. The trustees are responsible for acts of duty of the secretary and for loss of money by him, when they have neglected to take the required bond.

Concerning the tenure of the board, it was determined that rural trustees are elected at annual meetings. Members of town boards are appointed, partly by the Lieutenant-Governor in council and partly by the resolution of the

town council. Consolidated boards are selected according to the order of the Lieutenant-Governor in council.

Occasional vacancies are filled at special meetings, unless such vacancy occurs just before the annual meeting.

A trustee must make a declaration of faithful performance within ten days of selection. Failure to do so is evidence of refusal to act unless he acts nevertheless. In which case he is a de facto trustee with all the powers and responsibilities of the office. Cases concerning de facto trustees are decided according to the circumstances and the public interest.

Declining to act may take place immediately or after acting for a time. It may result from absence from three consecutive board meetings or failure to perform corporate acts, after written request by the inspector.

An occasional vacancy of the board may occur as above or resulting from quo warranto proceedings. The courts may issue an injunction to stop anyone from interfering with the acts of an office holder.

In the second chapter, the school board's responsibilities to ratepayers and teachers were studied. The board is responsible to the ratepayers in the acquisition of sites and in expropriation of property where necessary. Not only does the board acquire school property but holds and has custody of it, bringing action for trespass when advisable.

The board may buy, sell or rent school property and erect as many buildings as are needed.

In order to confer with the ratepayers whom they represent, the trustees call all annual meetings except the first; also they call special meetings, as they or the ratepayers desire, except those concerning consolidation.

Holding annual meetings on the official date is imperative and at these meetings, the trustees present educational and financial reports.

Concerning its responsibility to the teachers, the board, not the secretary, contracts with licensed personnel on a probationary basis for three years, after which a continuing contract is made, according to statutory authority. A lack of certain formalities in these contracts may be overlooked when there is bona fide intention; in this connection, New Brunswick courts are lenient about contracts not issuing from corporate decision at a regular board meeting. Only one teacher may be accepted for a position and the school board is either liable for paying or budgeting for salary, depending on the type of district.

Teachers on probationary contracts may be dismissed without reason, on proper notice. For improper dismissal the courts may be used. Also reference boards may hear cases of dismissal on a continuing contract, with appeal to the supreme court being allowed.

The third chapter determined the school board's responsibility to the children. The board provides free schooling for all children of residents or ratepayers and, in such a matter, must follow the statutes closely and seek counsel in case of doubt. To this end, adequate accommodation must be provided or the board will be subject to a writ of mandamus. Where free schooling or accommodation cannot be provided, the trustees must allow the province, which has the ultimate responsibility to decide on procedure.

The trustees have discretionary power of assigning pupils to schools and departments and of forwarding applications for vocational education when such is unavailable in the district.

The board is responsible for the safe conveyance of children where necessary, or for provision of education in another district. It is also responsible for the discipline of the school, having ultimate authority in suspension of pupils. The courts will not interfere in such judicial authority unless malice is proved.

The trustees are legally responsible for the safety of the children on the grounds or in the buildings, during school hours.

Responsibility in the prevention of accidents, involves the keeping of apparatus in repair, the grounds free from danger and adequate supervision. The standard of care

is more than that of an occupier to an invitee and the children are also responsible for using good sense. Certain rules pertaining to proof of negligence govern decisions in damage suits.

The fourth chapter concerned the legal basis of the board's powers in contracting and financing. Being limited to statutory authority, the board may contract with school personnel or concerning the purchase, construction, repair or furnishing of school property. The trustees become personally liable for non-fulfillment of contracts due to neglect or for illegal contracts.

Contracts, in which a trustee is personally interested, are not valid. Also all contracts must be accompanied by authorization to spend enough to cover the obligation; otherwise an injunction may prevent the fulfillment of same.

Recovery on an ultra vires contract is possible if money involved was used to defray corporation liabilities and recovery on quantum meruit may be ordered for that part which was intra vires.

Contracts must result from corporate decision and the omission of certain formalities, such as the lack of seal, may not invalidate them.

In financing, the school board is limited to statutory authority, which includes operational, building and corporation expenses, and also to the sanction of the school

district. Excess of revenue belongs to or is held for the board.

Although the city or town board has plenary power, it cannot levy rates. Rural boards present annual ordinary and supplementary budgets to the county finance board, which has the power of revision.

In borrowing for construction or purchase of property the board is not only limited to authority granted by the district but must have the sanction of the Lieutenant-Governor in council.

Demand notes and bills of exchange are ultra vires; the usual means of borrowing is by issue of debentures. City boards may borrow temporarily on a promissory note.

The board's liabilities and rights in action were studied in the fifth chapter. With respect to the teachers, the board is liable for their contracts and salary. Concerning the children, the board is liable for provision of free schooling, accommodation, their discipline, safety and compliance with the health regulations.

The trustees are liable to the ratepayers generally for administration of a non-sectarian system of education and enforcement of the school law and regulations. Specifically, they are responsible for calling and reporting to meetings, holding school property, financing and contracting.

Trustees become personally liable for acting in bad faith or with ill-will, for unauthorized spending or loss of money, for refusal or neglect in the fulfillment of contracts. Also their duty to the corporation must come before personal interest.

Acts, debts and injuries of agents are a responsibility of the board. The secretary is liable for care of school property and money.

Action may be brought by the board for trespass or for recovery of property when appeal to the inspector is inadequate. They may sue other boards in disputes over assets and liabilities and may bring action for non-fulfillment of contracts. The corporation may protect itself by appealing decisions and by suit for recovery of money lost by present or past board members.

Action may be brought against individual trustees for failure or refusal to act, if appeal to the inspector is inadequate. Also action against the board in the form of a mandamus will compel provision of accommodation, payment of teachers' salary, readmission of a child to school and payment of corporation debts or a judgment. A suit for damages may be brought against the board for non-fulfillment of contracts, for injuries to children and for wrongful dismissal. Other types of action possible are injunction, application for review, action of assumpsit,

garnishment of school money and a lien on school property.

Any remedy supplied by the statutes must be pursued first and all except contract action must be brought with proper notice and within three months' time.

Thus, the determination of the legal status of the school board was commenced by defining the type of corporation that the board is and the tenure of its members. Also involved was a study of the board's administrative responsibility to the ratepayers and its position in the hiring and dismissal of teachers. This made possible an examination of the board's role in providing free schooling for the children in safe surroundings. Finally, in order to understand the fulfillment of these responsibilities, it was necessary to determine the board's legal position in contracting, financing and court action.

While this study was an attempt to clarify the position of the local school board, a more complete picture could be obtained with similar studies of the status of the finance board, the county superintendent and the relations of these two to the local school board. This would also serve to clarify considerably the administrative situation in the province of New Brunswick.

BIBLIOGRAPHY

COURT REPORTS

Dominion Law Reports, (1912) vols. 4, 9; (1913) vols. 10, 14; (1915) vol. 25; (1916) vol. 31; (1917) vols. 34, 36; (1918) vol. 43; (1919) vol. 49; (1920) vol. 55; (1923) vols. 1, 2.

Dominion Law Reports, (1924) vols. 2, 4; (1925) vol. 3; (1927) vols. 2, 3; (1928) vols. 1, 2, 4; (1929) vols. 2, 3, 4; (1930) vol. 3; (1931) vols. 1, 2; (1932) vol. 4.

Dominion Law Reports, (1934) vol. 3; (1935) vols. 1, 2; (1937) vol. 3; (1940) vol. 2; (1943) vol. 1; (1944) vols. 3, 4; (1945) vol. 3; (1946) vol. 2; (1949) vol. 4; (1951) vol. 4.

Dominion Law Reports, (1952) vols. 2, 4; (1955) vol. 3; (1956) vol. 2 (2d); (1958) vol. 16 (2d); (1959) vol. 17 (2d); (1960) vols. 22 (2d), 23 (2d), 24 (2d).

Eastern Law Reporter, (1909) vol. 7; (1910) vol. 10.

Grant's Chancery Reports, (1869) vol. 16; (1881) vol. 28.

Manitoba Reports, (1887) vol. 5; (1904) vol. 14.

Maritime Provinces Reports, (1930) vol. 1; (1934) vol. 8; (1936) vol. 10; (1939) vol. 14; (1951) vol. 27; (1955) vol. 35.

New Brunswick Equity Reports, (1896) vol. 1.

New Brunswick Reports, (1873) vol. 14; (1877) vol. 17; (1882) vol. 22; (1887) vol. 26; (1891) vol. 30; (1892) vol. 31; (1897) vol. 34.

Nova Scotia Reports, (1880) vol. 13; (1899) vol. 32; (1909) vol. 44.

Ontario Appeal Reports, (1898) vol. 25.

Ontario Law Reports, (1901) vol. 1; (1903) vol. 6; (1905) vol. 10; (1908) vol. 17; (1910) vol. 21; (1911) vol. 23; (1928) vol. 62.

Ontario Reports, (1886) vol. 11; (1889) vol. 16;
(1889) vol. 17; (1893) vol. 24; (1895) vol. 26.

Ontario Weekly Notes, (1909) vol. 1; (1920) vol. 18; (1922) vol. 23; (1925) vol. 28; (1926) vol. 31; (1932) vol. 41; (1933); (1940); (1942); (1947); (1948); (1953); (1955); (1956); (1960).

Ontario Weekly Reporter, (1907) vol. 10; (1908) vol. 12; (1913) vol. 24.

Supreme Court Reports, (1879) vol. 2.

Territorial Law Reports, (1900) vol. 4; (1902) vol. 5.

Upper Canada Common Pleas, (1854) vol. 3; (1855) vol. 4; (1860) vols. 9, 10; (1862) vol. 12; (1871) vol. 21; (1873) vol. 23; (1881) vol. 32.

Upper Canada Queen's Bench, (1847) vol. 3; (1849) vol. 5; (1850) vol. 7; (1857) vols. 14, 15; (1869) vol. 29; (1847) vol. 35.

Western Law Reporter, (1906) vol. 5; (1907) vol. 6; (1908) vol. 9; (1909) vols. 10, 11; (1910) vol. 15; (1916) vol. 34.

Western Weekly Reports, (1911) vol. 1; (1912) vol. 2; (1914) vols. 5, 6; (1917) vol. 1; (1919) vol. 3; (1922) vol. 2; (1923) vol. 3; (1924) vol. 1; (1925) vol. 1; (1926) vol. 1; (1928) vols. 2, 3; (1929) vol. 2.

Western Weekly Reports, (1931) vol. 1; (1932) vol. 3; (1934) vol. 2; (1937) vol. 2; (1940) vol. 2; (1941) vol. 3; (1942) vol. 3; (1943) vols. 1, 3; (1947) vol. 1; (1948) vol. 2; (1950) vol. 2; (1956) vols. 17, 20; (1957) vol. 23; (1959) vol. 28.

STATUTES AND REGULATIONS

Province of New Brunswick, Corporations Act,
Revised Statutes of New Brunswick, 1952, cap. 42.

-----, County Schools Finance Act, Revised
Statutes of New Brunswick, 1952, cap. 47.

-----, Crown Lands Act, Revised Statutes of New
Brunswick, 1952, cap. 53.

Province of New Brunswick, Limitation of Actions Act, Revised Statutes of New Brunswick, 1952, cap. 133.

-----, New Brunswick Schools Act, 1960, Fredericton, Queen's Printer, 1960, 64 p.

-----, Regulations Respecting the New Brunswick Schools Act, 1959, Fredericton, Queen's Printer, 1959, 47 p.

-----, School Attendance Act, Revised Statutes of New Brunswick, 1952, cap. 202.

-----, School Trustees' and Teachers' Boards of Reference Act, New Brunswick Acts, 1956, cap. 12.

-----, Vocational Education Act, Revised Statutes of New Brunswick, 1952, cap. 243.

Province of Ontario, Teachers' Boards of Reference Act, Ontario Acts, 1946, cap. 97.

ABSTRACT OF

The Legal Status of the School Board in the Province of New Brunswick¹

During recent years, education in New Brunswick has been administered at the local level by the school board and the county finance board. Since there has been some discussion concerning such a division of responsibility, this study was planned to determine the legal status of the school board as it functions now.

In order to do this, the New Brunswick statutes pertaining to education were studied in the light of court decisions. From the Canadian abridgment of all cases, were taken those decisions based either on New Brunswick educational laws or similar laws of other provinces. These were used to give exact meaning to the statutes.

Five aspects of the legal status of the school board were considered. They were: the constitution and tenure of the board, the board's responsibility to the ratepayers and teachers, the board's responsibility to the children, powers of the board in contracting and financing, the board's liabilities and rights in action.

¹ M. Virginia Keith, doctoral thesis presented to the School of Psychology and Education of the University of Ottawa, Ontario, August, 1961, xii-188.

In order to reach a decision concerning the legal status of the board's constitution and tenure, it was necessary to determine what type of corporation the school board is, what constitutes a corporate act, the selection of members and the creation of vacancies in the board.

The board's responsibility to the ratepayers was determined by studying the trustees' rights and duties regarding school property and school meetings. The responsibility to the teachers was studied by distinguishing a valid from an invalid teacher's contract and differentiating between legal and wrongful dismissals.

The board's responsibility to the children was studied by drawing conclusions about what the right of free schooling involves. In this connection it was necessary to determine the board's duties in providing accommodation and conveyance of the children. Also, the board's authority and rights in the discipline and safety of the children had to be defined.

The study of the school board's powers in contracting and financing involved an understanding of intra vires and ultra vires contracts. Also, the board's statutory authority in both contracting and financing had to be set within limits.

Finally, conclusions were drawn concerning the school board's liabilities, both personal and corporate. In

the same connection, it was necessary to determine the trustees' rights in action, both to protect district property and to defend the corporation or its members.

A more precise meaning was thus given to the statutes governing the five aspects of the school board's rights and responsibilities; and the true meaning of these five aspects comprise the legal status of the school board in New Brunswick.