

# Creating a Professional Standard of Moral Conduct for Canadian Teachers: A Work in Progress

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The Charter of Rights and Freedoms protects the rights of all Canadians. Historically, Canadian legislation has allowed denominational schools to exercise the rights of the group over the individual rights of teachers. Denominational doctrine is used as a bona fide definition of moral conduct in these situations. In public schools, the standards of moral behaviour are less clear. In this article I investigate the role of the local community in setting moral standards for public schools by reviewing several court cases. I suggest that public school teachers may best protect their human rights by asserting their professional status through collective bargaining and peer review.

La charte des droits et libertés protège les droits de tout Canadien et toute Canadienne. Depuis toujours, la législation canadienne permet aux droits des écoles confessionnelles d'avoir préséance sur les droits des enseignants et des enseignantes. La doctrine confessionnelle sert à définir la conduite morale dans un tel contexte. Dans les écoles publiques, ces critères ne sont pas aussi nettement définis. Dans cet article, l'auteur étudie le rôle de la communauté locale dans l'établissement de critères moraux dans les écoles publiques en passant en revue plusieurs procès. Il soutient que c'est en affirmant leur statut professionnel par la négociation collective et l'évaluation par leurs pairs que les enseignants et enseignantes des écoles publiques réussiront peut-être le mieux à protéger leurs droits.

## THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

The early eighties saw the culmination of a long legal and political process to enshrine certain human rights in the Canadian Constitution. With the passage of the Constitution Act of 1982,<sup>1</sup> including within it the Charter of Rights and Freedoms, the Government of Canada claimed certain human rights and freedoms should be granted to all Canadians. Jean Chrétien, then Minister of Justice, outlined this sentiment clearly in a preface to *The Charter of Rights and Freedoms: A Guide for Canadians*:

In a free and democratic society, it is important that citizens know exactly what their rights and freedoms are. . . . In a country like Canada . . . the only way to provide equal protection to everyone is to enshrine those basic rights and freedoms in the constitution.

To be sure, there have been a host of federal and provincial laws guaranteeing some of our fundamental rights and freedoms. However, these laws have varied from province

to province, with the result that basic rights have been unevenly protected through our country. Now that our rights will be written into the Constitution, it will be a constant reminder to our political leaders that they must wield their authority with caution and wisdom.<sup>2</sup>

In making these claims, Mr. Chrétien voiced the concerns of many Canadians. The Charter was to ensure that fundamental freedoms would be available to all Canadians. These universal Charter freedoms were to be administered by the courts in such a way that different cultural groups within Canadian society, as well as individual citizens, would be treated fairly.

Section 2 sets out individual fundamental freedoms.

Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.<sup>3</sup>

Section 7, together with other preceding sections, spells out how these fundamental freedoms are legally protected.

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.<sup>4</sup>

Ensuring individual freedoms in the Canadian multicultural context is a difficult task, particularly because of the origins of the nation and the terms of Confederation. Nevertheless, Section 27 of the Charter is an interpretive injunction that gives direction to judicial interpretation in light of the multicultural character of Canadian society.

This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.<sup>5</sup>

To ensure that the Canadian mosaic endures, it is necessary to protect the rights of constituent groups, sometimes to the detriment of the individual. There is, however, still a commitment in the Charter to the exercise of individual rights. This article is about the tension between group and individual rights as it relates to teachers; more specifically, it is about the protection of the human rights of individual teachers from arbitrary infringement by local school authorities.

Section 1 of the Charter recognizes that individual rights are not unlimited and emphasizes the importance of the judicial system's tempering spirit.

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.<sup>6</sup>

One other section of the Charter is noteworthy because of its importance to the human rights of teachers. Section 29 reaffirms the rights of certain denominational schools previously granted under Section 93 of the British North America Act.

Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissident schools.<sup>7</sup>

The specified schools can exercise their rights to maintain the religious integrity of their programs. The supremacy of these religious group rights over individual rights is clarified in the following passage.

This ensures, for example, that neither the freedom of conscience and religion clause nor the equality rights clause, will be interpreted so as to strike down existing constitutional rights respecting the establishment and state financing of schools operated on a religious basis, with students and teachers selected according to their adherence to a particular religious faith.<sup>8</sup>

The courts had the opportunity to weigh the human rights of teachers against the rights of denominational schools several times in the eighties. Some of these were post-Charter cases but none was heard by the Supreme Court of Canada. The picture will remain somewhat confused, therefore, until the Supreme Court of Canada tries some cases involving the human rights of teachers. Education in Canada is a provincial matter, and judicial rulings made in one province need not determine policy in another province. Although all judicial systems strive to apply the law fairly and reasonably, judicial interpretations vary from one jurisdiction to another. It is unusual, however, for a provincial court to ignore rulings from another provincial jurisdiction.

#### THE BONA FIDE QUALIFICATION AND DENOMINATIONAL RIGHTS

All Canadian teachers are free, as citizens, to exercise their religious freedom. When, however, the exercise of their religious preference interferes with the religious board's ability to impart denominational doctrine, the teacher may be dismissed. The courts have constitutionally affirmed that denominational schools may legally discriminate against teachers on religious grounds. The Supreme Court of Canada has ruled that for denominational school boards to maintain their religious mandate they must be permitted to employ and maintain a teaching staff committed to denominational school's religious character.

## JUDICIAL RULINGS THAT UPHOLD DENOMINATIONAL RIGHTS

*The Caldwell Case*

Perhaps the best known of the cases involving the religious rights of teachers is the Caldwell case. It began in 1979 prior to passage of the Charter, and was tried under the British Columbia Code of Human Rights, eventually reaching the Supreme Court of Canada. Mrs. Caldwell was dismissed from her teaching position in a Roman Catholic school for marrying a divorced Protestant in a civil ceremony. Mr. Justice McIntyre, ruling for the Supreme Court of Canada, emphasized the religious nature of the school and the importance of the teacher as a religious role model.

The relationship of the teacher to the student enables the teacher to form the mind and attitudes of the student and the church depends not so much on the usual form of academic instruction as on the teachers who, in imitation of Christ, are required to reveal the Christian message in their work and as well in all aspects of their behaviour. The teacher is expected to be an example consistent with the teachings of the church, and must proclaim the Catholic philosophy by his or her conduct within and without the school.<sup>9</sup>

The Roman Catholic school board claimed that Mrs. Caldwell could not serve as an appropriate moral role model for her students because she had failed to abide by Roman Catholic doctrine. Although her professional competence was not questioned, her marriage outside the church was seen as an abridgement of a bona fide religious qualification.

Excluding consideration of the religious requirement, there is absolutely nothing in the case that would justify the dismissal of the appellant as a reasonable cause. In fact, her conduct and competence as a teacher of mathematics and commercial subjects is acknowledged by all. Therefore, any justification for the non-renewal of her teaching contract must be found if at all in the absence of a bona fide qualification.<sup>10</sup>

In that same school, roughly 30 percent of the teachers were not of the Roman Catholic faith. The Supreme Court recognized this fact, but still claimed that denominational adherence was a bona fide qualification for employment and could be used as a reasonable cause for dismissal.

Although it would prefer to have a full Catholic teaching faculty, it has not always been possible for the school to do so. In the academic year of 1977–78 that school employed 20 teachers of whom six were non-Catholics. Two were of the Islamic faith and four were Christians of non-Catholic denominations. Before employing a Catholic teacher, the school requires a certificate from the teacher's parish priest to the effect that he or she is a practising Catholic. For non-Catholic teachers no such certificate is required but the nature and purpose of the Catholic school is stressed and explained and steps are taken

to ensure that non-Catholic teachers observe the principles and practices of their own particular faith. The continued practice of the individual's faith is a requirement for continued employment. In short the school expected that non-Catholic teachers would support the religious approach of the school.<sup>11</sup>

Therefore, adherence to the Roman Catholic doctrine constitutes a bona fide qualification only for Roman Catholics. Non-Catholic teachers must exhibit authentic religiosity in terms of their own faith, but it is clear that Roman Catholic teachers must meet a bona fide qualification from which other teachers in the same school are exempt. Thus, denominational schools maintain a double standard of employment validated by the Supreme Court of Canada. In making this ruling, the Supreme Court of Canada reaffirmed the considerable Canadian legislative tradition enabling the right of religious school boards to maintain the religious character of denominational schools. The rights of the denominational group outweigh the rights of the individual teacher.

#### *The Walsh Case*

In Newfoundland, the issue of a bona fide religious qualification arose in 1988, after the ruling in the Caldwell Case, and was interpreted by Mr. Justice Marshall under the Charter of Rights and Freedoms at the Appeals Court level. Mr. Walsh was a Roman Catholic at the time he was employed, but later became a member of the Salvation Army and married a woman from his newly chosen faith. He was dismissed from his teaching position because he failed to continue to uphold the bona fide qualification required at the time of his employment. It was argued that he could no longer be an appropriate religious role model for his students because he had, by example, repudiated Roman Catholic doctrine. Mr. Walsh contended that he was willing and able to teach the Roman Catholic religion to his students because he had been a practising Roman Catholic for twenty-eight years. The Roman Catholic Board claimed that he could not be a living example of the faith because of his actions in private life. When Mr. Walsh contended that his human rights had been violated under the Charter of Rights and Freedoms, Mr. Justice Marshall ruled:

This is not to say, as intimated by appellants' counsel, that requiring religious conformance as a condition of employment renders Mr. Walsh's rights to freedom of conscience and religion illusory. These rights exist. However, they can not be exercised to impair the right of the School Board to operate its denominational school in accordance with bona fide religious beliefs and practices for the benefit of all members of that faith. Where a conflict exists, s.22 of the Charter clearly requires the scale to be tipped in favour of the general right.<sup>12</sup>

Mr. Justice Marshall used the precedent set by the Supreme Court of Canada in the Caldwell case to rule against Mr. Walsh because of his failure to maintain

a bona fide religious qualification, clearly demonstrating that a teacher's Charter right to religious freedom can be overridden by the rights of a denominational group as specified by Section 29 of the Charter. All levels of the judicial system indicated that Mr. Walsh was an educationally competent teacher. He was dismissed because he failed to meet an additional qualification, that of appropriate religiosity.

Mr. Walsh's competence as a teacher was never an issue. At issue was his serious departure from the denominational standards accepted by him as a condition of employment and the potential ill effects upon his students that could reasonably be anticipated as a result of their being instructed in the tenets of a particular faith by one who had openly repudiated that faith.<sup>13</sup>

This is a second instance where an educationally competent teacher was dismissed for failing to uphold the bona fide religious qualification.

The Walsh case was similar to the Caldwell case in one other aspect. This Newfoundland Roman Catholic school board also employed teachers who were not Roman Catholic — the arbitration board ruling made this fact quite clear.

Non-Catholic teachers (and some 10–15% of the Board's teaching staff fall into that category) are expected to show sympathy toward this policy [requiring religious conformance].<sup>14</sup>

Section 29 therefore allows teachers of different religions to be treated differently within the same school board. Because some teachers employed by the school board have a bona fide religious qualification and others do not, a Roman Catholic teacher may be held to a different, and some would say higher, moral standard than a non-Roman Catholic hired by the same board. The fact that this bona fide religious qualification is applied over and above other professional qualifications means that some teachers may be dismissed for things that are tolerated in others teaching in the same school. It may seem strange that teachers can be dismissed for failing to uphold a bona fide qualification that several of their colleagues may never have met, but some may see this inconsistency as an acceptable price to pay for maintaining a denominational system.

Beginning teachers should be fully informed of their duties and obligations prior to employment. In denominational schools, educational competence is not enough to be and remain employed. Teachers who begin as practising members of the employing denominational faith should realize that any change in their religious status may jeopardize their future employment with that denominational board. If teachers must accept these restrictions on their human rights in order to be employed, at least they should be able to base their decision on a full understanding of their situation.

It is also important that Canadian teachers be given the option of working in a non-denominational setting. Interestingly, in Newfoundland all schools are currently affiliated with a Christian religion. If teachers do not have the option of teaching for a non-denominational school board, then their human rights are in greater jeopardy than those of teachers who chose to relinquish their human rights in order to be hired by a denominational board.

#### JUDICIAL RULINGS THAT QUESTION DENOMINATIONAL RIGHTS RULINGS

In the two previous cases, due process was the method used to protect the human rights of teachers. Another option may exist: teacher associations may be able to structure their collective agreements to better protect teacher rights. This is exemplified by the Kersey case, heard prior to the Caldwell ruling, in 1982.

##### *The Kersey Case*

In 1980, Mrs. Kersey, a non-Catholic, was hired on a one-year contract by the Essex County Roman Catholic School Board in Ontario. Her contract was renewed for a further year because the board could not find a qualified Roman Catholic teacher to fill the position. Following her second appointment with the board, Mrs. Kersey's position was declared redundant and she was placed on a recall list. The next year a Roman Catholic teacher, who was lower on the recall list, was hired to fill a position for which Mrs. Kersey had the requisite professional qualifications. The teacher association argued that Mrs. Kersey should be reappointed because she ranked higher on the recall list and the advertised position made no reference to religion as a qualification for employment.

The Board of Arbitration ruled that the collective agreement did not require religious qualification as a condition of employment. They stated:

Therefore, since there is nothing in the Collective Agreement . . . indicating that Roman Catholicity is a basic requirement in all recall situations, and since denomination was not included within the list of qualifications specified on the particular job posting in question, there is no basis on which to conclude that being a Roman Catholic is a "required qualification" for this available position. . . .<sup>15</sup>

The arbitration board ruling went on to address the relevance of a bona fide religious qualification for holding a teaching position in the eighties.

It seems to us an obvious fallacy in the Employer's position that it is here arguing that Roman Catholicism is an inherent and basic qualification for any full-time teaching position, including the one at issue here, while, at the same time, stating that non-Catholic teachers have been, and continue to be, employed precisely because they have been found to be qualified for a certain teaching position where no qualified Roman Catholic is

available. To find that Roman Catholicism is a fundamental qualification for a full-time classroom teaching position within this system would compel a conclusion that the non-Catholics employed are, therefore, not qualified when, in fact that was the very reason for their employment in the first place. . . . [O]ne would not reasonably expect a School Board in the 1980's to blindly assume in all cases that, simply by the fact of Roman Catholicity, a teacher is qualified to teach various academic subjects, even religion, where a non-Catholic with identical other "qualifications" is not. Nor, it seems to us, does the fact of denomination in and of itself necessarily ensure the Board's stated aim of an educational service consistent with the philosophy of Catholic education regardless of the individual teacher's personal commitment to, or performance of, his religion.<sup>16</sup>

The Board ruled in favour of Mrs. Kersey and she regained her position, due in part to the wording of the collective agreement. This ruling suggests that there may be room for teacher associations to resolve the inconsistency of the bona fide qualification within the framework of their collective agreements.

#### *The Barron-Babb Case*

The question of religion being a bona fide job qualification arose in Newfoundland again in the Barron-Babb case in 1983, in which the arbitration board was also concerned about the relevance of a religious credential in a situation wherein one teacher association represents both denominational and nondenominational teachers in collective bargaining. Ms. Barron-Babb was a Roman Catholic teacher dismissed for marrying a Protestant in the Anglican Church. Ms. Barron-Babb sought special dispensation to marry outside the Roman Catholic religion, but due to circumstances beyond her control, she had to marry her Protestant fiancé in a non-Catholic ceremony. She vowed to remain a practising Roman Catholic and to teach the children in the same manner that had won her a tenured appointment one year earlier. The arbitration board ruled in her favour.

The Association does not, in the bargaining process, take cognizance of the claim that teachers professing the Roman Catholic faith have more or fewer rights under the Collective Agreement than teachers professing other faiths. The Association, furthermore, and where the argument of teaching by example is concerned, is willing to admit a substantive difference between a teacher who does not nor ever did profess the Roman Catholic faith and one who once did so but who is not now in good standing in the church. That the purpose of Roman Catholic education may be advanced by the former, even though he or she might be Protestant or indeed, a non-Christian, but not by the latter, would appear to be somewhat incongruous.

Again the arbitrators must agree that, within the context of the Collective Agreement, the imposition of special sanctions against a particular group of teachers is discriminatory and contrary to the principles of natural justice and of equity.<sup>17</sup>

When the case was appealed to the Supreme Court of Newfoundland, Mr. Justice Goodrich also found in favour of the teacher, but stated that the arbi-



tration board had made the right ruling for the wrong reason. The case was won on a legal technicality, since the Minister responsible had not signed the by-law governing the case.

These two cases, Kersey and Barron-Babb, show the importance of due process and indicate that it is possible for teacher associations to write safeguards for teacher human rights into collective agreements. It should also be noted that two arbitration boards in two different provinces questioned the appropriateness of religion as a bona fide qualification.

#### THE ROLE OF THE COMMUNITY IN DETERMINING AN APPROPRIATE ROLE MODEL FOR PUBLIC SCHOOL TEACHERS

The Supreme Court of Canada ruling in the Caldwell case has gone a long way toward defining what standards should be observed in certain denominational situations. Teachers in non-denominational settings, however, do not have denominational doctrine to provide guidelines of appropriate behaviour. Collective agreements, precedents set by arbitration board rulings, and judicial review all become primary sources of information about what counts as appropriate teacher behaviour in both denominational and non-denominational schools. It is therefore important for judicial rulings to be understandable and consistent. The following cases indicate possible inconsistencies in judicial rulings, and raise the question of who should set policy for appropriate teacher behaviour in the public school setting. They deal with the private lives of teachers and the part that the local community plays in determining what should count as appropriate teacher behaviour.

The standards for non-denominational schools are still evolving, but can be traced back to the denominational cases already discussed. Two additional denominational cases, the Casagrande case and the Bonnier case, indicate how the importance of an appropriate lifestyle in a denominational school setting might influence the interpretation of appropriate teacher behaviour in the public school. These cases also show that similar life situations can lead to opposite judicial rulings in different provincial jurisdictions.

##### *The Casagrande Case*

In 1986 the Roman Catholic School Board of Hinton, Alberta, was accused of violating a teacher's Charter rights by interfering in her private life and discriminating against her on the basis of sex. Ms. Casagrande was dismissed from her teaching position when she became pregnant out of wedlock for a second time. Mr. Justice Holmes, presiding over the arbitration hearing, indicated that teachers must behave morally in their private lives as well as on the job.

In line with this [Roman Catholic] philosophy, the board adopted a policy which required each of its teachers, firstly, “to conduct himself and herself in a manner both in the school and in the community which is consistent with the philosophy of the school district”; secondly, “to participate in the faith community as a positive example to the students and parents.”<sup>18</sup>

The school board argued that Ms. Casagrande failed to live up to Roman Catholic doctrine by engaging in pre-marital sexual intercourse. The ensuing pregnancy was an indicator of this inappropriate lifestyle, but it was the lifestyle that was objectionable, not the pregnancy.

The evidence did not indicate the appellant was treated differently than would be any other Catholic teacher, male or female. . . . [T]he alleged discrimination was based not on pregnancy or the sex of the appellant but her act of sexual intercourse out of wedlock. That kind of misconduct would seem attributable to both males and females.<sup>19</sup>

According to Mr. Justice Holmes, this was not a case of sexual discrimination, because the lifestyle attributed to Ms. Casagrande could also be adopted by male teachers. Both males and females must abide by the same denominational doctrine. If male teachers are caught engaging in a similarly inappropriate lifestyle, they too may be dismissed. The ruling indicates that all Roman Catholic teachers must live a lifestyle consistent with the religious doctrine of the Roman Catholic Church. Therefore, Roman Catholic doctrine should provide moral principles for all Canadian Roman Catholic teachers regardless of provincial boundaries or the preference of the local school boards, and all Roman Catholic teachers employed by Roman Catholic school boards across the country should have a clear understanding of their rights and obligations.

This ruling indicates that what a Roman Catholic teacher does in her or his private life may be cause for dismissal even though it does not involve marriage outside the church. This precedent based on lifestyle may also form the basis for rulings made in cases concerned with teacher behaviour in public schools.

#### *The Bonnier Case*

Prior to the Casagrande case, a similar question of lifestyle, this time for a male Roman Catholic teacher in a Roman Catholic school in Laval, went as far as the Quebec Superior Court. In 1978, Mr. Bonnier posed nude with his co-habitant, Miss Nude Quebec, who had been a student of his the previous year. The picture was taken at a private nudist club and was published in a Montreal newspaper, *Le Nouveau Samedi*. The school board suspended Mr. Bonnier without pay for six weeks, and Mr. Bonnier appealed his suspension to a board of arbitration. The arbitration board ruling carefully considered Roman Catholic doctrine, but also took contemporary morality into account.

The Board must consider the times in which we live. The same act carried out 15 or 20 years ago would have caused a mini-revolution with considerable consequences.<sup>20</sup>

The arbitration board said nothing had been presented during the hearing to indicate that Mr. Bonnier's nudity was contrary to its understanding of Roman Catholic doctrine. In addition, it indicated that the incident had taken place during the summer, so there was little disruption to the school. Further to this point, the arbitration board said the Laval School Board had been effective in quieting any parental concerns. It said, however, that had there been a greater public outcry, Mr. Bonnier might have lost his job.

Without saying that he has done anything wrong, however, in agreeing to pose nude with his girlfriend at a public event, he was risking causing a controversy that would have made it difficult to carry out his duties and might have justified his employers' adopting the most severe disciplinary measures. By acting in this way, Mr. Bonnier risked publicity which could have been disastrous for him. Can we be sure that the parents of his pupils would have accepted the fact that he was living with an ex-student and entered a nudist competition with her? Might the parents not have believed that their own girls would have been at risk in having him as a teacher?<sup>21</sup>

This raises the question of local control even in instances where Roman Catholic doctrine governs the behaviour of denominational teachers. Had the incident caused an outcry from the parents, and had it not been handled so well by the school board, the ruling might have been different.

Because Mr. Bonnier had been an exemplary teacher for eleven years, and because the incident caused little public concern, the arbitration board pronounced the suspension "draconian, disproportionate and totally unacceptable."<sup>22</sup> They ordered that Mr. Bonnier be totally exonerated.

The grievance is upheld, and the employer is ordered to cancel the suspension and remove the letter from his file, and reimburse him, with interest, for the money he lost.<sup>23</sup>

The arbitration board added an interesting footnote to its ruling.

Without discussing or contesting his opinions on nudism or the way he spends his leisure time, we hope that the present decision will serve as a warning to him to be more careful in the future.<sup>24</sup>

It is difficult to see how complete exoneration would serve as a warning to Mr. Bonnier, or how it would help to provide guidelines for other Roman Catholic teachers. The school boards in both the Casagrande and the Bonnier cases saw the teacher's action as contrary to Roman Catholic doctrine, but the judicial interpretation in the two cases was less consistent. In the Casagrande case, the hint of sexual discrimination arises, but the real concern in the Bonnier case is

whether the arbitration board's decision would have been swayed by a louder outcry from the local community. It is interesting that when the school board appealed the Bonnier ruling, the Quebec Superior Court upheld the finding of the arbitration board, saying that the board was within its rights when its members used their own personal knowledge and experience to interpret Roman Catholic doctrine.

In Alberta, Ms. Casagrande was dismissed from her teaching position for living an inappropriate lifestyle that happened to manifest itself in pregnancy. In Quebec, Mr. Bonnier was judged not to be living an inappropriate lifestyle even though he was co-habiting with a student from his class of the previous year, and allowed a photograph of himself in the nude with his partner to be published in a newspaper. Although the premarital living arrangements in both instances may have been similar, the evidence of their co-habitation was quite different. The resultant disciplinary action imposed by the judicial system was diametrically opposed even though Roman Catholic doctrine governed both cases. This suggests that local preference may play a role in judicial rulings even beyond the school board level.

#### *The Shewan Case*

Another case that involves the local community defining what should count as an appropriate teacher behaviour made its way to the highest court in British Columbia in 1987. The Shewan case arose from another instance of teacher nudity; this time, however, there was a public outcry, and it occurred while school was in session. The case differs from the previous cases because it occurred in a non-denominational school and therefore the teacher's behaviour was not governed by denominational doctrine.

John and Ilze Shewan were both teaching in the public school system in Abbotsford, British Columbia. John took a photograph of Ilze posing semi-nude that was published in *Gallery* magazine. The couple was married at the time and the picture was modest compared to the full frontal nudity of Mr. Bonnier and Miss Nude Quebec. The school board suspended both teachers for six weeks and the Shewans appealed the decision.

Because Mr. and Mrs. Shewan were employed in a non-denominational school, the question of what should count as a standard of teacher behaviour arose. This standard could have been derived from either the local community or the larger Canadian society. In the first appeal, the Board of Reference reversed the school board's decision and ruled in favour of the Shewans, saying:

The question we believe that should be asked is not whether the Shewans' conduct fell below some of the community standards but whether it was within the accepted standards of tolerance in contemporary Canadian society.<sup>25</sup>

The Supreme Court of British Columbia rejected this test of acceptability. In his ruling, Mr. Justice Bouck stated that teacher conduct should be judged by the standards recognized in the community where the teachers are employed.

The behaviour of the teacher must satisfy the expectations which the British Columbia community holds for the educational system. Teachers must maintain the confidence and respect of their superiors, their peers and in particular, the students, and those who send their children to our public schools. Teachers must not only be competent, they are expected to lead by example. Any loss of confidence or respect will impair the system and have an adverse effect upon those who participate in or rely upon it. That is why a teacher must maintain a standard of behaviour which most other citizens need not obtain because they do not have such public responsibilities to fulfil.<sup>26</sup>

In making the local community responsible for teachers' moral standards, Mr. Justice Bouck established a precedent whereby local community standards, devised by local school boards, based on local preferences, are more appropriate than standards established by either a provincial or national view of contemporary morality. To further clarify his position, Mr. Justice Bouck offered this observation:

If no other teachers are doing this, then it may be misconduct. Evidence of this nature was not heard by the Board of Reference but I believe I am entitled to draw an inference from the proven facts as to whether a substantial number of teachers in the Abbotsford area do indeed publish their nude pictures in men's magazines. It seems clear they do not.<sup>27</sup>

Apparently if other teachers in the Abbotsford area were in the habit of posing in the nude, the Shewans would not have been suspended because posing in the nude might then be considered as appropriate teacher behaviour on local standards. The exercise of local preference cannot explain the tolerance of nudity in the Bonnier case, because the local school board suspended Mr. Bonnier based on their understanding of denominational doctrine. The arbitration board overturned the school board's ruling, and the ruling was upheld by the Superior Court of Quebec. The troublesome part of the Bonnier ruling is the claim that had there been a greater public outcry, the decision might have been reversed. The arbitration board's reference to the possibility of public pressure swaying their decision lends credence to Mr. Justice Bouck's decision upholding the local community's right to determine appropriate teacher behaviour. These two cases illustrate the problem of legal situational ethics.

It is difficult for teachers reading these rulings to understand how standards of moral behaviour should be applied. The apparent lesson to be learned from Casagrande is not to get caught twice becoming pregnant as a consequence of engaging in pre-marital sexual intercourse. The lesson in the Bonnier case is less clear. It may be acceptable to co-habit with a former student and pose in the

nude for a newspaper photographer, if there is no public outcry, or obvious evidence of pre-marital sexual intercourse. From the Shewan case, it can be assumed that teachers living in different communities will have to measure up to different social standards. That the gamut of appropriate teacher behaviour ranges from the fixed notions of a denominational doctrine to the rather nebulous standards of local community preference may be of concern to those just beginning a teaching career or who are experiencing a significant change in their traditional lifestyle.

Fearing that school boards may arbitrarily set standards for dismissal, teachers may become cynical and hypocritical, simply keeping their private lives a secret. Thus their moral behaviour on the job will not necessarily reflect their true moral beliefs. This could undermine the whole concept of teacher as moral role model, or lead to the impossible situation in which school boards would have to invade the bedrooms of their teachers to determine whether their private lives are consistent with their professional lives.

#### THE PROFESSIONAL ALTERNATIVE

Typically, teachers are not free to act in public or in private as other Canadians might, because they have a responsibility to uphold a moral code non-teachers need not abide by. This duty to act responsibly places teachers in the company of such other professionals as doctors, lawyers, and the clergy. Each of these professional groups are expected to behave both on and off the job in ways above moral reproach.

This notion of professionalism may provide a solution to some of the problems raised by the non-denominational case discussed above. If public school teachers fail to get relief from the due process of the judicial system, or are not satisfied with protection afforded by their collective agreement, then greater professional autonomy may provide a more attractive alternative. These solutions are not as applicable to teachers in denominational schools, who are still governed by sections 22 and 29 of the Charter of Rights and Freedoms.

Such professions as medicine and law have established mechanisms for policing their own members, based on the autonomy granted to them because of their knowledge and expertise. These professions are careful to screen candidates for training programs, construct examinations for entry into practice, and then scrutinize the moral behaviour of their practitioners through peer review.

Professional teachers suspected of not providing an appropriate role model could be heard first before a tribunal of peers. Cases would then proceed to the public courts only if either party was not satisfied. Peer review may be the best solution for the problems raised in this article and is a powerful reason for the further professionalization of teachers.

The establishment of such a mechanism for policing the teaching profession would be a monumental task given the profession's size and scope, but it might

be the only way to assure teachers' human rights. Perhaps an understanding of cases such as these will provide the impetus for teachers to turn to their peers for protection.

If the Shewan ruling sets precedent in non-denominational settings, and appropriate teacher behaviour is to be determined by local preference, then a professional body empowered to investigate, supervise, and discipline its members is essential to oversee the human rights of teachers, especially in public school settings. Perhaps this is what Mr. Justice Bouck had in mind when he made his ruling in the Shewan case. The courts have traditionally been loathe to judge the competence of professionals. Perhaps Justice Bouck was encouraging teachers to take matters of judging professional competence into their own hands. It should be noted that British Columbia has set up a professional body—the British Columbia College of Teachers—in the years since the Shewan ruling.

Teachers ought not be required to abandon their human rights at the school-house door. Beginning teachers may enter into an initial contract in ignorance of the consequences of their actions. In periods of job shortages, teachers may be so eager for employment that they are willing to overlook the restrictions on their individual freedoms. Even if the terms of employment are clear and the teacher understands the obligations and duties at the beginning of employment, life situations can change over the course of a teaching career. If a mechanism for professional peer review were in place, a teacher's behaviour or competence would be judged first by knowledgeable teaching professionals. These professional boards would establish standards for teacher conduct and advise the courts about the various personal and professional competencies needed to teach effectively. Due process could still be pursued for those unsatisfied with the professional tribunal's judgement.

This is an excellent time to establish a professional review board because the teaching profession is on the brink of a massive period of retiring and rehiring. The teachers of the baby-boom generation will soon make way for new, highly qualified teachers, graduating from teacher education programs that have selected their students very carefully. Never has the quality of candidates for the teaching profession been higher, nor has the climate for further professionalization of teachers been more favourable. Teachers are more technically expert at their task and more knowledgeable than ever about the reasons underlying the teaching-learning enterprise. If professionalism is built on knowledge and technical expertise, then teachers should be more qualified than ever before to accept professional autonomy.

Teachers graduating from teacher education programs are often told that they are professional, but it is not always clear what benefits accrue from professional status. More autonomy, leading to a greater protection of teacher human rights, provides a strong argument for professionalization.

Educators at all levels need to become more involved in defining what should count as appropriate role model behaviour for teachers.<sup>28</sup> Teachers as profession-

als should have a greater say in defining the moral standards of the profession and should have greater control over the discipline of professional misconduct. Traditionally the courts have sought guidance from professionals about definitions of professional competence and the establishment of appropriate disciplinary measures. If the courts fail to receive guidance from educational professionals, they will continue to establish educational policy to fill the vacuum.

## NOTES

- <sup>1</sup> Part I of the Constitution Act, 1982, being Schedule B of the Canada Act 1982 (U.K.), 1982, c.11.
- <sup>2</sup> Minister of Supply and Services Canada, *The Charter of Rights and Freedoms: A Guide for Canadians* (Ottawa: Publications Canada, 1982), p. v.
- <sup>3</sup> *Ibid.*, p. 3.
- <sup>4</sup> *Ibid.*, p. 9.
- <sup>5</sup> *Ibid.*, p. 29.
- <sup>6</sup> *Ibid.*, p. 1.
- <sup>7</sup> *Ibid.*, p. 31.
- <sup>8</sup> *Ibid.*, p. 32.
- <sup>9</sup> *Caldwell v. Stuart*, (1984) 2 S.C.R. 603, pp. 4–5.
- <sup>10</sup> *Ibid.*, p. 23.
- <sup>11</sup> *Ibid.*, pp. 5–6.
- <sup>12</sup> *Walsh v. The Roman Catholic School Board for St. John's*, (1986), 59 Nfld. and PEIR 129 (Nfld. T.D.), Nfld. C.A., (1988) unreported, p. 19.
- <sup>13</sup> *Walsh v. The Roman Catholic School Board for St. John's*, (1986), p. 15.
- <sup>14</sup> *Walsh v. The Roman Catholic School Board for St. John's* (1985), p. 3, unreported Board of Arbitration.
- <sup>15</sup> *Re the Essex County Roman Catholic School Board and Kersey* (1982), unreported Arbitration Board ruling, Hennegan, 3 February 1983, p. 20.
- <sup>16</sup> *Ibid.*, pp. 17–19.
- <sup>17</sup> *Re Roman Catholic School Board for Conception Bay North and Barron-Babb* (1983), unreported Arbitration ruling, Harris, 21 March 1983, p. 20.
- <sup>18</sup> *Hinton Roman Catholic Separate School District No. 155 v. Casagrande* (1986), unreported Arbitration ruling, Mr. Justice Holmes, 29 May 1986, p. 9.
- <sup>19</sup> *Ibid.*, p. 7.
- <sup>20</sup> *Syndicat des Professeurs de la Ville de Laval c. Commission scolaire Chomedey de Laval* (1982), *Recueil des Sentences de l'Education* 26, 2529, p. 6. The quotation has been translated.
- <sup>21</sup> *Ibid.*, p. 7. The quotation has been translated.
- <sup>22</sup> *Ibid.*, p. 8. The quotation has been translated.
- <sup>23</sup> *Ibid.*, p. 9. The quotation has been translated.
- <sup>24</sup> *Ibid.*, p. 8. The quotation has been translated.
- <sup>25</sup> *Abbotsford School District 34 v. Shewan* (1987), 21 B.C.L.R. (2d) 93 (C.A.), p. 95.



<sup>26</sup> Ibid., p. 98.

<sup>27</sup> Re Board of School Trustees of School District No. 34 (Abbotsford) and Shewan et. al. (1986), Dominion Law Reports (4th) 26, p. 71.

<sup>28</sup> A good example of educators' efforts to apply sound educational principles to a judicial ruling is M. Manley-Casimir and S. M. Piddocke, "Teachers in a Goldfish Bowl: A Case of Misconduct," *Education and Law Journal* 3, no. 2 (1991): 115–48.

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