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The Problem of the Penumbra: Elementary School Principals' Exercise of Discretion in Student Disciplinary Issues

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THE PROBLEM OF THE PENUMBRA: ELEMENTARY SCHOOL PRINCIPALS' EXERCISE OF DISCRETION IN STUDENT DISCIPLINARY ISSUES

Problem of the Penumbra: Discretion and Student Disciplinary Issues

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by

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Abstract

Maintaining order and discipline is one of the most challenging aspects of the school-based administrator's role. School officials make disciplinary decisions within a context that is established, in part, by case law, legislation and regulations, school board policies and social, organizational and individual values. The exercise of administrative discretion is vital to the decision-making process. It offers school leaders creativity and flexibility. The interpretation and implementation of school discipline policies by in-school administrators can provide insight into their discretionary decision-making. The purpose of this study was to determine how principals in an urban school division in Western Canada negotiated within the legal parameters of discretion as it is delegated to them in legislation and school board policy in order to be faithful to their own values system in matters of student discipline. The study assumed Christopher Hodgkinson's hierarchy of values as a theoretical framework for examining the administrators' decision-making, and used H.L.A. Hart's concept of law as a system of rules as an additional lens through which to view the exercise of administrative discretion. Employing an interpretive qualitative research methodology, the researcher conducted in-depth, semi-structured interviews with ten elementary school principals. Findings of the research reflect that the way principals perceived the exercise of discretion enabled them to maintain school safety, to be, in their judgment, fair and just in decision-making in disciplinary situations, to balance competing rights in the school setting and to make decisions in what they understood to be the best interests of their students. The principals' exercise of discretion, however, appeared to be subject to various values and influences which could lead to injustice and arbitrariness in decision-making. In the end, I concluded discretionary power should be structured, limited and subject to review in order to provide accountability to stakeholders. Implications of the study suggest principals should develop greater awareness of their own values system and be reflective about their judgments and decision-making. Schools should have clearly-defined codes of conduct, and school divisions should outline expectations for discipline policy implementation and adherence by principals.

Keywords

Administrative Discretion, School Administration, Elementary Principals, Student Discipline, Christopher Hodgkinson, H.L.A. Hart, Decision-Making, Values, School Law

Dedication

This dissertation is dedicated to the memory of Grant and Georgina Robertson and Fred and Jean Findlay.

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CHAPTER 1

1 Introduction and Statement of Problem

> As a teacher I possess tremendous power to make a child's life miserable or joyous. I can be a tool of torture or an instrument of inspiration. I can humiliate, humour, hurt or heal. In all situations it is my response that decides whether a crisis will be escalated or de-escalated, and a child humanized or dehumanized. (Ginott, 1972, pp. 15–16)

One of the most challenging and time-consuming aspects of the in-school administrator's role is that of maintaining order and discipline, the twin legal imperatives that form the core of administrative practice, and without which the educational mission of the school could not be accomplished. As iterated in the United States Supreme Court ruling in *New Jersey v. T.L.O.* (1985), "without first establishing discipline and maintaining order, teachers cannot begin to educate their students" (p 747). Also inherent in the administrator's responsibility is the obligation to ensure school safety, and fair and appropriate discipline can help to establish such an environment (Kajs, 2006). Indeed, Hyman and Perone (1998) suggest that if the perception by pupils is that "school personnel, especially the principal, are fair and caring," then "they have a stake in making the school safe" (p. 12). Bundy (2006), however, describes student discipline as an "age old concern" of school principals (p. 2) and suggests it is one of the "most contentious issues in the struggle for improving student achievement" (p. 113). Brady (2002) concurs, adding that the "issues of school and student discipline continue to be a

persistent and difficult problem for educators" (p. 160). Furthermore, the research of Gall (2010) finds that school discipline may not foster "collaboration between school authorities and student" (p. 137), and suggests "the disconnect between school authorities and students (whether real or perceived) as caused by many practices of school discipline is a problem" (p. 138). Again, the United States Supreme Court underscores the importance of discipline in schools when it opines "one who does not comprehend the meaning and necessity of discipline is handicapped not merely in his education but throughout his subsequent life," and equates students' understanding of the "necessity of rules and obedience" with the importance of "learning to read and write" (*Goss v. Lopez*, 1975, p. 745). The Court goes on to identify "the classroom [as] the laboratory in which this lesson of life [the lesson of discipline] is best learned" (p. 746). The Supreme Court of Canada, too, grapples with the meaning of discipline in *Canadian Foundation for Children v. Canada* (2004). McLachlin C. J. acknowledges the "unclear and inconsistent" messages sent in the past by courts which have endeavored to define what is "reasonable under the circumstances" in cases of child discipline (para. 39). She admits, though, "on occasion, judges erroneously applied their own subjective views on what constitutes reasonable discipline—views as varied as different judges' backgrounds" (para. 39).

1.1 Decision-Making in School Administration

Instances of student misbehavior occur in schools on a daily basis; frequently, these incidents result in the application of any one of a number of disciplinary measures. The significance of these disciplinary responses cannot be understated—the substantial authority educators and school administrators wield may have lasting effects upon

students, and research reveals school disciplinary practices may disproportionately affect minority students (Brady, 2002; Clark, 2002; Fenning & Rose, 2007; Mendez & Knoff, 2003; Torres & Stefkovich, 2009; Townsend, 2000), and may contribute to early leaving of school (Mendez & Knoff, 2003; Ruck & Wortley, 2002; Wu, Pink, Crain & Moles, 1982).[1] Seventy-five percent of those educators surveyed in a study on the work life and health of Saskatchewan teachers agreed disciplining students was one of the negative stressors contributing to the "difficulties and complexities of teaching" (Martin, Dolmage, & Sharpe, 2012, p. 14). Although there often is little agreement among educators, discipline should be educative, corrective, supportive, and equitable. According to Kajs (2006), while discipline may be seen as "retributive, preventative, or rehabilitative," usually it is "associated with punishment" (p. 18; see also Duke, 2002; Fenning & Rose, 2007). Ackerman (2003), in a similar way, identifies the use of punitive and physical sanctions as the "overarching focus of American school discipline" (p. 14; see also Kafka, 2006, p. 239). Hyman and Weiler's (1994) study also notes the use of "punitive sanctions" (p. 128) in school discipline as being one of six common stressors that are "considered to be abusive to children" (p. 129). Furthermore, "get tough" discipline approaches, such as zero tolerance policies, which are prescriptive and punishment-based, have not proven to be effective or to reduce serious incidents in schools and, in fact, may have unintended negative results (Casella, 2003; Clark, 2002; Dunbar & Villarruel, 2002; Nelson, 2008; Skiba, 2002). Consequently, school-based

[1] In Canada, the dropout rates for young women are 6.6% of the school population, while for young men they were 10.3% in 2009-2010. Graduation rates, on the other hand, were 81% for females and 73% for males (Statistics Canada, 2011, p. 3). Furthermore, nearly "40% of Aboriginal people in Canada have not completed high school", as compared with "just over 20% of the total population" (Levin, 2009, p. 689).

administrators frequently wrestle with the tension that exists between being, and/or being perceived as being, either too harsh or too weak in dealing with disciplinary issues, since much of their effectiveness as school leaders may be determined in this way by students, staff and parents (Axelrod, 2010).

1.2 Role of Decision-Making

At the same time, decision-making has been described as the "*sine qua non* [emphasis in original]" of educational administration (S.H. Davis, 2004, p. 621; see also Hodgkinson, 1978b; Tuten, 2000), consisting of far more than "the mechanical application of existing rules, regulations and various levels of school and school-related policy" (Frick, 2009, p. 50; see also Begley, 1999). Indeed, Ashbaugh and Kasten (1984) believe the "unbalanced" and "undue emphasis upon technical proficiency" of leaders is misplaced (p. 195), and Roche's (1999) study also "challenges the traditional perspective of the school administrators as rational, technical bureaucrats" (p. 264). Millerborg and Hyle's (1991) survey of over 300 elementary and secondary principals in Washington, DC, suggests that "ethical principles, not the technical aspect" of educational administration, drive educational decisions (p. 17). Davis (2004) insists classical positivist decision-making models that reflect "dispassionate analysis, not emotion or subjectivity [are] a myth," since they do not provide effective responses for decision-making in the world of schools (see also Bundy, 2006; Morris, Crowson, Hurwitz and Porter-Gehrie, 1984). Tuten (2006) quite simply concludes "scholars and practitioners fail to understand how school administrators make decisions in the workplace" (p. 56).

Studies suggest that principals' decision-making often takes place in "episodic intervals" with nearly half their time spent in activities lasting less than four minutes (Crowson & Porter-Gehrie, 1980, p. 51). Other estimates suggest they attend to nearly 150 tasks per day (Calabrese & Zepeda, 1999, p. 7; see also Kmetz & Willower, 1982), which can result in almost 400 separate daily interactions (Manasse, 1985, p. 441; see also Mertz, & McNeely, 1998). Morris *et al*. (1984) describe the role of the secondary principal as having a "fractionated, piecemeal character" (p. 53), Calabrese and Zepeda (1999) note its "hectic" "rapid-fire" and "unpredictable" nature (p. 7), and Willower and Licata (1997) point to the "brief, fragmented, and often interrupted activities" engaged in by school administrators (p. 1). Roher and Wormwell (2000) highlight the manner in which principals are "bombarded" and "overwhelmed by demands" (p. 217) as they rush "from task to task, not completing one before another interrupts them" (p. 218; see also Hodgkinson, 1991, p. 58). Gronn (2003b) identifies the "work intensification" (p. 18) in describing "the new work of educational leaders: long hours, endless demands, punishing pace and continual frustration" (p. 68). W. D. Greenfield (1995) comments on the "action-oriented" work of the principal, complete with "ambiguity and uncertainty" in a "demand environment" (p. 63). The research, however, does not appear to distinguish between frequency of interactions in schools where principals are the sole on-site administrator and frequency of interactions in settings where vice-principals or assistant principals also assume administrative duties. Nonetheless, as multi-taskers *extraordinaires*, principals make countless spur-of-the-moment decisions while supervising a lunchroom or while conversing with staff or students as they scurry down a

hallway,[2] and Calabrese and Zepeda (1999) insist they often cannot afford "the luxury of delayed decision-making" (p. 8).

1.3 Notion of Values in Educational Administration

Much of the literature suggests there is little support for a positivist turn in administration and identifies the assumptions of the value-laden nature of educational administration (Ashbaugh & Kasten, 1984; Begley, 2003; Hodgkinson, 1978b, 1983, 1991, 1996; Willower & Licata, 1997). As T. Greenfield (1993) explains, "the central questions of administration deal not so much with what is, but with what ought to be; they deal with values and morality" (p. 194). Moreover, he claims, "the school *is* [emphasis in original] a crux of value and for value. It is the crux of value and of administrative value" (T. Greenfield, 1993, p. 192). Arguing against Simon's (1957) and others' traditional assumption that "de-valued, but rational decision-making is desirable, attainable and scientifically verifiable," T. Greenfield (1993) contends the "science of administration" misses the "moral and educative task of administration," that is, the "dimensions that deal with values and morality" (p. 194). Simon's (1957) search for effectiveness and efficiency in organizations by focusing on increased rationality and the factual basis for decision-making (Griffiths, 1959) is antithetical to the subjectivist assumptions of a phenomenological approach. T. Greenfield (1980) queries "but how can the administrator *be* logical and rational in decision-making? How can he make the decision flow from facts rather than from an attitude towards the facts or from personal values [emphasis in original]?" (p. 44). In acknowledging the

[2] Allison and Morfitt 's (1996) study of the time-span for task completion for principals and other school administrators provides an alternate context for their administrative duties.

limits of individual decision-making, Simon (1957) contends "two persons, given the same possible alternatives, the same values, the same knowledge, can rationally reach only the same decision" (p. 241); thus, there is a need for a science of administrative theory. Moreover, "within the area of discretion, once an individual has decided on the basis of his personal motives to recognize the organizational objectives, his further behavior is determined not by personal motives, but by the demands of efficiency" (p. 204). T. Greenfield (1986), however, rejects what he terms this "neutered science" in administration that "relieves the anxiety of decision-making and removes the administrator's sense of responsibility for his decisions" (p. 62).

W. D. Greenfield (1995) concurs, explaining "schools differ from most other types of organizations" in that they are "uniquely moral enterprises" (p. 61), and he insists it is the "special responsibility" of school administrators "to consider the value premises underlying their actions and decisions" (p. 69). He contends "valuing is central in the doing of school administration" (W. D. Greenfield, 2004, p. 191). Leithwood, Begley and Cousins (1992) also propose that school leaders at all levels of experience rely on a "common core of values in their problem-solving" (p. 107). Toews (1981), too, maintains the issues school administrators face "involve the weighing of social and personal values" (p. 6), and the making of decisions that are "prescriptive or proscriptive" requires them to make "moral judgements" (pp. 6–7). Leithwood and Steinbach (1995) attest to the pervasiveness of values in school administrators' decision-making and further suggest these values are influenced by administrators' "religion, educational training, school district philosophy, and role models" in addition to their professional and personal life experiences (p. 189). Millerborg and Hyle (1991) appear to agree. They

argue for greater attention on ethical decision-making in administrator preparation programs since administrators' ethical belief systems depend upon the "nature of the values they have internalized" and significantly affect their decision patterns (Millerborg & Hyle, 1991, p. 4). Roche's (1999) research reveals that when principals are faced with moral dilemmas they "must choose one value or set of values over another" (p. 256; see also Campbell-Evans, 1988). Ashbaugh and Kasten (1984) observe that administration consists of the "process of making decisions" and that decision-making "inevitably involve[s] values" (p. 196); consequently, it is the "value-based aspect" of decision-making "that makes administration difficult" (p. 196). Finally, Begley (1999) considers the "resurgence of interest in values as an influence on administrative practice" and attributes this focus to the "increasingly pluralistic societies" in which school leaders function, and which result in an administrative practice that has become "less predictable, less structured, and more conflict-laden" (p. 238).

1.4 Discretion in Administrators' Decision-Making

That administrators in organizations exercise discretion in their decision-making is also well-established. Manley-Casimir (1977–78), for one, argues discretion is "vital" to administrators in their decision-making, allowing them "flexibility" and creativity (p. 84), and he also pointedly maintains any model of administrative decision-making must involve a consideration of discretion (personal communication, November 19, 2009). In his insightful analysis, Hawkins (1997) contends discretion is pervasive and is part of the daily behavior of administrative officials. Lacey (1992) muses about whether a "decision" can usefully be considered apart from "discretion" (p. 380), and Galligan (1986) submits it is "hard to imagine a decision which does not involve some discretion"

(p. 11). Toews (1981) claims the exercise of discretion is "widespread" (p. 7), while Paquette and Allison (1997) contribute the view that discretion is at the "heart of administrative action" (p. 165). Sossin (2002) explains discretion "arises whenever bureaucrats have a choice as to how to exercise their authority. Construed broadly, virtually every administrative act contains some measure of discretion" (p. 839). Handler (1992) maintains "discretion is ubiquitous" and, as a result, it is "difficult to define" (p. 331). Furthermore, in the implementation of public policy, Handler (1986) argues, discretion is "inevitable" (p. 11) and should be seen as "necessary and desirable" (p. 11). Morris *et al.* (1984) argue principals' exercise of discretion is one aspect of behavior that influences "the total learning community" (p. 30), and narrowing the focus, Leithwood *et al*. (1992) suggest secondary school principals may have the opportunity to exercise more discretion than their elementary counterparts. Finally, the research of Meyer, Macmillan and Northfield (2009) into principal succession reveals "principals have a framework for decision-making that incorporates conscience and discretion" (p. 32). Their study found "the principals' use of conscience and discretion implicit in the decision-making process helped to explain their values in use" (Meyer *et al*., 2009, p. 22), and they conclude "one's conscience interprets under which contexts, under what influences, and to what degree the principal will exercise personal and professional discretion" (p. 33).

1.5 Discretionary Decision-Making in Schools

Baldridge (1995) defines policy-making as "the art of setting parameters for the actions of a group's members," and cites the creation of laws as but one example of "policy-making which governs the behavior of those within a legal system" (p. 44). If the boundaries of administrative action are established through legislation and policy,

then the existence of discretion may be considered as absolutely essential for the more pragmatic functioning of complex organizations, including schools:

> The school system operates within a dense legal, political, and social environment. It is subject to municipal, state, and federal laws and regulations. As a professionally oriented organization, it is influenced by professional educators, ideologies, licensing requirements, employment laws, and so forth. Nevertheless, within these constraints and influences, there is room to maneuver, to develop and modify styles and patterns of operations, to create and emphasize certain programs. (Handler, 1986, p. 10)

Clearly, a number of conflicting interests, standards, expectations, and obligations exist within the highly complex organizations that are schools; however, within that sphere there is considerable opportunity for discretion to flourish. Torres and Chen (2006) also observe that, given the intricacies of modern bureaucracies, discretion may be "indispensible" in the implementation of policy. They describe its intricate and multi-layered nature as being those "options or actions not encompassed or governed in formalized law or rules" (p. 190). They further suggest policy implementation in some fields may require stricter adherence to policy directives than in others where greater discretion and choice are needed in order for implementation to be effective. Discretion in decision-making by administrators in schools appears to be exercised in many areas. For example, Handler (1986) suggests that in cases of special education, which require programs that are "judgmental, professional, flexible, experimental" (p. 3), student placement decisions "should be discretionary" (p. 3) because of knowledge gaps about

student performance and achievement, while Larsen and Akmal (2007) identify the implementation of student retention policies as being another area where administrative discretion is required.

It may be argued, however, of even greater significance is the "Janus-like character of discretion" that may be manifested "benevolently or malevolently, reasonably or unreasonably, justly or unjustly" (Manley-Casimir, 1977–78, p. 84). As well, Hall's (1999) reference to the "dual nature" of discretion (p. 159) and K.C. Davis' (1969) admonition that discretion can provide the opportunity for "beneficence or tyranny, either justice or injustice, [or] either reasonableness or arbitrariness" (p. 3; see also Handler, 1986) reflect its highly complex character and offer compelling reasons for further study of the manner in which discretion operates in decision-making.

1.6 School-Based Administrators and Discipline

Principals are generally considered to be leaders of the instructional program (Lunenburg & Ornstein, 2008; Morris *et al*., 1984; see also Mertz & McNeely, 1998) or to influence the learning program through their leadership (Brubaker & Simon, 1987; Supovitz, Sirinides, & May, 2010; see also Leithwood *et al*., 1992). Yet Hanson (2003) maintains school administrators "give most of their attention to managing the school and pupil control" (p. 95; see also Doud & Keller, 1998), and W. D. Greenfield (1995) explains that although principals would prefer to focus upon matters of instruction, "this appears not to be the case" (p. 79). In arguing for a distributed leadership paradigm, Gronn (2003b) acknowledges that while leadership is the "core responsibility of principals and superintendents" (p. 16), they are not "automatically [leaders] by virtue of being administrators and managers" (p. 17). Bundy (2006) contends principals have

"responsibility for student achievement and improvement" (p. 1), but their instructional leadership is also assumed in the "arena of student behavioral management" (p. 101). Birrell and Marshall (2007) surmise much of a principal's time is diverted from a focus on curriculum and school leadership to disciplinary issues, while Kmetz and Willower's (1982) research reveals principals spend "considerable time on pupil control" (p. 74). Dempster and Berry's (2003) study of Australian principals found they spent a "disproportionate amount of time" on social problems, such as drug use among students, and, as a result, a significant amount of their time was diverted from curricular planning (p. 463). My own administrative experience supports these assertions; much of my role as an in-school administrator focuses on responding to the many complex social issues found in today's diverse and inclusive school settings.

When administrators make decisions in matters of student discipline, they are often required not only to problem solve but also to resolve ethical dilemmas (Cranston, Ehrich, & Kimber, 2006; Tuten, 2006). In order to better "appreciate the responses of leaders to complex and non-routine problems," Leithwood *et al*. (1992), however, suggest decision-making should be considered "only one form of problem-solving" (p. 9). Begley (1999b) extends this argument by contending that in contemporary school settings "traditional rational notions of problem solving" are rendered obsolete in some respects because school-based administrators "increasingly encounter situations where consensus cannot be achieved," since "there may be no solution possible that will satisfy all" (p. 239; see also Begley, 2010). Most of the issues they face are intricate and multi-faceted, reflecting the complexity of the contemporary role of the school official and the challenges found in the pluralism and diversity of today's schools (Begley, 1996, 1999b,

2010; Bundy, 2006; Davis & Davis, 2004). Indeed, Cuban (2001) defines many of the "wicked problems" or "dilemmas" faced by administrators and educators as "ill-defined, ambiguous, [and] complicated," requiring "undesirable choices between competing, highly prized values that cannot be simultaneously or fully satisfied" (p. 10). Leithwood *et al*. (1992) define what they term "swampy problems" in schools as "non-routine" (p. 46) problems "about which the solver possesses very little knowledge regarding how to accomplish some valued goal" (p. 43).

School administrators, it follows, use discretion as a response to value conflicts (Begley, 2004; see also Meyer *et al*., 2009) and to ethical dilemmas (Cranston *et al*., 2006; Haynes & Licata, 1995). Hall's (1999) research demonstrates administrators "rely on their core values in their use of discretion" (p. 96). Lunenburg and Ornstein (2008) echo these assertions and maintain school officials "are granted wide discretion in disciplining students" (p. 384), while the work of Morris *et al*. (1984) highlights the notion principals exercise discretion when they discipline students. Every one of the twenty-eight administrators and teachers surveyed in Ackerman's (2003) study "noted the use of personal judgment and discretion in every disciplinary situation faced, regardless of the infraction" (p. 51). Rossow (1984) extends the argument and suggests the "exercise of discretion in the decision to suspend is fraught with opportunities for subtle prejudices to come into play, and especially in the context of other identified discriminatory policies, may be constitutionally unsound. Three sensitive classifications spring to mind in the school environment: race, gender and social class" (p. 428). A study by Chesler *et al*. (1979) found that "school administration has enormous discretion in deciding what behavior to prosecute and what behavior not to prosecute" and, as a

result, the researchers concluded due process and fairness may be called into question through the arbitrary use of power (p. 503). Most importantly, then, it is through administrators' exercise of discretionary power in matters of student discipline that "the school's recognition or denial of student rights and interests assumes sharpest focus" (Manley-Casimir, 1977–78, p. 84).

However, certain studies suggest even when the ability to exercise administrative discretion is removed, some school administrators still exercise discretion. For example, when policies mandate that no discretion is to be used, such as in zero tolerance discipline regimes, Faulk (2006) maintains administrators continue to exercise "considerable judgment" (p. 109), and their discretionary decisions in these situations raises "questions about the equitable treatment of students" (p. 99). Torres and Chen (2006) likewise claim the limiting of discretion may lead to "overly punitive consequences" (p. 191) for students. Ackerman (2003) builds upon this argument and wonders if zero tolerance discipline ever appears in a "pure form" (p. 31) since administrators implement zero tolerance policies based on the "level of discretion" they assume (p. 24). Her study reveals zero tolerance policies are used at the discretion of educators, and that a misinterpretation of "law and policy" by school officials is associated with zero tolerance (Ackerman, 2003, p. 22). Although Tuten (2006) notes the pervasiveness of the exercise of administrative discretion in student discipline, her research reveals the greater the potential for school violence in any school situation, the less likely educators are to exercise discretion. If, as Paquette and Allison (1998) contend, discretion is "ultimately the power to do what one wants or believes best given one's particular mix of motives, values and cultural context, in a particular case or set of

similar cases" (p. 173), school officials may be seen to wield significant authority over students, especially in matters of student discipline. In their discretionary decision-making, then, administrators must balance their obligation to protect and respect student rights in the school setting against their duty to maintain school safety and to preserve order.

1.7 Purpose of the Study

School-based administrators derive their authority in part, through case law, legislation and regulations, and school board policies, and they make decisions within a context that is established by social, organizational, individual, and other values. They interpret what these influences mean in specific cases. Authority is assumed to be "unquestioning recognition by those who are asked to obey; neither coercion nor persuasion is needed," and may be "vested in persons" and granted on a "personal" level, as in "the relation between parent and child, between teacher and pupil," or "vested in offices" in governments or institutions (Arendt, 1986, p. 65). Hemmings (2003) contends "authority [between educators, administrators, and students] is crucial for meeting the formal goals of schooling" and is "typically rendered in models of educational policy and pedagogical practice" (p. 417). As McCarthy and Soodak (2007) reason, imbued with authority then, administrators often must "achieve a balance" between competing rights in the school setting in order to ensure school safety, and they "must exercise their discretion in negotiating just consequences for students with and without disabilities in the absence of clear guidelines and within a culture of accountability and public scrutiny" (p. 459). Many scholars have noted administrators' exercise of discretion, or use of judgment, in student disciplinary issues (Ackerman, 2003; Chesler *et al*., 1979; Clark,

2002; Hall, 1999; Heilmann, 2006; Lufler, 1979; Manley-Casimir, 1977–78; Rossow, 1984). Yet, discretion appears to be an elusive notion, and has been variously described as "sponge-like because it absorbs the values, assumptions, and preferences to which it is exposed" (Sossin, 2005, pp. 438–439), a "calculus" (Manley-Casimir, personal communication, November 19, 2009), and a matrix of obligations, influences and responsibilities (Vinzant & Crothers, 1998). Paquette and Allison (1997) describe discretion as "many-faceted and eminently situational"; consequently, what it is "depends on where [one sits]" (p. 179).

This study lends insight, through description and explanation, into current knowledge of how principals make meaning of their exercise of discretion in their disciplinary decision-making processes. The inquiry seeks to determine how administrative discretion structures, confines, directs, supports or refines school administrators' decision-making, and how they negotiate within the legal parameters of discretion in order to maintain their own value systems. The goals of the study reflect a values paradigm in educational administration woven within a theoretical framework of modern legal positivism. Such a framework, I believe, can lead to greater appreciation of the practice of valuation in principals' disciplinary decision-making within the structures and constraints of administrative discretion.

1.8 The Research Question

As evidenced in a review of the literature, and despite repeated calls for further investigation of principals' exercise of discretion, there is little research describing how Canadian school-based administrators understand their exercise of discretion or explaining how it is exercised in school disciplinary issues. As a result, the research

question is as follows: How do school principals negotiate within the legal parameters of discretion in order to maintain their own values system when they make decisions in matters of school discipline?

The research question comprises the following sub-questions:

1. What is the nature of discretion in general?

2. What are the influences on discretion?

3. How is discretion understood and practiced by school administrators in their decision-making?

4. What influences, values, or circumstances do school administrators consider in their decision-making?

5. Is there a hierarchy of influences, values, or circumstances that shape school administrators' exercise of discretion in their decision-making?

6. What kind(s) of knowledge do school administrators believe they need in order to make discretionary decisions in matters of student discipline?

7. What do school administrators perceive to be appropriate and inappropriate exercises of discretion in student disciplinary issues?

8. Do school administrators believe the exercise of discretion assists or hinders them as they work to balance competing rights in the school setting?

9. What do school administrators perceive to be an appropriate measure of accountability for their discretionary decisions?

10. In what ways do school administrators justify their exercise of discretion?

1.9 Significance of the Study

Many scholars and theorists have called for further inquiry into discretion. Hawkins (1992), for one, insists that in order "to understand how law works, how the words of law are translated into action" and how discretion may be effectively controlled, it is necessary to know how it is exercised (p. 44). He believes discretion is of concern in a liberal society because it permits "the substitution of the decision-maker's own personal standards for public, legal standards" (Hawkins, 1998, p. 414). Building upon this notion, Sossin (2005) argues for the "lived experience" of decision-makers to be considered in their discretionary judgments (p. 428). Cartier (2009) reasons it is important to "care" about discretion (p. 314) since numerous legislative provisions delegate its exercise. The nearly 15,000 statutes involving discretion which were identified in 1970 by the Law Reform Commission of Canada would attest to her assertion (Anisman, 1970; see also McLachlin, 1992).

The bulk of the literature considers discretion from a legal, socio-legal or social science perspective (Cartier, 2009; Hawkins, 1992, 1998; Jones & deVillars, 2004; Lacey, 1992; Lipsky, 1980; Mullan, 2001; Pratt & Sossin, 2009) and not necessarily from an educational one. Biggs (1993) suggests most of the existing work focuses on "administrative discretion in public agencies" (p. 56). This study reconceptualizes the notion of discretion in educational administrative decision-making and locates it within the larger scholarly tradition of administrative law. To paraphrase Sossin (2005), the study endeavors to enable educators to speak administrative law with an educational accent. Principals derive their authority from law, and their power to exercise discretion in their decision-making is provided for in provincial legislation and relevant regulations,

case law, school board policies, and, it has been contended, through legal doctrines such as *in loco parentis*[3] (Manley-Casimir, 1977–78; Sitch & McCoubrey, 2001), *parens patriae*[4] (Stelck, 2007, p. 336), and the "careful and prudent parent" standard (Hutchinson, 2007).[5] Brien (2005) also contends the fiduciary[6] concept is a "common law principle" that underlies the administrator and student relationship in disciplinary issues (p. 6). La Forest (1997) similarly observes that "fiduciary obligations" are found in many different types of relationships, such as "banker-customer, solicitor-client, doctor-client," (p. 122) and "teacher-student" (p. 128). Two features common to these relationships are "'trust and confidence,'" wherein "the fiduciary has scope for the exercise of a discretion or power," and the "discretion or power is capable of affecting the legal or practical interests of the principal" (p. 122).[7] Arguably, much of the legislation directing principals' actions relates to school discipline. For example, Sections 306 and 310 of Ontario's *Education Act* (1990) provide for principals to impose discretionary

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[3] *Black's Law Dictionary* defines *in loco parentis* as "relating to, or acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent" (Garner, 2009, p. 858).

[4] *Black's Law Dictionary* defines *parens patriae* as "the state in its capacity as provider of protection to those unable to care for themselves" (Garner, 2009, p. 1221). The *Education Act* (1995) in Saskatchewan in s. 150(30)(f), for example, allows for students to be disciplined in a manner "that would be exercised by a kind, firm and judicious parent."

[5] The court in *Williams v. Eady* (1893), in determining negligence, established the schoolmaster must exercise the same standard of care "as a careful father would take of his boys, and there could not be a better definition of the duty of a school master" (p. 42). The standard was affirmed in *Myers v. Peel Country Board of Education* (1981) when the Supreme Court of Canada ruled "the standard of care to be exercised by school authorities in providing for the supervision and protection of students for whom they are responsible is that of the careful or prudent parent, described in *Williams v. Eady*" (p. 31).

[6] *Black's Law Dictionary* defines a fiduciary as "a person who is required to act for the benefit of another person under matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence and candor" (Garner, 2009, p. 702).

[7] La Forest (1997) maintains "discretion, influence and vulnerability are *inherent* in the teacher-student dynamic [emphasis in original]" and, consequently, "there is a rebuttable presumption that teachers owe a fiduciary obligation to their students" (p. 124).

suspensions on students, while principals in Saskatchewan are afforded great discretion or latitude in disciplining students under Sections 150, 151, 154, and 178 of *The Education Act* (1995). Torres and Chen (2006) also predict courts generally will continue to defer to the "expertise and judgment" (p. 191) of school officials as they exercise discretion in dealing with students.

It may be further argued that principals exercise this discretion within a quasi-legal system (Arum, 2003; Biggs, 1993; Bundy, 2006; Duke, 2002; Kajs, 2006; Lipsky, 1980) and, judge-like, school administrators are required to make decisions in light of specific circumstances, a student's history, and the effects of specific incidents upon others. In their investigation of events, principals determine guilt or innocence and assign the appropriate consequences. At other times, their discretionary choices can make them agents of the police, and Dickinson (2009) astutely identifies the "worrisome labyrinth" (p. 179) of decision-making which can lead to criminal consequences for students. Millerborg and Hyle (1991) also allude to the "personal ethics…[and] professional codes of ethics, policy, laws, and court decisions" that guide the decisions of education administrators (pp. 5–6). MacKay (2008) concedes "educators must now operate within a much more extensive and complex legal framework, including the *Charter*"; he further maintains "educational administrators prefer the flexibility of broad discretionary jurisdiction, which allows them room to maneuver in carrying out their complex tasks" (p. 24). The United States Supreme Court in *New Jersey v. T.L.O.* (1985), however, describes what it believes is the unique role of the school official as being distinct from the "adversarial relationship" which exists between law enforcement officers and criminals, and highlights, instead, the "commonality of interests between

teachers and their pupils" (p. 747). Viewed through a legal lens, the discretionary decision-making of principals can be more clearly brought into focus and can offer insight into contemporary administrative practice with respect to how principals interpret and apply the law while negotiating their own values systems.

Many scholars and theorists in the field of education note how little is known about discretion in decision-making in educational administration and call for further study (Biggs, 1993; Faulk, 2006; Hall, 1999; Heilmann, 2006; Manley-Casimir, 1977–78; Meyer *et al*., 2009; Mukuria, 2002; Rossow, 1984; Torres & Chen, 2006). Toews (1981) calls for greater insight into discretionary decision-making, contending "injustice is probably most frequently inflicted when administrators have discretion—where rules, principles, and standards do not offer sufficient guidelines for decision-making" (p. 3). Faulk's (2006) study calls for further research in "terms of how discretion is used," especially with respect to its "implications for equity" (p. 100) and the inconsistency in severity of consequences for certain groups of students. In their inquiry into principals' disciplinary decision-making and student rights, McCarthy and Soodak (2007) go even further to note the dearth of information regarding how school administrators "understand and enact their role in implementing democratic values [such as fairness and due process] through school discipline practices" (p. 459), while Manley-Casimir (1977–78) envisions the "administration of discipline as a problem of discretionary justice" (p. 97). This inquiry lends insight into the area because, it may be argued, student perceptions of justice and equality, tolerance, and respect are formed, in part, by disciplinary outcomes. This study, therefore, helps to fill a gap in the existing knowledge about discretionary

decision-making in disciplinary matters and seeks to identify "salient themes, patterns, or categories of meaning" for the participants (Marshall & Rossman, 2006, p. 34).

Frick (2006) claims little research has been completed examining "social categories," such as "race, ethnicity, gender, class, age, religion and physical location," to the "values, moral choice and action of building level leadership" (pp. 58–59); however, a small, but emerging body of research examines the role gender plays in principals' decision-making (Durrah, 2009; Mertz & McNeely, 1998; Miller, Fagley, & Casella, 2009). Eagly, Karau, and Johnson (1992) more broadly examine the leadership styles of men and women principals, while the work of Ackerman (2003) suggests that differences between male and female teaching styles influence the levels of discretion educators exercise in disciplinary issues (pp. 31–32). Kraft's (1993) inquiry into the decision-making of principals regarding staffing decisions, on the other hand, reveals that while gender differences were "found more in the psychological reasonings used to employ discretion than in the actual process of using it," gender was not found to be a "significant factor in the use of discretion" (p. 170). Manley-Casimir's (1977–78) exploratory work in the area reflects different decisional premises for male and female administrators, and recommends further research in the area of selective enforcement of discretionary power. This study adds to the existing literature in the area.

As well, this inquiry fills a knowledge gap with respect to how administrators understand their decision-making processes, leading to an awareness that informs their practice. Anderson and Jones (2000) observe that "the past two decades of academic research have seen an increasing emphasis on a need to understand the day-to-day reflective processes and decision-making of administrators" (p. 434). However, they go

on to note studies that "shed light on how administrators frame problems [and] engage in day-to-day problem solving" are scarce (p. 434). In the same vein, Riehl, Larson, Short, and Reitzug (2000) advocate for more of what they term "practical research" as a response to practitioners' need for knowledge to "aid in decision-making and action," which can lead to "increased understanding or a change of practice in the day-to-day lives of practitioners" and which will describe their "knowledge and experience in ways that honor the complexity of practice" (p. 397). On the other hand, as Anderson and Jones (2000) point out, they are also critical of administrator research that provides a "limited and singular perspective on organizational life" since it does not account for student voices, omits teacher collaboration and creates a "false separation between administrator and teacher" (p. 434).

Ashbaugh and Kasten (1984) note the "paucity of literature" (p. 207; see also Frick, 2009) that pertains to values in school-based administrators' decision-making, and this inquiry augments the research that seeks to understand the values "undergirding principals' decisions" (p. 205). Campbell-Evans (1988) alludes to the need for more research on the place of values in decision-making in educational administration. In a similar way, Begley (1999a) concludes that the "nature of values as influences on administrators has not figured prominently in research" (p. 213). He further suggests that much of the current research focus is on the adoption of values that are "organizational or collective in nature," and does not search for the "intention" that motivates principals in the adoption of certain values in their decision-making (Begley, 1999b, p. 238); however, he observes there has been what he identifies as a "resurgence of interest in values as an influence on administrative practice," a result of what he terms the

"increasingly pluralistic societies" in which administrators work (p. 238). In fact, he concludes, "value-conflict situations" are a "defining characteristic of the role for most school principals" (p. 248). MacDonald (1998) also contends "how one positions the values and resolves emerging values conflicts is central to the decision-making process" (p.7).

W. D. Greenfield (2004) thinks that while "relatively little" is known about how administrators and educators "actually make sense of their worlds," the "sense they make of their experience is a critical guide to their practice" and to their responses to situations (p. 190). In outlining his recommendations for enhancing the understanding of the experiences of school leaders, he suggests research could focus on the study of "the meanings and perspectives underlying what school leaders are doing in their social relations with others" (W.D. Greenfield, 2004, p. 191). In allegiance to a phenomenological tradition, Bates (1980) argues for an understanding of the meanings and intentions of individuals within organizations. He believes "the structure of organizations provides only the framework within which negotiation is conducted, priorities are formulated [and] assumptions about ends and means are debated" (p. 7), but that it is "precisely the values and beliefs of the individual that give organizations their meaning" (p. 8). From his perspective, an educational theory of administration must include values an as "essential component" (p. 16), and he contends that educational organizations cannot be understood "without taking them [values and beliefs] into account" (Bates, 1980, p. 8).

Begley (1999b) maintains "theory and research on leadership values are highly relevant to the field of educational administration" (p. 252), while calling for action

research methods to lend insight into the nature and function of values in administrative practice. Meanwhile, Begley and Leithwood (1989) appear convinced a "theoretical perspective which accommodates the existence of values as influences on administrative practice" may enhance "our understanding of administrative actions beyond that which is possible employing the exclusively rational frameworks normally associated with effective schools and school improvement research" (p. 27). They go on to suggest this type of perspective "contributes to a more comprehensive description of the influences on the administrative actions of principals" since it adds an individual's "internal mental processes" to the more conventional list of "contextual and process factors" normally considered by researchers (p. 27). This study, then, also supplements existing research on the valuation process of school principals in their decision-making and focuses on "solving the practical problems of the day" (Begley, 1999b, p. 238).

Much of the literature that considers discretion in school administrators' disciplinary decision-making is somewhat dated (Chesler *et al*., 1979; Manley-Casimir, 1977–78; Morris *et al*., 1984; Rossow, 1984; Toews, 1981). The investigation expands upon previous work, in addition to augmenting more current Canadian research such as that completed by MacDonald (1998), Hall (1999), and Heilmann (2006). While MacDonald's (1998) inquiry investigates principals' decision-making processes with respect to school violence, Hall's (1999) study of British Columbia administrators focuses on a particular aspect of discretionary decision-making—responding to youth violence. Heilmann's (2006) research more generally explores discretionary decision-making by Manitoba principals in all areas of school administration. Toews's (1981) examination, for another, is a philosophical inquiry that focuses on the exercise of

discretion in resolving ethical issues based on K.C. Davis's (1969) theory of discretionary justice, and seeks to develop a normative framework to aid administrators in ethical decision-making in their practice.

Furthermore, American studies on discretion in administrative decision-making in schools frame discretion in localized contexts based on a legal system that, although influential, is distinct from Canadian law. Research such as that completed by Kafka (2004), which examines the shift of the loci of discretionary decision-making authority in schools in Los Angeles, California, is strictly a policy analysis with an historical emphasis at the school board level. Biggs's study (1993) focuses on a document analysis which reviews nine United States Supreme Court decisions concerning discretion in administrative action, but restricts its inquiry to the area of student rights.

Most importantly, however, the implications of discretionary decision-making, or the lack thereof, with respect to the imposition of zero tolerance policies in both Canada and the United States have brought the topic of discretion in disciplinary decision-making to the forefront of many discussions concerning issues of social justice and human rights (Clark, 2002; Civil Rights Project, 2000; Bhattacharjee, 2003); zero tolerance policies eliminate the "gray area" (Dunbar & Villarruel, 2002, p. 97) in administrators' decisions. What is more, Dolmage (1996) vehemently argues that by removing discretion from decision-making, as in the strict interpretation of zero tolerance policies, and not allowing latitude for "extenuating circumstance, we deny the basic principles which underlie our justice system" (p. 204). Torres and Chen (2006) also claim "policies that severely limit discretion can lead to disproportionately punitive consequences" for students (p. 190). This study, then, expands upon existing literature

that explores the effects of discipline policies that do not allow for principals' discretionary action. In a related way, problems connected to the inconsistency of discipline policy interpretation and implementation, such as lost opportunities to promote the "interpersonal development and competency" of students, or missed occasions "to teach community, moral, and ethical values" to students (Dunbar & Villarruel, 2002, p. 84) may negatively affect student behavior and outcomes. The inquiry contributes to further understanding of the interplay of disciplinary policies, rules, and laws with respect to principals' discretionary decision-making. As well, the effects of discretionary decision-making may also be reflected in student attitudes and perceptions (Costenbader & Merkson, 1998; Gall, 2010; Kupchik, & Ellis, 2008; Ruck & Wortley, 2002; Sheets, 1995; Soloman, 1992). This study has implications for current Canadian school administrators since schools are more diverse, inclusive, and technologically advanced than they were even a decade ago and, as a result, administrators face new and evolving disciplinary challenges.

Additional information on how principals interpret their exercise of discretion is required so that they may gain greater understanding of "the nature of the [student discipline] situations" (Kilbourn, 2006, p. 571) in which they find themselves. The study provides "detailed descriptions and analyses of particular practices, processes, or events" so that principals' practice can be more fully understood (McMillan & Schumacher, 2010, p. 325). As well, a "focus on the informal processes of policy formulation and implementation" in contemporary school settings that reflects a "diversity of cultural values" provides insight that could aid in anticipating "future issues" (p. 325). The inquiry also adds to a "theoretical or practical knowledge base" of the nature of

discretion as it is exercised in disciplinary decision-making that is "educationally significant" (Kilbourn, 2006, p. 544; see also McMillan & Schumacher, 2010, p. 325) not only to principals, themselves, as reflective practitioners, but also to educational policy-makers and stakeholders at all levels.

1.10 Assumptions of the Study

The research is conducted and the data analyzed based upon the following assumptions:

1. This study assumes the central claim of the law is positivist, that is, "it is essential to a legal system that what the law *is* can be established without considering what the law morally *ought to be* [emphasis in original]" (Dyzenhaus, Moreau, & Ripstein, 2007, p. 3), and accepts the tenets of modern legal positivism as the undergirding assumption, as defined in large part by eminent legal scholar H.L.A. Hart.
2. The study assumes the pervasiveness of values in educational administration and the recognition that administration is a "value-laden, even value-saturated enterprise" (Hodgkinson, 1978b, p. 122), and that the administrator is "constantly faced with value choices" (Hodgkinson, 1996, p. 109). It accepts the subjectivist world view of scholar Christopher Hodgkinson's (1978b, 1991, 1996) typology of values which provides the conceptual framework for understanding values in educational administration.
3. The study assumes the participants answered truthfully since it examines only the participants' interpretation and perceptions of their exercise of discretion in disciplinary issues. In the same way in which Tuten's (2006) inquiry into

high school principals' decision-making processes "deals with the administrator/leader's perception of how they [*sic*] would solve a given problem," neither does this study "directly observe administrators making decisions in the school setting" (p. 67). Thus, because the researcher was "relying solely on the participant's perception of how they [*sic*] make decisions, [and] not [on] empirically observed reality," (p. 67), the assumption is that the participants were truthful in their responses.

1.11 Theoretical Framework

1.11.1 H.L.A. Hart's Modern Legal Positivism

Burge-Hendrix (2008) submits "legal positivism is the currently dominant analytical theory of law" (p. 1; see also Bix, 2005, p. 29; Cotterrell, 1989). More specifically, a legal positivist position strives to "establish a study of the nature of law, disentangled from proposals and prescriptions for which laws *should* be passed or how legal practice *should* be maintained or reformed [emphasis added]" (Bix, 2005, p. 2), that is, keeping "'is' and 'ought' ('description' and 'prescription') separate, understanding that the second cannot be derived from the first" (p. 32). Moreover, legal positivism contends that "it is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality though, in fact, they have often done so" (Hart, 1961, pp. 181–182). The modern legal positivism of H. L. A. Hart (1994) includes the core presumption there is not an "important necessary or conceptual connection between law and morality" (p. 259) and the belief that legal and moral obligations are "conceptually distinct" (Hart, 1982, p. 147). As Hart (1983) observes, however, despite the prevailing belief in legal positivism in the need for the separation of law and morals, the development of the legal

system has been, in fact, "powerfully influenced by moral opinion" (p. 55; see also Hart, 1963, p. 1, Hart, 1961, p. 181). Hacker (1977) observes that Hart's theory supports classical legal positivism insofar as "what the law is, is one matter—to be discovered by examining social facts. What the law ought to be is another matter—to be discovered by applying moral principles" (p. 8).

This study assumes Hart's (1994) theory of the law as a system of "primary rules of obligation" (Hart, 1961, p. 151) that are "directed at citizens" (Bix, 2005, p. 33), and "secondary rules of recognition, change, and adjudication" (Hart, 1961, p. 151) that tell "officials how to identify, modify or apply the primary rules," in addition to rules that impose "duties" and others that confer "powers" (Bix, 2005, p.33). In short, "primary laws [set] standards for behavior and secondary laws [specify] what officials must or may do when they are broken" (Hart, 1962, p. 163). Furthermore, Hart's (1961) legal system contains a rule of recognition which "comprises the basic criteria of legal validity" within the system and is justified by its acceptance (Bix 2005, p. 35). The criteria for this rule of recognition include "a written constitution, enactment by a legislature, and judicial precedents" (Hart, 1961, p. 98). Hart (1961) argues that while rules and principles are the main form of social control, these "general standards" of behavior are communicated through the devices of "legislation" and precedent" (p. 121). He suggests an important fact remains: that although "general language" and "authoritative example" of legislation and precedent, respectively, provide guidance for human conduct, this guidance can be limited (p. 123), and in the application of rules "the discretion left by language" is ''in effect, a choice" (p. 124). Moreover, "whether precedent or legislation" is chosen to communicate "standards of behavior," it will, at times, when its "application is in

question, prove indeterminate" and have an "*open texture* [emphasis in original]" (Hart, 1961, p. 124). As well, there is a "core of settled meaning" in cases of open texture that constitutes the standard from which the official or decision-maker "is not free to depart" (p. 140), and the exercise of discretion must align with this solid core of meaning.

Dyzenhaus (2002) notes that statutory provisions may be ambiguous because ambiguity in language is "unavoidable" (p. 500). However, the "deliberate use of open-textured language by the legislature" permits "interpretative delegates to develop the law in accordance with their expert understanding of how it is best applied to particular circumstances, including circumstances that could not have been anticipated" or which may have "changed over time" (p. 500). He concludes that, as a result, "no hard and fast distinction can be drawn between deliberate and inadvertent open-texturedness" (Dyzenhaus, 2002, p. 500).

Hart's (1994) concept of law is regarded as "'soft positivism'" since it incorporates "as criteria of legal validity conformity with moral principles or substantive values" (p. 250). Bix (2005) notes that Hart's "soft legal positivism" or "inclusive legal positivism" finds that "while there is no *necessary* moral content to a legal rule (or a legal system), a particular legal system may, by conventional rule, make moral criteria necessary or sufficient for validity *in that system* [emphasis in original]" (p. 123). As well, while "moral terms can be part of the necessary or sufficient criteria for legal validity in a legal system," Bix (2005) explains that for Hart "the use of moral criteria is *contingent*—and derived from the choices or actions of particular legal officials—rather than *part of the nature of law* (and thus present in *all* legal systems) [emphasis in

original]" (p. 38). At different times, then, moral criteria may be either "necessary" or "sufficient" conditions for legal validity (Bix, 2005, p. 38).

The second tenet of Hart's modern legal positivism is the belief that "the courts exercise a genuine though interstitial law-making power or discretion in those cases where the existing explicit law fails to dictate a decision" (Hart, 1994, p. 259). Hart (1983) suggests that when legal rules are applied, "someone must take the responsibility of deciding what words do or do not cover some case in hand" (pp. 63–64). Since legal rules and principles "guide only in a certain way" (Hart, 1994, p. 127), often there are cases when "the law fails to determine an answer either way and so proves partially indeterminate" (p. 252). It is in these instances, he argues, rules and principles have what he terms "open texture," where a balance is struck "in the light of circumstances, between competing interests which vary in weight from case to case" (Hart, 1961, p. 132). This "open texture" is what Bix (2004) terms "the inevitable *uncertainty* [emphasis in original] in the application of terms and rules to borderline cases" (p. 153). It is in these "borderline" cases, (Bix, 2004, p. 166) or "'hard cases', controversial in the sense that reasonable and informed lawyers may disagree about which answer is legally correct" (Hart, 1994, p. 252), that the law is "fundamentally *incomplete*: it provides *no* answer to the questions at issue in such cases [emphasis in original]" (p. 252). Such cases "are legally unregulated and in order to reach a decision" the courts exercise "law-creating discretion" in order to fill the gaps left by the incompleteness of the law (p. 252). Discretion is used "in rendering initially vague standards determinate, in resolving the uncertainties of statutes, or in developing and qualifying rules only broadly communicated by authoritative precedents" (Hart, 1961, p. 132). Gavison (1987), too,

contends judges "interpret the law" (p. 30) but emphasizes that abstract legal theory is of no help to them in "hard cases" (p. 33). Nonetheless, "theories of precedent and legislation" may "guide answers" in such cases or else "provide rationalizations to decisions" (p. 33).

Discretion is necessary because of the "indeterminacy" of rules, that is, the inability to determine or anticipate all future circumstances (Hart, 1994, p. 128). Bix (2004) defines "indeterminacy" as being when legal questions do not have "unique correct answers" (p. 97). In these cases, there is not "one uniquely correct answer to be found" (Hart, 1961, p. 128) but, instead, an "answer which is a reasonable compromise between many conflicting interests" (p. 128). It is in cases of uncertainty, when discretion is required, that Hart (1983) identifies the "problem of the penumbra" (p. 64). This is a "penumbra of debatable cases in which words are neither obviously applicable nor obviously ruled out" (Hart, 1958, p. 607). If this "penumbra of uncertainty" exists "outside the hard core of standard instances or settled meaning" of all legal rules, then "deductive reasoning…cannot [always] serve as a model" for judicial reasoning, and the rationality of "legal arguments and legal decisions" must "lie in something other than a logical relation to premises" (p. 64). If these "penumbral questions" in the gray area are to be rational, however, the criterion that makes the decision sound is the "concept of what the law ought to be" which "must be a moral judgment" (Hart, 1983, p. 64). Discretion, then, is the "point of necessary 'intersection between law and morals'" (Hart, 1983, p. 64). Hart (1983) argues where there is indeterminacy in rules and discretion is exercised, judges are required to make their decisions in accordance with "broad principles and established values" and to choose "at the higher level of principles or

received values," and not merely on what they think is "best" (p. 137). It is at those times "that the judge must, when the explicit rules prove indeterminate, push aside his law books and start to legislate in accordance with his personal morality or conceptions of social good or justice" (p. 138). Furthermore, "judicial decision…involves a choice between moral values, and not merely the application of some single outstanding moral principle, for it is folly to believe that where the meaning of the law is in doubt, morality always has a clear answer to offer" (Hart, 1961, p. 200). Hart (1983) refutes the "mechanical application" (p. 70) of judicial decisions and, instead, identifies "the intelligent decision of penumbral questions" as being "one made not mechanically but in the light of aims, purposes, and policies" (p.71), although he cautions against being "preoccupied" with the penumbra and considering "*all* questions…in light of social policy [emphasis in original]" (p. 72).

Arguably, it is through the exercise of discretion that the rules-based positivism of law may be reconciled with the subjective, value-laden judgments of administrators; when they exercise discretion, principals through their decision-making can meet the demands of both facts and values. In much the same way in which the exercise of discretion by judges "is a freedom to apply their own moral beliefs or values, rather than merely [being] a discretion to interpret the law in their own way" (Tebbit, 2005, p. 58), so might principals also exercise discretion; however, for judges this freedom is not unlimited and neither, one may assume, is it for principals. Thus, discretionary decision-making may be one site where the objective realm of legal facts and rules accommodates valuation in administrative decision-making. By considering administrative decision-making in this way, then, the ways in which school administrators subjectively negotiate

within the legal parameters of discretion in order to maintain their own values system may be more fully appreciated.

1.11.2 Christopher Hodgkinson's Typology of Values

Begley (2004) insists there must be movement beyond the mere "rhetoric of moral leadership" because the "new reality of school leadership is responding to value conflicts" (p. 15). This dissertation draws upon the notion of the pervasiveness of values in educational administration and accepts the subjectivist world view of Hodgkinson's (1978b, 1991, 1996) typology of values. In acknowledging there are various types of decisions made by individuals and groups, Hodgkinson (1978b) theorizes that "the intrusion of values into the decision-making process is not merely inevitable, it is the very substance of decision" (p. 59). He refutes a scientific and traditional systems theory approach, arguing instead that central questions of administration are "philosophical" (Hodgkinson, 1978a, p. 272). Gronn and Lacey (2004) note Hodgkinson has "strongly enjoined leaders to 'know thyself'" (p. 419). Hodgkinson (1983) argues against the separation of fact and values in the positivist tradition, since "fact and value are always inextricably intertwined" and focuses instead on administration, not management, where the latter is a "relatively value-free" science (p. 12). He disagrees with Simon's (1957) "construction of means-ends chains" (p. 62) as a "series of causally related elements" (p. 77) in rational decision-making, and disputes his criteria of "'efficiency' and 'coordination'" (p. 61) in administration. Instead, Hodgkinson (1983) contends "technology and modern organizations are committed to the metavalues of efficiency and effectiveness but while they raise productivity they leach away meaning" (p. 16). Gronn (2003a) maintains Hodgkinson has "tried to show that the decisions and actions of

administrative and leadership practitioners, at all levels and in all spheres of action, are informed by one or the other of…three value types" (p. 256).

Hodgkinson's (1978b, 1991, 1996) typology of values provides the conceptual framework for understanding values and valuation processes in educational administration in this study. Values influence an individual's decisions, choices, and judgment (Hodgkinson, 1978b). Hodgkinson (1978b) describes values as "concepts of the desirable with motivating force" (p. 120).[8] Needs, wants, and desires are "*sources* of value [emphasis in original]," and are related to the notion of motive (Hodgkinson, 1996, p. 111). Motives, which are either "conscious reasons (pulls)" or "unconscious drives (pushes)," or "some combination of both," are also "a *source* of value [emphasis in original]" (p. 111), and they "have a sort of push-pull correlation with consciousness and the faculty of reason" (p. 112). As motives "provide a source of value, so value is a source of attitudes" which themselves are manifestations of values at the "interface of skin and world" (Hodgkinson, 1996, p. 112). How people "attend" in the world is a "function of [their] attitudes" (Hodgkinson, 1996, p. 112). With values defined in this way, their function in "making choices" is highlighted, underscoring the decision-making aspect of administration (Begley, 2003, p. 3). Hodgkinson (1978b) contends that within the realm of action there exists a dynamic continuum where, at one end, are "intensely private" values while, at the other, there are public "purposive behaviours and strivings" which can be "expressed verbally as ideals, *summa boni*, social norms, and cultural

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[8] Hodgkinson (1978) adapts his definition from Kluckhohn (1962) who defines a value as "*a conception, explicit or implicit, distinctive of an individual or characteristic of a group, of the desirable which influences the selection from available modes, means, and ends of action* [emphasis in original]" (p. 395). Kluckhohn (1962) further characterizes it as "a preference which is felt and/or considered to be justified—'morally' or by reasoning or by aesthetic judgments, usually by two or all three of these" (p. 396).

standards [emphasis in original]," and which can be "objectified into systems of law, codes of ethics, systematized philosophies and ideologies" (p. 109). Between "these extremes lie[s] the gamut of attitudes, opinions, preferences" (p. 109). Begley (2004) insists Hodgkinson's (1978b, 1991) values typology is integral for "understanding valuation processes" (p. 6), enabling "authentic leadership practices and ethical decision-making within social contexts of increasing cultural diversity" (p. 4).

For Hodgkinson (1978b), values have two components—"the axiological (good)" or that which is "enjoyable, likeable [and] pleasurable," and "the deontological (right)," that which is "proper, 'moral', dutybound, or simply what '*ought* to be [emphasis in original]'" (p. 110). He continues that good is a "matter of preference" and is essentially "part of our biological make-up," or else is "learned, [or] conditioned" (Hodgkinson (1978b, p. 110), while "right" is "a sense of collective responsibility, a conscience" Hodgkinson, 1996, p. 116). The deontological, or "right", is the dimension that causes the most angst for administrators, since whenever the "desirable and the desired contend," what is required is a reconciling of "idiographic desires in favor of other more nomothetic demands" (Hodgkinson, 1996, p. 116). The way the individual is able to "validate, justify, determine, [and] rank order" (Hodgkinson, 1996, p. 116) these values in given contexts is classified in four ways.

Hodgkinson (1978b; see also 1991, 1996) rank orders values in a hierarchy that "classifies the grounds" for value judgments (p. 112) and creates the tension inherent in making values conflict choices. At the bottom of the hierarchy are Type III (or Subrational) Values; these values reflect individual preferences (p. 98), are "self-justifying" and include personal taste (Hodgkinson, 1996, p. 117). Hodgkinson (1991)

refers to Type III values as "primitives," which correspond philosophically to logical positivism, hedonism, and behaviorism (p. 98). Begley (1996) suggests Type III values do not require "rational processing" the way Type II values do and that they are the "nonrational bases of thought and action" (p. 419). Situated above these values are Type II (or Rational) Values, which enlist reasoning and correspond with utilitarianism, pragmatism, and humanism. Type II Values are social and depend upon "collectives and collective justification" (Hodgkinson, 1991, p. 98). Type II, identified as "*the* modal administrative value orientation [emphasis in original]," corresponds to the organization as a whole, where values are contextual and established by laws, traditions, and customs (Hodgkinson, 1996, p. 120). Type II Values are further classified as either Consensus (Type IIB) or Consequence (Type IIA), which is a "'higher level' of rationality" (Hodgkinson, 1996, p. 117). Type II values are ultimately adjudged based on either Type I or Type III values (Hodgkinson, 1978b, p. 112). Residing at the top of the values framework, Type I (Transrational) Values, or "principles," are those values which are grounded in "ethical codes" and which go beyond reason and cannot be verified by logic or rationality. Their "adoption implies some kind of act of faith, belief, [and] commitment" (p. 99) and they are "highly idiographic" (Hodgkinson, 1996, p. 119). The "typical administrative mode" (Hodgkinson, 1991, p. 122) is Type II Values, although in the end such decisions are made by referring to either Type I or Type III Values, or both, and resolving the "dialectical tensions between principles and preferences" (p. 127). Begley's (2003) research supports these motivational bases as being behind the adoption of particular values by administrators. He further suggests the "normative motivational bases for administrative decision-making are the rational domains of consequences and

consensus [Type II]," with self-interest infrequently being a motivator, and ethics and principles being used by administrators only in "special circumstances" (p. 7).

There are three ways a "value can be adjudged to be *right* [emphasis in original]" (Hodgkinson, 1996, p. 117). As it moves upward in the hierarchy, if it agrees with the majority "in a given collectivity or context" (p. 117) and is based on consensus, then it becomes a Type IIB value; however, if some desired future state of affairs is the consequence of the "pending value judgment" (p. 117), then it is a Type IIA value. Both these values choices "enlist the reason," and are "rational and social" for they are based on "collectivities and collective justification (Hodgkinson, 1996, p. 117). The final value level, Type I, is based upon a "conviction" that is manifested "in the acceptance of a *principle* [emphasis in original] (Hodgkinson, 1996, p. 118).

The values hierarchy is especially helpful in resolving conflict between and within levels of the paradigm (Hodgkinson, 1991; 1996). Hodgkinson's (1991) general rule is that when a values conflict occurs, the "lower ranking value should be subordinated to the higher" (p. 146). However, an exception to this maxim, called "The Principle of Most Principle," exists; in certain situations the "summative knowledge" of the decision-maker will "override the general logic" of the conflict resolution, and require the leader's "moral art" (p. 147). An example would be when an administrator knows a colleague is incompetent. The value of "collegial solidarity" is in conflict with the "larger interest of the organization" (p. 146) and by deciding to keep the employee on, the administrator resolves the conflict at the Type I level of principle, even if it means the organization will become less efficient. The other exception to the rule of "higher subordinating lower" (Hodgkinson, 1996, p. 236) is called "The Principle of Least

Principle" which requires the decision-maker to reduce conflict by invoking the lowest or the "less principle" (p. 236). An example of this value conflict would be when the head of an organization affected by "grievance group activity" works to keep "potential controversy" away from the group level and to reduce it to the level of "individual opinion" or a Type III value level. Conflict within the same level must be reduced to two values and resolved by "preference," "dialogue," "cost-benefit analysis," or divine intervention, depending upon the level at which the conflict appears (Hodgkinson, 1996, pp. 238–240).

Hodgkinson (1978b) argues that while the resolution of value conflicts and the "dialectical tension" that accompanies them is "a universal feature of the human condition," more than that it is "the administrative condition" (p. 121). He contends administrative leadership is the ability to creatively resolve "moral conflicts" (p. 116), and this must be achieved not by avoiding or resisting them, but by raising consciousness of one's values through philosophical reflection for "authenticity", that is, being true to one's own personal morality (p. 187). He observes that policy decisions involving administrative discretion can be times of intense "moral complexity" (p. 195). Thus, administrators must know when to resolve conflicts on principle or at a lower, more pragmatic, level. Alternatively, when the aims of policy are in contention among a number of parties, administrators must consciously consider all relevant values and make a judgment either by choosing one side (a Type I value) or by making a compromise (Type IIB value). As a result, Hodgkinson (1978b) concludes, administrators would be well-served by having a "rich personal value structure" (p. 195).

1.12 Definitions of Key Terms

1. Discretion—in its legal sense, discretion typically resides in the field of Administrative Law and is defined in *Black's Law Dictionary* as "wise conduct and management; cautious discernment; prudence; individual judgment; the power of free decision-making" (Garner, 2009, p. 534). Bix (2004) defines discretion as "the right or power to select among a range of alternatives" (p. 54), and Handler (1992) maintains it is opposed to the "Rule of Law" (p. 333).
2. Values—"concepts of the desirable with motivating force" (Hodgkinson, 1991, p. 110).
3. Valuation processes—are the linkages "between motivation and values and between values and administrative action" (Begley, 2004, p. 4) which are the "primary enabling strategy for authentic leadership practices [that are professionally effective, ethically sound, and consciously reflective]" (pp. 3–4). The processes occur within "multiple external and internal environmental sources" (p. 10), such as the self, profession, organization, community and spirituality.

1.13 Limitations of the Study

Findings of the study are limited by the number of participants and by the geographic area in which they practice. The choice of ten participants contributes to a more insightful and in-depth analysis than that provided by a greater number of participants, since qualitative inquiry "focuses on the quality and texture of events rather than how often those events occur" (Kilbourn, 2006, p. 552). The number of participants

provides for depth of analysis, enough balance, and some representation of the larger population, although the participants cannot be "presumed to be representative of all principals in the geographic area of the study" (Ashbaugh & Kasten, 1984, pp. 203–204). Mertens (2010) submits the "proof for generalizability lives with the reader, and the researcher is responsible for providing the thick description that allows the reader to make a judgment about the applicability of the research to another setting" (p. 430); thus, the generalizability of the study is limited to the participants interviewed, since other principals may respond differently. The research is based on the interpretations, "recollections and perceptions of principals," (Ashbaugh & Kasten, 1984, p. 204), and the quality of the data is further limited by their selections of "the decisions they chose to discuss, and their self-awareness and candor" (p. 204), their depth of understanding of the topic and the information they shared during the interview (MacDonald, 1998). The principals were asked to recall disciplinary situations and "different values might have emerged if the focus had been on another aspect of administration" (Ashbaugh & Kasten, 1984, p. 204). Other principals may have chosen different situations and decision-making experiences. As well, the document analysis is limited to the analysis of legislation, relevant regulations, case law, and school policies authorizing the discretionary actions of school administrators in Saskatchewan. The study is also limited by the fact no school documents outlining discipline policies or codes of conduct peculiar to the participants' school were provided to the researcher (MacDonald, 1998).

In their study of principals' decision-making in disciplinary issues, McCarthy and Soodak (2007) note their interpretation of findings was limited by the fact that "no attempt was made to match reported practices to actual practices" (p. 472); consequently,

they recommend that future research employ "direct observations" which may serve to "develop a richer understanding of how discipline policies are enacted in schools" (p. 472). Biggs (1993), too, observes that inquiry into discretion "rarely focuses" on actual educational practice (p. 56), although, as Begley (1999b) suggests, the "observable actions" of individuals "may or may not be accurate indicators of underlying values" and "true intentions" behind these actions maybe "transparently obvious" or deeply hidden (p. 238). He also emphasizes that individuals may "deliberately or unwittingly manifest or articulate one value while being actually committed to another," which may complicate the connection between "motivational" bases and values and values interpreted by the participant and the researcher (Begley, 1999b, p. 238; see also Roche, 1999, p. 269). One way for the researcher to overcome this "value attribution" is to develop a "partnership" with participants based on "mutual trust, good faith, and a commitment to deliberate dialogue" about the value (Begley, 1999b, p. 243). Despite Hawkins's (1992) tangential argument for "empirical studies" into the nature of discretion (see also Lacey, 1992), much current research does not clarify whether the study is "descriptive of actual practice, or prescriptive of preferred practice" and mistakenly imputes "goals and motives" of decision-makers based on unexamined assumptions (p. 46). Such empirical methods are beyond the scope of this study. Given privacy and confidentiality issues concerning student discipline in schools, and given the sporadic, episodic, and unpredictable nature of administrator/student disciplinary interactions, direct observation, in many cases, may not be feasible. McMillan and Schumacher (2010) contend qualitative methods are preferred when topics under investigation require confidentiality. Observation can be limiting because it focuses on

"external behaviors and since the observer cannot "see what is happening inside people," the "selective perception of the observer may distort the data" (Patton, 1990, p. 244). Therefore, this study focuses on the topic of discretionary decision-making from the perspective of the lived experience of principals, and their interpretation and understanding of their actions, and not from the phenomenon of discretionary decision-making as it is observed in practice. Thus, the interpretation of findings of the proposed research also is limited in this way.

1.14 Chapter Summary

Decision-making is generally considered the essence of administration. Administrators in schools make decisions within a context that is established, in part, by case law, legislation and regulations, school board policies, and social, organizational, individual, and other values, and they interpret what these influences mean in specific cases. That administrators exercise discretion in their decision-making is also well-established. The exercise of administrative discretion can be seen as indispensible for the pragmatic functioning of schools and as vital to the decision-making process, offering school leaders flexibility and creativity. Discretion in decision-making is not absolute, however, and school administrators must adhere to certain legal constraints in their exercise of discretionary power. At the same time, educational administration is considered to be a moral art and a value-laden enterprise. It can be argued that when administrators exercise discretion they make choices that are influenced by personal, professional, organizational, social, and other values. Many scholars have noted school administrators exercise discretion in student disciplinary issues and, and a result, they maintain administrators must work to achieve a balance between competing rights in the

school setting, on one hand, and maintaining order and discipline, on the other; moreover, they must exercise their discretion within a culture of accountability and transparency. It follows, then, that in-school administrators' interpretation and implementation of school discipline policies, legislation, and case law can provide insight into both their discretionary decision-making and their underlying application of values in student disciplinary issues.

This study seeks to determine how school principals negotiate within the legal parameters constraining their discretion in order to be faithful to their own value systems when they deal with student disciplinary matters. The inquiry lends insight, through description and explanation, into current knowledge of how principals make meaning of their exercise of discretion in their disciplinary decision-making processes. The study uses the concept of Hodgkinson's (1978b, 1991, 1996) typology of values and H. L. A Hart's (1961, 1982, 1983, 1994) modern legal positivism as its undergirding theoretic framework. By considering not only a paradigm of values in educational administration, but also a "soft" positivist theoretical framework of the law, this study offers a fuller appreciation than past studies of the application of values by principals as they engage in disciplinary decision-making within legally fixed parameters to their administrative discretion. In this way, through the latitude the law affords school officials when they exercise disciplinary discretion, principals' subjective, value-laden decision-making may be reconciled with objective, modern legal positivism. Consequently, at the "practical" juncture where discretion is exercised, the distinction between what *is* and what *should be*, that is, "the line between fact and value," becomes, at the very least, "blurred" (T. Greenfield, 1978, p. 8).

1.15 Overview of the Dissertation

The dissertation is organized in a seven-chapter format. Chapter One presents the background to the problem, the purpose of the study, the significance of the study, the limitations of the study, and the assumptions that undergird the theoretical framework. Chapter Two presents a review of the applicable literature concerning discretion as it appears from not only a legal but also a social-science perspective. The role of values in administration is examined, in addition to the nature of discretion in administrative decision-making and its role in issues of student discipline. Chapter Three presents the methodology chosen for conducting the research, the population and sample, the design of the interview protocol, the process used to obtain the data, and the method of analysis of the data obtained. Chapter Four presents a document analysis of relevant provincial legislation and school board policies authorizing principals' exercise of discretion in Saskatchewan. Chapter Five presents a description of the participants and the findings of the data which include quotations from the semi-structured interviews. Chapter Six presents a discussion of the eight emergent themes from the data, as well as an analysis of the data, guided by the research questions. Chapter Seven presents conclusions based on the analysis of the data and implications for relevant constituencies, as well as implications for further research.

CHAPTER 2

2 Literature Review

Efforts to capture the essence of discretion may prove elusive; as Hawkins (1992) pointedly observes, "the topic is huge" and "no monograph can make claims to comprehensiveness" (p. vi). This review of the literature traces the concept of discretion from a brief historical perspective through to a consideration of its nature in law and the requirements of its exercise. From there, discretion is analyzed first from a social-science perspective and then from its place in policy implementation in organizations. The focus is then narrowed to the school setting and, more particularly, to administrators' exercise of discretion in dealing with student disciplinary concerns. Relevant American and Canadian cases that consider discretion are explored as well as the impact of discretion upon student disciplinary issues. Finally, a potential lens for viewing discretion in decision-making is offered as a guide for principals when they work with students on behavioral issues.

2.1 Historical Perspective

The concept of discretion appears to have been long-associated with judgment, discernment, and understanding. In the Bible, discretion and knowledge, counterparts to the personification of wisdom, appear to be acquired as one grows and matures: "I, wisdom, live with prudence/and I attain knowledge and discretion" (Proverbs, 8:12). This notion reappears in the writings of medieval theologian and natural-law philosopher Thomas Aquinas who considered man a rational being and reason as being "pivotal as the source of legal validity" (Tebbit, 2005, p. 44). In his examination of the nature of sin, Aquinas (1945) argues that "before a man comes to the age of discretion, the lack of

years hinders the use of reason and excuses him from mortal sin" (p. 740). Aquinas's notion is echoed by eminent British jurist Sir William Blackstone (1771) who, in his analysis of the rights of parents and child, identifies the age of twenty-one as the point at which the "power of a father" over his children ceases, "for they are then enfranchised by arriving at years of discretion" or at that point "when the empire of the father, or other guardian, gives place to the empire of reason" (p. 453).

Gelsthorpe and Padfield (2003) claim discretion has been around "since Plato," and has been "equated with what remains after one has elucidated what the legislation or law should be" (p. 2). In the history of English law, they maintain, discretion was recognized under other names, such as "the Royal pardon," or "the benefit of clergy," or exercised through indictments being quashed on "technicalities of language," or the "ability of women to offer pregnancy as a consideration in sentencing" (p. 2). They claim their most significant finding from a historical perspective is that "however precise the law, theory or policy might be, there is always a certain flexibility, ambiguity or discretion in how it is applied in practice" (pp. 2–3). They conclude, quite simply, that discretion is the difference between "the formal position and the actual practice" (Gelsthorpe & Padfield, 2003, p. 3).

2.2 Golden Age of Discretion

King (2000), however, identifies the last three-quarters of the eighteenth century as the "golden age of discretionary justice in England" (p. 1). At that time the "criminal justice system relied on the participation of a wide range of social groups at almost every stage in the prosecution process and gave them extensive discretionary powers" (King, 2000, p. 1), despite the fact the prevailing legal handbooks appeared "rigid and

inflexible" (p. 2). Furthermore, there were many "interconnected spheres of contested judicial space" in the criminal justice system, wherein "deeply discretional choices were made" (p. 1). For example, when "jury nullification and mitigation" were at their peak, acquittal rates were high, and the pardoning system, with judges' rights to automatically "reprieve many capital convicts," extended sentencing options (p. 355). Pretrial processes, such as choices whether or not to prosecute, the type and length of punishments, as well as the type of charge issued, suggested the participants in criminal-justice decision-making exercised "wide and often almost untrammeled discretion" (p. 355). Magistrates, too, "enjoyed important freedoms" and dealt with many "indictable property offenders informally" (p. 356). Prosecutors also "maintained considerable flexibility between committal proceedings and trial" (p. 356). As a result, the criminal justice system appeared as a long and complex series of decision-making processes, wherein decision-makers acted "primarily on the basis of their own interests, interactions, and ideas of justice" (p. 356) and countless opportunities existed for the exercise of discretion.

Discretionary power was exercised by numerous groups throughout the justice system—from the laboring poor who could choose whether or not to prosecute, to the middling class who had extensive leeway to pardon or to charge if they were property victims and to act as jurors in acquitting or reducing the charges against property offenders, to the ruling elite's and the assizes judges' exercise of their sentencing power (p. 360). King (2000) observes the law at that time was an area of "contest and negotiation" among all social groups in England, where "factors such as youth, gender, family property, previous offences, good character and the nature of the offence" would

be criteria upon which all groups could agree in sentencing (p. 361), and a site where groups could resolve disputes, air their grievances, or express opposition to game and excise laws, for example. He further notes justice was an "approximate word," represented by "hurried trials, overawed prisoners, ambivalent judges [and] convictions on flimsy evidence" (p. 371), in addition to "gender- and property-based qualifications" for jurors and judges. Nonetheless, justice was essential to the "rhetoric of the ruling elite," and the law had to be "seen, in part, at least, to work" (p. 371) so that they could ensure their dominance, the middling class could protect their property, and the laboring poor could use it to "appeal for wages or relief" (p. 373).

The elite, however, found "rituals, discretionary opportunities and legitimating functions of the law" to be only marginally useful in maintaining their dominance over other social classes (King, 2000, p. 372). As a result, in order to strengthen their authority, the ruling class also exercised power through "terror, exploitation and bloody sanction," in addition to "negotiation" and "accommodation," so as to establish control over the "laboring poor" and the "middling sort" (p. 373). Thus, the law was used not only to maintain and support the status quo but also to legitimize the ruling elite who were able then to govern England without a police force or an army (p. 373).

2.3 A. V. Dicey's Law of the Constitution

A. V. Dicey (1885), in his analysis of the law of the English Constitution, distinguished between the principle of the rule of law and the exercise of discretionary power: he found the two incompatible. Wade and Forsyth (2004) comment that this belief currently does not contain much truth and contend the point is not that discretionary power should be eliminated, but that the law should "control its exercise"

(p. 343). Dicey (1915), however, identifies the sixteenth and seventeenth centuries in England, from the "accession of the Tudors" to the "expulsion of the Stuarts," as an historical period in which the French system of "*droit administratif*" potentially could have gained a foothold in that country (p. 365). *Droit administratif*, which was "absolutely foreign to English law," was a wide discretionary authority whereunder the "relation of individual citizens to the state is regulated by principles different from those which govern the relation of one French citizen to another" (Dicey, 1915, p. 383) and "the government, and every servant of the government, possesses, as representatives of the nation, a whole body of special rights, privileges, or prerogatives" based on different principles (p. 332). This system contradicts "modern English convictions as to the rightful supremacy or rule of the law of the land" (Dicey, 1885, p. 203); as a result, it failed to be enacted in England, because it was fundamentally inconsistent with the rule of law.

Dicey (1915) takes great care to contrast the English rule of law with *droit administratif* in France where judges "are under no circumstances to disturb the action of the administration," which could lead "to the exemption of every administrative act, or, to use English terms, alleged to be done in virtue of the [administrative] prerogative, from judicial cognizance" (p. 366). In tracing the history of the rule of law, Dicey (1915) also criticizes the situation in seventeenth-century England when the "[Royal] prerogative was something beyond and above the ordinary law," and was not unlike the "foreign doctrine [*droit administratif*] that in matters of high policy the administration has a discretionary authority which cannot be controlled by any Court" (p. 366).

In his lengthy defence of the rule of law, Dicey (1885) acknowledges the "rightful supremacy" of the "rule of the law of the land" (p. 203), which serves as a fundamental principle of the unwritten Constitution in England, which, in turn, owes its existence to the "ordinary law of the land" (p. 216). The rule of law is, among other things, the "absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness and prerogative, or even of wide discretionary authority on the part of government" (p. 215). It also recognizes the equality of all people before the law, where no one is above the law and where "no man is punishable" or can be made to suffer unless there is a "distinct" breach of law established in an ordinary manner before the Courts (Dicey, 1885, p. 172). He maintains the "absence of arbitrary power on the part of government" in England, even during the last part of the nineteenth century, distinguishes that country from other European nations where "persons in authority [exercised]…wide, arbitrary or discretionary powers of constraint" (Dicey, 1885, p. 172), such as exemplified by the principle of *droit administratif* in eighteenth-century France, and insists "there exists in England no true *droit administratif*" (Dicey, 1915, p. 386).

In arguing for Parliamentary sovereignty in England, Dicey (1885), nonetheless, recognizes that although there are times the English executive requires the right to exercise discretionary powers," such as in times of war, "the English Courts must prevent, and will prevent at any rate where personal liberty is concerned, the exercise by the government of any sort of discretionary power" (p. 338). In England, "the fact that the most arbitrary powers of the English executive must be exercised under Act of Parliament" then places the government, even with wide authority, "under the

supervision, so to speak, of the Courts" (p. 339). He identifies the dichotomy between ordinary law and discretionary power when he concludes that the English Parliament is the "supreme legislator" (Dicey, 1885, p. 340), but that laws are subject to judicial interpretation. As he reasons, "from the moment Parliament has uttered its will as lawgiver, that will becomes subject to the interpretation put upon it by the judges of the land" because judges "are disposed to construe statutory exceptions to common law principles" (Dicey, 1885, p. 340).

2.4 The Nature of Discretion

More recently**,** Hawkins (1997), in his analysis, defines discretion as "the means by which the words of law are translated into action" (p. 140), and posits that discretion has long been considered by both lawyers and social scientists, albeit from divergent perspectives (Hawkins, 1992). Lawyers, he claims, are concerned with "decision-making procedures and questions about the scope for the play of individual judgment afforded within a structure of rules…discretionary power…official authority…[and] questions of legitimacy" (p. v). Social scientists, on the other hand, seek "understanding of the ways in which people reach decisions, and how various social, economic, and political constraints act upon the exercise of choice," and see the law as "merely one set of restraints upon, or guidance for, individual action among a varied array of social forces" (p. v). Hawkins (1992) suggests both groups are interested in ways discretion may be limited or guided: for lawyers, "in terms of legal constraint by rules, procedures, or forms of accountability," and for social scientists, in terms of the other constraints upon choice, "including those which officials and organizations impose upon themselves," such as "incentives or disincentives to forms of behavior, questions of socialization or training, or

the importance or organizational routines" (p. v). This study seeks to enhance understanding in both realms.

2.5 Discretion as a Legal Concept

Bell (1992) distinguishes between the "varying degrees of choice" in the interpretation and application of discretion, such as "deliberately created discretion" provided for in law, in addition to the "leeway of interpretation and other situations of choice of a less deliberate kind" (p. 98). Discretion, then, exists in its formal role in law, and Schneider (1992) points to the tension that exists between the concept of rules in law and discretion, believing that "despite the recognition of the primacy of rules…discretion is both invaluable and inevitable" (p. 48).

Formal discretion falls under the ambit of administrative law, a "coherent system of principles" (Jones & de Villars, 2004, p. xi) wherein cases are contextually based. In many areas of law, rules, as differentiated from principles, provide certain answers to "legal problems arising from particular fact patterns" (p. xi); however, the general principles which constitute administrative law provide a most challenging aspect insofar as they provide "no single correct answer to a problem" (p. xi). Unlike in other areas of public law where the application of rules generally results in "definite answers" to problems arising from facts (Jones & de Villars, 2004, p. xi), the application and consideration of general and "competing principles of public policy" (p. xi) are used in administrative law to find solutions. As a result, one of the main challenges administrative law presents is that the contexts within which cases appear are so diverse and complex that it may be difficult to achieve anything but an application of broad principles to the facts as they are presented, and "to glean precedential dicta from such

cases without referring to general principles" is "exceedingly difficult" (Jones & de Villars, 2004, p. xi). In the absence of rules, then, each case must be considered on "its own merits," and, as a result, discretion will be "exercised differently in different cases" (Jones & de Villars, 2004, p. 192). Mullan (2001) envisions discretion in administrative law as a continuum "characterized at one end by extremely broad, unstructured discretion," while "at the other end of this spectrum, there are provisions that depend upon the application of legal terms sharply defined either in the statute itself or by clear common law principle" (p. 108). In short, there is "no bright line distinction" between questions of law and the exercise of discretionary powers (p. 109). He concludes "the resolution of questions of law will involve almost invariably elements of judicial discretion, and the exercise of discretion is just as invariably constrained in some measures by legal principles" (Mullan, 2001, p. 108).

Grey (1979) argues "if administrative law is seen as the study of the use of power, one of its most important interests is discretion, since the limits on discretion are at the same time the limits on the power that anyone can have in our type of democracy" (p. 107). He continues that discretion may best be defined as "the power to make a decision that cannot be determined to be right or wrong in any objective way"; this power creates "rights and privileges" but does not determine by whom they are held (p. 107). Discretion positively confers power upon officials when they require more freedom than a "detailed system of rules" allows (Galligan, 1986, p. 2). Wade and Forsyth (2009) conclude "all legal power, as opposed to duty, is inevitably discretionary to a greater or lesser extent" (p. 259).

Jones and de Villars (2004) further distinguish between the notions of duty and discretion when they submit that many delegated powers do not allow for the exercise of discretion, such as the power given to an immigration officer who has the duty to admit Canadian citizens into Canada but who has "no discretion to decide—as a matter of law—who is a citizen or whether that citizen can be excluded from Canada; on the contrary, the officer has a duty to admit citizens into the country" (p. 87). Furthermore, they contend it is necessary to determine if the powers delegated are "really duties," or powers "which are discretionary in nature" (p. 86), if the administrative powers can be "sub-delegated" (p. 85) to others, and if the "general duty to be fair" or the "principles of natural justice" (p. 85) apply. Grey (1979) maintains discretion is usually "coupled with a duty," although the duty simply may be to exercise the discretionary power or to "act honestly and in good faith" (p. 108). Thus, "review of discretion means determining how far the power extends and at what point the 'duty' is ignored and the correlative 'right' violated" (p. 109). At that point the courts will interfere (Grey, 1979).

Although there is no established standard as to when discretion should be exercised, reasons that discretionary power may be delegated include the following:

(a) the difficulty of providing a rule which is applicable to all cases;

(b) the difficulty of identifying all of the factors to be applied to a particular case;

(c) the difficulty of weighing those factors;

(d) the need to provide an easy vehicle for changing the considerations to be applied to the problem over time;

(e) the complexity of the issue; and

(f) the desire not to confer vested rights on a particular party (which might be called the 'short leash' principle). (Jones & de Villars, 2004, p. 86)

Galligan (1986) adds discretion is necessary because of the "vagaries of language, the diversity of circumstances, and the indeterminacy of official purpose" (p. 1). Bix (2004), in distinguishing indeterminacy from predictability in law, contends the former is based on the vagueness of language; contradictions within the law; the many exceptions to, and the inconsistency and overlap within, rules; the "indeterminacy of precedent," and the "indeterminacy in applying general principles to particular cases" (p. 97).

The Supreme Court of Canada considers the standard for vagueness in *Canadian Foundation for Children v. Canada* (2004), a case involving parents' and teachers' use of reasonable force to correct children in their care. McLachlin C. J. submits that the law "must set an intelligible standard" for those who are governed and for those who "must enforce it"; however, a vague law does not "provide an adequate basis for legal debate" (para. 15) and, as a result, puts "too much discretion in the hands of law enforcement officials, and violates the precept that individuals should be governed by the rule of law, not the rule of persons" (para. 16). As a result, "legal requirements for precision" must be applied to a statute (para. 14), since "legislators can never foresee all the situations that may arise, and if they did, could not practically set them all out" (para. 17). McLachlin C. J. concludes "areas of uncertainty exist" in our legal system, and "judges clarify and augment the law on a case-by-case basis," whereby their "decisions may properly add precision to a statute" (para. 17) so that "discretionary decision making" is not left for police officers and the judiciary to resolve on an "*ad hoc* and subjective basis" (para. 16).

Others believe discretion may be exercised to "fill in legislative gaps" (*Baker v. Canada*, 1999, para. 54), although the Supreme Court acknowledges "there is no easy distinction to be made between interpretation and the exercise of discretion; interpreting legal rules involves considerable discretion to clarify…and make choices among various options" (para. 54). LaViolette (2008) argues, however, not all judicial discretionary decisions are able "to fill these [legislative] gaps in any coherent, consistent and policy driven way" (p. 667), citing advances in reproductive technologies and changing social conditions with respect to parenting as examples of current gaps which present challenges for family law reform.

2.5.1 Language of Discretion

The language used in legislation delegating discretionary power provides the basis for its exercise. Mullan (2001) observes the "use of the term 'may' or 'may in its discretion' in the language of the empowering section [signifies] the presence of a discretionary power" (p. 105). He continues that it "connotes choice over a course of action as opposed to a duty to take action or to make a particular decision based on closely worded legislative language or even existing common law principles" (p. 105). When a statutory power or authority is conferred by the use of the word *may*, Sullivan (2008) explains, "the implication is that the power is discretionary and that its recipient can lawfully decide whether or not to exercise it" (p. 70). When *may* is used in legislation, "the issue that arises in these circumstances is not the meaning of the word 'may,' but rather the nature and extent of the discretion that is enjoyed by the recipient of the power" (Sullivan, 2008, p. 70); in other words, "the use of 'may' implies discretion, but it does not preclude obligation" (p. 71). Sullivan (2008) observes "the duty, if it

arises" from the use of the word *may*, must be "inferred from the purpose and scheme of the Act or from other contextual factors" (p.73). The use of the word *shall*, on the other hand, often overlaps "conceptually and in practice" with *may*; however, the two concepts are not "mutually exclusive categories" and the two words are used in various ways in legislation (Sullivan, 2008, p. 69). Sullivan (2008) concludes that the issue is not the meaning of the word *may*, but, in more recent case law, the "*degree* [emphasis in original]" (p. 73), "scope" (p. 74) and context of the discretion conferred.

Focusing on the relational and conditional aspects of discretion, Mullan (1993) alludes to the "broad, subjectively-worded grant of discretionary power" (p. 176), that is, the way it is perceived or interpreted. Similarly, Wade and Forsyth (2009) refer to the "subjective element in all discretion" (p. 355), and note that sometimes "it is plain from language and also from context that the "discretion granted is exceptionally wide" (Wade & Forsyth, 2004, p. 420). However, the limits upon discretion (i.e., acting reasonably, in good faith, and upon proper grounds) are such that no matter "how subjective the language" is, there is protection against the "abuse of power" that was not authorized under the Act (Wade & Forsyth, 2004, p. 420).

2.5.2 Requirements for Discretion

Discretion is not absolute. Wade and Forsyth (2009) maintain the courts are required to limit discretionary power in such a way that "strikes the most suitable balance between executive efficiency and legal protection of the citizen" (p. 286). As Jones and de Villars (2004) point out, in much the same way in which power must be restrained, "unlimited discretion cannot exist" (p. 186) and, as a result, "very few discretions are completely unfettered" (p. 87). Legislation usually enumerates the "factors which delimit

the amount of the discretion delegated" (Jones & de Villars, 2004, p. 88). In *Roncarelli v. Duplessis* (1959), the Supreme Court of Canada outlined the parameters for discretion when Rand J. ruled on its behalf that "there is no such thing as absolute and untrammeled 'discretion,'" or action that is "taken on any ground or for any reason that can be suggested to the mind of the administrator" (p. 140). Furthermore, a court cannot contemplate "an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute" (p. 140). Mullan (2001) points out the Supreme Court in *Roncarelli* (1959) also referred to "underlying constitutional values, such as freedom of religion and speech" as restricting very "broad statutory discretions" (p. 128). Discretionary power must be "wielded only by those to whom it is given," and those so delegated "should retain it unhampered by improper constraints or restrictions" (Wade & Forsyth, 2009, p. 259). McLachlin (1992) adds the exercise of discretion must "conform to a normative framework (substantive and procedural)…coined the decision-maker's 'jurisdiction'" (p. 173). Jurisdiction is determined, in part, by "statutory construction…the nature of the interests to be protected and the character of the decision and the decision-maker" (p. 173). Courts also are inclined to acknowledge a "duty of fairness," in the exercise of discretionary power, which McLachlin (1992) defines as a "less strict application of the two principles of natural justice: the rule against bias…and the right to be heard" (p. 174).

The Supreme Court of Canada, in *Suresh v. Canada* (2002), a case that involved a Sri Lankan refugee who was deemed to pose a security threat to Canada and who fought a deportation order, outlines further requirements for the exercise of discretion. The Court ruled a discretionary decision may be set aside only if "it was made arbitrarily or in

bad faith, it cannot be supported on the evidence, or the Minister failed to consider the appropriate factors" (*Suresh v. Canada*, 2002, para. 29). According to the Court the ultimate question in discretionary decisions is "always what the legislature intended" (para. 30), and must include the "weight of particular factors" (para. 37), that is, the "relevant" ones (para. 37) to be considered, in addition to the "relative expertise of the decision-maker" and the "purpose of the legislation" (para. 31) in finding a balance "of various interests" (para. 31). In exercising the discretion the individual "must evaluate not only the past actions of and present dangers to an individual…but also the future behavior of the individual" (*Suresh v. Canada*, 2002, para. 116).

2.5.3 Canadian *Charter* Guarantees

The guarantees enshrined in the *Canadian Charter of Rights and Freedoms* (*Charter*) also act "as a limitation on the scope of discretion and the manner of its exercise" (Mullan, 2001, p. 122), and can "act as a brake on apparently broad discretions" (p. 123). McLachlin (1992), on the other hand, points to the introduction of new areas of discretion conferred by "the language in which the rights and freedoms [of the *Charter*] are cast… [which are] broad and open-textured. What does free speech mean? Liberty? Equality?" (pp. 170–171). She goes on to describe how judges "faced with this sort of language must shape and carve and sometimes limit it, like a sculptor shapes a stone, finding the ultimate shape within the undefined block" (p. 171). Such is the language that "confers wide discretionary power" (p. 170).

In *Baker v. Canada* (1999), however, L'Heureux-Dubé J. defines the notion of discretion as referring "to decisions where the law does not dictate a specific outcome, or where the decision-maker is given a choice of options within a statutorily imposed set of

boundaries" (para. 52). She contends it is "inaccurate to speak of a rigid dichotomy of 'discretionary' or 'non-discretionary' decisions," since the "degree of discretion" can range from "where the decision-maker is constrained only by the purposes and objects of the legislation," to "where it is so specific that there is almost no discretion involved" (para. 54). The Court also notes that although "courts should not lightly interfere with such [discretionary] decisions," discretion must be exercised in a manner that is "consistent" with the rights and freedoms entrenched in the *Charter* (para. 53). In articulating guidelines for the judicial review of discretion, the Court not only recognizes the deference usually given to discretionary decision-making, but also points out that although "discretionary decisions will generally be given considerable respect, discretion must be exercised in accordance with the boundaries imposed in the statute, the principles of the rule of law, the principles of administrative law, the fundamental values of Canadian society, and the principles of the *Charter*" (*Baker v. Canada*, 1999, para. 56).

Mullan (2001) wonders if the Court in *Baker* (1999) intended the reference to the *Charter* as a rhetorical device" or if it was to "have a bite?" (p. 128). If so, he predicted a decade ago, the courts "may be on the verge of a new era of controlling executive discretion by reference to implied constitutional principles" (Mullan, 2001, p. 129). However, in the days before the *Charter*, "courts were often much more alert in their scrutiny of the exercise of discretionary power" since they considered themselves guardians of the "underlying values of Canadian society" against "statutory bodies with no particular insights in such matters and likely to be influenced unduly by more parochial or narrow concerns" (Mullan, 2001, p. 14). Nonetheless, grounds for a review of the abuse of discretion include "bad faith, acting for an improper purpose or motive,

taking account of irrelevant factors, failing to take account of relevant factors, undue fettering of discretion, and acting under the dictation of someone without authority" (Mullan, 2001, p. 100).

2.5.4 Acting Reasonably and in Good Faith

Wade and Forsyth (2004) claim the courts will not support "arbitrary power" and "unfettered discretion" (p. 343). To these ends, they insist, the courts have declared there are "restrictive principles" regarding the exercise of discretion so that it must be "exercised reasonably and in good faith," for "proper purposes only," in "accordance with the spirit as well as the letter of the empowering Act," and they have imposed "stringent procedural requirements" (Wade & Forsyth, 2004, p. 343). Grey (1979) maintains there is not always a duty to exercise discretion in every case, although discretion, if provided for, must be exercised. He argues that even when there is a duty to act, it must be in good faith, uninfluenced by irrelevant considerations or motives, reasonable and within the statutory bounds of the discretion (Grey, 1979; see also Mullan, 2001, p. 100). Jones and de Villars (2004) maintain the presumption is that the delegate will not exercise discretion "unreasonably, discriminatorily, retroactively, or in an uncertain manner" (p. 184). They contend "reasonableness is an *implied limitation* [emphasis in original]" on the discretionary power conferred upon the delegate (Jones & de Villars, 2004, p. 184). This clarification of the requirements of discretion may be augmented by Wade and Forsyth's (2009) insight that when officials are not acting in good faith, or "merely 'for legitimate reasons,'" it does not necessarily mean that they are to be "found guilty of intentional dishonesty: normally they are found to have erred, if at all, by ignorance or misunderstanding" (p. 352).

In *Roncarelli v. Duplessis* (1959), the Supreme Court also observes "discretion necessarily implies good faith in discharging public duty" (p. 140). It goes on to clarify the meaning of "good faith," which it describes as "carrying out the statute according to its intent and for its purpose; it means good faith in acting with a rational appreciation of that intent and purpose and not with an improper intent and for an alien purpose; it does not mean for the purpose of punishing a person for exercising an unchallengeable right; it does not mean arbitrarily and illegally attempting to divest a citizen of an incident of his civil status" (*Roncarelli* v. *Duplessis*, 1959, p. 143).

The requirement to act in good faith may often "impute no moral obliquity" (Wade & Forsyth, 2009, p. 352), but if absent, the notion of bad faith can be used to describe various forms of behaviors, ranging from clear "moral turpitude" to "errors not intrinsically different from those influenced by irrelevant consideration or unreasonable acts" (Grey, 1979, p. 115). Grey (1979) contends officials must not exercise discretion for "ulterior motives, such as personal gain, dislike, ethnic feeling and so on" (p. 115), or with "conduct so arbitrary, capricious, or blatantly erroneous that no reasonable, properly directed person could have engaged in it" (p. 118). "'Discretion' necessarily implies good faith in discharging public duty; *there is always a perspective within which a statute is intended to operate* [emphasis in original]; and any clear departure from its limits or objects is just as objectionable as fraud or corruption" (*Roncarelli* v. *Duplessis*, 1959, p. 140).

Galligan (1986) envisions discretion as a decision requiring judgment, "in particular good judgment," exercised within a "sphere of autonomy" (p. 8). However, he highlights the requirement of defensibility when he focuses on discretionary power as the

ability "to choose amongst different courses of action *for good reasons* [emphasis in original]" (p. 7). He adds that discretion must be exercised "consistently, fairly and impartially," and the reasons not only must comply with "considerations of morality," but also must adhere to rules and standards (Galligan, 1986, p. 6).

2.6 Perspectives on Administrative Discretion

2.6.1 Law/Discretion Dichotomy

Pratt and Sossin (2009) argue discretion "is about power and judgment" (p. 301) and suggest that it has been the subject of much analysis, theorizing, and debate. Whereas "the rule of law" is linked to justice, the notion of discretion has conventionally been seen as "more open-ended" (p. 302). They further argue that discretion in decision-making is usually considered either from a legal perspective and the adjudication of discretion, or from a social-science viewpoint that focuses on "social forces" and the 'non-legal' influences on discretionary decision-making" (p. 304). The legal assumption sees discretion and law as "discrete and distinct entities that are negatively correlated" (Pratt & Sossin, p. 302). In tracing the roots of discretion, they claim the pendulum swung away from its traditional meaning as being synonymous with arbitrariness—"the antithesis of law" (Pratt & Sossin, 2009, p. 302) and a threat to justice—to its association during the last century with the rise of the welfare state as an individualizing and "'humanizing'" (p. 303) force which considered the circumstances of individual cases. However, as individual rights have been brought into sharper focus, they assert the pendulum has swung back to the point where discretion is again considered as a power that requires restraints because it poses "a serious threat, both real and potential, to individual justice" (Pratt & Sossin, 2009, p. 303). Lately, however, there has been a

branch of scholarship that views discretion as being an agent for "dialogue [and] democratization" (Pratt and Sossin, 2009, p. 303). Despite these changes in perceptions, "discretion as a binary contrast to law remains the dominant paradigm" and is still seen as a "threat" to "certainty, objectivity, and fairness" (Pratt & Sossin, 2009, p. 303).

Pratt and Sossin (2009) argue that, while a critical lens might view discretion as the pawn of "oppression and political interference" (p. 305), current Western liberalism and the "dominant legal paradigm" of the rule of law see three distinct perspectives of discretion. First, discretion is seen as a necessary aspect of "individualized justice (p. 307) which allows for the tailoring of laws to suit circumstances, although the possibility for discrimination and capriciousness exists and "law and law-like rules" are needed to constrain them (p. 308). Second, discretion is a "dialogic relationship" between those who exercise discretion and those upon whom it is exercised so that, although constrained, it has the ability to respond to economic, cultural, and racial diversity. Finally, discretion may be regarded as accommodating and reconciling "the gap between law and equity" and may be considered a tool of governmentality, from a Foucaultian viewpoint, where governance is enabled "*through* [emphasis in original]" the exercise of discretion (Pratt & Sossin, 2009, p. 308).

2.6.2 Discretion as Dialogue

Cartier (2009) refutes the law/discretion dichotomy, maintaining that discretion is compatible with the rule of law. She submits the characterization of discretion as a "top-down authoritarian approach" that is in opposition to law (p. 316) has slowly been eroded over the last thirty years through decisions made by the Supreme Court of Canada. Three cases in particular, Cartier (2009) believes, provide grounds for changing the

conventional model of discretionary power to a bottom-up approach. In *Roncarelli v. Duplessis* (1959), the Supreme Court ruled there were limits to discretionary power; in *Nicholson v. Haldimand-Norfolk* (1979), it ruled discretion had to be exercised within "the obligations of procedural fairness" (p. 318); and in *Baker v. Canada* (1999), it determined that discretionary decisions had to be based on reasonableness, with demonstrated sensitivity, and with reasons given. Cartier acknowledges that "discretion as power" still serves to direct administrative law, given decisions such as *Suresh v. Canada* (2002) in which, in the wake of the events of September 11, 2001, the Court seemed reluctant to undertake a "substantive review of discretionary decisions dealing with matters of national security" (p. 323). Nonetheless, she asserts, the courts have imposed principles that create a "reciprocal relationship between the decision maker and the individual," and she argues for the possibilities inherent in a dialogic model of discretion. Discretion as dialogue reflects "a common bond, mutual respect [and] a genuine listening" (Cartier, 2009, p. 321) that internalize the participation and accountability constituting the rule of law. While the argument for a bottom-up approach has merit, the direct application of the dialogic model of discretion may not transfer readily to the school setting because it does not appear to account for the considerable power differential inherent in the relationship between administrator and student.

2.6.3 Inequality of Discretion

Handler (1992) defines discretion as that which gives "the official choice" , and comments upon the fact that, unlike the "idealized version of the rule of law where parties have equal access and the court applies neutral rules evenhandedly," discretion "allows for the bargaining away of publicly defined normative standards" (p. 333).

While much that is written about discretion assumes the relative equality of the parties and considers how they can "better relate to each other," he is concerned about discretion when there are "serious inequalities" between parties" (p. 333). He contends discretion "contemplates a conversation within a normative framework," and may seriously disadvantage "the poor, minorities, the uneducated, and unsophisticated" because those who are "poor and weak" often "lack the information, the skills, and the power to persuade," while the official with the power to exercise discretion "has the unfair advantage" (p. 333). Therefore, it is necessary to find "conditions which facilitate and create and nurture empowerment in discretionary decision-making" (p. 354) through "active participation by all stakeholders, by increasing [the] information and knowledge" (p. 357) of all parties, through the skill-building of those about whom discretion is exercised, and through greater accountability by the decision-makers.

2.6.4 K. C. Davis's Notion of Discretionary Justice

Legal theorist K. C. Davis's (1969) insightful work has contributed much to an understanding of discretion and the concept of justice. While he acknowledges discretion is indispensible for "tailoring results" (p. 17) to unique circumstances, or in situations when rules alone cannot cope with the "complexities" of modern organizational life, he also argues that when it is used improperly its abuse results in "nine-tenths of the injustice" in legal systems (p. 25). Davis does not see discretion as being exercised in a single, "final disposition" of a problem but, rather, as being a process which extends to "procedures, methods, forms, timing, degrees of emphasis, and many other subsidiary factors" (p. 4). While discretion usually entails the "freedom" to choose from possible options, K. C. Davis (1969) describes the exercise of discretion as deciding what is

"desirable in the circumstances" once the individual has found the facts and applied the law (p. 4). The symbiotic act of finding facts and applying law is quite complex, and the individual who exercises the discretion "does not necessarily separate facts, law, and discretion" (p. 5). While maintaining most discretionary decisions are generally "intuitive," he believes responses to various influences may suppress values, and even speculates that emotions, more than intellect, may determine the choices of values in discretionary decision-making (p. 5).

2.6.4.1 Ways to Minimize Injustice

K. C. Davis (1969) acknowledges discretion is desirable, since it is "indispensible for individualized justice [and] for creative justice" (p. 216), but he argues for the elimination of "*unnecessary* [emphasis in original]" discretion by finding ways to control "*necessary* [emphasis in original]" discretionary power in order to minimize injustice (p. 51). While the courts must determine what discretionary power is necessary or unnecessary, he contends the best way to control discretion is by confining, structuring, and checking it—that is, by confining it through better rules or statutes that clearly establish the boundaries of discretion; by structuring it through rules that clearly specify the duties of the administrator; and by checking it through objective review of the discretionary power. Hawkins (1998) supports the notion of controlling discretion, and maintains it is controlled in organizations by statements of policy, codes of practice, the rights of individuals, and by providing reasons for decisions. However, he questions whether "in the absence of better understanding of the conditions under which rules are interpreted and acted on in particular ways, it is simplistic of Davis (1969) to imagine that if discretion is reduced, somehow greater justice will be a natural consequence"

(Hawkins, 2003, p. 207). Manley-Casimir (1971) advocates for the application of K. C. Davis's (1969) approach in the school setting for three reasons: school officials possess and exercise extensive power over a range of student behavior; discipline is exercised on a one-to-one basis in a closed context; and discipline is enforced through rules and sanctions. By applying the principles of discretionary justice to student discipline, he argues, it can "reduce the likelihood of injustice, enhance the climate of mutual respect, facilitate the maintenance of effective control," and possibly restore "the school's institutional legitimacy" (Manley-Casimir, 1971, n.p.).

2.6.4.2 Goal of Discretionary Justice

K. C. Davis (1969) maintains that while it is "impossible and undesirable" to eliminate discretionary power, he believes the "sensible goal is development of a proper balance between rule and discretion" (p. 42). He concludes "discretionary power can be either too broad or too narrow. When it is too broad, justice may suffer from arbitrariness or inequality. When it is too narrow, justice may suffer from insufficient individualizing" (p. 52). In a similar way, Hall's (1999) study reveals discretion can "yield consistency or disparity in decision depending on administrative values and ideologies, social constraints, decision context and ambiguous student discipline objectives" (p. 159). Thus, it would appear that the exercise of discretion, much like Goldilocks's porridge, needs to be "just right."

2.7 Distinction between Rules and Discretion

In contemplating the tension that is formed between rules and discretion, Schneider (1992) identifies what he sees as the many advantages the latter allows. Discretion permits "the decision-maker to resolve the conflict in ways that accommodate

all the interests involved," and it can be "tailored" to the special circumstances of each case (p. 61). It can let the decision-maker "do justice" (p. 67) and deal with situations that are highly complex. Discretion can be used to form compromises, to allow for a more expansive interpretation of circumstances than was envisioned by the rules, to allow for incremental adjustments to changing societal norms more readily than legislative changes, and to take the standards of the decision-maker's community into account (pp. 62–68).

2.7.1 Disadvantages of Discretion

On the other hand, Schneider (1992) sees discretion as "a kind of power" that seems "conducive to an arrogance and carelessness" in dealing with the lives of others (p. 68), and he points to the disadvantage that discretionary decisions may not have the "legitimacy" that strict rules-based decisions do. Furthermore, there is a risk of "bias" in discretionary decision-making and a potential for abuse that is not found in strict rules-based decisions, insofar as decision-makers may substitute "private for public standards" in their decision-making (p. 71). Yet, Schneider (1992) does not simply endorse substituting rules-based decisions for discretionary ones. He suggests the concern about bias may be addressed by assessing the potential for abuse of discretion in an individual case, by determining "the best means of diminishing that risk, and…the costs of those means" (p. 71), and by prohibiting decision-makers from using "improper standards" (p. 72). Schneider (1992), however, points to the advantage of rules-based decision-making and the possibility the rule-maker may be "better situated" than the discretionary decision-maker in terms of time, resources and a broader perspective, in determining how justice may be achieved in both in a specific case and in general (p. 72). One

disadvantage he identifies is that discretionary decision-making may appear to violate the assumption "like cases should be treated alike" (Schneider, 1992, p. 74), and it may contest the individual's sense that he or she has been "treated fairly" (p. 74). Schneider (1992) notes as another disadvantage is the rather "private" nature of discretion as opposed to the more "public" nature of rules that are "formulated" (p. 76) in legislatures, through hearings and by committees, and "disseminated" (p. 76) through the press or some "importantly public way" (p. 75). As a result, individuals may not necessarily know how to "plan their lives and work in accordance with the law" (p. 76) as in custody disputes, for example. Finally, Schneider (1992) believes rules, not discretion, can often "promote efficiency by telling decision-makers which facts and arguments will be relevant" (p. 77). He concludes the "correct mix of discretion and rules must be determined situation by situation" (p. 79).

2.7.2 Constraints Upon Decision-Makers

Schneider (1992) argues, however, that discretion is not as "unfettered" as it appears and, in fact, is "regularly constrained in multitudinous ways" (p. 79). Some of those limitations include decision-makers' "socialization and training" (p. 80). Strong social and professional norms can "equip decision-makers with a common language, with shared assumptions, and with standard ways of reasoning" that to aid in predictability and consistency in decision-making (p. 81). As well, criticism by the community, press and "interested publics" (p. 82) serves to constrain discretionary decision-making. The internal dynamics of decision-makers, such as "simple laziness" or "a wish to avoid responsibility," also can limit their exercise of discretion. The development of their decision-makers' own rules by "categorizing" (p. 83) the issues and situations they

encounter, based upon their experiences, may limit their creativity and further constrain discretionary decisions. External dynamics, such as lacking the authority to make a decision, having to defer to others, or being required to make decisions in consort with another group or agency, can also restrict the exercise of discretion. Finally, the need to make decisions hierarchically in organizations, or to be forced to follow a "set of procedures" or to be guided by "policies and principles" may further constrain discretion (Schneider, 1992, 84–86).

2.8 Predictability of Discretion

Baumgartner (1992) submits that discretion, when exercised, is not "unpredictable" but is, in fact, constrained and shaped not by statutes, but by "social contexts" (p. 129). Citing evidence that shows discretion is "clear" and "remarkably patterned and consistent," she contends it is a myth that officials' decisions are "mysteriously rooted in the unknown peculiarities of individual cases" (p. 129). Instead, she argues, their discretionary decisions can be "anticipated with considerable accuracy," since the constraints upon discretionary decision-making are found not in legislation, but in "the social context of legal cases"; that is, discretion is not structured by "governmental laws" but by "social laws" (p. 130). The discretionary choices made by legal officials, such as jury selection, are "socially patterned and socially predictable" (p. 156) and based not only on social characteristics of the decision-makers (e.g., jurors, prison guards, police officers, or judges), such as status, religion and ethnic background, but also on other influences, such as, respectability, level of connectedness or intimacy, gender, and race of the subject of the discretion. Furthermore, Baumgartner (1992) asserts, those who exercise the discretion, in addition to those who are "subject to it,"

"often appear unaware" of the "social factors" influencing its exercise (p. 130). While officials may believe in the need for unique interpretation in individual situations, Baumgartner (1992) claims that, instead, their "behavior conforms to sociological laws that transcend particular incidents" (p. 156).

Extending her argument, Baumgartner (1992) maintains that while discretion traditionally may have been regarded as "personal, situational, and idiosyncratic" (p. 157), its true nature is something quite different. Even legal rules are "the products of discretion" and are "formulated according to the same social principles that govern all other discretionary legal behavior" (p. 157). Discretion, she argues, admits favoritism; in practice, discretion "amounts to what is commonly known as discrimination" and advantages some people over others (p. 157). For example, social factors influence sentencing decisions in the United States, resulting in disproportionate effects in capital and domestic violence cases. When laws are applied, she insists, there is interpretation in judgment and in applying "abstract standards" such as "reasonable doubt" or "probable cause" to factual cases (p. 161). As a result, it is very difficult to reduce "social discrimination in the use of discretion" (p. 160) and, since she concludes that "discretion may be too basic an element of legal systems to root out completely" (p. 161), it follows that the "law will always be discriminatory to some extent" (p. 162; see also Lipsky, pp. 111–16).

2.9 Discretion as Discrimination

Similarly, Gelsthorpe and Padfield (2003) claim that in a criminal justice context "discretion, discrimination and disparity" are "related, if not also used interchangeably" (p. 3); indeed, they believe discrimination and disparity are discretion's "first and second

cousins…respectively" (p. 2). The authors, however, take care to distinguish between the terms. Discretion refers to the "freedom" to make a decision or judgment that is "constrained" by "formal (and sometimes legal) rules" and by "many social, economic and political constraints" (p. 3). While discrimination can involve the "showing of good judgment," it can also be aligned with the "concept of prejudice," and may occur when "individual discretion [is] wide" (p 4). Disparity involves differences in outcomes and "concerns 'equal treatment'" (p. 4), when the assumption of "uniformity of treatment would mean 'better' treatment" (p. 5). It is linked to inconsistency, or treating similar situations "differently or unequally," even when "circumstances are similar" (p. 4). Both disparity and discrimination, however, "involve the exercise of *discretion* [emphasis in original]" (p. 5). Discretion, however, is "critical to the meaning of justice" (p. 2) and can provide a mechanism for "the concept of mercy" (p. 5) and "compassion" (p. 6) in the determination of punishments or consequences. As a result, an "inherent tension exists" between the positive and negative exercise of discretion, and there is a need to "maintain a balance between uniformity and individualization of treatment" (Gelsthorpe & Padfield, 2003, p. 5).

Gelsthorpe and Padfield (2003) point to research that has shown "ethnicity," "clothing," and "gender-appropriate or inappropriate behavior" can influence officials' decision-making in the criminal justice system, despite the fact officials "are prohibited from basing their decisions upon arbitrary or irrelevant standards…. race, ethnicity, social class, socio-economic status, sex or sexual orientation, for example" and must "apply rules impartially" (p. 9). In their analysis they also highlight the notion of power in decision-making—the "power to decide, to choose, to discern or to determine"—and

maintain the power to exercise discretion also includes the potential for abuse (p. 9). They further argue that in order to gain a fuller understanding of how discretion is exercised, it is necessary to consider aspects such as "who has the authority to decide, to choose, to judge," the source of the "legitimacy of the exercise of discretion," the need for accountability, and "factors such as process, environment or culture, organizational culture and occupational culture…all of which go well beyond the law" (p. 9). They conclude by emphasizing that any discussion of a framework involving discretionary decision-making must also involve the "subjects of the decision" (p. 23) and the effects of the decision upon them.

2.10 Discretion in the Criminal Justice System

McMahon (1992) offers similar arguments with respect to discretion, discrimination, and the over-representation of Aboriginal peoples in Canadian jails, especially in Manitoba. To substantiate his claim, McMahon (1992) notes "56% of the total inmate population of Manitoba in 1989" were Aboriginal (p. 9), yet "Aboriginal people comprised just less than 12% of Manitoba's total population" (p. 10). He adds "the disproportionate Aboriginal incarceration rates are shocking" and "demand immediate government action" (McMahon, 1992, p. 14), all the while observing that nothing has been done in the last twenty-five years "to reverse the trend" (p. 14).[9]

[9] It may be reasoned that McMahon's (1992) observation is still relevant; in the almost twenty years since the dates he cites, incarceration rates of Aboriginal persons in Canadian prisons remain disturbingly disproportionate. For example, in Manitoba, Aboriginal people accounted for 71% (up from 58% in 1996/1997) of sentenced admissions in 2005-2006, while they comprised 16% of the outside population. In Saskatchewan, Aboriginal adults currently make up 79% of the prison population but only 15% of the outside population. In Quebec the representation of Aboriginal offenders was the closest to their representation by population in that province, 3% versus 2% (Landry & Sinha, 2008, p. 7).

Although McMahon (1992) does not "attribute intent, prejudice or racism to most of the systemic discrimination in the justice system" (p. 8), he believes the test for discrimination is "whether the system adopts laws, procedures and practices which have a disproportionate impact on Aboriginal people," and whether "the laws, procedures or practices are related to the guilt or moral wrongdoing of the accused" (p. 8). He concludes that discrimination in the criminal justice system is "cumulative" (beginning with over-policing) and impacts those who are already marginalized by poverty, race, or unemployment (p. 323). The criminal justice system, he maintains, "permits subjective discretion to determine outcomes at every stage, and it allows penalties to be imposed with almost no guidance for the decision-maker" (p. 325).

2.10.1 Discretion in Sentencing

Sentencing is considered to be a highly discretional exercise (Makin, 2010; McIntyre, 2010; McLachlin, 1992; Mullan, 2001). The Alberta Court of Appeal's criticism of a "lenient rape sentence given to an aboriginal man who raped a sleeping friend" by a Queen's Bench judge, for example, underscores the "vast sentencing discretion currently enjoyed by trial judges" and serves to make "the search for just sanctions at best a lottery, and at worst a myth'" (Makin, 2010, p. A11). The Court of Appeal argued the judge in the case was but one of many who "mete out rape sentences based on outdated myths and stereotypes" and who dispense justice "in accordance with personal predilections, preferences or philosophies" (Makin, 2010, p. A11). Makin (2010) contends the "wide disparities in sentencing" precipitate a "crisis of confidence in the justice system" and notes suggestions that the "creation of a sentencing commission" may help to balance "judiciary discretion and predictable sentencing ranges" (p. A11).

On the other hand, the broad "sentencing discretion of judges" has also been suggested as one way to "reduce overall sentences" that result in the lengthy pretrial custody of prisoners and "to treat defendants leniently" in order to mitigate the harsh conditions they endure in "provincial remand centers" awaiting trial (Makin, 2011, p. A1). Therien (2011), though, disputes the advantages such a suggestion might have. He maintains the Supreme Court of Canada "established what's known as the Gladue Court. The landmark ruling called on judges to exercise discretion and be sensitive to the historical plight of aboriginal people" (n. p.). However, "the overall response by the judiciary to that ruling, as evident by the growing incarceration rate of aboriginals,[10] has been a sporadic application, varying from one extreme to the other, depending on jurisdiction" (n. p.).

2.10.2 Disproportionate Effects of Discretion

Citing the lack of cultural appropriateness in discretionary decisions made by people within the justice system, McMahon (1992) believes "discretion has very important consequences for Aboriginal persons" (p. 325). He says the simple fact remains that "the rule of law in criminal justice takes a back seat to individual discretion and Aboriginal people suffer for it" (p. 327). McMahon further identifies the variability in "access to counsel," probation, parole, and "fine option programs" (p. 324) as being other aspects of the justice system that are not uniform, in addition to the lack of respect for "numerous legal principles" (p. 324). He believes if the criminal justice system "operated in a perfectly even-handed manner, Aboriginal people would get all the benefits of discretion and lack of attention accorded to non-Aboriginal people" (p. 323),

[10] Therien (2011) cites incarceration rates for aboriginal peoples in Canada in 2008 as being nine times the national average (n. p.).

but because there is lack of accommodation for cultural differences, penalties for Aboriginal people are greater, recidivism rates are higher, and rehabilitation is less effective. As well, Hamilton and Sinclair (1991) observe that excluding Aboriginal persons from any decision-making positions in the criminal justice system ensures that "none of the discretionary decisions made by system personnel will be culturally appropriate to Aboriginal people" (p. 107). The large amount of discretion along the continuum of the justice system, juxtaposed "with detailed rules and procedures," leads to "a confusion of roles and inconsistency in the exercise of justice" (McMahon, 1992, p. 342). MaMahon (1992) concludes Aboriginal persons are "discriminated against by the justice system" (p. 334) as a result of being "over-represented in groups of persons exposed to unfair practices and unchecked exercises of discretion" (p. 335).

Hamilton and Sinclair (1991) contend Aboriginal people in Canada have been victims not only of overt forms of bigotry, but also of systemic discrimination that is "rooted in policy and law" (p. 101). They identify as evidence the "adverse impacts" of discrimination that have resulted in the "over-incarceration of Aboriginal people" (p. 101) in Canadian prisons and clearly pinpoint discretionary decision-making in their analysis of the Canadian justice system:

> A significant part of the problem is the inherent biases of those with decision-making or discretionary authority in the justice system. Unconscious attitudes and perceptions are applied when making decisions. Many opportunities for subjective decision-making exist within the justice system and there are few checks on the subjective criteria being used to make those decisions. We believe that part of

> the problem is that while Aboriginal people are the objects of such discretion within the justice system, they do not "benefit" from discretionary decision-making, and that even the well-intentioned exercise of discretion can lead to inappropriate results because of cultural or value differences. (Hamilton & Sinclair, 1991, p. 101)

It can be argued, then, that the relatively few constraints upon discretion as it is exercised throughout the entire criminal justice system contribute to the adverse affects upon Aboriginal people and to their over-representation in Canadian prisons.

2.11 Discretion in Organizations

2.11.1 The Role of Policy

Davies and Brickell (1962) maintain policy is a "guide for discretionary action" (p. 15) in organizations; they claim it must be narrow enough to provide guidance and broad enough to leave room for discretionary decisions. Downey (1988) suggests that while no one "simple definition" for policy exists, it is characterized as an "*authoritative* allocation or choice from among competing values or desires…a *declaration of intent*…*future oriented*…a directive for *action*…and allows for *discretion* on the part of the actor…as a general and flexible guideline [emphasis in original]" (p. 54). Similarly, Simon (1957) defines policy as "any general rule that has been laid down in an organization to limit the discretion of subordinates" (p. 59). The "strategic intent" (Dr. J. Paquette, personal communication, July 7, 2011) is considered the focus of policy which may be further defined as "a course of action or inaction chosen by public authorities to address a given problem or interrelated set of problems" (Pal, 2001, p. 3; see also Dye, 1975). Shipman (1969) makes an important distinction between policy as "statements of

intent and purpose" and "operational and procedural specifications" (p. 122). Procedures can be defined as a type of "policy instrument" or the means by which "the problem is to be addressed and the goals achieved" (Pal, 2001, p. 8; see also Hodgkinson, 1978b, pp. 66–79).

Galligan (1986) asserts policy-making is the "very heart of the discretionary process" and maintains officials in organizations may simply be concerned with "getting the job done" and, accordingly, will modify, embellish or depart from statutory directions (p. 110). Shumavon and Hibbeln (1986) likewise contend administrators are thoroughly involved in the formulation of policy and "have become policy makers in their own right, often enjoying virtual autonomy as they exercise discretionary authority accorded to them by legislative and executive institutions" (p. 1). They go on to suggest discretion is a "fundamental component of any attempt to explain administrative behavior and the formulation and implementation of public policy" (Shumavon & Hibbeln, 1986, p. 2; see also Hawkins, 1997), while Hawkins (1997) adds discretion is "clearly exercised" in policy formation (p. 151). McMillan and Schumacher (2010) add that "school administrators and teachers, in a real sense, make policy as they carry out their day-to-day jobs" (p. 438).

2.11.2 Effects of Discretion Upon Policy

Hawkins (1997) observes that while discretion may exist throughout legal bureaucracies, large amounts "inevitably shift" (p. 158) to the perimeter and, therefore, the interpretation of rules transforms and changes policy as it moves down and outward in the organization. As a result, the greatest discretionary power often resides with those individuals on the peripheries of organizations, or with those who are not delegated

specific discretionary power. He maintains it is at the "field" level where the "tensions, dilemmas, and sometimes contradictions embodied in the law are worked out in practice" and where officials sometimes "distort the word or spirit of the law" by either assuming power they are not authorized to have or by choosing to ignore authority they do possess (Hawkins, 1992, p. 12). Rules and policies may become "reference points" around which decision-makers exercise discretion in a "rather unconstrained way" (Hawkins, 1997, p. 156). "Legal rules," he argues, signify "objective, formal justice," while discretion represents "subjective, personal justice" (Hawkins, 1998, p. 414). Frequently, then, "policy at this level" becomes "practical, particularistic, [and a] here-and-now matter" and possibly "rather remote from the real world" (Hawkins, 1997, p. 156).

Decisions, as a result, are usually made in a "heavily decentralized fashion," and the risk of policy being fragmented, distorted, or even subverted as it moves down and outward in the organization is great (Hawkins, 1997, p. 158; see also Handler, 1986). Thus, policy in action may be quite transformed from policy as it is envisioned at the center of the bureaucracy. Hawkins (1998) acknowledges the inevitability of discretion and, while insisting it does have its usefulness, he claims the problematic nature of its "invisibility" makes "methods of accountability and control extremely difficult" (p. 413). As well, discretion's "reflective" and "anticipatory" character (Hawkins, 1997, p. 147) has a "serial" nature and relies upon "precedents" (pp. 147–148). These qualities have implications for principals' decision-making insofar as administrators' judgments may be influenced by what is "likely to happen" (Hawkins, 1997, p. 147) based on past practices, or by "understandings of the 'normal ways' of acting" that are categorized by behavior which is "typical" or "routine" (p. 149) and part of the organization's culture.

2.11.3 Issues with Policy Implementation

Shumavon and Hibbeln (1986) surmise that an excess of "discretionary authority" can "favor narrow private interests" and lead to the "loss of individual freedom" (p. 8), all the while acknowledging the benefits of discretion, such as its ability to adapt to individual situations and its responsiveness to "unique…needs and problems" (p. 8). They worry about the "possible misuses of public trust" when administrative discretion is not controlled, and maintain that a balance must be struck "between the need for flexibility and the need for control" (p. 8).

Hawkins (1992) notes that although discretion is either "formally granted" or "assumed" (p. 11), it is rule-guided and is a "product of individual knowledge, reflection and reasoning" (p. 18). He points to concerns about issues of power, propriety and inconsistency when discretion is exercised. He claims discretion may be conducive to "arrogance" or "carelessness" (Hawkins, 1998, p. 414), and its application over time and place by various individuals allows for "inconsistency" and does not always allow "for like cases to be treated alike" (p. 415). What is more, he suggests, discretion can be shaped by personal constructs such as "laziness, or a desire to avoid responsibility," since exercising discretion "takes time and effort" (p. 417). Paquette and Allison (1997) identify other influences in organizations that affect "locally contextualized de facto policy" such as empire-building, self-aggrandizement, neutralization of competing groups and power bases, [and] avoiding controversy" (p. 172). Arguably, similar elements can influence principals' disciplinary decision-making in schools.

2.11.4 Street-Level Bureaucrats

Lipsky's (1980) authoritative work on the field of public administration describing the work of "street-level bureaucrats" (p. 3) supports much of Hawkins's claim about policy creation and implementation. However, his research extends to the identification of individuals who exercise substantial discretion in their decision-making roles and who execute their roles with relatively little supervision; these street-level bureaucrats include teachers and school administrators because the complexity of their environment requires discretion, and the "human dimension" of their work requires judgment (Lipsky, 1980, p. 15; see also Faulk, 2006, p. 127). He believes "the decisions of street-level bureaucrats, the routines they establish, and the devices they invent to cope with uncertainties and work pressures, effectively become the public policies they carry out" (Lipsky, 1980, p. xii). Policy, therefore, is "not best understood as [being] made in legislatures or top-floor suites of high-ranking administrators" but in the "crowded offices and daily encounters" of the street-level bureaucrats (Lipsky, 1980, p. xii).

Lipsky (1980) identifies in street-level bureaucrats what he calls "worker bias," that is, differentiation among people because of personal "preferences" on the part of the decision-maker (p. 108). He believes subtle patterns of prejudice, or bias, especially in organizations "dedicated officially to equal treatment" can occur in three ways and are difficult to address (p. 109). First, he claims some decision-makers simply "prefer some clients over others" and receive greater satisfaction working with them (p. 108). Biased behavior is also apparent when decision-makers respond to what they determine is the relative "social worth" of an individual (p. 109). The decision-makers' resources of time and energy, and their opportunities for successful intervention, are key determinants in

informing decisions as to the "worthiness or unworthiness" of the client (p. 109). Third, some street-level bureaucrats have "explicitly moral judgments to make," such as "school disciplinarians," among others, who are "charged with allocating punishments," "fitting the sanction to the offender as well as the offense," and determining whether "lenience or severity" is necessary (p. 110). The problem, Lipsky points out, "is not that moral judgments are made," but that "moral assumptions of dominant social orientations" or "dominant values" can shape decisions, and the decision-maker will not search for "alternative solutions" (p. 110). Finally, street-level bureaucrats can "regularly display biased behavior" if they feel some individuals are "more likely to respond" positively to their decisions or, conversely, if they feel a group is "unlikely to respond to intervention" (p. 111). He cites as an example educators who "favor" children who "assimilate information easily" because they provide "more frequent and positive feedback" of their teaching. (p. 111).

One reason "it is difficult to assess equity of treatment" by street-level bureaucrats is the various contexts of treatment, and it may be difficult to collect the data which would "demonstrate patterns of bias" (Lipsky, 1980, p. 112). Furthermore, street-level bureaucrats believe they "treat all clients alike," while "norms of equal treatment" serve to reduce "tendencies towards bias" and create "powerful myths" about equality (p. 112). Finally, when there is differentiation in treatment of individuals, decision-makers attribute it to policies "alleged to be in the best interests" of the individual or of the group (p. 112). Lipsky (1980) maintains this "ideology of differentiation" is used to rationalize, excuse and justify their decisions (p. 112).

Differentiation in client treatment is supported by "social inequality," and decision-makers' need to "routinize [and] simplify" within this context results in "*institutionalization* [emphasis in original]" of stereotypical tendencies" (p. 115). The inherent need to differentiate is receptive to "prejudicial attitudes" which are "nurtured in a context" (p. 115). Decision-makers may see validity in their attitudes which are "forged from experience," while clients may see "unfairness" (p. 116). As a result, the problem of bias among street-level bureaucrats is "a profound one" (Lipsky, 1980, p. 116). Lipsky (1980) concludes "at best, street level bureaucrats invent benign modes of mass processing that…permit them to deal with the public fairly, appropriately, successfully. At worst, they give in to favoritism, stereotyping, and routinizing" which he believes "can serve private or agency purposes" (p. xii).

Quinn (1986) describes the phenomenon of "triage" which he argues serves as the model for discretion exercised by street-level bureaucrats (p. 129; see also Lipsky, 1980, p. 107). Based on the practice of French physicians during World War I, the term reflected the method of optimizing "scarce medical resources" where priority was given to those soldiers who were able to be saved, while those who were too seriously wounded were left to die and those who were mildly injured were left to wait for other medical help (p. 124). Quinn maintains triage can serve as an effective paradigm for the manner in which "professional norms and economic restraints…shape the exercise of administrative discretion" (p. 129), but cites the use of the strategy to enforce housing codes in St Louis, Missouri, in the 1960s and 1970s as inequitable and unfair.

Taylor (2007) suggests professional discretion in schools in the United Kingdom reflects more of what Lipsky (1980) said "*ought* to be [emphasis in original]," because of

current educational reforms that include mechanisms for enforcing policy at the street level, "in particular the self-policing and self-managing aspects of discretion" (p. 569), and a national curriculum that requires teachers to be "more technicians than professionals" (p. 560). He argues British educators cannot be characterized as the same type of "street-level bureaucrats" Lipsky (1980) identifies who "interpret and devise their own rules in order to implement policy" (Taylor, 2007, p. 566) because of "prescriptive policies and targets [in classrooms], as well as the high degree of accountability required in [British] schools" (p. 569), that have "undermined [their] autonomy" (p. 561) and compromised their exercise of rule and policy-making discretion. Taylor's (2007) study revealed, however, that while some educators may have lost their ability to exercise discretion, they did not necessarily feel disempowered.

2.11.5 Technological Perspective

Bouvens and Zouridis (2002) argue that in large "decision-making factories" (p. 180) the street-level bureaucrat has been affected by "information and communication technology (ICT) systems" (p. 177) and is becoming, instead, the "screen-level" or "system-level" bureaucrat (p. 175). Although they do not consider teachers, judges, or health care officials in their analysis, Bouvens and Zouridis contend that whereas administrators' authority was once based on existing law, and decisions made were often reviewed by an organization's legal counsel, or even the judiciary, the decisions of case managers and adjudicating officers are increasingly being taken over by "information refineries" wherein decisions are "preprogrammed by algorithms and digital decision trees" (p. 175) through new bureaucrats who are information and communication technology (ICT) experts and systems designers. Bouvens and Zouridis wonder if this

scenario of system managers controlling decisions in rooms with servers is the consummation of the "ideal of perfect legal and rational authority" (p. 175) as envisioned by Dicey (1885). They maintain "knowledge-management systems and digital decision trees have strongly reduced the scope of administrative discretion" (p. 177), since decisions are also being made by computer software programs and the "automation of one step in a process demands the standardization and formalization of the preceding steps" in order to be accepted by computers (Bouvens & Zouridis, 2002, p. 178).

2.11.5.1 Examples of Technological Discretion

Bouvens and Zouridis (2002) suggest that street-level bureaucrats are being replaced by data-entry clerks, and decisions are based solely on data that has been entered, as in the case of grant applications for students in the Netherlands. In a similar way, the monitoring by cameras of speeding on roadways in the Netherlands is handled entirely by computers, and "no legal or professional assessment is involved" (p. 179). A ticket is sent to the individual and no judicial intervention is required unless there is an appeal, at which point "a street-level bureaucrat will take a look at the case for the first time" (Bouvens & Zouridis, 2002, p. 179). In fact, the researchers maintain, the emphasis has shifted from legal judgment and the "criminal-judgment process" required in individual traffic violations, to the "technical" administrative work in the simple collection of fees (Bouvens & Zouridis, 2002, p. 179). There is now a "standardized judgment under administrative law" whereby fines are issued "regardless of the circumstances of the case" (p. 179) and the "law does not permit" nor is the "executive organization" equipped to permit a reduction or cancellation of fines (p. 179). Bovens and Zouridis (2002) also submit that in the student grant application process, which had

formerly been individualized, "the street-level bureaucracy, which focused on a professional, legal judgment of each individual situation, has been replaced by a system-level bureaucracy in which computer networks are maintained, perfected, and intricately linked to one another" (p. 180).

2.11.5.2 Technological Predictions

While Bovens and Zouridis (2002) suggest it remains to be seen if similar transformations will occur in "non-legal, non-routine, street-level interactions such as teaching, nursing and policing" (p. 180), they predict centralized organizations, formalized legal routines, and standardized work will increase. With a growing emphasis on a legal culture of certainty, they further suggest that if a "legal framework" such as an "if/then structure" can be "transformed into algorithms and decision trees" (Bouvens & Zouridis, 2002, p. 181), then, "in principle, all administrative discretion can be mapped out entirely in syllogisms and algorithms" (p. 181); as a result, administration will become less responsive, and policy execution will "no longer [relate] to the application of rules to individual cases" (p. 181).

2.12 Discretion in Schools

2.12.1 School Administrators' Exercise of Discretion

Discretion appears to be essential for the pragmatic functioning of schools. Kafka (2004) sees it as a "basic component" of both principals' and teachers' "traditional source of authority" (p. 97). Hall's (1999) research reveals school administrators believe discretion is essential for the interpretation and implementation of district policy (p. 162), while Heilmann (2006) also suggests discretion in schools may be exercised "when an individual deliberately chooses to ignore the established rules or policies" (p. 9).

Crowson and Porter-Gehrie (1980) assert school principals are a vital part of the "accumulated decisions that lead to the implementation of education policy" (p. 45), and their findings indicate "principals do exercise discretion in the day-to-day delivery of the services of their schools" (p. 49). They maintain principals, as enforcers of school policy, use a variety of discretionary coping mechanisms, such as "spotlighting" situations, in order to save time (p. 51). Larsen and Akmal (2007) argue that, irrespective of the origin of educational policy, "implementation is not likely to be as simple as ordering the principal or the teacher to ensure that school practices reflect the will of the policy makers" (p. 47). They further state that if the aims of policy are not congruent with either personal or professional ethos, then "compliance with policy directive" may not occur (p. 47). Additionally, other aspects such as miscommunication and self-interest may result in what they term "discretionary insubordination" (p. 47). In a similar way, Haynes and Licata (1995) explain how school officials often practice a form of discretion they term "creative insubordination" (p. 21) as one means to adapt central office mandates in order to tailor them to the local context, and "to ensure that system directives do not impinge unfairly or inappropriately on teachers and students and to avoid the possible backlash that outright defiance might incur" (Roche, 1999, p. 258). Mukuria (2002) feels more research is necessary to learn "how to bridge the gap between the intentions of the central office and a principal's behavior" (p. 449). Although his American study found that "principals value personal autonomy and should be empowered to make rules and regulations at individual school level [*sic*]," he has a concomitant belief that "little is known" about principals' adherence to rules, especially with respect to student suspensions (p. 449).

2.12.2 Requirements for Discretion in Schools

Discretion is especially helpful to administrators when policy does not provide adequate or sufficient direction, or when precedent does not prove illustrative. Haynes and Licata (1995) claim discretionary decision-making for principals is "the implementation of central office decisions, policies and programmes at the school level in a way that fits the principal's values, philosophy, goals, and situation" (p. 21). Heilmann's (2006) study reveals principals consider discretion necessary in various aspects of their practice, such as finance, interactions with staff, and discipline, and he suggests discretion also may be exercised "when an individual deliberately chooses to ignore the established rules or policies" (p. 9).

Martin (1995) frames the requirements for the exercise of discretion in the school setting. She specifies administrators are "expected to render administrative justice; that is…employ the rules of natural justice and procedural fairness" (p. 241; see also Manley-Casimir, 1977–78; Rossow, 1984). Thus, in their discretionary decision-making, school principals should be mindful of the following tenets:

> Four important principles govern the exercise of discretion by administrators in public schooling. First, their decisions must be according to the dictates of the law; second they must not fail to exercise or otherwise avoid discretion granted them; third, these powers must not be used excessively or be abused; and fourth, they must not be used for purposes other than those dictated by law. (Martin, 1995, p. 241).

2.12.3 Discretionary Action and School Discipline

Crowson and Porter-Gehrie (1980) contend that to simplify and routinize their complex roles, principals "must assert authority in order to exercise leadership" (p. 47), and that one strategy employed by administrators, in their need to maintain control in the school setting, is the use of "wide discretionary latitude in situations that call for decisions regarding pupil discipline and school control" (p. 58). Mukuria (2002) thinks principals may "modify" policy to suit their own needs and "value personal autonomy" in their decision-making at the expense of policy implementation (p. 449). His research reveals that when principals view a discipline policy as being a "flexible guideline but not a rigid document" (p. 441), they have lower rates of suspension in their schools. Conversely, those principals who do not "seem to have any flexibility or [who do not] use their discretion in implementing" school discipline policies have higher rates of suspension and "more disciplinary challenges" (p. 447). His study concludes the administration of suspensions is "arbitrary," and although there are "common strategies" used by administrators in discipline, there also is a "lack of uniformity" among educators in implementing suspension policies (p. 445). Hall's (1999) research tends to support these assertions. She recommends the need for "heightened awareness of the defensible element of discretion" and a clearer understanding of its nature in order to reach "more consistent discipline and documentation practices" (p. 106).

2.12.4 Student Perceptions of Discipline

Rawls (1962) distinguishes between justice and fairness when he states "the fundamental idea in the concept of justice is fairness" (p. 132); the two are not inherently the same. He goes on to add "the usual sense of justice" is "essentially the elimination

of arbitrary distinctions and the establishment, within the structure of a practice, of a proper balance between competing claims" (Rawls, 1962, p. 133). Furthermore, that which is fair "must often be felt, or perceived" (Rawls, 1962, p. 146).

The extent to which student attitudes and perceptions of fairness are affected by discretionary decision-making in disciplinary matters has come under scrutiny. A study of Canadian students conducted by Ruck and Wortley (2002) reveals that "minority status appears to be an extremely important predictor of student's [*sic*] perceptions of inequality regarding how they are treated by school authorities and police at school" (p. 192–193), and that male students are more likely to believe there will be "bias in terms of their treatment relating to school punishment" (p. 193). Furthermore, racial/ethnic minority students believe they will receive "suspensions" or "police action" at school (p. 194).

Mendez and Knoff (2003) believe suspensions, in particular, are perceived as punishment by students and result in negative attitudes and rarely result in improved student behavior (see also Clark, 2002). These findings support, in part, the work of Solomon (1992) whose Canadian study shows that some minority students believe disciplinary consequences are "handed out arbitrarily" (p. 52). Brown and Beckett (2006) discovered "the problem of student discipline in urban schools is compounded by a wide-spread belief among disadvantaged students and their parents that school disciplinary policies are administered unfairly" and that is one reason "disadvantaged parents consistently give for not being more involved in their children's schools" (p. 239). A national study in the U. S. conducted by Kupchik and Ellis (2008) found minority students perceived less fairness in school and specifically that "African American students hold lower opinions of the fairness and consistency of school rules

and their enforcement than White students do" (p. 570). Gall's Canadian (2010) inquiry into perceptions of discipline by students revealed they "do not perceive safe school rules, punishments, or rule enforcement practices to be fair overall" (p. 136). Interestingly, student perceptions of "justice and fairness" appeared to be based on how the school treated one student in relation to the next, and not on "whether the school is able to meet generalized criteria [of fairness]" (p. 137). Her research indicates what underpins students' perceptions of the "fairness of school discipline is a particular theory of justice" (Gall, 2010, p. 138), and that they "evaluate fairness based on the standard of equal treatment" (p. 139). This research would suggest that from students' viewpoints, discretionary decision-making may not always be perceived to be fair. Gall (2010) concludes school discipline "has the ability to drive a wedge between these two groups [i.e., school authorities and students]" (p. 137). Lufler's (1979) research shows student perceptions of arbitrary punishment in school can result in cynicism and further misbehavior. Arguably, even the perception by students of arbitrariness or lack of fairness in discipline can negatively affect their behavior and attitudes and lead to possible disengagement and detachment from school.

2.13 Discourses of Discretion in School Discipline

When administrators are denied the ability to exercise discretion it is suggested that discrimination results (Bhattacharajee, 2003; Civil Rights Project, 2000); on the other hand, there are allegations the exercise of discretion allows opportunities for personal prejudices and bias to surface, and that due process rights can be violated, especially in cases of student suspensions (Clark, 2002; Rossow, 1984; see also Mukuria, 2002; Torres & Chen, 2006). School administrators formally exercise discretion within

the parameters outlined in law in addition to the many, more informal discretionary decisions they make daily in their practice, such as "snap suspensions" (Dunbar & Villarruel, 2002, p. 95). Both the formal and informal exercise of discretion may have wide-ranging implications for, and effects upon, students. Lufler's (1979) two-year study found systems of discipline to be "highly particularistic, dependent upon the attitudes of teachers and administrators" (p. 457). His research suggests principals often interpret school rules based on what they believe is appropriate, and that "punishment" varies considerably, "often bending to the expectations expressed by teachers" (p. 462; see also Martin *et al*., 2012).

2.13.1 Regulation of Student Behavior

According to Crowson and Porter-Gehrie (1980), principals have a tendency to exercise "discretionary latitude" in order "to define appropriate behavior in schools" and have used this flexibility in determining "procedures and rules for student suspensions" (p. 58). Clark (2002) suggests discretionary decisions regulate and constrain behavior and that "discretionary discipline policies" tend to "perpetuate cultural reproduction, with teachers as the instrument to transmit the accepted culture" (p. 143). In a similar way, Kupchik and Ellis's (2008) extensive study concluded, in a manner consistent with reproduction theory, "that schools use discipline to reproduce existing social [i.e., class and status] inequalities" and that "school rules are indeed applied differently for minority students" (p. 567). As a result "school punishment experiences" vary greatly between "White and non-White youth" (p. 553; see also Clark, 2002).

2.13.2 Patterns of Control

Chesler *et al*. (1979) argue that discipline policies are implemented by educators with a great deal of "socially patterned discretion"; such practices "support current patterns of power, and the prevailing culture of those people who exercise control," and may preclude administrators from considering relevant details in their disciplinary decision-making (p. 497). From a similar perspective, Scheurich (1994), in his critique of conventional policy studies, illustrates how Foucaultian policy archaeology examines and identifies the "networks of [social] regularities" (p. 301), such as gender, class, or race, that generate what becomes visible and acceptable in the social order and that constitute or construct social and education problems. He contends that labeling a targeted group as a problem "is critical to the maintenance of the social order" (Scheurich, 1994, p. 308). If one extends this argument to student discipline, it follows that pupils who "do not break rules, are not disobedient…are not disruptive" (p. 315) are taught through the "'appropriate management of schools" to be "social-order-congruent citizens" (p. 307). Scheurich (1994) maintains that through the naming and treating of the "public display of 'wrong behavior'" (p. 307) and by continually "producing 'bad' groups who are publicly identified as such," a "proper productive citizen" is defined, and the behavior of "'good' citizens" is reaffirmed and reinforced (p. 308); this contention may merit consideration in terms of discretionary decision-making in schools. Other disciplinary discourses involving discretion focus on "the rule breaker," effectively identifying the student as the cause of the problem[11] and thereby deflecting consideration

[11] Henriksson (2008) identifies a "hidden teacher discourse" that exists among some Swedish educators (p. 150). Alongside the "official discourse" of pedagogy and curricular theory, there exists a "shadow

of the school itself for its contribution to the situation (Lufler, 1979, p. 462; see also Hall, 1999; Harber, 2004).

2.13.3 Discretionary Practices

Torres and Chen (2006) insist principals' perceptions of appropriate student conduct may influence how they exercise discretion in disciplinary matters, and what is normalized through a discourse of "good" youth may result in discretionary action that can have consequences which privilege one group over another. They believe "unchecked" discretion can be "threatening to fairness and liberty" (p. 190). Dunbar and Villarruel's (2002) research also questions how principals' social construction of "students of color" as "bad youth" affects their interpretation and implementation of school discipline policies (p. 102). McCarthy and Soodak's (2007) investigation of the discipline of students with disabilities indicates that, "absent accountability to the law," some American administrators "would have subordinated the rights of students with disabilities for the sake of eliminating problematic behavior" (p. 472). They believe legislation restricting the ability to suspend or expel if the "misbehavior is a manifestation of the student's disability, (i.e., the student's disability impaired his or her ability to control or understand the behavior)" reflects "the power of the law to safeguard the rights of individual students" (p. 472). Faulk's (2006) study reveals "the possibility of unequal student treatment" may result from enhanced administrative discretion (p. 100). As well, his research highlights the challenges for educators dealing with the

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discourse" where "students are very often seen as 'problem containers'" who have "reading and writing problems," in addition to "concentration problems, behaviour problems, and attitude problems; in short, students are 'bad news'" (p. 150).

"'gray' area" in student fights, for example, where "district fighting policy may not let administrators exercise full discretion to determine if a student should be expelled for fighting" (p. 53). He describes how individual interpretations and subjective definitions of fighting, perpetrator, and victim and the notions of self-defense or instigation could result in inconsistent application of zero tolerance policies. The work of Biggs (1993), Clark (2002), and Kaesar (1979) also contests the notions of consistency, justice, and accountability in discretionary decision-making in student disciplinary issues. Nonetheless, Gall's (2010) study reveals—from a progressive discipline viewpoint in discretionary decision-making—that "differential treatment of students may not only be legitimate, it may also be preferred in many situations" (p. 139).

As Drizin (2001) observes, administrators are often accused of abusing discretion and "criticized for being too lenient, too harsh, discriminatory, racist, [or] preferential to athletes" (p. 40). He counters that "the cure is to demand that administrators use their discretion wisely" and to demand a "statement of reasons for their decisions" and a system of "review of their decisions" to ensure accountability (p. 40). Maintaining a delicate balance can be exceedingly challenging for principals because "they face potential liability for incidents involving students under their responsibility," while at the same time "they face the risk of complaints of discrimination by expelled or suspended students, all in the face of the wrath of their stakeholders if they fail to fulfill their mandate" (Birrell & Morgan, 2007, p. 48). Furthermore, as Casella (2003) warns, other influences may infringe upon the exercise of judgment in student discipline, despite the consideration of context:

> Violence prevention and discipline policy must deal with the context of situations. The nature and history of conflicts, the circumstances of people, what individuals have to lose when criminalized, the relationship between those involved, and the meaning that people make of situations, are all part of that context. Prison policy rehashed as school discipline policy does not take into account the context of situations; rather discretion and understanding are likely to be supplanted by preventative detention and the questionable practice of consistency. Yet even with peoples' [*sic*] best intentions to understand and take into account the context of situations…success is not guaranteed." (Casella, 2003, p. 889)

2.14 Student Rights and Administrative Discretion

MacKay (2008) argues that in Canada "lawyers and judges are no longer restricted to comparisons with American law," and he reasons, because of the Internet, "international law has also taken on a new significance" (p. 25). Nonetheless, Canadian law often looks to American law for "points of comparison and clarification," since there are similarities in American and Canadian constitutional jurisprudence (Kiedrowski, Smale, & Grounko, 2010, p. 45); as a result, leading cases in the United States which delineate the exercise of discretion by school officials in the area of disciplinary actions and students rights may offer insight into the examination of decision-making by school principals. However, Pitsula and Manley-Casimir (1989) caution that Canadian and U. S. legal traditions and norms are distinctly different and these differences should be acknowledged in an analysis of school law in Canada. As a result, they advise avoiding an "uncritical adoption of U. S. case law as a guide to interpreting and applying the

Charter" which is, "at best, a hazardous undertaking, and, at worst, a thoroughly mistaken practice" (p. 71). McConnell and Pyra (1989), however, dispute the claim that there is a different type of educational administration in Canada. They maintain the two societies are similar and that Canada does draw on the "judicial reasoning" of the U. S. Supreme Court because "there exists much accumulated judicial experience and wisdom…in interpreting analogous Bill of Rights provisions" (p. 211).

MacKay (2008), nonetheless, maintains that despite what may be generally believed, "the United States courts have been quite restrained on matters of students' rights in schools" (p. 29) and references *Tinker v. Des Moines* (1969) as being the first case of students' rights to be argued before the U. S. Supreme Court. This case, which involves student freedom of expression, and *Goss v. Lopez* (1975), which involves student due process rights, help to define student rights in American schools and establish that principals' discretion is not unbounded or unlimited, especially in the area of students' constitutional rights. These two landmark cases, in addition to *New Jersey v. T. L. O*. (1985) and *Bethel School District No. 403 v. Fraser* (1986), serve to contextualize the exercise of administrative discretion.

2.15 An American Perspective

2.15.1 *Tinker v. Des Moines Independent Com. Sch. Dist.* (1969)

The iconic line articulating the United States Supreme Court's acknowledgement of student rights in *Tinker v. Des Moines* (1969) has been cited innumerable times in judgments and has become part of the parlance of lawyers and legal scholars. The Court's determination that "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (p. 736),

reflected its opinion that it was unconstitutional to prohibit students from wearing black armbands to protest the Vietnam War, and to impose suspensions upon some of those who did. In delivering the judgment of the Court, Fortas J. clearly stated that "school officials do not possess absolute authority over their students" and that "students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect" (p. 739).

However, in so defining student rights the Court identifies a Gordian knot with which school administrators continue to wrestle more than forty years later: "The problem lies in the area where students in the exercise of First Amendment rights [freedom of speech] collide with the rules of the school authorities" (p. 737). The Court in *Tinker* states that for the school to impose the sanction of suspensions for what was "closely akin to 'pure speech'" (p. 736), that is, the "silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners" (p. 737), was an infringement of the students' constitutional rights to freedom of expression. The Court further maintains students may express their opinion so long as they do not cause "substantial disruption of or material interference" (p. 740) with the school's mission or the rights of others. The "*Tinker* test, as it has been called, prescribes that freedom of expression in the public school community should be allowed provided such freedom is not disrupting the orderly operation of the school or interfering with the rights of others" (Kiedrowski *et al*., 2010, p. 56). In rendering its judgment, the Court in *Tinker* cites *Burnside v. Byars* (1966), a case in which African-American students had been arbitrarily suspended from school for wearing "freedom buttons" (p. 749). In *Burnside* (1966), Gewin C. J. of the Circuit Court considered the ambit of administrator discretion:

> School officials have a wide latitude of discretion. But the school is always bound by the requirement that the rules and regulations must be reasonable. It is not for us to consider whether such rules are wise or expedient but merely whether they are a reasonable exercise of the power and discretion of the school authorities. (p. 748)

Allowing that discretion which is not reasonably exercised may be open to judicial scrutiny, the Court in *Tinker* reserves judgment on the wisdom and efficacy of policy and procedures developed in schools. Nonetheless, *Tinker* has as a corollary a cautionary note about the element of capriciousness in the exercise of discretion by administrators; the Court observes that schools are not "enclaves of totalitarianism" (p. 739), that rules cannot be enforced merely upon administrative whim, and it concludes that school officials should avoid arbitrariness in their decision-making. Brady (2002) contends that historically "public schools exercised broad authority in disciplining students" (p. 169), aided by the principle of *in loco parentis*, but that the *Tinker* ruling "challenged" this previous practice and "shifted both the law and school administrators to a more active protection of students' rights" (p. 170). MacKay (2008) feels that while courts in Canada have generally "been sympathetic to the 'substantial disruption' test" of the U. S. Supreme court in *Tinker*, "like their American counterparts" they still give "front-line educators considerable deference in determining what is 'substantial disruption'" (p. 29).

2.15.2 *Goss. v. Lopez* (1975)

The issue of due process rights under the Fourteenth Amendment, more specifically with respect to student suspensions in school, was considered by the United

States Supreme Court in *Goss v. Lopez* (1975), along with the concomitant notions of administrative discretion and the purpose of student discipline. In rendering its judgment, the Court acknowledges the need to find a balance in the tension that exists between "a student's legitimate entitlement to a public education as a property interest that is protected [by due process]" (p. 732) and the need to ensure that school officials are able to deal with disciplinary matters with "acceptable efficiency" (pp. 739–740) and "effectiveness" (p. 741). The requirement for the student to be given "notice of the charges against him" and "an opportunity to present his side of the story" (p. 740), albeit "rudimentary procedures" (p. 741), not only ensures the safeguards enshrined in the Constitution, but also minimizes "unfair or mistaken findings of misconduct and arbitrary exclusion from school" (p. 740). The Court ruled that "requiring effective notice and [an] informal hearing permitting the student to give his version of the events" provides a "meaningful hedge against erroneous action" (p. 741) on the part of school officials and determined that legislation allowing suspensions of less than ten days to be applied without a hearing or notice was unconstitutional. In delivering the judgment of the Court, White J. notes the imposition of the requirements of a hearing would not infringe upon students' rights; moreover, the school principal's "discretion will be more informed" and "the risk of error [of unfair suspensions] substantially reduced" (p. 740). The ruling reflects the Court's sensitivity to the concern that formal suspension processes, adversarial in nature, along the lines of "truncated trial-type procedures," may "overwhelm administrative facilities" (p. 740) and remove any educative component of the disciplinary process. Student suspensions, it concludes, require "at least an informal

give-and-take between student and disciplinarian" and "longer suspensions or expulsions may require more formal procedures" (p. 741).

In dissent, Powell J., along with three other justices (one of whom was the Chief Justice), focuses upon the need for principals to be able to exercise discretion in their decision-making in matters of student discipline. He maintains that "in prior decisions [i.e., *Tinker v. Des Moines*], this Court has explicitly recognized that school authorities must have broad discretionary authority in the daily operation of public schools. This authority includes wide latitude with respect to maintaining discipline and good order" (p. 744). Mandating due process requirements would pre-empt the authority of educators, and curtail the discretion afforded them. Powell J. goes on to insist "the teacher must be free to discipline without frustrating formalities," noting "there is no evidence indicating the frequency of unjust suspensions," and that "common sense suggests that they will not be numerous in relation to the total number, and that mistakes or injustices will usually be righted by informal means" (p. 746). The "statutory requirements" in Ohio requiring "*written* [emphasis in original] notice including the 'reasons therefor' to the student's parents and to the Board of Education within 24 hours of any suspension" is a "deterrent against arbitrary action by the principal," and he doubts rushing to "mandate" constitutional requirements for due process would not "in any meaningful sense [provide] greater protection than that already afforded under Ohio law" (p. 747).

Powell J. warns requiring due process procedures would hinder administrators in their role and would "sweep within the protected interest in education a multitude of discretionary decisions in the educational process" (p. 747), not the least of which include

student promotion, assessment, instruction, placement, and extracurricular activities. Predicting "federal courts should prepare themselves for a vast new role in society" (p. 749) on the heels of any requirement of the Court for due process procedures whenever "routine school decisions" are challenged, Powell J. contends there will be a "serious" impact upon public education since the "discretion and judgment of federal courts across the land often will be substituted for that of the 50 state legislatures, the 14,000 school boards, and the 2,000,000 teachers who heretofore have been responsible for the administration of the American public school system" (p. 748).

2.15.3 *New Jersey v. T.L.O.* (1985)

In rendering its judgment in *New Jersey v. T.L.O.* (1985), the United States Supreme Court establishes that, although not divested of their constitutional rights, students have a "lesser expectation of privacy" (p. 746) in schools. White J. delivers the opinion of the Court and defines the reduced standard for searches of students in the school setting, alluding to the belief that "in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in schools have become major problems" (p. 741). The Court determines "maintaining order in the classroom has never been easy" (p. 741) and argues about the need for administrative latitude by stating that ensuring "security and order in the schools requires a certain degree of flexibility in school disciplinary procedures" (p. 742). In recognition of the necessity to "strike the balance between the schoolchild's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place" (p. 742), the Court rules the legality of student searches in schools "should depend simply on the reasonableness, under all the circumstances, of the search" (p. 735). The standard

of reasonableness "will spare teachers and school administrators the necessity of schooling themselves in the niceties of probable cause"; this lesser standard is expeditious for school officials, offering them greater discretion and permitting "them to regulate their conduct according to the dictates of reason and common sense" (p. 743).

Blackmun J., concurring, notes the constitutional guarantee of freedom from unreasonable search and seizure would not be violated by the adoption of this standard, but he mentions, as well, the "special need for flexibility justifying a departure from the balance struck by the Framers [of the Fourth Amendment]" (p. 748). A balance must be struck between "the interests of the student against the school official's need to maintain discipline by recognizing qualitative differences between the constitutional remedies to which students and adults are entitled" (p. 746). White J., with O'Connor J. concurring, also states "we have recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary policies" (p. 742), thus identifying the need for latitude on the part of school administrators and respecting that "strict adherence" (p. 742) to requirements was not required.

2.15.4 *Bethel School District No. 403 v. Fraser* (1986)

In *Bethel v. Fraser* (1986), the Chief Justice of the Supreme Court alludes to the inability of school rules to cover every disciplinary infraction, thus recognizing the requirement of "flexibility" (p. 3166) for school officials in responding to student misbehavior:

> Given the school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need not be as detailed as a criminal

code which imposes criminal sanctions. (p. 3166)

The Court ruled that "giving a lewd and indecent speech" (p. 3165) during a high school assembly is not constitutionally protected under the First Amendment guarantee of freedom of expression. Overturning a ruling by the lower Court of Appeals, and acknowledging that school officials do not have "limitless" (p. 3168) authority to "regulate" (p. 3167) such speech, the Supreme Court maintains "that in light of the discretion school officials have to teach high school students how to conduct civil and effective public discourse, and to prevent disruption of school educational discourse" (p. 3166), the imposition of a suspension upon the student did not violate his constitutional right to free speech, and confirms the need for administrators to have flexibility in their disciplinary decision-making. Citing *Thomas v. Board of Education* (1979), in which the Court of Appeals ruled students could not be punished for distributing an off-school newspaper that was "morally offensive, indecent, and obscene" (p. 1044), Brennan J., concurring, notes that school administrators, nonetheless, do not enjoy unrestricted authority when he observes that *Thomas* had shown "'school officials . . . do [not] have limitless discretion to apply their own notions of indecency'" (p. 3168).

The *Bethel* Court also cited *Eisner v. Stamford Board of Education* (1971), a case where prior restraint of student publications had been found unconstitutional and had opposed students' free speech. The Court in *Eisner* warned overly broad policy had to be reworded since there is a possibility that overly vague policy "because of its tendency to over-generalization, will be administered arbitrarily, erratically, or unfairly" (p.809). The policy allowing the prior restraint by school officials amounted to "censorship" (p. 89), and the Court reminded administrators that they "must demonstrate a reasonable basis for

interference with student speech" (p. 810). Furthermore, Kaufman J. also cited the *Burnside* decision and maintained arbitrariness on the part of school officials would not be tolerated. He ruled "school authorities must demonstrate a reasonable basis for interference with student speech, and that the court will not rest content with officials' bare allegation that such a basis existed" (p. 809).

Dissenting in *Bethel,* Marshall J., while agreeing that an administrator's discretion must not escape scrutiny, especially when the right of freedom of speech is concerned, contends there was no evidence the student's remarks had disrupted the educational process, the standard that had been established in *Tinker v. Des Moines* (1969). He, too, recognizes "the school administration must be given wide latitude to determine what forms of conduct are inconsistent with the school's educational mission; nevertheless, where speech is involved, we may not unquestioningly accept a teacher's or administrator's assertion that certain pure speech interfered with education" (p. 3168).

2.16 Deference to Discretionary Decision-making

Biggs's (1993) analysis of administrative discretion in selected students' rights decisions of the United States Supreme Court reflects the "imprecision" he finds in discretionary decision-making by administrators (p. 161). He argues the earliest decisions of the Court, such as those rendered in *Tinker v. Des Moines* (1969) and *Goss v. Lopez* (1975), determined principals' discretion was not unlimited or unbounded, especially when administrative action sought to limit students' constitutional freedoms. *Wood v. Strickland* (1975), a case involving suspension and student substantive due process rights, supported the exercise of discretion by school officials while emphasizing that school officials were protected by a "qualified immunity" in their discretionary

actions unless "they knowingly violated the constitutional rights of students" (Biggs, 1993, p. 75); consequently, their decisions must be made in good faith and be reasonable or administrators could be held personally liable. In *Wood*, the Court affirms the decision-making of administrators when it states that "the system of public education that has evolved in this Nation relies necessarily upon the discretion and judgment of school administrators and school board members" (p. 326). The Court held that school officials, when acting in good faith in fulfilling their responsibilities, will not be punished but they will not be immune from damages if they know their actions violate the constitutional rights of students.

Biggs (1993) points out subsequent decisions of the Court, such as *New Jersey v. T.L.O.(1979),* and *Bethel v. Fraser* (1986) and *Hazelwood v. Kuhlmeier* (1988), which concerned student rights to freedom of expression, "involved significant constitutional issues and controversial interventions on the part of school administrators" (p. 93). This trio of cases "signaled a shift away from controlling students' rights through additional restrictive protections, entrusting greater discretionary authority to school officials" (p. 95). As evidenced in *T.L.O.* and *Hazelwood*, Biggs (1993) maintains, the Court deferred to the administrators' actions if their behavior was "reasonable" (p. 93) and "justified" when it considered administrators' "spur-of-the-moment decisions" (p. 94) that resulted in disciplinary responses. Moreover, in *Hazelwood* the Court ruled school officials could impose reasonable restrictions on student speech and could limit the discourse as long as the restrictions were "reasonably related to legitimate pedagogical concerns" (p. 571). Biggs (1993) concludes the principles contained in these Supreme Court decisions suggest that courts in America will "usually support" discretionary action

as long as it is not "arbitrary, inconsistent, discriminatory or heavy-handed" (p. 180) and if it complies with "standards of fairness" (p. 179). Arum (2003) concurs with Biggs's appraisal of the courts' deference to principals, and maintains that appellate court cases at the state and federal levels in the U.S. generally had a "pro-school tendency" after 1975 and supported administrators' decisions, whereas before that time, judges had "tended to adopt pro-student orientations" (p. 86) which served to undermine what he calls the moral authority in schools.

2.17 Shift from Discretionary Authority

Kafka (2008), on the other hand, disputes the claim that by the time of *Goss v. Lopez* (1975) court decisions in America were contributing to what she sees as the "centralization" of school disciplinary authority (p. 249) away from the discretionary decisions of educators in schools. Instead, she insists that "racial conflict" and "distrust" (p. 249) of White teachers and administrators in Los Angeles during the late 1960s and early 1970s led to the erosion of the *in loco parentis* doctrine and its "considerable discretion in the administration of discipline" and to the establishment of the school district as a centralized bureaucracy that regulated and controlled the disciplinary policies of schools (Kafka, 2008, p. 247). By the mid-1970s, Kafka (2008) contends, as a result of this racial strife the Los Angeles School Board responded to claims that "local school rules and disciplinary procedures" were seen to "perpetuate injustices and preserve inequities," and limited "teachers' and principals' control over school discipline" (p. 263).

Consequently, Los Angeles became a national prototype for models of "centralized regulation and bureaucratic rule making" (Kafka, 2008, p. 262) that "reduced

local discretion and increased centralization" in all areas of school administration and governance, including student discipline (p. 264). The Los Angeles board "enacted policies that limited teachers' and principals' disciplinary discretion, [and] framed school discipline in terms of [centralized] district-level mandates"; in the years to follow, administrators and teachers were able to maintain and regulate school discipline through their roles as "members of the district bureaucracy" who clearly derived their authority from the board itself (p. 262).

More recently, however, Torres and Stefkovich (2009) suggest that ambiguity in lower court rulings in the U. S, especially since *New Jersey v. T.L.O*. (1985), has left school officials with "considerable discretionary interpretation and application of [the] law" (p. 469). They call for policy checks to ensure that administrative actions comply with Supreme Court rulings in order that administrators' decisions do not have a disproportionate impact upon students.

2.18 Discretion as Moral Authority

Arum (2003) advocates "limiting and redefining the scope" of U.S. student due-process rights in cases where students face school discipline "that does not involve long-term exclusion or violation of First Amendment rights" (p. 207), that is, "rights of freedom of speech, press, and peaceful assembly" (p. 204). Maintaining that due process guarantees afforded students by *Goss v. Lopez* (1975) and subsequent cases were "rudimentary" at best, Arum holds students are provided "little formal protection from inappropriately exercised discipline" that does not include long-term suspension or expulsion (p. 208). The majority of suspensions issued are not long-term and, in these more informal cases, students are "offered no real protection from administrators who act

in arbitrary, authoritarian or discriminatory fashion" (p. 208). He suggests legal constraints in court decisions that challenge "the administrative discretion of school personnel" have "undermined the effectiveness of school discipline" and led to "deteriorating public school climates" (p. 189).

As it stands, Arum (2003) submits, the widely held belief that American students are able to invoke their constitutional rights at any time has not resulted in greater protection for them but, instead, in "the legalization of school practices, the intimidation of school personnel faced with an ambiguous legal terrain, and an undermining of the school's moral authority" (p. 208). Narrowing student rights, he contends, would be "largely symbolic," and would indicate "faith in public educators' discretionary judgment" (p. 213) and could be off-set by increased measures of accountability at the district level, dedicated in-service development sessions for administrators and by the professionalism of educators (Arum, 2003, p. 213). Limiting any student rights, on principle, appears counter-intuitive and, it can be argued, may lead to greater arbitrariness in administrative decision-making. Arum's point remains, however, that minority students do not appear to have been particularly well-served by due process rights to this point, given that studies indicate they are disproportionately affected by school discipline, and over-represented in suspension rates (p. 211).

2.19 A Canadian Perspective

Zuker, Hammond, and Flynn (2009) maintain Canadian law has afforded administrators in schools "some degree of discretion" to make "reasonable decisions in their particular school contexts or while supervising students outside of school" (p. 333). There are limits to the discretion afforded school authorities, however, and they reason

"this lenience will not necessarily be accorded to every decision made by a teacher or school authority in every context, particularly where the action taken subverts the interest of pupils to the individual's self-interest" (Zuker, Hammond, & Flynn, 2009, p. 334).

Pitsula and Manley-Casimir (1989) provide an historical context for administrators' decision-making when, shortly after the enactment of the *Charter*, they suggest judicial reasoning in Canada is grounded in "deference to the good faith behavior of educational administrators" (p. 60). As a result, "the public standard…is determined by local school board policy and the discretion of the disciplinarian" (p. 67). They argue Canadians seek redress and change "through the political process rather than through the courts," that school law is mostly found in "the actions of school boards, ministry officials, and teacher professional organizations," rather "than in the written decisions of judges" (p. 67), and that Canadian school administrators have not seen the intrusion into "matters of school discipline" that has occurred in the United States (p. 68). Canadian courts grant broad discretionary powers to school authorities "based on an interpretation of the relevant school act and long-standing principles such as *in loco parentis*…and *parens patriae*" (p. 58), and judicial reasoning reflects the "belief that educational administrators rarely behave in a capricious, arbitrary or unreasonable manner" (p. 59). They go on to note courts are "very reluctant to interfere with the reasonable exercise of this discretion" (p. 59). Their authority to discipline students at common law is based on a willingness to delegate "considerable autonomy" to educational administrators through the doctrine of *in loco parentis* and as state agents carrying out the important function of "peace, order and good government" (p. 59) as articulated in *Murdock v. Richards* (1954):

> It is sometimes said that the parent, by sending the child to school, has delegated his discipline to the teacher; but since many children go to public schools under compulsion of the law, and the child may well be punished over the objection of the parent, a sounder reason is the necessity for maintaining order in and about the school. (p. 769).

Dickinson and MacKay (1989) at that time also allude to the "traditional approach" of courts in Canada before the arrival of the *Charter* where deference to "school officials' discretion" reflected a preference for "the virtues of discipline and obedience over those associated with individual rights and challenging authority" (p. 318). The "flexibility of broad discretionary jurisdiction" MacKay (2008, p. 24) identifies as being exercised by educational administrators is considered in the following three cases which involve searches of students by school officials in Canadian jurisdictions.

2.19.1 *R. v. J. M. G.* (1986)

In this case in which a student appealed his conviction for possession of narcotics, the Ontario Court of Appeal identifies the complex nature of administrative decision-making, particularly in cases of student searches in schools. Grange J. A. affirms "the type of information required to justify a search" (p. 710) by citing *New Jersey v. T. L. O.* (1986), wherein the Court determined searches in schools need not adhere to the standard of probable cause. The "twofold inquiry" found in *Terry v. Ohio* (1968), whether the search is "justified at its inception" and "reasonably related in scope to the circumstances which justified the interference in the first place" (*New Jersey v. T. L. O.*, 1986, p. 341),

determines the reasonableness of all circumstances of the search. Grange J. A. notes the obligation of school principals to "enforce school discipline in schools efficiently and effectively" is balanced against the "substantial interest not only in the welfare of the other students but in the accused student as well" (p. 710). He acknowledges principals require latitude to make judgments that are reasonable in order to "maintain proper order and discipline" (p. 712), explaining "a principal has a discretion in many minor offences whether to deal with the matter himself, whether to consult the child's parents and whether to call in the law enforcement authorities. He cannot exercise that discretion until he knows the nature and extent of the offence" (p. 710). The Court supports administrators' decision-making that is reasonable under the circumstances, indicating such decisions will not violate students' *Charter* rights.

2.19.2 *R. v. M. R. M.* (1999)

The Supreme Court of Canada affirms the discretionary decision-making of school principals when it establishes the more "lenient and flexible" standard of reasonableness for educators who conduct searches of students in the school setting (p. 395) and supports the need to maintain order and discipline in schools. As well, the Court notes the "significantly diminished" (p. 413) expectation of privacy for students in addition to determining that "the actions of school officials as an extension of government are subject to the *Canadian Charter of Rights and Freedoms*" (p. 430). The Court acknowledges the significant responsibilities of school officials and considers the balance they must find between respecting the rights of students and maintaining a safe school environment. On behalf of the Court, Cory J. notes the recent increase in "illicit drug and dangerous weapons in the schools," which present considerable barriers to

school officials in meeting their obligations to provide a "safe and orderly environment" (p. 415). He acknowledges that since school administrators must "be able to respond quickly and effectively to problems" (p. 420), they must be provided with "the flexibility required to deal with discipline problems in schools" (p. 415). Reiterating that "school authorities must be accorded a reasonable degree of discretion and flexibility to enable them to ensure the safety of their students and to enforce school regulations" (p. 421), the Court goes on to support the decision-making ability of school authorities who, "as a result of their training, background and experience," are "in the best possible position" to evaluate the information they receive (p. 421). Consequently, school officials occupy a "preferred position" (pp. 421–422) in determining whether reasonable grounds exist for a search to be conducted; as a result, the Court maintains a "modified standard for school authorities is required to allow them the necessary latitude to carry out their responsibilities to maintain a safe and orderly school environment" (p. 425) within the context of the particular circumstances as they are presented. Cory J. concludes that, although the standard for searches is lessened, school administrators must remember "the manner in which students are treated in these situations will determine their respect for the rights of others in the future" (p. 424).

In dissent, Major J. argues the school's vice-principal in the case had acted as an agent of the police and not in his capacity as a school official; therefore, he believes the search requires a warrant with the standard being elevated from reasonable suspicion to "reasonable and probable grounds" (p. 425) and, as such, violated M.R.M.'s *Charter* rights. Major J. also enumerates an important consideration regarding school policy. For the case in point, the school district's policy requirement to call the Royal Canadian

Mounted Police (RCMP) if a student was found to be in possession of drugs or alcohol "of a criminal nature" (p. 433), served to make "a school official a *de facto* agent of the police when and if the police engage the services of that person to conduct the subsequent investigation" (p. 433). It may be inferred from this ruling that school discipline policies directing administrative action should be reviewed for alignment with legislation and significant court rulings.

Dickinson (2009) points to the courts' "traditional emphasis on order and discipline" underscoring the "special 'case'" of discipline (p. 180), and notes the "role-based test" for school searches by school administrators in their roles either as agents of the police or as careful, prudent parents established by the courts in *M.R.M.* (as well as in *R. v. J.M.G*) focuses on the "subjective *intentions* [emphasis in original] of the administrator," but he maintains that in matters "where school rule breaches and criminal acts coalesce, discretion becomes a moot point" (p. 179). He asserts that the two judgments support the "considerable discretion, latitude, and flexibility" (p. 180) afforded school administrators but do so at the expense of students' *Charter* rights. Noting the "transition from educational state agent to police state agent" can be a rapid-fire one for principals (Dickinson, 1998, p. 452), and highlighting the importance of the "fiduciary relationship between educator and student" (p. 451), Dickinson (2009), instead, offers that "[A.W.] MacKay's impact- or results-based" approach, which focuses on the impact of what a search might reveal, would determine students' rights "based on the objective test of whether there were reasonable grounds to believe there would be criminal consequences" (p. 179). As a result, he contends, all searches of students would then be left to the police, a condition which may make greater practical sense, and which may

relieve principals of much of their burden of discretionary decision-making in finding the balance between enforcing school rules and assisting in the enforcement of the criminal law.

2.19.3 *R. v. A. M.* (2008)

That administrative decisions involving discretion are not unfettered, however, is confirmed in *R. v. A. M.* (2008). Binnie J., on behalf of the Supreme Court, agrees with the Court's earlier decision in *R. v. M. R. M.* (1999) that "greater latitude must be given to school authorities in the discharge of their responsibilities than to the police" (para. 47). This case, involving a random drug search conducted by sniffer dogs in an Ontario school, recognizes the "teaching of *M.(M.R.)* is that in matters of school discipline, a broad measure of discretion and flexibility" (para. 45) is afforded school officials, yet it also confirms that students do enjoy a measure of privacy in the school setting. Nonetheless, the Court ruled that, despite the lower threshold required in school searches, the exercise of discretion afforded school officials insofar as the use of sniffer dogs is concerned must be balanced against the need to establish the standard of reasonableness based on "objective facts" (para. 90). The majority ruling affirmed there is a higher standard for searches by sniffer dogs in schools (Kiedrowski *et al*., 2010) and that school administrators and police officers cannot decide to conduct random searches in schools based on a mere whim; instead, the "prior requirement of reasonable suspicion" must be met (para. 90). In its ruling, MacKay (2008) maintains, the Court came down on the side of individual rights.

In dissent, Bastarache J. agrees administrative decision-making cannot be capricious or arbitrary and "reasonable suspicion requires more than a mere hunch,"

while confirming a "generalized, ongoing suspicion" entitling principals to use their authority to indiscriminately search students whenever they please "does not exist in relation to schools" (para. 152). He reasons that although school officials had thought it likely drugs might be discovered in the school, they had not first established a reasonable suspicion drugs would be found; as a result, the search of the student's backpack by the sniffer dog was deemed unreasonable, and the rights of the student were upheld. As he observes, although reasonable suspicion is a "recognized legal standard that has been adopted where considered appropriate by both Parliament and the courts" (para. 79), if it is "construed as nothing more than a subjective standard, it may lead, as critics fear, to abuse in terms of arbitrary police action and racial profiling" and must be backed by "objectively verifiable indications" (para. 80). Bastarache J. emphasizes school administrators and others must establish a reasonable suspicion at the time when a search takes place, and not base their decision upon an educated guess that illegal drugs will be discovered; otherwise, it would appear that arbitrariness and capriciousness on the part of administrators with respect to random school searches would be found to be unreasonable by the courts.

2.20 Increasing Influence of Rights

MacKay (2008) describes what he sees as the growing impact of the law upon education and identifies one of the benefits of the "expanded judicial role in education" as contributing, in part, to the need for the clarification of school rules in order to meet the "justification standard" of the *Charter*, "thereby diminishing discretion" (p. 32). The pressure on school boards "to meet the 'prescribed by law' dictate" has resulted, he believes, in the end to "'the good old days' of open-ended administrative discretion for

teachers and principals" (p. 32). However, he concedes "courts and most administrative tribunals" are still "willing to show considerable deference to the educational experts on the substance of educational policy" and they "have been mindful of the practical demands of the school context" in "matters of jurisdiction, fair process, and constitutional and human rights" (p. 23).

MacKay (2008) also points to the growing "focus on students and their rights within the school system" (p. 32), and the "increased presence of lawyers in schools has produced a greater focus on process rights" (p. 31); the increasing "importance of human rights agencies" and tribunals in Canadian schools is reflective of this "rights consciousness" (p. 25). He maintains these agencies play a more prominent role in education, occupy much of the "time and energy" of schools and are "less deferential to the front-line educational experts" (p. 25) and their discretionary decision-making than is the judiciary. The courts, he suggests are focused on "fair process for students and parents," while human rights agencies seem more concerned with "substantive human rights" (p. 25), and he points to the emphasis by the courts of "the importance of fair process at all levels of decision making in the educational system" (p. 31).

MacKay's (2008) contention appears to be supported by Silbert (2010) who notes the recent case of *J. O. v. Strathcona-Tweedsmuir School* (2010) involving the expulsion of a student from an independent school in Alberta for alleged unacceptable off-campus conduct. In this case the court did not defer to the decisions of the administration. The lower court ruled in favor of the plaintiff, maintaining that "expulsion decisions [by school officials] must not be arbitrary, discriminatory, or made in bad faith," and that the

school was required to "incorporate the principles of fundamental justice into its disciplinary rules" (p. 8).

Sitch and McCoubrey (2000), however, suggest courts continue to defer to administrators' exercise of discretion because the "judiciary [tends] to subordinate children's rights to the interests of order and discipline" (p. 191). Judges have been reluctant "to examine the method of discipline, or the extent of the school's disciplinary role" because of this deference to the decisions of school boards and school officials, and also because of a failure to examine the application or the effects of the power of "state authority"; consequently, they have neglected "to consider the existence of students' rights" (p. 188). They further contend the "impenetrable nature" (p. 191) of the broad discretion afforded school administrators in order to preserve the orderliness in schools "is a consequence of the preservation of *in loco parentis* — a principle that is inappropriate when applied to a 21st century understanding of children's rights" (Sitch & McCoubrey, 2000, p. 191).

2.21 Impact of Discretion on Discipline Policies

School administrators exercise discretion when they make disciplinary decisions involving student misbehavior; they use their judgment to choose from any number of responses, from ignoring the behavior to levying a suspension. Student suspension has become one of the "most commonly used forms of discipline in the United States" (Mendez & Knoff, 2003, p. 31; see also Fenning & Rose, 2007, Skiba, 2002) and it is frequently relied upon as a disciplinary measure in Canada as well. Mendez and Knoff (2003) contend suspension "rarely has a logical, functional, or instructive connection" to the offence (p. 30). Historically, suspension became an alternative form of discipline

replacing corporal punishment in Ontario (Axelrod, 2010; see also Brown & Beckett, 2007) and the trend to suspend students appears to have spread throughout the rest of Canada. Brien (2005) reasons that with the ability to suspend encased in legislation, coupled with due process requirements and the opportunity for judicial review, suspension "can trigger more legal consequences than many other disciplinary measures" (pp. 10–11). What is more, Hall (1999) believes decision-making regarding student suspensions highlights "the impact of values on administrative discretion" (p. 141).

2.21.1 Reasons for Suspension

Mendez and Knoff (2003) suggest suspension is "intended" by administrators and "perceived by students" as a "punishment" (p. 30). Birrell and Marshall (2007) maintain that "strict discipline in the form of suspensions and expulsions," coupled with the inculcation of values such as "responsibility, accountability and civility," has been used "to address violence and bad behavior in schools" (p. 33). Ironically, Costenbader and Merkson (1998) identify attendance concerns as being one of the most often-cited reasons for issuing school suspensions (see also Chobot & Garibaldi, 1982; Kaesar, 1979). Another study revealed that 63% of all suspensions were for non-dangerous offences and for nonviolent acts such as defiance or disruption (Chobot & Garibaldi, 1982, p. 317). Other inquiries claim the majority of student suspensions are subjectively issued for minor offences, not violent incidents, and are applied under quite broad categories such as "disobedience/insubordination" (Mendez & Knoff, 2003, p. 48; see also Kaesar, 1979) and for more nonspecific offences, such as "disrespect" (Bhattacharjee, 2003; Fenning & Rose, 2007) and "noncompliance" (Clark, 2002, p. 41;

see also Mendez & Knoff, 2003). Much is left to teachers' and administrators' interpretation and judgment in many cases when student suspensions are issued.

It may be argued discretion also holds the potential for bias or, at the very least, decision-making that may be influenced by socially and culturally constructed individual perceptions of appropriate behavior and conduct. With very subjective offenses such as "disrespect," "noncompliance," "disobedience," and "defiance" open to individual interpretation, there is opportunity for subtle prejudices to enter into the decision-making process in disciplinary matters. Research by Clark (2002) shows racial stereotypes influence "teachers' perceptions, judgment and behavior" since their ontology defines the "accepted culture and behaviors" (p. 143) and, as a result, those "students not exhibiting 'normal' behavior experienced increased discipline actions and special education placements" (pp. 142–143).

2.21.2 Effects of Suspension Upon Students

The United States Supreme Court offered its own consideration of the effects of suspension in *Goss v. Lo*pez (1975). Powell J., in dissent, argued "a deprivation of not more than 10 days' suspension from school" does not "assume constitutional dimensions" (p. 743) since the right to an education "is not a right protected by the Constitution" (p. 742) and is, instead, "encompassed in the entire package of statutory provisions governing education in Ohio" (p. 743). Noting there was recourse to air "grievances…available to pupils and their parents" (p. 747), he stated the prevailing provision for suspension in Ohio was sufficient and allowed "no serious or significant infringement" of a student's education since "it authorize[d] only a maximum suspension of eight school days, less than 5% of the normal 180-day school year" (p. 743). Such

suspensions, the Court determined, "will rarely affect a pupil's opportunity to learn or his scholastic performance," and there was no evidence to support the claim that students could experience "damage" from such suspensions, or that the suspension could harm "a student's reputation" (p. 743). Current literature, however, appears to challenge such traditional beliefs.

Torres and Stepkovich (2009; see also Costenbader & Merkson, 1998; Townsend, 2000) claim suspensions may end up adversely affecting minority students. Indeed, the literature is replete with allegations that zero tolerance and zero tolerance-like policies, which remove the possibility for administrative discretion, usually with respect to suspension and expulsion, disproportionately affect minority, male, and special education students (Arum, 2003; Bhattacharjee, 2003; Casella, 2003; Civil Rights Project, 2000; Wu *et al*., 1982). Even when such policies are not considered, other studies show a relationship between race and suspension rates. For example, data from a survey of 31,000 students by Wu *et al.* (1982) support their hypothesis that "racial bias is a contributing factor in student suspension" (p. 269), even when "poverty, behavior and attitudes, academic performance, [and] parental attention" are considered (p. 270). As well, "academic bias" plays a role since the "greater the emphasis on academic ability," the greater the probability that "low ability students" would be suspended (Wu *et al*., 1982, p. 267). Although they also found students' behavior and attitudes are a "basic determinant" of student suspension (p. 254), the "subjective judgments and attitudes of teachers" appear to be "highly relevant" as well (p. 260). They further discovered when the authority for discipline in the school is "centralized," that is, when "administrative control" over student discipline and rules is increased, as opposed to awarding

"discretionary power" to teachers for school discipline, this focused control leads to an increased number of suspensions (pp.262–263).

Much research has indicated suspensions and other forms of school exclusion provide temporary, short-term relief for frustrated administrators and teachers, but the damaging effects of these measures may far exceed any benefits that may ensue. As previously noted, they are usually levied for very subjective reasons (Bhattacharjee, 2003; Civil Rights Project, 2000; Conroy *et al*., 1999; Kaesar, 1979; Lufler, 1979), and the efficacy of suspensions as an effective, educative disciplinary strategy is much debated (Kaesar, 1979; Arum, 2003; Mendez & Knoff, 2003). Costenbader and Merkson (1998) contend suspension exacerbates misbehavior, reinforces inappropriate behavior, does not improve attendance, is correlated to drug use, and can force the school's problems onto the streets (see also Mendez & Knoff, 2003; Mukuria, 2002). Students who are suspended or expelled have "increased opportunity to engage in illegal behaviors" and are most susceptible to "early school leaving" and dropping out (Townsend, 2000, p. 382; see also Wu *et al*., 1982). Skiba (2002) sees suspension being used as a "push-out tool" for "persistent troublemakers" and associates suspension and expulsion with an increased likelihood of gang involvement (p. 90). Clark (2002) connects suspension to the future academic progress of students and maintains there is a "negative relationship between discretionary removal and academic achievement" (pp. 133–134) and believes it deprives minority students, who are already marginalized, of access to academic experiences. When suspensions are levied, schools officials may assume students always think before they act, or that they are capable of linking causes and effects. Some students, especially younger students under ten years of age, may be

developmentally incapable of separating the sanction of the behavior from the sanction of the self (Clark, 2002).

Principals often may issue shorter suspensions from one to three days that, in some school divisions, may not be part of a formal documentation process. These suspensions may be the easiest and quickest disciplinary consequence to administer. Arguably, informal suspensions still may cumulatively impact students' progress, engagement, feelings of self-worth, desire for reparation, and sense of belonging (see Henriksson, 2008, p. 133), in addition to potentially exposing them to jeopardy in their own homes. As well, these suspensions can be levied with little external accountability, and their application would seem to be a highly discretionary aspect of the disciplinary process.

MacKay's (2008) argument for inclusive school environments has validity in a discussion about suspensions. He believes it would "be fair to say that the failure to properly accommodate diversity, in its many manifestations, is a significant cause of student frustration, alienation, and withdrawal. This, in turn, can lead to acting out in ways that are disruptive and that lead to discipline problems" (p. 48). He notes that the fact Aboriginal students, especially, are not "properly" included in Canadian school systems "goes a long way" to explaining the "high levels of discipline problems and drop outs" among them (MacKay, 2008, p. 48). At the core of many student suspensions, then, may be an incorrect or inappropriate response to the actions and behaviors which result from the diverse needs of students.

2.22 Student Suspension Rates

Suspension can become the default disciplinary consequence for school administrators responding to student misbehavior in schools and, as Howe and Covell (2010) argue, reviewing student suspension rates can offer insight into administrators' decision-making and its impact upon children and youth. What is more, it can also illustrate how legislation and policies concerning disciplinary actions may affect them. A study completed by the Civil Rights Project in 2000 for a national summit on zero tolerance policies in the United States sought to determine, among other things, if the principal's philosophy on discipline correlated to suspension rates and explained wide discrepancies in rates of suspensions and expulsions among counties that had the same discipline policies. The study's authors discovered that principals' philosophy and attitudes have a significant impact on disciplinary procedures and outcomes, and that they exercise their philosophy through student code of conduct policies (Civil Rights Project, 2000). Noguera (2003), for one, contends those principals who believe in harsh punishments for students have higher suspension/expulsion rates, but these punishments "do not necessarily translate into more effective discipline" (p. 19). Meanwhile, he explains, those school authorities who have a "penchant to punish" (p. 346) can create environments of mistrust and resistance in schools (Noguera, 1995).

2.22.1 The United States

A national report sponsored by the United States Department of Education (2009) reveals that student suspensions in that country appear to disproportionately affect racial

minority and male students.[12] About 7% of students received out-of-school suspensions of at least one day for disciplinary reasons in 2006; this number increased from 3.1 million to 3.3 million between 2002 and 2006 (p. 70). Suspension rates (of one day or more) for elementary and secondary school students in the United States in 2006 reveal that the number of males (2.3 million) suspended was twice that of females (1.1 million) (p. 68). As well, 15% of the suspensions issued were to Black students, 8% were to American Indian/Alaskan Native students, 7% were to Hispanic students, 5% were to White students, and 3% were to Asian/Pacific Island students (p. 70). In terms of total student population, however, White students comprised 56.9% of the enrollment in public schools, Hispanic students 20.2%, Black students 15.6%, Asian/Pacific Island students 4.0%, and American Indian/Alaskan Native students 0.7% (p. 136). These figures would appear to support the assertion of Mendez and Knoff (2003) that "race [and] gender" have "strong relationships to suspension rates" (p. 49).

Narrowing the focus, Clark's (2002) study of the "discretionary removal" rates of students in kindergarten to grade five in a large urban center Texas in the late 1990's reflects a similar trend. She defines "discretionary removal" as the "removal of students from the traditional academic setting for any behavior deemed disruptive to the learning environment" (Clark, 2002, p. 7). Such exclusionary responses "are classified as 'discretionary' because each school district may define the types of behavior that will not be tolerated," as opposed to federal statutes, for example, that mandate zero tolerance for

[12] Bhattacharjee (2003) claims that Nova Scotia is the "only province in Canada where there has been some collection and analysis of school board statistics on race and the application of discipline" (p. v). Data obtained from the "Halifax Regional School Board from 1987 to 1992" revealed that "Black students were being disproportionately impacted by the application of suspensions" (p. v).

weapons in school (p. 6). She indicates several "notable patterns" with respect to ethnicity, gender, socio-economic status and special education designation (p. 134). For example, even though "African-American student enrollment declined by 24% between 1998–99 and 1999–2000, the discretionary removal rate jumped from 9.2% to 13.37%" (pp. 134–135). As well, her research points to the negative effect any type of discipline referral by the classroom teacher may have on students' future academic achievement, especially in the areas of mathematics and reading scores.

2.22.2 Province of Ontario

In Ontario, discretionary decision-making would appear to serve as one part of the foundation upon which school safety rests. School discipline in Ontario, in part, focuses on principals' choice and judgment. Brown (2009) argues that principals make "judgment calls" daily with respect to acts of misbehavior, and "assess how to respond….Principals develop a sense of what disciplinary measure is appropriate for a particular student under the circumstances" (p. 24).

While many alternatives are available to school administrators in their responses to student misbehavior, under *Bill 212* (2007) and its attendant regulations, principals have the duty to apply discretionary suspensions, as well as to consider "mitigating factors" and "other factors," which are enumerated as being those considerations that reduce the seriousness of the actions, when determining disciplinary consequences:

> 'Mitigating' and other factors are not concerned with whether the student committed the prohibited activity. They pertain to what, if any, disciplinary consequences will be imposed. They are nothing more than a requirement to consider the 'whole picture'

> of the student, instead of a lock-step, automatic, arbitrary imposition of disciplinary consequences free of any genuine use of discretion or other hallmarks of judicious or educationally-sound decision-making. (Brown, 2009, pp. 13–14).

Progressive discipline—part of the province's strategy for safe schools—is a policy which "promotes positive student behavior and enables the principal to choose the appropriate consequences to address inappropriate student behavior" (Ontario Ministry, 2010, *Safe Schools*). Progressive discipline is a "whole-school approach that utilizes a continuum of prevention programs, interventions, supports and consequences to address inappropriate student behaviors and to build upon strategies that promote and foster positive behaviors" (Ontario Ministry, 19 October, 2009, *Policy/Program*). Principals are also to consider the "nature and severity" of the infraction and its "impact upon the school climate" in determining the appropriate consequence, which can range from "verbal reminders" to suspension and expulsion (Ontario Ministry, 19 October, 2009, *Policy/Program*). Additionally, *Bill 157* (2009), a recent amendment to provincial legislation which came into effect on February 1, 2010, requires those who work directly with students to respond to any incidents that "may have a negative impact on the school climate" (Ontario Ministry, 19 October 2009, *Policy/Program*); such incidents may include cyber-bullying, which may take place off campus but which has the potential to drastically affect students and staff within the school environment.

Although the Ontario Ministry of Education does not disaggregate its provincial school suspension and expulsion data by ethnicity, records indicate the number of students suspended in the province's schools in the 2009–2010 school year was 86,140,

or 4.18% of all students attending Ontario schools; the total number of suspensions issued was 149,080 which include "multiple suspensions for individual students" (Ontario Ministry, 2012, *Safe Schools: Suspensions*). Twenty-three percent of the suspensions for that year involved students with "Special Education Needs" where a student with special education needs is "a student who has been identified as exceptional by an *Identification, Placement and Review Committee* (IPRC) of the school board and who has an *Individual Education Plan* (IEP) that describes the special education program and services required by a particular student in order for the student to learn and to demonstrate learning [emphasis in original]" (Ontario Ministry, 2012, *Safe Schools: Suspensions*). As well, 76% of the suspensions involved male students, and 24% involved female students. Suspension rates for individual school boards ranged from 12.62% to as 0.95% in that same year. Expulsion rates for the province were 0.03% or 608 of all students; 7% were elementary students, and 89% were males (Ontario Ministry, 2012, *Safe Schools: Suspensions*).

2.22.3 Toronto District School Board

A review of the suspension and expulsion data of the Toronto District School Board (2010), Canada's largest school division, provides insight into current disciplinary practices. However, the Board states the use of the data from its suspension and expulsion analysis in 2009 to 2010 and posted on its website is "encouraged" for "use in schools of the Toronto District School Board," but that "for any other purpose, permission must be requested and obtained in writing" (Toronto District School Board, 2010, p. ii). Two email requests from the researcher were sent to the Superintendent of the Safe and Caring Schools and Alternative Programs; one request was sent on March 3,

2010 and the second request was sent on September 27, 2011. The website specifically indicated this process was to be followed in requesting and receiving permission to use the school board's data. Neither request received acknowledgement from the Board.

2.22.4 Province of Saskatchewan

Saskatchewan's Ministry of Education does not keep provincial data on student suspension rates; individual school boards collect this information, however, as they feel it is required (Ken Feltin, Assistant Registrar, Saskatchewan Ministry of Education, personal communication, March 23, 2010). Additionally, an email sent February 25, 2010, by the researcher to Saskatchewan's Deputy Minister of Education inquiring whether there is a requirement for the collection of suspension and expulsion data by individual school boards in the province and, if so, whether the data are ever published, did not receive a reply.

2.23 Best Interests of the Child

Biggs (1993) contends administrative choices cannot be "willful, arbitrary, unaccountable, and closed to analysis" (p. 186). He maintains it is difficult for administrators to follow any deliberate process or itemized procedure in discretionary decision-making because, in part, discretionary action is very imprecise and the decision-making and behavior that occur when "an administrator creates and applies school rules, investigates misconduct, attempts to follow certain legal-like procedures, and in some instances, assigns punishment" are "multifaceted" (p. 160). While the law serves to establish, authorize and define the actions of school administrators, principals must negotiate within the parameters of discretion in a way that allows them not only to meet their statutory obligations but also to make value-laden decisions that are fair, reasonable,

and in good faith. In short, they must find the tension that exists between the rights of the individual and the rights of the entire school population. How, then, might principals be directed in their exercise of discretion in making decisions involving matters of student discipline?

2.23.1 Best Interests as Basis for Decision-Making

Biggs (1993) suggests school officials should make decisions in the best interests of the child; moreover, Cranston *et al*. (2006) contend educators have a responsibility and duty of care to act in students' best interests (see also, Lipsky, 1980, p. 112). Ashbaugh and Kasten (1984) identify the conviction of acting in the best interests of children as being "central to the ethos of the principalship" (p. 199). W. D. Greenfield (1995) also claims school administrators have a professional obligation to ensure that policies and procedures "serve the best educational and developmental interests of children (minors within the law and attending school involuntarily)" (p. 64). Indeed, many principals insist this putative standard forms the basis for many of their decisions about what they believe is best for students (Frick, 2006, 2009; Haynes & Licata, 1995; Roche, 1999; Tuten, 2006), although here, too, a tension often exists between the best interests of the misbehaving pupil and those of other students. Others, including Larsen and Akmal (2007), propose a moral element is invoked if administrators use "creative insubordination" to counter balance those school-district policies they consider to be not in the "best interests of the students" (p. 49). Simply being well-intentioned, however, may not be sufficient to inform school administrators' disciplinary decision-making.

2.23.2 Legal Definitions

In the legal arena in Canada, the best interests of the child is the "sole test for determining custody and access" (Fodden, 1999, p. 182), and statutes governing the standard are found in the federal *Divorce Act* (1985), the *Youth Criminal Justice Act* (*YCJA*) (2002) and in "parallel provincial or territorial legislation," such as family law and children's law acts (Williams, 2007, p. 634). Fodden (1999) contends there is "no formula or guiding method for determining which outcome of a dispute" is in the best interests of the child, and "the task of knowing this…can be dauntingly large" (p. 188). Nonetheless, a judge is often called upon to decide what is in a child's best interests, and this determination "requires an exercise of discretion after the consideration of relevant factors" (Fodden, 1999, p. 188).

2.23.3 Supreme Court Interpretation

In *Young v. Young* (1993), L'Heureux-Dubé J., in delivering the opinion of the Supreme Court of Canada, considers that "the best interests of the child cannot be equated with the mere absence of harm; it encompasses a myriad of considerations" (p. 13) including "age, physical and emotional constitution and psychology" (p. 8). Furthermore, in *Canadian Foundation for Children v. Canada* (2004), the Court acknowledges that while "'the best interests of the child' has achieved the status of a legal principle" (p. 94), and is "a factor for consideration in many contexts, it is not vital or fundamental to our societal notion of justice, and hence is not a principle of fundamental justice" (p. 95). The Court goes on to note the imprecision of the principle and its function "as a factor considered along with others" (p. 95). As a result, "its application is inevitably highly contextual and subject to dispute" (p. 95).

Hovius and Maur (2009) insist some legal scholars believe the best interests standard is "inherently vague and inevitably permits or even requires judges to decide cases based on their personal values, beliefs or ideology" (p. 519). As well, Bala (2000), in describing professionals and assessors who are called upon to provide insight and information to the court about what might be in a child's best interest in divorce proceedings, concludes that "values, biases and competencies [also] affect their judgments" (p. 529). Hovius and Maur (2009) add that "given the inherently speculative and value-based nature of many of the assessments they [mental health professionals] are asked to make, it is understandable that their views provoke controversy in the legal profession and among the judiciary" (p. 532; see also Millar, 2009, p. 72). Because psychological theories are not necessarily indicative of future behavior, Hovius and Maur (2009) maintain it is "difficult and sometimes impossible to predict the effects of a particular alternative for the child with any certainty" (p. 519). Arguably, the same may be said about principals' decision-making in determining what is in a student's best interests. Part of the difficulty, Fodden (1999) maintains, is determining what "factors" and "values" are to be considered relevant in the "best interests calculus," since there is "no matrix provided" for determining the *summum bonum* for the child (pp. 190–191).

Millar (2009), too, observes "the best interests of children and their predictors have not been established," but he does suggest that in order to measure the best interests of children, the factors to take into account include "those that demonstrably affect children's behavior, health and educational success" (p. 5). However, it is unclear what factors contribute to or help to determine the best interests of the child and to what degree. Millar (2009) maintains the "Supreme Court [of Canada] has developed a

framework whereby even the Constitution does not apply to decisions involving the best interests standard" (p. 109). As a result, since there is no set of criteria to define the "supra-constitutional idea of 'best interests,'" the criteria for best interests degenerate "into judicial discretion unfettered by any legal constraint save the review of superior courts"; however, he believes this discretion "has not been exercised at random" (p. 110).[13] Millar (2009) believes a paradigm of best interests that exposes the child to as many sources of support as possible through open communication and that connects "children to the best resources in the optimal context possible under the circumstances," can "guide legal principles and [support] children's best interests" (p. 116).

Best interests decisions may be highly subjective, and may rely on the predisposition of the decision-maker in much the same way the discretionary judgments of principals may be influenced by competing rights, interests, and needs in the school setting. In *Baker v. Canada* (1999), a case involving an immigration claim, the Supreme Court of Canada links the two notions of discretion and best interests. L'Heureux-Dubé J., on behalf of the Court, submits that "for the exercise of discretion to fall within the standard of reasonableness, the decision-making should consider children's best interests as an important factor, give them substantial weight, and be alert, alive and sensitive to them" (para. 75).

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[13] For example, Miller (2009) claims federal Department of Justice custody data illustrate that mothers currently obtain custody "far more often than fathers" (p. 118). He believes the "judiciary in Canada cannot be said to be acting in children's best interests with respect to the assignment of custody" (p. 110), since the "gender of the parent is not a predictor of parental ability" (p. 117). Yet, he points to a "pronounced reliance on stereotypical notions of gender roles" (p. 110) in identifying the "lopsided nature of custody outcomes" (p. 117). Millar (2009) argues that variables affecting children include "*physical punishment*," "*household income*," and "*intact biological family*" [emphasis in original] (pp. 111–112), while "custody is assigned mainly on the basis of criteria unrelated to children's welfare" (p. 122). As a result, such decisions do not achieve the "best possible outcomes for children" and actually act "against their best interests" (p. 122).

2.23.4 Application in Administrative Practice

Nonetheless, some principals, in maintaining their decisions are based on the educational "shibboleth" of the "best interests" of students, may be making what Walker (1995) sees as "sententious" responses (p. 3; see also Dunbar & Villarruel, 2002). In considering the limitations of the criteria for the best interests test, Walker (1998) reiterates the need for administrators' "ethical competence in the exercise of discretion," and warns against the "danger of statism and [the] potential tyranny of the expert" (p. 293). He maintains that their decisions must be "grounded in applied jurisprudential and ethical considerations" (p. 304) in much the same way "the wide latitude under the best interests test permits courts to respond to the spectrum of factors which can both positively and negatively affect a child" (Walker, 1998, p. 293). Consequently, he concludes there is a requirement for educational administrators to use their "ethical discretion and dialogical competence to resolve difficult cases" (p. 293). Haynes and Licata's (1995) research suggests that administrators' rationale for decision-making is taking what they see as the "professional or moral high ground" (p. 33) in doing what they believe is in their students' best interests to aid in their learning. In this way they are able to avoid "negative sanctions" for their decisions by stakeholders or censure by their superiors (p. 33).

2.23.5 Best Interests and Rights

Williams (2007) extends the best interests argument by suggesting that decision-making be based on best interests and rights, mindful of Canada's international obligation as a signatory to the United Nations *Convention on the Rights of the Child* (*CRC*) (1989), which recognizes the child not as a "passive recipient" but as an "active participant" in

the acknowledgment of his or her rights (pp. 643–644) and which provides an "opportunity [for all children] to be heard and have their views considered" (p. 648). Arguing that the test has "evolved from one of 'best interests' to a 'best interests and rights of the child' test consistent with guidance from the Supreme Court of Canada [i.e., *Young v. Young*, 1993] and Canada's ratification of the *CRC*" (p. 634), Williams claims this means the test "moves from one of 'charity' in protecting the child's best interests to one of 'entitlement' that recognizes the child as an independent person with rights" (p. 635). The premise is, she continues, that a child's best interests "must be determined from the child's perspective" (Williams, 2007, p. 639).

2.23.6 Alignment with *CRC*

Howe and Covell (2010) argue that with Canada's ratification of the *Convention* in 1991, this country was "officially committed to implementing the rights of the child and the principles of the Convention" (p. 18), one being "the principle of the best interests of the child" (p. 19). The principle no longer applies solely to child custody disputes but to "*all* [emphasis in original] actions concerning children, including in the field of education" (p. 19). According to Howe and Covell (2010), though, the best interests of the child principle does not refer to the "educational best interests" or the "best interests of the student" but to "the well-being of the child as a whole" (p. 23). While there are many criteria for the principle's implementation, of particular note is the need for "an evidence-based approach to decision-making" that encompasses not only the views of children and their parents and guardians, but also "the impact of decisions" upon them (p. 21). They further suggest the attention of educational administrators and policy-makers is focused upon the daily operation of schools, and these groups do not want to be

constrained by "rights, rules, and principles" (p. 23). As a result, they use their "broad discretionary power" to "maneuver in achieving their goals" and appear less concerned with determining the best interests of the child than with budgets and personnel matters (p. 23).

Although Howe and Covell (2010) concede the principle of the best interests of the child has been considered by the Canadian Supreme Court in such cases as *Brant County Board of Education v. Eaton* (1997), involving the educational placement of children with disabilities, and *Canadian Foundation for Children v. Canada* (2004), involving the corporal punishment of children, there are still shortcomings in the implementation of this principle. For one, children must be able to enjoy their right to education based on equal opportunity; yet, Aboriginal children, special needs children, and children of poverty still experience inequality in terms of educational outcomes and resources (Howe & Covell, 2010). As well, children do not participate in decision-making that affects them in a manner proportional to their age and maturity. Children have "little awareness and little understanding of their basic rights," and with their wide discretionary power, schools have not provided "mechanisms" for student input into decision-making (Howe & Covell, 2010, p. 27). Gall (2010) likewise contends if students' needs and well-being are at the forefront of educational issues, then "their viewpoints should not be overlooked throughout the process of developing best practices for schools" (p. 141) in determining disciplinary consequences. Howe and Covell (2010) maintain decision-makers must be held more accountable "on the basis of their reasoning and judgment" (p. 29). If the best interests principle is applied, they conclude, there will be greater benefit in administrative decision-making, because "instead of ad hoc decision-

making and [the] wide use of discretionary power" they now exercise, school officials would be obligated to make "rational and principled decisions" providing accountability and transparency (Howe & Covell, 2010, p. 29).

2.23.7 Implementation of *CRC*

Others, too, have noticed the "lack of voice and participation by children in discipline policies and decisions" (Canadian Coalition, 2009, p. 52). The Canadian Coalition for the Rights of Children (2009) points out that the principle of the best interests of the child (BIC) is the primary consideration of Article 3.1 of the *CRC*. While conceding there are tensions between the interests of one student and the entire class or school, they emphasize that "it [BIC] is now applicable to all policies and practices that affect children individually and as a group" (Canadian Coalition, 2009, p. 6) despite the "different interpretations of best interests by students, parents, teachers and school administrators" (p. 51). They suggest "incorporating the provisions of the *Convention* into provincial laws that govern education, including mechanisms for considering the best interests for children as a group and for individual children within decision-making processes, for both mandatory policies and discretionary decisions" (Canadian Coalition, 2009, p. 53). As well, the Canadian Coalition for the Rights of Children (2009) advocates a transformation from "the paradigm for decision-making in education" that is "processes based on competing powers and interests" to a more inclusive and collaborative model that is based on "accountability," includes "all voices," "alternative choices," and considers best interests (p. 53). Furthermore, they want to ensure that "research and educational programmes [*sic*] for professionals dealing with children are reinforced and that article 3 of the *Convention* [best interests of the child] is fully

understood, and that this principle is effectively implemented" (p. 7), as well as providing "guidance and training on strategies for disciplining children" that respect them as rights-bearing individuals (p. 53).

2.24 Need for Ethical Decision-Making

Stefkovich and O'Brien (2004) contend the discretion and authority afforded school officials must enhance student rights beyond what is provided for in the United States Constitution; they should use their discretion to make ethically wise decisions based on the best interests of the student. They maintain there is no clear definition of what defines the best interests of the child, but they admit administrative decisions must be made that consider rights, responsibility, and respect. Millerborg and Hyle (1991) advocate for training in ethics for educational administrators, explaining that there is a need to give "serious attention to ethical issues and ethical aspects of decision-making" (p. 17) because "ethics play a major role in educational administrative decisions" (p. 18). Begley (2004) cautions, however, that although a focus on ethics may be noble, it "does not necessarily accommodate the full range of human behavior" (p. 5). Ethics are "culturally derived" and do not necessarily serve as "an appropriate basis for decision-making" in all situations, especially those which occur in "culturally diverse contexts" (Begley, 2004, p. 5).

2.25 Other Considerations

In that same vein, McMahon (1992) notes that in Aboriginal cultures, for example, the "best interests of the child" also take into account the best interests of the community, because the two cannot be separated. He argues that the community needs children "in order for the community to function properly and in order to provide the

support the children will need" (McMahon, 1992, p. 181). Community break-down, then, will affect the child negatively, with loss of support and "negative stereotypes" (McMahon, 1992, p. 181). Using a unique approach, Dupre (1996) argues for an attorneyship model for school officials' decision-making that would have educators acting in the "best pedagogical interest" (p. 103) of those students whom they must discipline for misbehavior and that would also meet the obligations of ongoing communication and allow for transparency in decision-making with administrators exercising independent judgment regarding school concerns.

While there is general agreement that in their decision-making school administrators must determine what is best for their students, there does not seem to be any certainty about what that condition might entail. Intended and unintended consequences of decisions should be aspects to be considered. School officials who wish to do what is best for students in their discretionary decision-making should also be guided by context and circumstances. Principals make decisions based upon values and influences and their own perceptions and interpretations framed within the boundaries of the law. It is at this point, then, in the gray area, in the penumbra of decision-making, that the exercise of discretion flourishes. To what extent and with what consequences the values of administrators are manifested, supported or constrained in their discretionary decision-making in matters of student discipline is the focus of this research.

2.26 Chapter Summary

Discretion, in its earliest references throughout history, has been synonymous with judgment and wisdom. More recently, it has been analyzed as a concept of interest

to scholars in the fields of law and social science, with the latter interest specifically in the area of administration of organizations and bureaucracies.

From its legal perspective, discretion has been considered as the scope of decision-making within a structure of rules; however, in its specific setting in administrative law, concerns are raised about its use, constraint, and potential abuse by those authorized to exercise it. The authority to exercise discretion is signaled by the use of the word *may* in legislation which, depending upon the context, can indicate obligation as well as permission. There are a number of requirements under which discretion is to be exercised, such as reasonableness, good faith, and requirements of the Canadian *Charter*. Because of the indeterminacy of law, discretion is necessary for those occasions when law cannot cover every eventuality. It is also valuable in adapting laws to suit specific circumstances, contexts and community standards, and is beneficial in decision-making involving complex issues. Nevertheless, disadvantages have been associated with the exercise of discretion: discretion may disadvantage those over whom it is exercised, bias may creep into decision-making, discretion is discriminatory, and those authorized to exercise discretion may lack the jurisdiction to make the required decisions. Lack of consistency among similar cases is another concern. Discretion is evident throughout all aspects of the criminal justice system in Canada, especially sentencing, in which, it has been argued, its exercise can have a disproportionately negative impact on racial minorities.

In the administration of organizations, discretion chiefly manifests itself in policy formulation and implementation. Discretion naturally shifts downward and throughout an organization, moving to the periphery; as a result, policy as it is implemented may be

quite different from policy as it is envisioned. Those individuals who exercise great discretion on the peripheries of organizations typically do so with little supervision as they deal with complex human situations. As well, recent advances in technology have been seen to replace human decision-making with computer software programs that have eliminated some discretionary human judgment.

In organizations such as schools, discretion is also necessary in organizations such as schools for the implementation of policies, yet educators and administrator must adhere to its exercise as prescribed by law. Discretion is exercised in administrative decision-making involving discipline concerns, and research suggests certain disciplinary consequences, such as suspension, which can be highly discretionary, may be modified to suit individual administrators' purposes or philosophies and, as a result, may not be implemented consistently in similar situations. Consequently, students may perceive that certain groups are treated unfairly, or that they have been disciplined in an arbitrary manner. Some scholars suggest that discipline policies which define social norms and define appropriate behavior support patterns of power and thus reinforce prevailing dominant cultural expectations in order to maintain the prevailing social order.

A number of Supreme Court cases in the United States and Canada allude to discretion in student disciplinary issues; typically courts defer to administrators' discretionary actions of administrators they consider reasonable. A review of student suspension rates in the United States and in Ontario suggests that the interpretation of policies in imposing suspensions has been seen to affect students disproportionately on the basis of race, gender and the designation of special needs.

Some scholars suggest that discretionary decision-making by administrators should be guided by the child's "best interests." The best interests of the child doctrine, as it is envisioned by the United Nations *Convention on the Rights of the Child* (1989) to which Canada is a signatory, outlines that children's rights must be taken into consideration in all matters, including education. Decision-making that is collaborative and accountable, and that includes the input of the child, appears to be best suited in determining what is in the child's or student's best interests.

CHAPTER 3

3 Methodology

3.1 Qualitative Research Rationale

Given the complexity of decision-making, and his belief that discretion is a "dynamic and adaptable phenomenon," Hawkins (1992) suggests that acquiring a "sophisticated understanding" of discretion is a complex task (pp. 45–46). He maintains the "organizing assumptions" must be continually identified and examined when discretion is studied (p. 46), and he argues for a naturalist perspective which "emphasizes a holistic view of discretion and decision-making as a collective process" (p. 26) and which attends to the political, social, and economic processes and contexts within which decisions are made in organizations in order to better understand the nature of legal discretion. He believes decision-makers in organizations do not necessary "hold the same conception of what their legal mandate is" or "consistently seek to attain the same goals" (p. 24). Rational decision-making assumes "decision-makers' conception of their interests are congruent with the interests of their organization, and that their decisions are not informed by matters of self-interest, economics, politics, and the like" (p. 24). In advocating for "naturalism" as an alternative approach to rational decision-making (p. 24), he points to the centrality of the "notions of context and meaning" in the "naturalist tradition," and of interpretation in the "structure of knowledge, experience, values, and meanings which a decision-maker uses to make sense of the decision problem" (p. 25) and which is particularly relevant to an understanding of discretion. Naturalism, he contends, is "situatedly rational" in that decisions are rational in a "particular context" and are a response "to a particular set of circumstances" where

people "follow rules, but they also create rules, norms, [and] patterns of behaving" (p. 26). Discretion, viewed from a naturalist perspective, focuses on decision-makers' interpretation, the way they make sense and the way they "acquire meaning" (p. 25).

Lacey (1992), too, maintains that while "social scientists and legal theorists" recognize the need to study discretion, its context-relative nature has resulted in a necessary focus upon not only the importance of context in understanding discretion but also the need to "gather an appreciation of agents' own understandings of their discretionary actions" (p. 364). Thus, the investigation of discretion should be concerned with the "meaning and significance of those decisions and actions to the agents undertaking them," in addition to exploring the "basis" for the agents' decision and their "understanding of the significance of discretion" when they make their decisions (p. 364). As a result, Lacey (1992) concludes, such an "interpretive" and "agent-centered approach" in the study of discretion has the ability to generate insights about the "systems of values and beliefs" (p. 364) of the decision-makers as they make sense of their exercise of discretion, as opposed to a discourse of law that sees a "monolithic, black-and-white view of the world" which may establish an "objective reality or truth" (p. 371). The assumption that there is a right answer in disputes based on a series of facts marginalizes "alternate views of reality and understandings of the world" (Lacey, 1992, p. 371).

The inquiry seeks "the informative voice of school principals" (Wright, 2008, p. 2) with respect to their understanding of discretion and to their construction of meaning in their disciplinary decision-making in schools. Discretion, which involves "interpretation and choice" (Hawkins, 1997, p. 140), "is the means by which the words of

law are translated into action" and is necessary because the detailed structure of legal rules does not afford the flexibility and responsiveness helpful in dealing with complex issues and with the "various tensions, dilemmas and conflicts of values" that are found in organizational life (p. 141). Thus, discretionary decision-making is an inherently interpretive exercise and is best explored through a qualitative research methodology where the participants' "interpretation becomes important" during the research process through "detailed stories and quotes" (Creswell, 2002, p. 145). Taylor (2007) argues that since discretion "cannot be measured and is ultimately unique and personal to those exercising it," a qualitative is the most "appropriate" way in which to study it (p. 564).

Robinson (1996) maintains research studies that make a "practical contribution" to the field are required and calls for methodologies that are "capable of informing [administrative] practice" (p. 428). She expresses concern for the need for problem-based methodologies in which methods are used that allow "for data to be collected and analyzed in ways that reveal and preserve the problem-solving processes that constitute administrative practice" (p. 449).

Creswell (2002) also suggests qualitative research is generally concerned with a "central phenomenon" (p. 146). Because qualitative study seeks "to *explore* and *understand* one single phenomenon [emphasis in original]" (p. 147), it is an effective methodological fit for this study's research questions, since the phenomenon under study is discretion as it is understood and exercised by in-school administrators in student disciplinary issues. Marshall and Rossman (2006) support this contention, maintaining the historic purpose of qualitative research has been threefold: "*to explore*, *explain*, or *describe a phenomenon*," that is, to "*understand, develop, or discover* [emphasis in

original]" (p. 33). Hoy (2010), in arguing for a quantitative approach in educational research, submits that qualitative research focuses on "in-depth understanding of social and human behavior and the reasons behind such behavior," where researchers are interested in "understanding, exploring new ideas, and discovering patterns of behavior" (p. 1). Merriam (2002) maintains that if a researcher wishes to determine how individuals "make meaning of a situation or phenomenon," then the "meaning is mediated through the researcher as instrument, the strategy is inductive, and the outcome is descriptive," and an interpretive qualitative research approach would be the methodology supporting those requirements (p. 6). She adds the aim of a basic qualitative study is "to discover and understand a phenomenon, a process, the perspectives and worldviews of the people involved, or a combination of these" (Merriam, 2002, p. 6).

Furthermore, if the notion of the pervasiveness of values in administration is an undergirding assumption of the study, the tenets of a scientific and positivist methodology are incongruent with a qualitative methodology, since values are "beyond the scope of positivist science" (T. Greenfield, 1986, p. 68). Subjectivist assumptions that organizations are "invented social reality" mean "organization theory must not only describe the process people use in constructing reality; it must also somehow *be* that reality with all the possibilities that the human mind reads into experience [emphasis in original]" (T. Greenfield, 19778, p. 12). Begley and Leithwood (1989) maintain it is necessary to assume a theoretical framework that accommodates "the existence of values" in administrative actions, since it will lead to a more "comprehensive description" of decision-making than what is normally found in "exclusively rational

frameworks" (p. 27). Begley (1999a) observes that most of the research in educational administration has been positivist and not particularly informative "given the relevance of values" in the field, since "values are explicitly *excluded* [emphasis in original] from research methodologies conducted in the positivist and postpositivist modes" (p. 212). He does acknowledge the challenges of researching "the nature and function of values in administration" because "values resist empirical verification. Like the wind, they are unseen forces" (Begley, 1999b, p. 243). Although one may determine the impact of either the wind, or values, "the presence or influence of values cannot be reliably or explicitly tracked by scientific methods alone" (p. 343). He notes that "qualitative research methods" are "most appropriate" to a study of values and include "face-to-face" data collections, "simulated recall activities and case problem analysis" (Begley, 1999b, p. 244).

This study, then, assumes a subjectivist approach because an objective, positivist perspective would not readily enable recognition of the ways in which administrators' values impact their disciplinary decision-making.

3.2 Research Design

3.2.1 Role of the Researcher

Rossman and Rallis (2003) claim personal assumptions concerning the nature of reality and the construction of knowledge will "incline" the research "toward different methods" (p. 42). This inquiry, with its goal of exploring principals' exercise of discretion in disciplinary issues, is consistent with an interpretive frame which "places primary emphasis on this process of understanding" from which "patterns of meaning will emerge," leading to generalizations (Connole, 1993, p. 20). As a researcher, my

worldview, then, acted as a "personal biography" that provided an interpretivist lens through which the data were analyzed, geared towards "working understandings" of principals' decision-making (Rossman & Rallis, 2003, p. 42). As researcher, I "enter[ed] the lives of the participants" and, in doing so, became "the instrument" of the research (Marshall & Rossman, 2006, p. 72). Viewed in another way, Denzin and Lincoln (1994) describe the qualitative researcher as "*bricoleur*" (p. 2) whose inquiry is "an interactive process shaped by his or her personal history, biography, gender, social class, race, and ethnicity, and those of the people in the setting" (p. 3). Thus, my methods, strategies, experiences and lifestory all contributed to the "bricolage" that represents my "images, understanding, and interpretations" (p. 3) of the principals' exercise of discretion in disciplinary decision-making. Furthermore, Anderson and Jones (2000) suggest the "tacit knowledge" acquired over months and years by administrators in school divisions raises "logistical and epistemological issues," since it tends to be full of "bias, prejudice, and unexamined impressions and assumptions" (p. 443). Notions of power and authority, too, cross lines in face-to-face interactions. As Rossman & Rallis (1998) observe, issues of power, such as "race, age, and gender" all play out in the interview. However, these issues can be partly overcome by strategies such as a review by a "critical friend" (Anderson & Jones, 2000, p. 445) or a "peer debriefer" (Rossman & Rallis, 2003, p. 69). Both strategies were used in this study.

3.2.2 Insider Stance

Since in qualitative research, as Patton (1990) also asserts, "the researcher is the instrument," credibility, in many ways, hinges "on the skill, competence, and rigor of the person doing fieldwork" (p. 14; see also Connole, 1993, p. 23). My personal experiences

over the past ten years as an in-school administrator served to improve my depth of understanding and support the legitimacy of my interpretation of participating principals' experiences (see also Tuten, 2006). These experiences permitted me to "raise additional questions, check out hunches, and move deeper into the analysis of the phenomenon" (McMillan & Schumacher, 2010, p. 349). Additionally, Gall, Gall, and Borg (2007) maintain "carrying out your research in a setting where you are known as a friend and colleague makes it much easier than if you are regarded as an outsider with unknown motives" (p. 90). They go on to argue that, positioned in this way, researchers will "gain insights that improve [their] research design and contribute to [their] findings" (p. 90). Rossman and Rallis (1998) believe "sharing social group identity can be powerful" (p. 128), yet the researcher must continue to be sensitive to what is being said and must constantly reflect upon and assess how he or she is part of the interview process. They caution that participants may assume the researcher has tacit understanding that is "reflective of comembership [*sic*] in a social group" and this understanding may preclude "eliciting and recording rich, detailed data" (p. 127).

Kraft's (1993) research into principals' decision-making was conducted in the school district wherein she was employed as a vice-principal, yet she wished to "distance herself in order to render the results as fair and accurate as possible" (p. 32). She indicates she knew some of the interviewees in her study "personally or by reputation," and feels this knowledge is "an advantage" because "it allowed for access to the interview and provided for a common understanding" of the topics discussed (p. 33).

Because I also serve as an elementary school principal, the criticism can be raised that, as an insider, I had personal expectations, beliefs, biases, and dispositions that could

have distorted the data collection during the semi-structured interviews with the participants and the analysis afterwards. *Insider*, *indigenous*, or *native* research refers to "conducting research with communities or identity groups of which one is a member" (Kanuha, 2000, p. 440). As researcher, I was seeking "more knowledge, more analysis, and ultimately more understanding of others whose life experiences were similar to mine" and I hoped to contribute to the "knowledge and practice foundations" of those who are similarly situated to me (Kanuha, 2000, p. 440); consequently, my insider position "guide[d] and inform[ed] this research endeavour" (Hamdan, 2009, p. 384).

However, as Anderson and Jones (2000) point out, some of the limitations of the "outsider within" cause epistemological and methodological problems for administrative research because often "validity criteria is designed with outsiders in mind" (p. 439). Kanuha (2000) claims the insider researcher assumes an "emic perspective" with a "subjective, informed, and influential standpoint" (p. 441), while Toma (2000) maintains "involvement and bias" are "inevitable" in research and the relationship between the subject and the research is "subjective and transactional" (p. 177). Hamdan (2009) adds that in any qualitative research there is "no detached, objective position from which to study human beings" (p. 386). Toma (2000) suggests that in this subjective relationship "researchers and subjects collaborate to determine meaning, generate findings, and reach conclusions" (p. 177). He assumes "personal values necessarily influence any investigation," and reasons subjective researchers cannot "separate themselves from the phenomena and people they study" because the research process is a "two-way" exchange (Toma, 2000, p. 178). Hamdan (2009) discovered insider research enabled her

to develop an awareness of "how and when to ask questions, when to interrupt and clarify, and how to interpret the answers" given by her research participants (p. 386).

Campbell-Evans (1988) believes her insider stance and the "working relationship" she had with the participants in her research project helped to reduce concerns about reliability of her data. During the interview process with the principals, she maintains they did not appear to feel the need to "make an impression," and her reputation in the school district was such that the subjects "felt confident in my integrity and professionalism in the researcher role" (p. 43). As well, the relaxed, "thoughtful" and "freely given" answers of the participants reflected the comfortable environment she was able to create for the interviews and the "confidence in and respect for" her as an interviewer (p. 44). Not one of the principals showed "distress," and their comments indicated to her their interest in the collection of date (Campbell-Evans, 1988, p. 44). One limitation of her study, however, was the reduced "possibility of replication" (Campbell-Evans, 1988, p. 44).

Marshall and Rossman (2006) identify some of the concerns with research conducted in one's own setting. They suggest these include expectations of the researcher "based on familiarity with the setting and people"; the ability to transition to researcher from a more "familiar role"; effects of any "ethical and political" dilemmas; the discovery of potentially damaging knowledge; and the struggles the researcher may experience with closeness and closure (pp. 61–21). However, they also enumerate the possible benefits of insider research as relatively easy access to participants, feasibility of location, "reduced time expenditure" for certain aspects of the data collection and, finally, the potential for the researcher to build trust, establish rapport, and gain the

"subjective understandings" that "greatly increase the quality of qualitative data" (p. 62). Kanuha (2000) concurs with the last point as she believes research on colleagues has the potential to establish trust, which may help the researcher to address the topic more effectively (Kanuha, 2000); moreover, Toma (2000) writes, "getting closer to your subjects makes better qualitative data" (p. 179). It is most important, however, no matter where the inquiry is based, that the study is "conducted and reported ethically" and that "the data quality" and the "credibility of the study are reasonably assured" (Marshall & Rossman, 2006, p. 62).

3.2.3 Establishing Researcher Credibility

Patton (1990) contends that during interviews, distortion in interpretation and perception may occur due to "personal bias, anger, anxiety, politics, and simple lack of awareness" (p. 245). In order to establish "investigator credibility," I indicated "*any personal and professional information that may have affected data collection, analysis and interpretation* [emphasis in original]" to those who may use the findings (p. 472) and have reported them in order to support the credibility of my research. However, since "every researcher brings preconceptions and interpretations to the problem being studied, regardless of methods used," the "stances" of "neutrality and impartiality" are impossible to achieve (Patton, 1990, p. 476). Maxwell (2005) argues that the concern of qualitative research is not primarily with "eliminating variance between researchers in the values and expectations they bring to the study," but is focused on "understanding how a particular researcher's values and expectations influence the conduct and conclusions of the study" (p. 108). Patton (1990) adds that the issue concerning qualitative rigor in research is about "researcher credibility and trustworthiness, about fairness and balance" (p. 481),

since distance from the phenomenon "*does not guarantee objectivity*; *it merely guarantees distance* [emphasis in original]" (p. 480). Consequently, being aware of how my "perspective affect[ed] the fieldwork," describing the limitations of my perspective, clearly documenting all procedures so that others may "review [my] methods for bias," and indicating my assumptions and experiences further aided in establishing the trustworthiness and credibility of my analysis (Patton, 1990, p. 482). What is more, debriefing of the results with my academic supervisors and colleagues also assisted in supporting the credibility of the investigation (Tuten, 2006).

3.2.4 Ethics

This study received ethics approval from the Faculty of Education Research Ethics Review Committee at The University of Western Ontario (see Appendix A). No data were collected until ethics approval was received. I gained access to the field site by applying for and receiving permission from the superintendent in charge of research projects in the school division under study (see Appendix E) before I sent out the general call to the potential research participants (Gall *et al*., 2007). The research participants were given, read and signed a consent form (Rossman & Rallis, 2003, pp. 74–75) after being given a letter of information (see Appendix B) that outlined the purpose of the research, their "right to privacy," the efforts used to create anonymity, and their "protection from harm" (Fontana & Frey, 2000, p. 662).

3.3 Data Collection

Merriam (2002) explains that since qualitative research is not concerned with degree or frequency, random sampling does not make sense; consequently, purposive sampling is that "from which the most can be learned" (p. 12). Patton (1990) suggests

qualitative inquiry, as opposed to quantitative methods, "typically focuses in depth on relatively small samples," selected "*purposefully* [emphasis in original]" (p. 169), and maintains since "*there are no rules for sample size in qualitative inquiry* [emphasis in original]" (p. 184) purposive samples should "be judged on the basis of the purpose and rationale of each study, and the sampling strategy used to achieve the study's purpose" and must "be judged in context—the same principle that undergirds analysis and presentation of qualitative data" (p. 185). Furthermore, since the goal of a purposeful qualitative study is "credibility, not representativeness" (Patton, 1990, p. 180; see also Marshall & Rossman, 2006, p. 71), this inquiry aimed for understanding of administrators' value systems and not for the generalizability of their decision-making processes. As Gall *et al*. (2007) also note, the aim of purposeful sampling is to achieve an "in-depth understanding of selected individuals and not "to achieve population validity" (p. 178). Patton (1990) concludes "in-depth information from a small number of people can be very valuable, especially if the cases are information-rich" (p. 184). In summary, since "*no rules* [emphasis in original]" exist for size of sample in qualitative inquiry, I determined the sample size base of ten principals on the "purpose of the inquiry," what is "at stake," what was "useful," what has "credibility," and what was available considering "time and resources" (Patton, 1990, p. 184).

3.3.1 Research Participants

For this study a purposeful sampling of ten school-based administrators was chosen as the method to best "illuminate the question" of how principals negotiate their values system when exercising discretion (Patton, 1990, p. 169). Moustakas (1990) suggests a "study will achieve richer, deeper, more profound, and more varied meanings

when it includes depictions of the experience of others—perhaps as many as 10 to 15" (p. 47), while Creswell (2002) contends a small number of participants will provide more of an in-depth understanding than will a project with a large, broadly-based representative sample. As well, Hall's (1999) study of principals' exercise of discretion includes interviews with ten participants, and Tuten's (2006) inquiry into principals' decision-making has nine participants. MacDonald's (1998) project and Kraft's (1993) study each has twelve principals as participants, and Frick's (2006) research into administrators' decision-making has eleven participants, as did Frick and Faircloth's (2007) investigation. Campbell-Evans (1988) interviewed eight principals in her investigation into values in administrative decision-making. Additionally, another aim of the study was to gain insight into administrative decision-making offered by in-depth analysis, and not that provided by a broad range of participants and the frequency with which decisions occur. As a result, the choice of a small number of research participants to provide "rich, thick description" (Gall *et al*., 2007, p. 450; see also Merriam, 2002, p. 29) and "*information-rich cases* for study in depth [emphasis in original]" (Patton, 1990, p. 169) supported the research question. My sample size of ten participants was "based on expected reasonable coverage of the phenomenon" given the purpose of the research, and what was useful, credible, and capable of meeting time and resource requirements (Patton, 1990, p. 186). Additionally, "exercising care not to overgeneralize from purposeful samples, while maximizing to the full the advantages of in-depth, purposeful sampling, will do much to alleviate concerns about small sample size" (Patton, 1990, p. 186).

Rapley (2004) reminds researchers that "interviewees don't always speak 'as individuals'" but may speak at different times during interviews as "representative of institutions or organizations or professions" or as "specific (sub)cultural groups" or as "experiencing individuals" (p. 29). In this way, researchers cannot simply use interviews to "understand peoples [*sic*] *lived, situated, practices* [emphasis in original]" (p. 29) and must not treat them simply as individuals but as part of a "broader-story-of-the-whole-research" (p. 29).

In their examination of administrative decision-making concerning moral judgments about "students' best interests" (p. 23), Frick and Faircloth (2007) identified and chose principals as being those individuals who are "organizationally situated within school systems where student contact is most likely high" and whose "activities are replete with decision-making activity" (p. 23; see also Frick, 2006, p. 90). Campbell-Evans (1988) believes "principals make a difference" in schools and that the consequences of their decision-making can have a great affect upon all individuals in the school. Eagly *et al*. (1992) claim the investigation of principals' leadership styles has been a "very popular research area for many years" in doctoral research conducted in educational administration (p. 78). More specifically, however, statutes and board policies confer "substantial legal discretion" upon principals (Manley-Casimir,1977, p. 8) "over a wide range of student behavior" (p. 3). Consequently, these in-school administrators were chosen as the participants for this research inquiry to provide the "information-rich cases whose study will illuminate the questions under study" concerning administrative discretion in disciplinary decision-making and about which one "can learn a great deal about issues of central importance to the purpose of the

research" (Patton, 1990, p. 169). Individuals who are not school-based administrators do not necessarily exercise daily the discretionary decision-making that maintains order and discipline in the school as authorized by provincial legislation. By purposefully choosing only elementary principals, as opposed to secondary principals, in the school division, I was able to request participation from a greater number of potential candidates.

Crowson and Porter-Gehrie (1980) suggest both elementary and secondary principals spend a "good portion" of their day "on school control and pupil discipline" (p. 57). MacDonald (1998) claims principals at the junior high level (i.e., grade seven through nine) "would be most familiar with the issues of school violence" and related discipline issues (p. 11; see also Mendez & Knoff, 2003). Kmetz and Willower (1982) suggest both elementary and secondary principals spend approximately the same amount of time on "pupil control" (p. 71), that is, on monitoring student behavior and on discipline, although the research of Leithwood *et al*. (1992) may counter this latter claim (p. 182). Their research suggests the most non-routine problems in schools involve students and, while similarities between elementary and secondary principals exist with respect to non-routine problems in schools, elementary principals encounter "50% more" of the student non-routine problems than do secondary principals (Leithwood *et al*., 1992, p. 48). They speculate, however, that in some cases this percentage may be more a function of "school size rather than school level" (Leithwood *et al*., 1992, p. 70). Allison and Morfitt (1996) appear to concur when they note "school size (enrolment) appears to be a more influential variable than school type (elementary or secondary) in determining the level of work faced by Principals" (p. 31).

3.3.2 Entry Into Field

Upon receiving permission for entry into the field by the school district, I sent a general email to all elementary school principals and requested their participation in the study. I emphasized that participation was strictly voluntary and that there was no pressure to participate (Bogden & Bilken, 2007). Then, the participants were "purposefully selected by determining accessibility and willingness to participate" (Frick & Faircloth, 2007, p. 23; see also Frick, 2006, p. 92) in the in-depth one-interview format. I was not in any type of line-authority relationship with any of the participants, and while the participants were known to me as colleagues, if any principal who responded to the general call for interested participants was closer than arm's length to me or was someone with whom I had a social relationship, then that individual was not included in the research sample (Gall *et al.*, 2007). I presented myself as a "researcher, not as a colleague" (Campbell-Evans, 1988, p. 43). Two participants who volunteered to be part of the study were not included because they responded to the call a number of weeks after all the interviews had been scheduled. One interview was not included because the participant would not provide specific references, details, and examples and was able to answer only a few of the questions due to personal time constraints. For that reason, an additional interview was conducted to bring the total number of semi-structured interviews to ten.

3.3.3 Characteristics of Participants

Alversson and Sköldberg (2009) advise that "researchers should stop now and again to think for a moment in gender terms" (p. 248). They suggest that researchers should also "develop a certain level of sensitivity to gender aspects" (p. 247); however,

for this study, the main interest was not "in clarifying gender conditions or emphasizing the gender perspective as a key to the understanding of the object studied" (p. 249), but instead those aspects of discretionary decision-making, such as valuation processes, that seemed most appropriate to the subject In order to be sensitive to aspects of gender, however, principals were also selected based on their representativeness of the gender distribution of the elementary school-based administrators in the school division; approximately 40% of the elementary school principals in the school division are male. As a result, four of the participants were male. The other criteria include representation of a variety of levels of administrative experience (i.e., one principal considered himself experienced, having served eleven years in an administrative role, six principals considered themselves inexperienced, having been principals for less than five years, three principals were within five years of retirement, and one principal indicated she was both inexperienced and within five years of retirement). The participants served in schools with varying student enrollments (i.e., school populations ranged from 144 students to 520 students). The first ten participants who volunteered and who represented these attributes of gender, years of experience and size of school were selected.

3.4 Research Design Rationale

As Merriam (2002) asserts, there are "three major sources of data for a qualitative research study—interviews, observations, and documents" (p. 12), while Rossman and Rallis (2003) are convinced "in-depth interviewing is the hallmark of qualitative research" (p. 180). In order to determine how administrators understand discretion and how they exercise it in student disciplinary cases, data were collected through in-depth semi-structured interviews. Anderson and Jones (2000), in their study of fifty doctoral

dissertations completed by school administrators, discovered nearly 60% of the methods used included "interviews, observations, and document analysis" (p. 436). Also, Gall *et al*. (2007) maintain interviews provide information that the participant would not reveal "by any other data collection method" (p. 228).

3.4.1 Limitations of Interviews

Limitations of interviews as strategies for data collection techniques include the dependence of the researcher "upon the cooperation of a small group of key informants" and the fact that the strategy is "difficult to replicate" and particularly "dependent upon the honesty of those providing the data" and "highly dependent" upon the ability of the researcher to be "resourceful, systematic, honest" and able "to control bias" (Marshall & Rossman, 1989, p. 104). The study employed semi-structured interviews because of "the degree of flexibility for the interviewer and participant to clarify and elaborate beyond the scope of predetermined questions and to probe unexpected responses" (Wright, 2008, p. 6). Patton (1990) points out that the flexibility in questioning of the semi-structured format may result in different responses from different participants, making "comparability of responses" (p. 288) more difficult, and risking the chance that important or significant topics may be missed or not included. As well, the phrasing of certain questions might predispose the participant to certain answers and certain ways of responding based on the assumptions and biases of the researcher (Hamdan, 2009). Semi-structured interviews also allow for the collection of more standardized data, but with the benefit of allowing greater depth of detail (Gall *et al*., 2007). Rossman and Rallis (1998) point out interviewees may be "uncomfortable" sharing, or may not be

willing to share their experiences, or may not understand fully questions posed to them, or may have different notions about the purpose of the interview (p. 125).

Fontana and Frey (2000) also note three sources of "response effects, or nonsampling errors" may be found in structured interviews: "respondent behavior," where the participant deliberately tries "to please the interviewer"; the "sequence or wording of the questions"; and the "characteristics or questioning techniques" of the interviewer (p. 650). The last is the greatest source of error since not every "contingency can be anticipated," and although there is not much room for researcher improvisation, "not every interviewer behaves according to the script" (p. 650). However, they maintain research on interviewer effects show "age, gender and interviewing experience to have relatively small impact on responses" (Fontana & Frey, 2000, p. 650). Mason (2002) warns of the "vagaries of memory, selectivity and deception in interviewees' accounts," in the researcher's "enthusiasm for the rich and fascinating data which can be generated in interviews" (p. 237). She suggests participants may find it difficult to put all their ideas into words, and that non-verbal expressions, as well as emotions and feelings may not be discussed in interviews; as a result, the researcher might be wary of reading "interviewees' accounts as straightforward descriptions of social experience" (p. 239).

3.4.2 Advantages of Interviews

Marshall and Rossman (1989) identify some of the strengths of interviews as a data collection technique in qualitative studies as giving the researcher the ability to obtain "large amounts of expansive and contextual data quickly"; facilitating the "discovery of nuances in culture"; and having "great utility for uncovering the subjective side of the 'native's perspective' of organizational processes" (p. 103). Patton (1990)

claims the strength of the semi-structured interview format includes minimizing the effects of interviewer bias, and of variation in questioning, and getting more comprehensive information from some participants than others. Moreover, the researcher is able to make better use of interview time because interviews will be more focused than if they were informal conversations, and asking the same questions increases the "credibility" of the data (p. 286). The semi-structured form allows for the further probing of topics that may not have been anticipated; on the other hand, important and "salient topics" may not be included (Patton, 1990, p. 288) and standardizing of questions may limit the participants' responses. My choice of the semi-structured interview format with its relative inflexibility, standardized and "predetermined nature" was designed to lessen the influence of these interviewer effects; nevertheless, as researcher, I had to be "sensitive to how interaction [between participant and interviewer] can influence responses" and to "make the proper adjustments" (Fontana and Frey, 2000, p. 650) during the interviews with an awareness of the "forces that might stimulate or retard [the participants'] responses" (p. 651).

Bogden and Bilken (2007) suggest the use of semi-structured interviews enables the researcher to obtain "comparable data across subjects," but possibly to lose "the opportunity to understand how the subjects themselves structure the topic" (p. 104). Gronn (2003b) advises that the form of semi-structured interviews should be "broadly consistent for each informant in respect of question order and wording, but also sufficiently flexible to seek other information if the principals deviated or strayed from the anticipated line of inquiry" (p. 53). Also, researchers are encouraged to use triangulation of methods of data collection since "multiple methods enhance the validity

of the findings" (Merriam, 2002, p. 12); therefore data were collected through field notes, document analysis, semi-structured interviews with multiple participants, a literature review and informal reflections. Denzin and Lincoln (1994), however, point out triangulation "reflects an attempt to secure an in-depth understanding of the phenomenon in question" and "is not a tool or a strategy of validation, but an alternative to validation" (p. 2).

3.4.3 Strategies for Trustworthiness of Data

Guba and Lincoln (1994) suggest that instead of the "conventional benchmarks of rigor," such as "internal validity," "external validity," reliability," and "objectivity" of a quantitative approach (p. 114), an interpretive orientation would seek the "*trustworthiness* criteria [emphasis in original]" of "credibility," "transferability," "dependability," and "confirmability" (p. 114; see also Rossman & Rallis, 2003). Marshall and Rossman (1989) expand upon these alternate constructs by arguing that in order to maintain credibility the study must be conducted "to ensure that the subject was accurately identified and described" and include an "in-depth description showing the complexities of variables and interactions…so embedded within data derived from the setting that it cannot help but be valid" (p. 145).

Second, the transferability of the data which is "the applicability of one set of findings to another context…may be problematic" (pp. 145–146). Marshall and Rossman (1989) state this problem can be overcome by referring to how the data collection is guided by the "original theoretical framework" (p. 146) or by the triangulation of multiple sources of data, participants or techniques. They also note that while "no qualitative studies are generalizable in the probabilistic sense, their findings may be

transferable" (Marshall and Rossman, 2006, p. 42; see also Rossman & Rallis, 2003).

Dependability requires that the researcher attempts to account for "changing conditions" in the phenomenon under study through an "increasingly refined understanding of the setting" and through a set of assumptions different from the "positivist notions of reliability" of an "unchanging universe" (Marshall & Rossman, 1989, pp. 146–147). Finally, the construct of confirmability "captures the traditional concept of objectivity" by "stressing whether the findings of the study could be confirmed by another" by removing "evaluation from some inherent characteristic of the researcher (objectivity) and plac[ing] it squarely on the data themselves" (p. 147). Creswell (2007) concurs, noting that "the naturalistic researcher looks for confirmability rather than objectivity in establishing the value of the data" (p. 204).

Maxwell (2005) argues qualitative research is not, foremost, "concerned with eliminating variance between researchers in the values and expectations they bring to the study, but with understanding how a *particular* [emphasis in original] researcher's values and expectations influence the conduct and conclusions of the study" (p. 108). In terms of the trustworthiness of the findings, then, the goal is not to eliminate researcher influence "but to understand it and to use it productively" (p. 109), since "reactivity is generally *not* [emphasis in original] as serious a validity threat" as some may believe (pp. 108–109). Gall *et al*. (2007) add that in order to increase the rigor of qualitative research the researcher should use an "authentic reporting style" (p. 474), that includes direct quotations from participants, and should fully describe the context of the study, including researcher reflection and peer examination (pp. 475–476). Additionally, member checks, that is, the use of "research participants' review statements" should be

used to achieve "accuracy and completeness" (p. 475); therefore, they become part of the study protocol. As a result, the participants were asked to change, add to, or delete from the original transcript after reviewing the transcribed statements in order to ensure there was no misrepresentation, to "reconcile discrepancies," to "include contrasting views" and to "correct factual errors" (Gall *et al*., 2007, p. 475). They were allowed to vet their transcripts and were encouraged to delete those statements they did not wish to be included, or to change statements in order to ensure accuracy.

3.5 Structure of the Interviews

McMillan and Schumacher (2010) contend the interview is a qualitative research technique that focuses on values; it follows that participant interviews which provide "rich" (p. 332), "thick" (p. 336) description (see also Merriam, 2002) offer the most appropriate way to elicit principals' understanding of their own value systems when they exercise discretion in decision-making. Fontana and Frey (2000) refer to the "sharedness of meanings" in the interview process which enables participant and research to "understand the contextual nature of specific referents" (p. 660), where the participant is an "equal" in the interview (p. 664). What is more, they point out, the negotiated accomplishments" (p. 664) of both the researcher and the participant are shaped by context; interview data must be considered contextually, and not as an "objective unit" (Fontana & Frey, 2000, p. 663).

In order to address the research questions, interviews were conducted "using a predetermined set of questions" (Mukuria, 2002, p. 437), leaving room, however, for probes, that is "explorations of the topic in detail" (Creswell, 2002, p. 208), and further comments by the participants. The use of follow-up questions and rephrasing also

allowed for greater clarification, elaboration and development of details and examples, and for a more complete understanding of responses (Rossman & Rallis, 2003). Follow-up questions also enabled the researcher to discuss topics further which may not have been anticipated and which allowed for more individualization in responses (Patton, 1990).

3.5.1 Interview Protocol Questions

The interview questions (see Appendix C) were based on "a set of key issues derived from the literature" (Cranston *et al*., 2005, p. 109; see also Ackerman, 2003; Bogden & Bilken, 2007; Faulk, 2006; Frick, 2006; Frick & Faircloth, 2007; Hall, 1999; Heilmann, 2006; Manley-Casimir, 1977–78; Patton, 1990; Tuten, 2006) and were framed by the research questions. McMillan and Schumacher (2010) recommend the use of "standardized open-ended questions," which are "completely open-ended" (p. 356) and of predetermined question order and wording. They believe questions should focus on participants' "experiences or behaviors, opinions and values, feelings, knowledge, [and] sensory perceptions" (McMillan & Schumacher, 2010, p. 357). Patton (1990) agrees, claiming open-ended questions also enable the researcher to understand the participants without "predetermining [their] points of view" (p. 24). He maintains that by asking the same questions of each participant, the researcher is able to "minimize interviewer effects," and the necessity for "interviewer judgment" during the interview is reduced" (Patton, 1990, p. 285). In this way, data analysis is easier because the researcher is able to organize questions and answers that are similar. Finally, Patton (1990) suggests use of the same questions "increases credibility" (p. 286), although he concedes the spontaneity of participants' responses may also be limited or reduced by the standardizing of

questions. In order to further increase the credibility of the semi-structured interview technique, the questions on the interview protocol were vetted by the researcher's committee and by the participant in a pilot study (Gall *et al*., 2007).

3.5.2 Use of Vignette

The interview protocol also included the use of a vignette (Bundy, 2006; Frick, 2009; Hall, 1999; Heilmann, 2006; Roche, 1999; Tuten, 2006) wherein the participants were asked to respond to a scenario and pre-determined questions based on a case study involving discretionary decision-making and student discipline (see Appendix C). The vignette was used to introduce the topic, to provide a focus for the interview, to "engage participants" and to "set the stage for a sustained reflection" (Frick & Faircloth, 2007, p. 24; see also Frick, 2009) on discretionary decision-making, although Patton (1990) maintains the use of a vignette may predispose the participants to a certain way of considering the topic and "limit the naturalness" of some of the responses (p. 289). Roche's (1999) research demonstrates vignettes can serve as memory triggers, and can remind participants of similar events in the past. In order to increase "the validity of reports" (p. 259), the participants in his study were asked to refer only to events that had occurred within the past year. In a similar way, to increase trustworthiness the participants in my study were asked to rely upon short-term memory, "notwithstanding that these interviews involved hypothetical situations" (p. 259).

Frick (2006) reasons flexibility and variety in the interview structure are used "to elicit…challenging self-reflections and sustained ruminations" (p. 95); consequently, both a vignette and follow-up questions, in addition to a series of separate, but related, questions, were used. The vignette was entirely fictitious, but the ideas were based on a

compilation of disparate incidents in which the researcher had been involved or to which she had been exposed over her administrative career. The form of the vignette was adapted from a format used by Lam, Hurlburt, & Bailey (1996).

3.5.3 Use of Demographic Profile

The participants were also asked to complete a short demographic profile (see Appendix D) which asked for their gender, the number of years of experience they had as a principal or as an in-school administrator, whether or not they worked with a vice-principal, their age, the enrolment of their school, and whether or not they considered themselves experienced principals. Gronn (2003b) suggests an "experienced" principal has spent five years in the role (p. 25), while St. Germain and Quinn (2005) identify expert as opposed to novice principals as those having more than five years' experience. Begley (1999b) defines an experienced principal as having at least two years of experience in the role (p. 244). For the purposes of this study, I made the assumption an experienced principal was one who had five years' experience in the role.

3.5.4 Pilot Study

Once school-district permission had been received, I conducted a pilot study in order to identify any unanticipated problems and issues, to seek clarification on wording of questions, to ensure that the audio recording device was in good running order, and to help to pace and time the questions during the interviews (Gall *et al*., 2007). The pilot study participant was female, indicated her age was between 50 and 60 years of age, considered herself an experienced principal, did not work with a vice-principal, had approximately 200 students enrolled in her school, and was two years away from

retirement. She was the first principal in the school division to respond to my email agreeing to participate in the research study.

The participant of the pilot study identified one aspect of the protocol which caused uncertainty for her; she required clarification on the question which asked for the participant's definition of discretion. In response to my request for suggestions on effective changes that might be made during the interview, the pilot-study participant recommended clarifying the topic of the research once participants had completed the vignette questions, just before they began to answer the remainder of the semi-structured interview questions. Although I was reluctant to divulge the over-arching assumptions about discretion upon which the study is based, the participant in the pilot study did pose some specific questions to me about the study's purpose and the premise of the research. This insight prompted me to clarify orally the goal of the inquiry and to provide greater details about the subject under study before reading the vignette aloud to the participants during the semi-structured interviews. The principal in the pilot study noted the interview questions were clearly worded, straightforward, and focused upon what was, for her, the key features of decision-making in student disciplinary issues, such as finding a balance among competing needs, making decisions which may cause conflict among stake-holders, and determining consequences for misbehavior which are fair and equitable for all students. She also indicated the nature of the interview protocol allowed for sustained reflection on decision-making.

There were three other insights into the data collection techniques that were evident during the pilot study. One key insight for me into the interview protocol was my observation that the participant did not appear to readily have a specific definition

(whether found in a dictionary, a personal definition, or a synonym) for the term discretion but, rather, she had more of a sense of the manner in which she exercised it in decision-making. The second insight was that the vignette not only provided a place of orientation for the participant, but also became a point of reference as she referred to the scenario in her responses to questions on the interview protocol, commenting that she had had similar experiences. The third insight was that the protocol questions appeared to be relevant to the daily practice of a principal, since the participant readily gave specific examples of recent student disciplinary situations she had encountered as she responded to the questions. The participant in the pilot study was very willing to draw upon recent experiences, including even those from the very day of the interview, in order to elaborate or to clarify upon certain points. The data from the pilot study were not included in the research findings.

3.5.5 Interview Procedures

Each of the participants was interviewed at a time and place most convenient for him or her. I electronically mailed the vignette to participants two days before their interviews so they could have the opportunity to review the scenario and the specific questions relating to it if they so chose. Some principals chose to take advantage of the opportunity to prepare themselves for the interviews, while other principals indicated the constraints on their time had not permitted them to read the scenario. Once I entered the research site, I worked to gain trust by establishing rapport with the participants through clarifying the purpose of the research project, discussing my role as a doctoral student and by mentioning that reasonable steps were taken to maintain confidentiality and privacy (Gall *et al*., 2007; Marshall & Rossman, 2006). At that time, participants were

given the letter of introduction and the informed consent (see Appendix B) for signature and time was allowed to discuss any questions or concerns they had. Interviews were held at the end of the school day in the participants' own offices, except for one which was held in my office. The central tasks during the interviews involved having the principals read the vignette, with "questioning and probing" for responses, in addition to a more extensive series of protocol questions which required them to draw on personal experiences, insights, perceptions, and observations (Frick, 2009, p. 58).

Once the interview began, the recording device was turned on, and I read the vignette aloud with each participant because not all participants had read the scenario prior to my arrival, and also because I wished to establish a common starting point for each interview. I then proceeded through the questions in the listed order. This same procedure was followed for every interview. After the vignette follow-up questions had been fully discussed, the participants responded to the fifteen prompt questions in numerical order as outlined in the interview protocol. The same prompt questions were asked of all respondents; however, there was some flexibility in questioning through the use of follow-up questions and probes to allow for a more complete understanding of the participants' responses (Rossman & Rallis, 2003). Throughout the course of data collection, there were "significant clarification, rephrasing and participant response checks" as part of "the conversational nature" of the interviews (Frick, 2009, p. 58). The field notes I made during the interviews consisted of "observational notes" and "reflective-analytic journaling based on the interview experience" (Frick, 2009, p. 58). The original estimated time for each interview was approximately sixty minutes; however, all interviews exceeded that time, lasting from approximately seventy to ninety

minutes. Once the interview had been completed, I thanked each participant for his or her willingness to take part in the research project and exited the site. Participants were sent a formal thank you via email within the next few days following the interview, in addition to a hand-written personal note of thanks upon receipt of the final version of the transcription from the participant (Marshall & Rossman, 2006).

I transcribed four of the semi-structured interviews and then, for reasons of time and efficiency, I hired a professional transcription company to transcribe the remaining six interviews. Once each of the audio files of the semi-structured interviews had been transcribed, participants were emailed a copy of their transcript and asked to make any changes or deletions they felt were necessary in order that the transcript would accurately reflect their understanding and perception of their responses and comments during the semi-structured interviews. Participants were asked to return the transcripts within one week of receiving them. Five participants took longer than one week to return their transcripts, and in four cases participants remarked on their own perceived tendency to verbosity, their peculiarity of expression, and, in some cases, the depth and the amount of detailed information their interview had contained. For example, one female principal emailed back with her revised transcript, "*I certainly went on for quite a while, didn't I*?" One of the male principals emailed me the day following the interview to mention that he had found the entire process to be professionally invigorating. He added, "*I haven't had a chance to do an indebt* [*sic*] *reflection on the goings on as a principal. Sometimes you just go through the motions without thinking about it. It was good. Good luck with the rest of your work.*" He also thanked me for including him in the research.

3.6 Credibility of the Research

Triangulation and coherence were established through document analysis and a literature review. Strategies used to enhance the credibility and rigor of the qualitative study included keeping a researcher log, or journal, and using "interim analytic memos" (Rossman & Rallis, 2003, pp. 67–68). As well, "participant validation" of the interview content for accuracy and elaboration, or member checks, and the use of a "peer debriefer" and a "community of practice," that is, colleagues with whom to engage in "critical and sustained discussion" with respect to reviewing ideas and challenging notions, are all strategies that I employed to enhance trustworthiness and usefulness of the findings (p. 69; see also Creswell, 2007, pp. 207–208). What is more, I used "*inter-rater* reliability, *intercoder agreement*, or *scorer agreement* [emphasis in original]" to determine if there was "agreement" (McMillan & Schumacher, 2006, p. 186) in the identification of codes, categories, and themes. However, it was noted that "when two or more observers or raters independently observe or rate something to determine if there is some consistency," this "type of analysis does not indicate anything about consistency of performance or behavior at different times" (McMillan & Schumacher, 2006, p. 186). The inter-rater reader, who has extensive experience in the field of education, is also a retired school principal with a graduate degree and currently works with pre-service teachers at a local university. There was a high level of inter-rater agreement with the codes and themes I had identified. These techniques, therefore, helped to offset limitations that could arise with respect to sample size and reliance on the data collection techniques employed. They were also used to enhance the trustworthiness and

dependability of the study of principals' exercise of discretion and their efforts to maintain their value systems (Rossman & Rallis, 2003).

Although the selected research design was not an empirical study in the positivist sense and did not attempt to observe directly school-based administrators exercising discretion in disciplinary situations in their educational practice, it did focus on how principals interpret and make sense of their disciplinary actions. In this way, I was able to gain access to those things that could not be observed, such as the perspectives, feelings, motivations, and understandings of the participants (Patton, 1990). Likewise, Gronn (1984) argues, in empirical studies what is being observed "in natural settings is action *not* behavior [emphasis in original]" (p. 125). If one is concerned only with what can be observed or measured, as was Mintzberg's (1973) study of the daily activities of managers, then this assumption may create an initial bias from which it is difficult to escape. Gronn (1984) contends that less quantifiable elements and more information on administrators' interpretation, perspectives and attitudes are required in naturalistic research studies.

The data collection ended at the conclusion of the tenth interview "based on the substantial amount of information that had been acquired through lengthy discussions" (Frick, 2009, p. 58). As well, the "practical exigency of time and resource constraints balanced against the potential for expanding the boundaries of participants' shared understanding" (Frick, 2009, p. 58) of their administrative practice signaled data collection was complete. The data collection process "rendered a full account of participants' views and perceptions" based on the fact the participants had shared "similar structural and social conditions within middle class schooling bureaucracies" (Frick,

2009, p. 58). As Frick (2009) observes, the "ultimate criterion" for determining the trustworthiness of the participants' responses in a study is the "accumulation and analysis of a wealth of rich data and thick descriptions" (p. 58).

As researcher, I sought to develop safeguards to maintain as much as possible the privacy and anonymity of the participants (Gall *et al*., 2007). I removed any identifying marks, words and phrases from the transcripts so that participants could not be linked or related to the data. Once the data had been coded and analysis completed, the transcripts were and continue to be kept in a locked cabinet in my home. Hard copies of the data will be kept for two years after the inquiry has been completed and then will be shredded. Audio files will be erased two years after the inquiry has been completed as well. Electronic copies of the six transcripts made by the transcribing service were destroyed by the firm one month after transcription had been completed. The transcribed data were password protected on my personal laptop computer, and I kept back-up electronic copies of the transcripts on a flash drive device that was secured with a password encryption.

3.7 Method of Data Analysis

The raw data used for analysis included the interview transcripts, observations and notes made during the interviews, journal notes, memos, and legal documents (Patton, 1990). The interviews themselves generated 190 pages of transcripts. Transcripts were verbatim and included spontaneous laughter on the part of the participants and myself, participant asides, interruptions by students (in one case for a disciplinary issue), interruptions because of phone calls, and profanities. My "preliminary analysis" began during the fieldwork phase when I began a "rough formulation" of the observational and journal notes into broad areas. All statements with

relevance to the study were listed without judgment as to their relative worth (St. Germain & Quinn, 2005). Then, once formal analysis began, I immersed myself in the data through careful reading and re-reading, or "prolonged engagement" with the verbatim transcripts in their entirety (Marshall & Rossman, 2006, p. 159), in order to search for "*patterns of meaning* [emphasis in original]" (McMillan & Schumacher, 2006, p. 374) using the research questions and protocol questions as a framework. My understanding of the principals' "experiences and the meanings they attributed to them" was achieved by integrating their "perceptions, thoughts, feelings, examples, ideas," as well as "recollections" and their responses to the vignette (Frick, 2009, p. 59). As McMillan and Schumacher (2006) note, "pattern seeking starts with the researcher's informed hunches about the relationships in the data" (p. 373). I coded the data to identify common ideas or categories that emerged from the data (Patton, 1990) and which were also based on my own self-knowledge (Maxwell, 2005) and reflections of my "own experiences" (McMillan & Schumacher, 2006, p. 376) which served to inform and to answer the research questions. In that way, "an overall description of the meaning of the experience [was] constructed" (McMillan & Schumacher, 2006, p. 376).

Once I had generated preliminary coding categories I assigned to them units of data and segments of text (Bogdan & Biklen, 2007; see also McMillan & Schumacher, 2006); I identified 790 segments of text throughout the ten interviews. Each specific text segment was labeled and color coded according to participant, and then grouped into one of the ninety coding categories the meaning of which I had previously described (Creswell, 2002). I then highlighted patterns within these more general coding categories according to their relevance, such as definition of discretion, and the participants'

interpretation of activities, events, relationships, people and objects, and behaviors (Bogdan & Biklen, 2007; see also Frick, 2009). The data was cross-referenced to the patterns found in the transcribed documents, field notes, and relevant literature, and I considered "causes, consequences and relationships" when I was analyzing the data, making decisions based on "speculation, interpretation, and hypothesizing" (Patton, 1990, p. 422). Those portions that formed the essence of the themes were listed (St. Germain & Quinn, 2005).

Four separate sets of analyses were required to elicit the final eight common themes which were found within the more broadly-defined thirteen categories. MacMillan and Schumacher (2010) observe "typically qualitative studies will have between four and eight categories" or themes (p. 377). Once coding had been completed, I clustered codes, searched for redundancies, eliminated irrelevant and unrelated segments, and reduced the number of codes from ninety to thirteen categories (Creswell, 2007, p. 267). The meaning of these categories depends on "both the content of each and the comparison made with that content—other categories or patterns" (McMillan & Schumacher, 2006, p. 374). As Ashbaugh and Kasten (1984) state, determining categories "was sometimes problematic" as many of the participants' statements were not "mutually exclusive" and there were many commonalities in the codes (p. 201). I reduced these categories to the eight emergent themes that were "most frequently discussed" or "unique" (Creswell, 2007, p. 267). The themes are presented in the findings, along with excerpts from the transcripts—the "rich data" (Maxwell, 2005, p. 112) and "thick description" necessary "to enhance the study's trustworthiness"—

(Merriam, 2002, p. 15) in order to expand upon and to illustrate these themes and patterns.

3.8 Chapter Summary

An interpretive approach in a study of discretionary decision-making can generate insight about the values and the valuation processes of the decision-makers. The purpose of the study is to determine how principals negotiate within the confines of discretion available to them by law in order to maintain their values system in matters of student discipline. Discretion is the phenomenon under study and, since discretion is incapable of being measured and discretionary decision-making is an interpretive exercise, a qualitative research methodology is appropriate for this inquiry. Similarly, in order to determine the nature of values in administrative decision-making, qualitative research methods are required. Because the research participants were elementary school principals, as researcher and insider, I was able to effectively establish trust among the participants. By providing any information that may have affected the collection of data and its interpretation, I am able to work to enhance the credibility of the research. Some critics contend it is difficult for any qualitative researchers to achieve neutrality and impartiality and that, in any case, it is more important to understand how the researcher's values and assumptions influence the conclusions of the study.

The research methodology included purposive sampling of ten elementary school principals participating in individual, semi-structured, in-depth interviews. A pilot study helped to confirm the order, coherence, and clarity of questions. The participants were initially given a vignette and five supporting questions to answer to introduce the topic and to establish the framework for the discussion. Fifteen additional prompt questions

relating to how principals exercised discretion in student-discipline issues guided the interview protocol.

In order to achieve trustworthiness of the data, such strategies as member checks, inclusions of direct quotations from participants, inter-rater reliability, researcher reflections and triangulation were used. Ethics protocols were adhered to and procedures put in place to ensure as much as possible the anonymity of the participants. Data analysis was conducted by coding using categories based on the research questions as the guiding framework in order to identify patterns, and by clustering of codes in order to discover emerging themes.

CHAPTER FOUR

4 Document Analysis

This research inquiry sought to determine how administrative discretion provided for in law confines, directs, supports or refines principals' decision-making, and how principals negotiate within the legal parameters of discretion in order to maintain their own value systems. This chapter provides a document analysis of the provincial legislation and relevant school board policies granting the participating principals discretionary power in matters of student discipline.

4.1 *The Education Act* (1995)

In Saskatchewan**,** *The Education Act* (1995) outlines the General Duties of Pupils in Section 150. The obligations of each student are outlined in subsection 3.

(3) Every pupil shall:

(a) attend school regularly and punctually;

(b) purchase any supplies and materials not furnished by the board of education…

(c) observe standards approved by the board of education…with respect to

(i) cleanliness and tidiness of person;

(ii) general deportment;

(iii) obedience;

(iv) courtesy; and

(v) the rights of other persons;

(d) be diligent in his or her studies;

(e) conform to the rules of the school approved by the board of education…; and

(f) submit to any discipline that would be exercised by a kind, firm and judicious parent.

(4) For the purpose of clause (3) (f), discipline must not include the use of any of the following:

(a) a strap, cane or other physical object;

(b) a hand or foot in a manner meant to punish.

Under Section 151, the student is accountable to the teacher for his or her "conduct on the school premises during school hours" and also in "authorized school activities conducted during out-of-school hours" (ss. 1). The pupil is also "accountable to the principal" for "general deportment" while at any time he or she is under the general supervision of the school, "including the time spent in travelling between the school and the pupil's place of residence" (ss. 2). The pupil is also "accountable to the driver of a school bus and to any other person appointed by the board of education…for the purposes of supervision during hours when pupils are in the personal charge of those employees of the board of education…" (ss. 3). Furthermore, those employees "mentioned in subsection (3) are accountable to and shall report to the principal in accordance with the procedures approved by the board of education…" (ss. 4).

The *Act* also contains a separate section on Discipline:

152 (1) Every pupil is subject to the general discipline of the school.

1.1 For the purpose of subsection (1), discipline must not include the use of any of the following:

(a) a strap, cane or other physical object;

(b) a hand or foot in a manner meant to punish.

In this same section, school boards are required to "make provisions" in their bylaws for the "expeditious investigation and treatment of problems arising in the

relationship between a pupil and the school." Under 153 (2), if a situation arises that adversely affects "the pupil's educational development or the well-being of other pupils in the schools the principal may refer the matter to a committee of staff members and consultants." The referral to committee may be made if "in the opinion of the principal and the staff, a pupil is not complying with the pupil's general duties" as established in Section 150 or if a situation has developed with respect to the pupil's

(a) attendance;

(b) studies;

(c) deportment;

(d) personal relationships in the school; or

(e) attitude towards the school.

If such a referral is made, the principal must contact the parents or guardians of the child immediately.

Section 154 deals with student suspension. Provision is made for suspensions of less than three days, and for more than three days but less than ten. Provision is also made for student expulsion.

154 (1) A principal:

(a) may suspend a pupil from school for not more than three school days at a time for overt opposition to authority or serious misconduct; and

(b) where he or she suspends a pupil pursuant to clause (a), shall immediately report the circumstances of the suspension and the action taken to the parent or guardian of that pupil.

(2) A principal may suspend a pupil for a period not exceeding 10 school days where the principal receives information alleging, and is satisfied, that the pupil has:

(a) persistently displayed overt opposition to authority:

(b) refused to conform to the rules of the school;

(c) been irregular in attendance at school;

(d) habitually neglected his or her duties;

(e) willfully destroyed school property;

(f) used profane or improper language; or

(e) engaged in any other type of gross misconduct.

Once the principal has suspended a student under subsection (2), he or she must report the matter to the director, notify the parents or guardians of the student, "inform the pupil of the reason for his or her suspension" and then prepare a written report for the director and the parents or guardians. A hearing may be granted whereupon the director or designate may "confirm, reduce or remove" (subsection (4)) the suspension. As well, the board may investigate the "circumstances" of a suspension before the end of the period of suspension and may suspend the student from any or all of the schools in the division for up to a period of one year. The pupil and his or her parents or guardians have the right to appeal the decision. Section 155 of the *Act* authorizes a board of education to expel a student from any or all schools in the division for a period of greater than one year based upon "an investigation" or "the unanimous report" ((1) (a), (b)) of a committee of the board. This expulsion may, at the end of the year, be reviewed and rescinded by the board.

The duties of a principal outlined in Section 175 of the *Act* include supervision of staff and organization of school programming, leadership in terms of staff professional development, and plans for reporting to parents and guardians. Subsection 2 contains specific duties relating to school discipline:

> (i) define and prescribe the standards of the school with respect to the duties of pupils and give direction to members of the teaching staff and to pupils that may be necessary to maintain the good order, harmony and efficiency of the school;
>
> (j) administer or cause to be administered any disciplinary measures that are considered proper by him or her and that are consistent with this Act.
>
> (m) maintain regular liaison with the director with respect to all matters pertaining to the well-being of the school, the staff and the pupils.

Provision is also made in the legislation for the suspension or expulsion of intensive needs students, or students whose "capacity to learn" is "compromised by a cognitive, social-emotional, behavioral or physical condition" (Section 178 (1) (d)). The legislation indicates the following process may be considered:

> 178 (12) If a pupil with intensive needs displays behavior that poses a risk of harm to others within the school and if that behavior is not caused by the pupil's intensive needs, the pupil may be suspended or expelled in accordance with section 154 or 155, as the case requires.

4.2 Analysis of Legislation

Shipman (1969) concludes "legislation usually recites a set of formal values, attributed to constitutional or other philosophical sources, but these are not inevitably the values conveyed to the society by subsequent governmental action" (p. 122). The

education legislation assumes certain norms, values and standards for behavior. Saskatchewan's *Education Act* (1995) makes assumptions about how good behavior is defined and describes "standards of behavior to encourage certain types of conduct and discourage others" (Hart, 1962, p. 163). The legislation assumes "there is a single norm for appropriate behavior that people of all races, sexes, classes, and ethnic groups should be expected to exhibit" (Chesler *et al*., 1979, p. 504; see also Henriksson, 2008). In other words, there are no "culturally plural notions of good behavior" (Chesler *et al*., 1979, p. 504). The *Act* does not countenance teachers and administrators taking into account any cultural differences among students as they interpret the statute to effect disciplinary consequences.

In their discussion of the sources of law, Proudfoot and Hutchings (1988) point out "crimes are created by statute" (p. 42); the same might be said of misbehavior at school insofar as legislation defines what constitutes unacceptable behavior. Using the reasoning of Hamilton and Sinclair (1991), in the same way that a "functionalist" theory suggests crime is used to help "define normalcy," so the identification and naming of inappropriate behavior under *The Education Act* (1995) actually delineates acceptable behavior and makes it "more attractive" (p. 89). In this way, by defining behavior that is unacceptable, the *Act* reproduces social norms and emphasizes social conformity (Clark, 2002). What is more, as King (2000) suggests, "all definitions of crime are, of course, social constructions changing over time and between societies, social groups, and individuals" (p. 6), so student misbehavior as constructed by the *Act*, and behavior that may have been inappropriate in 1995 may be acceptable in 2011, or vice versa. The *Act*'s solid core of meaning of appropriate student behavior is based on certain assumed values,

cultural preferences, and standards that may or may not be shared by all educational stakeholders in a pluralistic and diverse student population. It authorizes definitions, such as "standards" of "general deportment," "obedience," and "courtesy" based on what may be perceived to be "White middle-class values" (Nelson, 2008, p. 33) presumed to be shared by all stakeholders; this presumption creates conditions or expectations for behavior that are untenable for certain students or groups of students and may create oppressive conditions for them. Rules become solely instruments of "adult control" of students (Chesler *et al*., 1979, p. 504), and learning becomes synonymous with "following orders" (p. 503). Even the elasticity of discretion delegated to principals legitimizes these dominant rules and patterns of control. Furthermore, notwithstanding Section 153—the option of referral to a committee for review of behavior—the legislation is solely reactive to misbehavior, and makes minimal provision for preventive or alternate strategies that may serve to guide or support what it considers appropriate student conduct, such as that prescribed in the Ontario *Education Act* (1990).

The consequences for misbehavior outlined in Saskatchewan's *Education Act* (1995) concern, for the most part, suspension and expulsion as the only identified alternatives for misbehavior. The *Act* does not take into account the fact children often do not consider the consequences of their actions (Hall, 1999) and if the misbehavior is impulsive, suspension will not serve as a deterrent. Some students may not recognize the cause-and-effect relationship between misbehavior and suspension. The *Act* has been amended to reflect the Supreme Court ruling in *Canadian Foundation for Children v. Canada* regarding the corporal punishment of children. To paraphrase Clarke (2002), suspension becomes the gate-keeper of behavior in schools insofar as it determines which

students will stay and which students will go. Within *The Education Act* (1995) "there is no specific process set out" for "suspensions of less than 3 days" and "no statutory requirement for the principal to report a suspension of 3 days or less to the director" although it may be required in specific school division policy (Saskatchewan School Boards, 2009, p. 7). As such, in these shorter suspensions under Section 154 (1) there appears to be no requirement for the student to be afforded the chance to give his or her account of the events leading to the suspension; if such an account is provided, this opportunity is implicit, rather than explicit, as a procedural fairness doctrine. As well, in cases of suspension, there should be provision "for continuous access to the established curriculum" and to classroom instruction (Clark, 2002, p. 10); yet, whether this access would occur at the school the student normally attends is not clear. Alternatives that are educative or instructive, such as conflict resolution or mediation, are not required to be considered. Suspension and expulsion are solely reactive measures, and will not help to solve behavioral problems or to support students.

Offences for which students may be suspended, such as "gross misconduct" and "opposition to authority" are highly subjective and open to interpretation by administrators and educators. The "wide categories" in the language of the legislation "indicates that the behavior must be more than merely trivial" (Saskatchewan School Boards, 2009, p. 7). The hierarchy of misbehavior reflects conduct that is very wide-ranging—from swearing to vandalism to incomplete assignments—and makes no specific provision for what many would consider serious infractions such as the possession and use of weapons or drugs, although delineating every conceivable offence is impossible. Moreover, the doctrines of *in loco parentis* and *parens patriae*, reflected in the "kind,

firm and judicious parent," are broad in scope and, again, subject to various interpretations which can lead to inconsistency in assigning consequences. These provisions also assume much about the good faith and common sense of administrators and teachers who may, or may not, consider mitigating circumstances in applying rules. Infractions, such as a lack of "diligence in studies" or "irregular" attendance, construct student behavior from the perspective of pupils who, it is assumed, are not affected by social challenges that may be barriers to their compliance and to achievement, such as poverty. What is more, the legislation assumes that support staff, such as bus drivers or lunch room supervisors to whom students are accountable for their behavior, have the appropriate training to deal with and respond to incidents of student misbehavior. Finally, it is not clear, if all school administrators have the knowledge, ability, or training to differentiate between behavior that is compromised by special needs and that which is not, when they consider serious disciplinary consequences such as suspensions or expulsions.

The duties of pupils are in tension with the responsibilities of educators but are circumscribed without reference to the obligations on the part of the school or school division. The legislation assumes that individual students are engaged in learning, and that the school is meeting its responsibility in showing respect to students (Chesler *et al*., 1979), meeting the individual needs of students and providing an educational environment that is "stimulating" (Clark, 2002, p. 32). The responsibility for behavior is placed upon the student; as a result, the rules outlined in the legislation have a "unilateral component" (Chesler *et al*., 1979, p. 502), and there appears to be no "reciprocal discipline" for staff (p. 507). For example, students who text or who use a cell phone in

class may be subject to disciplinary action for not conforming to the rules of the school while, one presumes, a teacher who texts or uses a cell phone in class would not. Finally, the *Act* does not specifically reflect the current reality of technology which has the potential to greatly affect the environment and climate of the school and which would appear to warrant due consideration by itself, although it may be interpreted that under Section 152 students are accountable for the "use of phones, email or the internet to harass or bully [other] students" (Saskatchewan School Boards, 2009 p. 1).

It would appear much is left to the interpretation of principals as to the values legislated in *The Education Act* (1995). The duties of the principal include broad discretionary authority in terms of the administration of discipline that is "proper," however "proper" may be defined, and that maintains the "good order" and "harmony" and "efficiency" of the entire school but not necessarily for the benefit of the individual student. No provision is made for officials consider mitigating circumstances or context, or progressive disciplinary measures. The approach is unilateral, imposing ill-defined standards for behavior that may not be attainable for all students in all situations or that may create conditions of privilege for others.

4.3 STF Policy—*Student Discipline: Rights and Responsibilities* (2011)

The Saskatchewan Teachers Federation (STF) is the professional governing body for both school-based administrators and teachers in Saskatchewan. As an advocacy group, the STF outlines in this policy document the rights and responsibilities of principals and teachers with respect to student discipline. The policy acknowledges that "sometimes teachers and principals feel that their hands are tied in dealing with students whose misbehavior makes it difficult for teachers to teach and other students to learn"

(Saskatchewan Teachers, 2011). The organization briefly quotes from Saskatchewan's *Education Act* (1995), pointing out the responsibility of principals, not teachers, to suspend students from school for "overt opposition" to school authorities or for "gross misconduct" (Saskatchewan Teachers, 2011). The Federation understands "gross misconduct" as behavior that is defined by the "opinion of the principal," and it may be constituted by the "persistence of misconduct" or by a single incident (Saskatchewan Teachers, 2011). The Federation emphasizes the importance of ensuring that the "principles of natural justice" are followed when students are suspended, noting "courts are usually more concerned about the process and are content to let the discretion rest with the principal in determining what is serious or gross misconduct" (Saskatchewan Teachers, 2011). Principals are "only required to notify parents" regarding suspensions of up to three days, but are reminded that the "requirements for natural justice are more rigorous" for suspensions of more than three days (Saskatchewan Teachers, 2011). The Federation also observes school board policies "MAY NOT [*sic*] restrict the duty of teachers to exclude students from a class for overt opposition to authority or gross misconduct" (Saskatchewan Teachers, 2011). School board policies cannot "forbid [student] exclusion from class or require approval of a principal or director before the exclusion" or "take away from principals the discretion they have in making suspensions," although they may impose additional guidelines or requirements (Saskatchewan Teachers, 2011).

The age of the student is not a consideration in discipline, since "the law is applied the same for all students" (Saskatchewan Teachers, 2011). When an administrator considers applying a suspension—the only stated option or consequence for

student misbehavior—the Federation indicates "it is important that the focus be on the fact that the *behavior* is unacceptable rather than on the *nature of the child* [emphasis added]" (Saskatchewan Teachers, 2011). The STF goes on to clarify that the student is "being removed because he or she did something bad not because the child is bad" (Saskatchewan Teachers, 2011). Teachers, nonetheless, are allowed "considerable discretion" in maintaining their obligations to "[their] other students" by excluding children from class, but are required to admit students "back into [their] classroom the next day" (Saskatchewan Teachers, 2011).

4.4 Analysis of STF Policy

The Federation's position on student discipline deals solely with discipline from a punitive stance, with a unilateral focus on student misbehavior. It does not consider an educative or supportive component to discipline. Since the Federation is a provincial advocacy group for its teachers and administrators, it narrowly frames student discipline from the perspective of the well-being of educators in their workplace and emphasizes the legal aspect of their responsibilities in addition to the rights of parents and students. The policy does not consider any social or cultural issues that may affect student behavior in schools. It emphasizes the rights and responsibilities of educators, creating an adversarial tone in discipline among teachers, principals and students. There is no indication that mitigating or aggravating circumstances and context are to be considered in administering discipline to students, and students are assumed to be able to differentiate between the act of misbehavior and themselves. The policy offers no process for progressive discipline; suspension and exclusion from class and school are the only options or consequences for misbehavior. The policy does not allude to the

subjective interpretation of the grounds for suspension, such as "persistent overt opposition to authority," but simply cites the physical threat of a teacher by a student as an example of "gross misconduct" (Saskatchewan Teachers, 2011). In its support of educators' discretionary decision-making, the policy assumes their knowledge of natural justice principles and the requirements for the exercise of discretion, their knowledge of the standard of reasonableness, and assumes that their decisions will involve sound judgment.

4.5 School Board Policies

School board policies and by-laws are a "form of subordinate legislation" (Proudfoot and Hutchings, 1988, p. 72). School boards have "no inherent constitutional power to make laws as do federal and provincial governments" and, as a result, "their laws can be made only pursuant to a delegated authority under statute" (Proudfoot & Hutchings, 1988, p. 72). The school division in Saskatchewan where the study was conducted has policies for educators and administrators to follow when disciplining students; these policies are posted on the school division website. A number of policies and procedures relate directly to student behavior: *Discipline*, Administrative Procedure 375 (March 2008); *Suspensions and Expulsions*, Administrative Procedure 377 (March 2008); *Threats/Violent Behavior—Students*, Administrative Procedure 380 (March 2008); *Bullying Behavior—Student to Student*, Administrative Procedure 381 (March 2008); and *Prevention of Drug Use and/or Alcohol Abuse*, Administrative Procedure 382 (June 2007).

4.5.1 *Discipline, Administrative Procedure 375* (March 2008)

The guiding principle for the board's policy is "positive discipline" that "assists students to develop self-control and leads to a school environment which is conducive to learning" (p. 1). The policy references *The Education Act* (1995) and delegates to the "Principal and staff" the task of arranging for "corrective measures to deal with inappropriate student behavior" (p. 1). Corporal punishment is not permitted, although "restraining force" is one of the "behavior management techniques" that may be used with the objective of providing "a positive school climate for students" (p. 1). Section 3 of the policy outlines a progressive form of discipline that is to be used by identifying unacceptable behavior and assisting the student "in taking responsibility for his/her actions" (p. 1). According to subsections 3.2 and 3.3, teachers must show "that actions have been taken to assist the student in resolving the problem" before discipline is administered for classroom misbehavior (p. 1). Next, subsection 3.4, provides that student behavior should be discussed with parents/guardians, and then collaboration with student support services consultants may ensue for "classroom management strategies" (p. 2). Finally, the policy indicates discipline is an "individual matter," and students are dealt with "according to age, maturity, experience, abilities, interests, and values" (p. 2). If these measures do not result in "appropriate student behavior" the Principal is directed to discuss the situation with his or her Superintendent and "plan further action" under Administrative Procedure 377—*Suspensions and Expulsions* (2008) (p. 2). The Appendix to this policy outlines options for responses to student behavior, such as "in-school disciplinary alternatives," "restitution," "anger management," "individual behavior plans," and "community team approaches" (p. 3).

4.5.2 *Suspensions and Expulsions, Administrative Procedure 377* (March 2008)

This policy identifies the Principal and staff as responsible for "establishing and maintaining acceptable standards of discipline," and cites *The Education Act* (1995) in providing the foundation for suspensions and expulsions for "overt opposition to authority, or for serious or gross misconduct" (p. 1). It also defines suspension as being imposed for a period of one year or less and expulsion as being imposed for a period of more than one year, and a day of suspension being equivalent to one-half to one full school day (p. 1). The policy states "gross misconduct" is "considered to include" such behavior as possession or ingestion of drugs or alcohol, vandalism, theft, inappropriate computer use, possession of weapons, "hate violence", harassment, threats, intimidation or bullying, assault, sexual assault, fighting, discrimination, profanity, vulgarity, and "inappropriate language/attire and/or ethnic slur to another person including offensive language or graphics on clothing and person/school items" (p. 1). The procedures follow the actions required under *The Education Act* (1995), but also provide in Sections 1.1.2 and 2.2.2 for the "student to respond" to the reason(s) for "Suspensions For Up To and Including Three Days," and "Suspensions Greater than Three Days Up To, and Including Ten School Days," respectively (p. 2). Sections 1.3 and 2.2.5 of the policy direct the Principal to immediately remove the student and follow Administrative Procedure 380—*Threats/Violent Behavior—Students*, if the "safety of students or staff" is compromised (p. 2). For both categories of suspension, the Principal is required to "provide the student with appropriate instructional/assessment materials in a timely manner" (pp. 2–3) under Sections 1.4 and 2.2.7. As well, the Principal is to complete reports for both types of

suspension and submit them to the designated Superintendent. For any suspensions levied under Section 4, the Principal and student support services personnel will meet to "consider and plan for appropriate follow-up interventions and/or placement for students returning to school" and convey to parents/guardians information concerning school safety and any relevant contingency plans (p. 3).

4.5.3 *Threats/Violent Behavior-Students, Administrative Procedure 380* **(March 2008)**

This policy cites *The Education Act* (1995) and is premised on the belief that "all students have the right to learn and interact in a safe, affirming environment" and be treated with "respect and dignity," and that action "will be taken by staff" to respond to violent behavior that threatens that environment (p. 1). The policy defines a threat as "a written or oral communication or action that implicitly or explicitly states or demonstrates a wish or intent to damage, injure or cause life-threatening harm to oneself or another individual" and presents a hierarchy of "low risk threat," "moderate risk threat," and "high risk threat" (p. 1). The procedure to be followed is that every school will establish a Threat Assessment Committee that is "situational" and formed "at the discretion of the Principal" (p. 2), and based upon an investigation, this Committee will, determine the level of threat and the appropriate procedures to be followed in each case. Some of the outcomes include consultation with outside agencies, suspension or expulsion, notification of the police, and interventions at the school level. Appendices to the policy include a schematic of the "sequence of action" to follow in "dealing with a threat" (p. 5); the information crucial for determining if a student is at moderate or high risk, such as history of violence, involvement with legal system, social background,

personality, gang involvement, or substance abuse; and the personnel to be involved depending on the level of risk, such as school counselor, school psychologist, consultants, police, or other outside agencies.

4.5.4 *Bullying Behavior—Student to Student, Administrative Procedure 381* **(March 2008)**

The policy is premised on the belief that "bullying behavior shall not be tolerated and shall be dealt with in a serious and timely manner" (p. 1). The policy defines "'bullying behavior'" as "an assertion of power through aggression, abuse and social manipulation. It is intentional repeated oppression of a less powerful person/group by a more powerful person/group" (p. 1). Various types of bullying such as physical bullying, psychosocial bullying, and cyber-bullying are listed. The procedures to be followed in cases of bullying include the individual's responsibility to report, method of investigation, and the actions to be taken, based on circumstances such as maturity of individuals, context and type of behavior exhibited. The Principal, teacher, counselor, and/or school resource officer are responsible for follow-up on the bullying behavior, which may include contacting parents/guardians or making a referral to support personnel such as a school counselor or resource officer. If the bullying behavior continues, the incidents must be properly documented, parents/guardians are to be notified, and suspension/expulsion may be considered. The policy concludes with Section 4 that mandates educational programs on bullying for students and awareness of policy provisions for parents and staff. An Appendix references *The Education Act* (1995), the mission statement, and the Shared Values of the school division, which include belonging, respect, responsibility and desire for knowledge, in addition to indicating the

need for policy alignment with rights provided for under the *Charter* and provincial human rights legislation.

4.5.5 *Prevention of Drug Use and/or Alcohol Abuse, Administrative Procedure 382* (June 2007)

This policy is based on the premise that "healthy lifestyles" will be taught to students in order to "discourage drug and alcohol abuse," and outlines measures that can be taken to "establish school environments that are drug and alcohol free" (p. 1). The procedures under Section 2 require health education programming that is provincially mandated and the identification and intervention by staff regarding any student who "appears to be experiencing" problems with drugs or alcohol (p. 1). Responses may include such interventions as use of peer support teams, provision of information, recommendation to community agencies, development of prevention procedures, referral to drug and alcohol services, assessment by outside agencies and school counseling. If students are suspected of being under the influence of or possessing drugs or alcohol, Principals are to use a progressive disciplinary approach which may include a plan for intervention or school attendance, or suspension or expulsion of the student according to required procedures (Section 3). If students are suspected of supplying or trafficking drugs or alcohol, the Principal shall determine an appropriate course of action, in consultation with the Superintendent and the police.

4.6 Analysis of School Board Policies

While the provincial legislation is a system of "primary laws setting standards for behavior," the school division policies would be the "secondary laws specifying what officials must or may do when they are broken" (Hart, 1962, p. 163). The board policies

noted above are quite prescriptive in nature and are designed to regulate student behavior and to direct the administrator's response to misbehavior. The policies are solidly based on legislation; however, the procedures contain rules that are much more specific and detailed than those outlined in *The Education Act* (1995). The procedures do allow for the school administrators' exercise of discretion with respect to determining consequences for student misbehavior and within a framework of progressive discipline. There is an expectation of and requirement for shared decision-making among educators, administrators and support staff such as psychologists, counselors, and resource officers in determining appropriate consequences for misbehavior. These collaborative procedures also encourage the consideration and use of alternate discipline strategies which may serve to mitigate cultural or other types of misunderstandings on the part of educators. The procedures attempt to itemize types of "gross misconduct," a highly subjective term, and this attempt serves to limit the interpretive ability of principals and educators in exercising discretion. However, this description supports Brown and Zuker's (2007) contention that school boards should "provide some guidance" in their policies for terms such as "'swearing,'" since interpretation can result in "inconsistent and possibly unfair application of the law" (p. 239).

Suspension and expulsion are clearly regarded as options for disciplinary consequences and are the final consequences when other alternatives do not result in the desired behavior. Collective student rights are outlined, yet individual rights are omitted, and the school's responsibility in contributing to appropriate discipline is not directly stated. The policies appear to offer accountability for decision-making and refer to the completion of forms and reports and the documentation that must be adhered to in student

disciplinary issues. The procedures imply the dispensing of disciplinary consequences to students will be fair and equitable and that the school has engaged its students and accommodated learning styles and needs. No mention is made of the responsibility of staff for creating situations that may lead to the imposition of disciplinary consequences.

4.7 Chapter Summary

This chapter includes a description and document analysis of the relevant sections of the province's *Education Act* (1995) authorizing school administrators' exercise of discretion in matters of student discipline in Saskatchewan. The chapter also includes a description and analysis of the Saskatchewan Teachers' Federation (STF) policy on student discipline; the Federation is the provincial professional organization which governs teachers and school-based administrators. There are also descriptions of relevant school board policies of the school division in which the research was conducted that direct administrators' actions in student disciplinary situations. The chapter also includes analysis of these documents.

5 CHAPTER FIVE

5.1 Presentation of Research Findings

This chapter provides a description of the participants in the semi-structured interviews. It also presents the research findings which include quotations from the interviewees, in addition to quotations from relevant documents found in the literature and scholars in the field, to illustrate the eight themes that emerged from the data. The findings of the study respond to the research question and the ten sub-questions and are presented within the framework of the eight themes.

5.2 Description of Participants

The participants were asked to provide demographic information by completing the brief demographic questionnaire in pen and returning it to the researcher just before the semi-structure interview started. Each of the participants was given a pseudonym.

(a) Frank is in his fourth year of the principalship, and has been an in-school administrator for a total of eleven years. He indicated his age was between forty and fifty years, and "eleven years in an admin chair," he "did not consider himself inexperienced [as a principal]." He mentioned that he was six years from retirement. There are 144 students at his school and no administrator serving as a vice-principal.

(b) Miriam has been a principal for five years. She has been an in-school administrator for ten years, and indicated that she was between forty and fifty years of age. She is within five years of retirement, and she indicated she did not work with a vice-principal or assistant principal. The enrolment at her school is 330 students.

(c) Harold has been a principal for ten years and a school-based administrator for fifteen years. He revealed he was 57 years old and was retiring at the end of the current school year, and considered himself an experienced principal. He works with a vice-principal, and the enrolment at his school is 160 students.

(d) Shawna has been a principal for four years and an in-school administrator for the last seven years. She indicated she was between 50 and 60 years of age, was two years from retirement, and considers herself an experienced principal. She works with a vice-principal and the enrolment at her school is 200 students.

(e) Amanda is in her second year of the principalship, but she has been an in-school administrator for six years. She indicated she was over 50 years of age, and she considers herself an inexperienced principal. She does not work with a vice-principal, and the enrolment at her school is 132 students.

(f) Adam is in his third year of the principalship and he has been an in-school administrator for the last five years. He says he is between 40 and 50 years of age and indicated on his demographic information sheet that he considered himself an inexperienced principal. He works with a vice-principal and the enrolment at his school is 430 students.

(g) Danielle, a newly appointed principal, had served as a vice-principal for three years. She indicated her age was between 50 and 60 years of age. She considers herself an inexperienced principal, but one who is within five years of retirement. She does not work with a vice-principal, and the enrolment at her school is 260 students.

(h) Melvin has been a principal for two years and an in-school administrator for four years. He indicated he is between 30 to 40 years of age and considers himself an inexperienced principal. He works with a vice-principal and the enrolment at his school is 160 students.

(i) Lauren is serving in her fourth year as a principal, but has been an in-school administrator for eight years. She indicated she is between 50 and 60 years of age and considers herself inexperienced as a principal since she had been less than five years in the role. She works with a vice-principal and the enrolment at her school is 530 students.

(j) Sarah has been a principal for four years and an in-school administrator for the last ten years. She indicated she is between 50 and 60 years of age, and she considers herself an inexperienced principal. She works with a vice-principal, and the enrolment at her school is 340 students.

5.3 Observations of Participants' Responses

The participants in the interviews responded quite freely to the questions posed to them and willingly provided details and specific examples to illustrate the points they made. As Roche (1999) describes, the principals replied "with surprising candor," and with apparent "critical, personal reflection" spoke "freely, clearly and at considerable length" (p. 260). The probes and follow-up queries with the prompt questions tended to reveal their interpretation of their actions in the situations they described, and a number of principals commented on the opportunity for reflection the interviews and, more specifically, the questions provided. As Roche (1999) also discovered, the vignettes, or "hypothetical scenarios, readily gave way to vivid memories of similar experiences that

the principals had previously encountered" (p. 260). In their responses to the prompt questions, six of the principals also referred to the vignette, and indicated they had experienced, in part, similar situations in their own practices (see also Campbell-Evans, 1988). In a manner similar to that found in Roche's (1999) study, these participants at various times during the interviews appeared to express "feelings of self-doubt, optimism, and some disillusionment, but especially of genuine care for those within their school communities" (p. 260).

5.4 Results of the Interviews

As Rapley (2004) indicates, during the interview process, researchers may "raise some of the themes" that begin to appear "by asking interviewees specific questions about them" or, sometimes, "telling them" about their "thoughts and letting them comment on them" (p. 27). In this way, researchers may assess their "analysis of these specific themes by asking interviewees to talk about them" (p. 27). I found that certain patterns and themes, such as time in decision-making, trust, and experience, appeared early on in the data collection; however, although these topics were not part of the interview protocol per se, I nonetheless asked participants to talk about them.

5.5 Identification of Themes

Although each participant's worldview was unique, I discovered eight themes in the categories and patterns in the data obtained during the semi-structured interviews. These themes include "participant perspectives" as well as "*in vivo* codes" that use the wording of the participants themselves (McMillan & Schumacher, 2010, p. 371), while "verbatim language from the participants" serves to illustrate these themes

(p. 376). Descriptions of "what was experienced" by the participants and reflections of my "own experiences" were "integrated with those of the participants" in order to "construct an overall description of the experience" (p. 376). I used a "*recursive* [emphasis in original]" process in forming the categories or themes, which necessitated "searching for both supporting and contrary evidence about the meaning of the category" and the progressive grouping and regrouping of "codes and data segments" until eight "specific" themes were established (p. 377). The themes which emerged from the analysis are shown in Table 1.

Table 1

Themes Revealed in Data Analysis

Theme Number	Description of Theme
1	Principals' Understanding of Discretion in Disciplinary Decision-making
2	Principals' Understanding of Their Role in Discretionary Decision-making
3	Principals' Espoused and Identified Values in Their Discretionary Decision-making
4	Principals' Understanding of the Significance of Experience in Discretionary Decision-Making
5	The Role of Policy/Legislation in Principals' Use of Discretion in Their Disciplinary Decision-Making
6	Student-Specific Influences Affecting Principals' Discretionary Decision-making
7	External Influences and Pressures Affecting Principals' Discretion in Disciplinary Decision-Making
8	Principals' Use of Discretion to Find the Balance Between Individual and Group Interests and Rights

The research questions that frame the study will serve to undergird the presentation and discussion of the findings within the identified themes. While certain themes may relate to more than one research question, all ten sub-questions are addressed in the following discussion. Since "some codes fit into more than one category" or

theme, the "elasticity" of "codes and category meanings" underscore the inter-relatedness of the questions, and the "complex links" among the participants' "beliefs," thought processes, and "actions" allows "*patterns of meanings* [emphasis in original] to emerge" (McMillan & Shumacher, 2006, p. 378). These patterns of meanings elicited from the themes or categories are used to illustrate and answer the over-arching research question of how school principals negotiate within the legal parameters of discretion in order to maintain their own values system when they make decisions in matters of school discipline. This research question comprises the following sub-questions:

1. What is the nature of discretion in general?

2. What are the influences on discretion?

3. How is discretion understood and practiced by school administrators in their decision-making?

4. What influences, values, or circumstances do school administrators consider in their decision-making?

5. Is there a hierarchy of influences, values, or circumstances that shape school administrators' exercise of discretion in their decision-making?

6. What kind(s) of knowledge do school administrators believe they need in order to make discretionary decisions in matters of student discipline?

7. What do school administrators perceive to be appropriate and inappropriate exercises of discretion in student disciplinary issues?

8. Do school administrators believe the exercise of discretion assists or hinders them as they work to balance competing rights in the school setting?

9. What do school administrators perceive to be an appropriate measure of accountability for their discretionary decisions?

10. In what ways do school administrators justify their exercise of discretion?

5.5.1 Theme One: Principals' Understanding of Discretion in Disciplinary Decision-Making

This theme focused on the way in which principals appeared to understand the nature of discretion and how they exercised it in their disciplinary decision-making. The participants appeared to understand discretion in various ways, such as an unarticulated element of decision-making and as a feeling and a gray area. Their perceptions of how it was exercised included the necessity for gathering information, the time required for decision-making and the importance of not making decisions in haste, and the imposition of a line in the sand or a finite point. The principals' understanding of discretion and their perceptions of how they exercised it in decision-making answered research sub-question 1 concerning the nature of discretion in general, research sub-question 3 concerning their understanding of discretion as they practiced it in decision-making, research sub-question 5 concerning a hierarchy of influences, values or circumstances shaping their exercise of discretion, and research sub-question 7 concerning appropriate and inappropriate exercises of discretion.

Discretion did not appear to be foremost in the perceptions of principals as an element of their decision-making despite their being informed that it was the topic of inquiry. In fact, in answer to research sub-question 1 concerning the nature of discretion, most participants seemed unable to articulate a definition of how they interpreted it, and many seemed to describe, instead, what they perceived to be the effects of discretion in

their practice. Only one of the principals provided anything approaching a concrete definition when asked to describe discretion in decision-making.

> Shawna: "*When I use the word judgment, I am referring to the capacity to assess situations or circumstances shrewdly and to draw sound conclusions, not based on a value judgment. The discretion I would use would be based on the needs of children and interventions to promote growth for the child involved…discretion should be based on sound decision-making practice.*"

Many principals appeared not to have considered discretion per se as an element of their decision-making in disciplinary issues although, upon reflection, they indicated that they did exercise it:

> Amanda: "*Discretion is based on your own paradigm…probably not congruent with others…it could, could be judgment, I guess. I can use that as a synonym, but it does not sound as polite as discretion, does it*?"
>
> Danielle: "[Being a fairly new principal] *I have sort of stuck fairly closely to what I know is sort of accepted procedures* [and have not exercised discretion]."
>
> Shawna: "*In the course of the day, I have lots of discretion on how we are making any decision in terms of our kids in this building, be it academically, behaviorally, whatever the case is.*"
>
> Miriam: "*I always try to say is this the right thing for the kid? Is this the right thing for the school? Is this the right thing for the teacher?*"
>
> Melvin: "*When you* [Nora] *say discretion, what do you mean?* [Nora: Is it like applying judgment?]. *Yes, absolutely.*"
>
> Sarah: "*Equity* [Is a synonym for discretion]."
>
> Lauren: "*Discretion, knowing the background of the children, knowing what their relationship is with their teachers within the school and knowing how many times they have been in the office.*"
>
> Harold: "*Well, I mean you take a look at the whole situation, right? You take a look at the background, you take a look at the community, families…at safety features…the past experience of the individuals*."
>
> Adam: "*I guess I have measured everything off of, well, what I do with my own kid in the situation, so that whole in loco parentis thing. It's kind of my guiding principle in terms of discretion.*"

> Frank: "*I'm responsible for everything that goes on here, so if we've decided as a group that…we have policy, we have provincial policy…so if you have a kid that hasn't been to school for ten days, and we don't know where he is…then we take him off the books now. There's not discretion in that any more. There are things that we do that we don't have discretion about.*"

Other principals appeared to understand discretion as a type of feeling they had when they made a decision:

> Miriam: "*Probably a little bit* [that guides you] *is your gut and your heart.*"

> Lauren: "*I think you go through gut sometimes*."

> Amanda: "*Sometimes when you are making those decisions you got to go with your gut and if your gut misleads you, then I think you have to apologize and you have to say, 'I didn't make the best choice there'…*[sometimes] *it is just a gut feeling.*"

One principal likened the feeling or sense to an intuitive one:

> Adam: "*I think it is a lot of body language that you read, it is even the words that you hear. It is the weight, it is the tone of voice. I mean all of those contribute to intuition; it is whatever prior knowledge you have that informs your sub-consciousness as you are working through these things.*"

However, one principal felt that to not exercise discretion at all, and to follow a rule, policy, or legislation would indicate indifference, if not cowardice:

> Melvin: "*I think it is easier* [to follow the procedure book] *because then it is not you making the decision. You are gutless then. You need to be able to make a decision and use your discretion around this decision and stand by it.*"

Some principals understood discretion in a more colloquial sense as a "gray area" in their decision-making, as opposed to decisions that were more obvious, or black-and-white:

> Frank: "*I don't think we work in definites, in black and whites…this policy of the example* [vignette] *is black and white, and I'm not seeing a lot of discretion in that one… There's gray areas…I don't believe we would have policies. I think we ignore them a bit and we operate in more of a practical world than sometimes the policies let us do, and we operate in more of a child-centered world…So if you're a black and white person, and follow policy, you'll get back up. Sometimes you look for ways to fit a situation, or you know if there's a hard, fast rule, again I*

> *look at the impact on the child and say, does the ends justify the…giving this child a three day suspension, or should it be more than a three day because he did this…is that serving the purpose? Sometimes you have to bend the rules a bit.*"

> Amanda: "*I think it* [decision-making] *is black and white for lots of principals, actually. I think suspension is too easy. I think my colleagues at the high schools* [use] *suspension, just because it is easy…I am sort of this nebulous girl who tries to fit in the square box of policies and procedures.*"

> Lauren: "*It* [following rule or procedures] *depends on your situation. I mean, it is kind of like I am not ignoring the suspension law, but I am trying to work within it for the betterment of the student…and school and staff…I think there is a lot of gray area.*"

Some principals suggested it may be difficult to make an appropriate discretionary decision, unless they have what they perceive to be all pertinent and relevant information regarding a particular disciplinary issue (research sub-question 7):

> Frank: "*The hardest ones* [decisions] *are…the social ones where there are not clear lines and sides. Those are hard to apply…where you got to judge. You have to make sure you have all your information, when mediation doesn't work, and you've got to make some decisions about really who's at fault and who's not.*"

> Adam: "*It was very important for me to understand where these* [fighting] *boys came from in terms of how they wound up in situations, so I spent a long time actually talking to a whole bunch of kids, to try and get some sense of how this* [fight]*…occurred…so it is very important…the physicality is extremely important…this was a fight you know, so for me that is highly important to spend the time to figure out what happened.*"

> Lauren: "*I guess* [it is] *not being fair, I guess maybe* [me] *being bullied by a teacher, not listening to all the information and reacting inappropriately by giving a child an inappropriate consequence when I do not have all the information.*"

> Danielle: "*I try to get the facts and I try to ensure that the decision I am making is the best decision for the student and the school and I'm not making it because my buttons have been pushed*."

Sometimes information was required if the decision is challenged by a parent or stakeholder, and it could be useful in aligning the decision with board policy or preventing the administrator from making a poor decision:

> Harold: "*I just make sure we have everything documented in an objective fashion, right? So that you can say, 'This is the situation,' and if you need to fall back on school board policy at those times you can, because they* [parents] *will likely look toward the school* [and challenge you]."
>
> Sarah: "*I would talk to that teacher* [about the incident]. *I would talk to the student to find out exactly what he had said…and…ask the teacher to write some report….eventually she would have to write up a report on that and talk to my superintendent.*"
>
> Amanda: "[When you are uninformed] *you started to second guess yourself. I'd rather be fully informed and give the kid a 'cool off' for the afternoon in the library before I suspend them rather than throw them out of my building and not be fully informed. I am not going to make those mistakes, because I have done that before.*"

Some of the administrators considered inappropriate exercises of discretion in disciplinary situations (research sub-question 7) as being decisions principals may treat very simplistically and quickly when, in fact, they are really more complex:

> Shawna: "*All of a sudden, as we are investigating, we are finding that there is more* [to consider]. *Start peeling back the layers. It is never cut and dried. When you start peeling back the layers and all of a sudden you find that he has been talking about hurting someone.…the difference is when it comes to kids…it's not so cut and dried.* [If] *you resort to things that are the easiest…*[if you] *say 'You are going home,' and then they go home to chaos and they are going home to whatever…that is always the easy way to do it, isn't it?*"
>
> Adam: "*I learned very early on in my administrative career, I did come down in a sort of very cut and dried and hard-and-fast response in a couple of situations, which ultimately proved to be counterproductive.*"
>
> Harold: "*It* [a quick response] *is not best for the school…certainly not best for Gary* [student in vignette] *to suspend him for two weeks, but it's the easy way of doing it….it's zero thinking.*"
>
> Frank: "*I got out the board policy book and The Education Act and* [made] *some pretty easy decisions, because I can say this is what this says and this is what we have to do no matter what.*"
>
> Danielle: "*Well, if you are just sending students away from school because you know it's easier* [and] *would make the teachers happy,* [then] *they can be someone*

> *else's problem, send them off to another high school…because it's easier than having to work through the process of helping that student to be better.*"

Most principals had the perception many appropriate decisions were not able to be made in a hard-and-fast manner, without consideration of the student at the center of the decision or of the context (research sub-question 7):

> Danielle: "*It is just very easy to make hard-and-fast decisions. They* [principals] *rely on the rules; they don't hear about the young person. They don't know about the young person.*"

> Adam: "*You know, most of the time a hard-and-fast response is not the appropriate response. You need to pick up on the nuances and the context of the situation. Now having said that, I also have experienced the situation where you had to have an immediate response, no conversation; you just need to deal with it.*"

> Melvin: "*In the context of this school hard and fast rules do not work. Hard and fast discipline does not work because what happens is the kids have none at home. There is no discipline and so when they walk in the* [school] *door, they just rebel immediately….I use the hard, fast rules only when I need to and have I ever pulled it* [statement of rules] *out and put it in front of a kid? No, not once, but yet I have every parent sign it.*"

> Amanda: "*It* [good decision-making] *is part of the understanding of children. To some principals it* [the school] *is a corporation…it is a hierarchy to the next job. It is corporate…so sadly it is a hierarchy of size of school and it is sad because it looks like each child does not matter…you are compensated according to size*."

On the other hand, taking the necessary time often appeared to be a required element in order to appropriately exercise discretion in decision-making:

> Miriam: "*When it comes to a* [quick] *decision...* [I will pull] *a kid from recess or something like that, but if it's having an in-school suspension, or an at-home suspension, I wouldn't say I make those hastily.*"

> Sarah: "*I think you have to be able to take the time you need to think something through. Sometimes the decision does not have to be made right away. Maybe you can take twenty-four hours to sleep on it and think about it and think about what the best way is…and if you can just take that time that helps, so being able to not rush into a decision* [is necessary]."

> Frank: "*Some issues in bullying… are pretty easy to see, but when you just get the normal, your every day run-of-the-mill things that come through here, you really have to take your time.*"

Consequently, if decisions were made in haste, without consideration of circumstances or situation, principals may consider them also to be inappropriate exercises of discretion in decision-making:

> Sarah: "*If you have a lot of things happen in one day and you have got somebody who just does something over the top and you've had it and you make a rash decision without taking the time to slow everything down*…[and do not consider] *the circumstances or even the needs of the child in that situation.*"
>
> Amanda: "*When they* [principals] *do something that is inappropriate and make that snap decision, 'Your kid is suspended,'* [and] *then have this litany of reasons* [as to] *why he should have been*…."
>
> Lauren: "*You really need…to take the time to talk to the adult, the child, whatever and not make a snap decision. I think that is one of the things I learned. I can always say 'I won't have more information until tomorrow. I need to think this over'* [and] *take the time because I think we're pressured not to take the time and to react* [quickly]."
>
> Miriam: "*When you have one of those* [busy] *days you make decisions a little more quickly…and I do try not to do that, unless someone was physically being pummeled or something like that.*"

For one principal, however, a certain type of decision was always easy to make:

> Frank: "*Those are easy ones…the drugs and the alcohol in schools. Absolutely black and white. Those are no-brainers.*"

Yet, at other times, there appeared to be no opportunity to exercise discretion, that is, when an apparent line in the sand had been crossed and a quick decision was necessary. Again, decision-making was contextual for the principals, and there were some situations, safety being one, in which there was no flexibility or judgment (research sub-question 5):

> Harold: "*The no-smoking policy, a drug policy, those things I deal with rather quickly…that was the quick consequence.*"
>
> Lauren: "*Safety. Drugs. They need to be out of here for drugs and alcohol. I mean, I know last year we had kids with alcohol in water bottles and their parents*

were called in and they were definitely suspended....if there is harm to the person themselves or to others within the building, definitely they need to be suspended…also the kid that we just suspended, the last thing he needed to do was be at home for three days…but it was just kind of, it was a bottom line that he crossed the line of threatening a staff member and so it was for the good of all."

Amanda: "*We're a family here and the student marginalized one of our staff, and I cannot allow bigotry. In fact, I would have allowed him to hit his teacher out of anger, before a racial slur…that is when it is about tolerance and acceptance of others, no that is my line right there…at some point it is black and white, you know and that is black and white to me and that is a feeling I have.*"

Adam: "*The possibility of a gun in the school has to be dealt with immediately or knives or whatever, anything that would threaten the safety of the kids.*"

Frank: "*People will want a line to be drawn in the sand. And if this, this young guy has stepped over that line a number of times* [vignette], *I think at some point we need to draw the line. It sounds that this is a number one of a number of things he has done…it's time to draw a line. It would be time to draw a line with him. And to say, 'You know, there's got to be an empty road somewhere, now, and we've got to keep everyone safe.*"

Shawna: "*I mean, if you are suspecting kids are bringing drugs to school and knives or whatever the case is, I mean absolutely you do need to follow that* [policy]."

5.5.2 Theme Two: Principals' Understanding of Their Role in Discretionary Decision-Making

This theme focused on the way in which principals understood their role in discretionary decision-making. The participants appeared to understand their role through the responsibility they felt, the amount of time they spent on discipline, their need to investigate situations, their desire for collaboration and shared decision-making, and their obligations under the doctrine of *in loco parentis*. The principals' understanding of their role in discretionary decision-making answered research sub-question 2 regarding influences on discretion, research sub-question 3 concerning how discretion is understood and practiced by school administrators, research sub-question 6

concerning types of knowledge they believe they need to make discretionary decisions, and research sub-question 7 concerning appropriate and inappropriate exercises of discretion.

The principals' role in discretionary decision-making was perceived in various ways by the participants although all seemed conscious of the importance of their position within the school environment. Two of the principals defined the role of the principal as a decision-making one:

> Harold: "[Decision-making] *that's what we always do. Right? I go home and I don't want to have a decision about supper and neither does my wife.*"

> Adam: "*I go home at the end of the day and my wife says, 'Would you like to do this or this?' and I say* "*I do not care, having made decisions all damn day. You decide.' To me, that* [making decisions] *is entirely what we do.*"

The principals' understanding of the influences upon their discretionary decision-making (research sub-question 2) changed depending upon the time and the individual stakeholder's perception of their role. Stakeholders' perceptions could affect the types and the number of disciplinary referrals to the principal and, as a result, their exercise of discretion:

> Amanda: "*The old philosophy of administration by the principal's office when I was young was you sent your problems to the office; the office handled them and sent them back. Well, children are not problems. They're making poor choices in the day, so you have to help them make a better choice…I do not ignore established rules like no running in the hallway; it is not safe, but some rules* [e.g., no hats] *are just legalisms of the building and I say they are stupid.*"

> Adam: "*I would say* [my] *role is varied and changing constantly, depending on the situation. Sometimes it is very much to be that enforcer, that heavy person in the school, and at other times it is about brokering responses between teachers and student and students and students. It is, I would say, equally about educating as to what are acceptable and not acceptable behaviors, responses and actions within the school, not necessarily to be punitive, but to inform.*"

Other principals felt that the weight of the responsibility of making decisions for all those individuals within the school environment influenced their decision-making:

> Adam: "*On one hand, I bear the responsibility in the building for the safety of the children that are attending that school, and that is something that weighs heavily on my mind on any given day and, therefore, I need to make sure that those kids are as protected as I can possibly make it.*"
>
> Danielle: "*I try to hear what parents and staff have to say, though, because it's real and I mean their feeling is valid, too, and it is real, and I have to let them know what I think is best for the young person within our school* [because I am the one responsible]".
>
> Melvin: "*We are given, as principals, a lot of discretion in terms of what we make decisions about, from our senior admin…the common sense decision-making is what we are given…common sense decision-making…is as long as you are making decisions with common sense, you are going to be supported. Once you get outside of that, I think it's hard for them to support you…I think we have to be given that responsibility, but it is an important responsibility to handle properly.*"

The volume of disciplinary situations appeared to influence their discretionary decision-making (research sub-question 2). The principals indicated the time they spent attending to disciplinary issues could range anywhere from 10–80% daily, depending upon whether follow-up, such as communicating with parents about disciplinary issues, was included, or whether disciplinary concerns were shared with a vice-principal. Adam, in his school of 430 students, noted he spent "*5–10% at the worst*" with the "*students themselves*" each day, but 30–40% talking "*to the parents, explaining the situation, the response, contacting, letting them know*." Melvin indicated 40–45% of his time was spent with only eight to twelve students whose misbehavior in his school of 160 students was "*chronic*." Lauren indicated that while discipline accounted for 60–70% of her and the vice-principal's time in their school of 520 students, the behavior of a group of twenty students occupied a majority of that time. Sarah indicated she and her vice-principal could "*easily*" spend up to 80% of a school day on discipline in their school of 340

students, which included "*dealing with the situation, giving the consequence*…[and] *doing a whole lot of teaching*."

Five of the principals understood their role in disciplinary decision-making through the legal principle of *in loco parentis* and the wide discretion they believed it afforded them (research sub-question 2). Some appeared unaware that their interpretation might not reflect an accurate understanding of the principle[14]:

> Amanda: "*It* [*The Education Act*] *is too out-dated and too archaic…but I tell you what covers your ass is the loco parentis….I think that is the only line that they need to really print. Just put in The Education Act, in loco parentis. Because that is the one really when we are going to go head-on in the court of law. I can say that I did that* [decision] *in a caring, kind way and in loco parentis. Because you are making the best decision you can at that moment.*"
>
> Adam: "*It's kind of my guiding principle in terms of discretion. What would I do with my own kid in this scenario and what I would want done with my own kid in this scenario…given the framework? Because we do have guiding policies, but the discretionary part of a policy, which to me, I default to that,* [is] *in loco parentis…I am the parent here while they are in the care of the school. I am the parent and I am to be just a judicious and responsible parent…the standard that I would be held to in a legal sense would be much higher than a parent would be.*"
>
> Danielle: "*I think we take a greater role as far as being parents; we attempt to do more, not thinking that the parents can't, but the parents are, they are stretched, so we just sort of try and fill in some of those gaps.*"
>
> Melvin: "*I think of my role as a principal, but also my role as a father* [Nora: As *in loco parentis*?]. *Yes, absolutely.*"
>
> Sarah: "*I think that if I am acting in loco parentis that I am covered by The Education Act and if I am ensuring the safety of students, there are certain things that I need to do and there are certain laws that I need to follow, and I mean a law is a law, so then you would need to follow it. But when it comes to making a decision about discipline or consequences of any kind, then I have some leeway*."

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[14] Dr. G. M. Dickinson of Western University offers reasons principals might refer to *in loco parentis* as guiding their decision-making, even though the "doctrine is of less and less relevance, especially in the discipline area." He reasons "they like the sound of it; it makes them sound learned; they received less than an accurate ed law grounding; phrases have a way of hanging on long after their shelf life; and the courts haven't come right out and put a stake through its heart" (personal communication, March 15, 2011).

Many principals understood their role in disciplinary decision-making as having the ultimate decision or as being at the end of the decision-making chain (research sub-question 3):

> Harold: "*Well, I'm the end…because the buck stops here, right? And I have to answer to the board or the trustees if they get involved, right?*
>
> Frank: "*That persona is still in the schools…of where the buck stops. You're the end of the line…so you are the top of the food chain in the discipline. I don't think that part of it has really changed because there's an office; there's a place to be sent…if things go wrong in this school, they're my responsibility. If we've got kids who are truant, who aren't coming to school, that's my responsibility, that's my role that I play. I've got to make sure…that the kids are ready to learn.*"
>
> Melvin: "*I mean that maybe one of the flaws of our school system is that, you know, we are seen only as authority figures rather than someone who is helping them with the learning and, in particular, in the principal role. I mean when you end up here, it means you've hit the last kind of level that you can.*"
>
> Sarah: "*It* [discipline] *ends up coming to me…like I do not have to necessarily make all the decisions, but in the end when somebody said the buck stops here, it does really, and then I mean it does not just stop here. Then it moves up the chain, you know, to the superintendent, but in my school it comes to me in the end.*"

However, staff sending a misbehaving student to the principal's office for disciplinary consequences was not always perceived by principals as being a necessary part of their discretionary decision-making, and not a part of their practice that they encouraged (research sub-question 3) :

> Lauren: "*If the child is always sent to me for the problem, it doesn't help anything get better in that classroom, so again it is more of the educational component overall…but I deal with playground issues, bus issues and classroom issues…*[I am] *where the buck stops.*"
>
> Danielle: "*I try to be supportive of my staff. I believe I have a very strong staff, and I also try to encourage them to believe that they have the skills necessary* [to deal with misbehavior]. *I encourage them to 'own' the problem because the minute they abdicate their authority, I think that they lose their credibility. I support them if they feel that I need to be involved. I support them, but I've also said to them that you might not like how I choose to resolve the issue once you turn it over to me.*"

> Amanda: "*The cash and carry kinds of behaviors…where somebody is misbehaving in the classroom, then they pick up the kid and they bring them to me and then I am supposed to take care of them without* [knowing the] *background. So they say he was talking in my class, interrupting instruction. Fair enough, but by bringing me the cash and carry problem…I won't have it. My role for student discipline is to track discipline, to track conduct…I want to be at the front end of proactive, as opposed to the back end of cleaning up the mess.*"

Nonetheless, many principals also saw one of the dimensions of their role as supporting teachers in student disciplinary situations[15]; this support appeared to be an expectation in some cases and an influence on their discretionary decision-making (research sub-question 2):

> Frank: "*I'd have to get a sense on what his immediate teachers talked about* [student Gary in vignette]. *I'm making some assumptions here. I'm assuming that teachers will expect that this kid gets dealt with because he's had chances.*"
>
> Shawna: "*My role is to work with my teachers, so that my teachers know our overriding philosophy of this school…and if the teachers function with structure and routines and expectations in their classroom they end up dealing with all the little minor things in the school. The kids should form relationships with their teachers…it's when the kids that are really struggling and going and having a really tough time…distracting the rest of the class, then that becomes my role supporting the teachers in that and finding ways to problem-solve with these kids that are struggling with being in the classroom.*"
>
> Danielle: "*It* [suspension for student Gary in vignette] *would depend on your staff. Is your staff going to buy into your feelings about this young man, or are they going to say 'We have to do something'? So you walk a fine line, and your staff needs to feel supported.*"
>
> Lauren: "*You know it* [student behavior] *just was not appropriate; they were not treating a teacher respectfully* [and were suspended]. *As a first step I like to go into the classroom and take* [over] *the classroom* [so that] *the teacher and the student* [have the opportunity to] *try to come to terms with what is happening.*"

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[15] The study of Saskatchewan teachers conducted by Martin *et al*. (2012) found the majority of teachers' self-reported difficulties with school administrators were when principals or vice-principals "failed to support teachers at critical points in time when they genuinely needed leadership and assistance" (p 19); many of these times involved behavioral incidents with students.

However, teachers who expected support from their administrators appear to have a professional responsibility as well:

> Amanda: "*I said, 'Your job is to problem-solve with that child and to think of a better solution for tomorrow so they can make a better choice for tomorrow. Because you send them to me, what do you want me to do?' So it has to be a threat to themselves, threat to others and a threat to a teacher or a respite. I suppose I allow teachers that if they are just fed up.*"

Most of the principals understood a large part of their role as being an information-gatherer in disciplinary situations involving students.[16] The principals interpreted knowledge they needed in decision-making as factual information specific to the behavioral incident. This factual information would inform their decision-making and would be collected through such means as questioning students, listening to stories, and interviewing witnesses. This information they garnered, then, would be one of the kinds of knowledge that would inform their discretionary decision-making (research sub-question 6):

> Frank: "*But you don't know until you've investigated. So it's two weeks* [length of suspension for student Gary in vignette], *but the first part of that also gives you time to look into it more.*"
>
> Lauren: "*The issue on the weekend* [in vignette] *to me is not a school issue. That is an issue that is outside the realm of school and I would try to collect some information.*"
>
> Melvin: "*When I make my decision I want to know all of the different stories from all of the different people involved in what happened…I want the facts or the version of the facts from the people involved. I want the version of the facts from the witnesses.*"

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[16] T. Greenfield (1980) contends "any administrator who foolishly sets out to base his action on facts alone will find himself swept away in the maelstrom of action created by those who will not yield their human capacity and—as they see it—their right to decide, to choose, to impose value on the world and to impose self and will" (p. 43). He adds that the "basic consideration in this matter is simply that *ought* cannot be derived from *is*. Facts are, but they cannot tell us what to do [emphasis in original]" (p. 43).

> Danielle: "*I have to be informed. I cannot make a decision without…it can't be done at arm's length. Lots of people do it at arm's length, but I can't.*"

> Sarah: "*I just make sure I have really clear facts; that I have reports from teachers, that I have…the information that I need to explain to the parent that, no, this actually did happen and your child was involved, and so I make sure to have my ducks in a row…before I call the parent and when I talk to a teacher.*"

Not having all the information may result in principals feeling hesitant or conflicted in applying the rules and may undermine their confidence:

> Adam: "*If I can't get a good read on the situation, if I can't really figure out what has happened, if there is not any clear evidence of what's actually transpired, I really struggle with those situations because I don't want to punish or penalize in any way somebody mistakenly, and so I get very nervous when I just don't have a clear handle on what's actually transpired.*"

Furthermore, not being fully informed or not gathering all available information could result in inappropriate discretionary decision-making:

> Amanda: "*I am not going to make those mistakes* [in decision-making] *because I have done that…before I was an administrator I was a classroom teacher. That happened with me and I wanted him punted and I went down and I was not fully informed. It was bad. I learned very quickly in my career.*"

Gathering all available information for an informed decision, however, may allow principals to justify their decision-making to stakeholders (research sub-question 10):

> Shawna: "*I think in most cases you have to sort of investigate everything, right? You have to say in at the beginning that it* [suspension] *may be right for that many days but we need some time to look into things...but our job is to investigate the whole thing, right? Not just the snapshot and I find if you actually investigate absolutely everything and put it all together…they* [families] *accept that because you have done the work.*"

Principals, for the most part, appeared to understand discretionary decision-making in a collaborative sense, and they valued shared decision-making, especially in complex disciplinary situations (research sub-question 3):

> Sarah: "*It could be up to ten days' suspension if that is what the policy states, and then give them* [stakeholders] *what we've decided as a team here and with our*

superintendent what it would be, especially for something as serious as this [vignette]."

Adam: "*To kind of clarify a little bit…I suggest bringing in school guidance counselors or those sort of extra professional people even outside agency people* [vignette]."

Shawna: "*I like to think that the discretion that I would use would be going to my colleagues within the building. Almost a team approach in terms of something is happening. What can we do here together?*"

Melvin: "*I would probably seek out somebody that would know a child that I did not know to get their advice…as principal of a school, if I have a vice-principal, which I do, I would bring the vice-principal in on the decision-making process…and I mean certainly I guess I would say even further to that is involve the superintendent, but I would also involve the parent in the decision-making process as well* [vignette]."

Lauren: "*I know that I have some principals who phone me just to talk things over because they do not have a vice-principal and they phone and say 'I just need another view on this. What are your thoughts?*"

One principal acknowledged the need for increased collaborative decision-making:

Danielle: "*I have to get better at asking other administrators what they have done… not that it always guides me, but at least it gives me that spectrum of where they're sitting as well. I sometimes don't think to ask. Then it depends on the situation as to which administrator I might phone.*"

Some principals indicated their decision-making often was shared with their school resource officer, especially in issues they saw as having legal overtones, perhaps to compensate for their lack of knowledge in a particular area (research sub-question 6):

Harold: "*No I don't think he should be charged* [student in vignette]*, but it would be up to the resource officer, but a lot of times the resource officer, in my experience, has* [input]*…we have discussed it and come to a consensus.*"

Sarah: "*I will bring in the resource officer and then that would probably go to a different level.*"

Lauren: "*I think I would have the resource officer involved as well, and I also have a vice-principal, so there would be more than one person involved* [response to vignette]."

Shared decision-making may also provide some protection against a backlash to their decision-making and, seemingly, some justification for that decision.

> Amanda: "*I do not make the decision by myself because I do not want everybody coming down on just me. I wanted a collective decision.*"

5.5.3 Theme Three: Principals' Espoused and Identified Values in Their Discretionary Decision-Making

This theme focused on principals' understanding of their valuation processes in discretionary decision-making. The participants understood and acknowledged the place of values in their decision-making by explicitly stating and identifying them (research sub-question 4, research sub-question 5, and the over-arching research question). However, unarticulated values appeared to influence their decision-making as well. It should be noted all principals appeared to value safety as being of primary importance in their discretionary decision-making. This would suggest this value would be at the top of a hierarchy of values that inform principals' decision-making. School safety appeared to pre-empt all other values when principals made decisions. This value is discussed under Theme Six.

Many principals appeared to value responsibility, respect, dignity, caring, tolerance, and belonging as guides in decision-making. These values did not appear to assume a hierarchy of importance in their decision-making (research sub-question 5):

> Frank: "*When the kid does swear at a teacher…do we run and get in their face…Or do we figure out why and then you show them how to take responsibility for the mistake they made?*"

> Shawna: "*So if I treat them like they are my own kids, that means with respect…I try very hard to work from a respect issue. If I want my kids in the building to be respectful, I better be treating them respectfully as well…treating people with dignity…there is hope…a caring way.*"

Amanda: "*Belonging…love, kindness, respect, mutual respect, security* [are values that] *inform my decisions.*"

Harold: "*Our assemblies are based on the Circle of Courage and they are belonging, generosity, mastery and independence. Those are what guide us throughout the year…we work on that*…[I] *model and believe in them.*"

Melvin: "*Really it is to be kind to others and try to be kind to yourself and respect everybody that you interact with.*"

Lauren: "*I just mean the honor, respect, responsibility kind of thing* [informs my decisions]*…you know are they being respectful, are they being honest, have they been treating others how they want to be treated?*"

Sarah: "*I would find that there is compassion. There is a lot of caring that goes into thoughts before I give out any kind of consequence…as long as you have respected their child and respected the other children of the other parents.*"

Adam: "*Tolerance as a value is huge for me and I do not feel there is enough tolerance in our system any more. When we talk about the need for tolerance, but actually I find that we are becoming increasing <u>intolerant</u> as a society.*"

Frank: "*Everyone needs to be heard…everyone belongs here…everybody has value, everyone has core strengths.*"

Personal religious values were not explicitly indicated by most principals as informing their decision-making; however, decision-making may be seen by principals as being guided sometimes by a personal philosophy:

Shawna: "*It's hope and faith that guides you. As opposed to my religion…it is about humankind, it is not about religion.*"

Sarah: "*I have my own conscience as well, my own beliefs in being honest and being kind to people.*"

Danielle: "*I think it is more like a personal philosophy about the worth of young people and where they belong in our society. So recognizing their worth would be a value as well.*"

Three principals, however, acknowledged the influence of their personal religion in their discretionary decision-making:

Frank: "*I've been brought up in the Christian church, I've been brought up in a Christian family, and it cannot impact my decisions…but that's part of the*

Christian values, like when I said it's not fundamental, but that is the welcoming piece of it, that we all add value to it, that's part of my faith."

Danielle: "*You know that* [Christian values] *is probably part of my underlying values…you know only church on Sunday and Sunday school, but it was a pretty strong message. We need to treat people well…it's part of who I am…I just sort of think of how I was raised has sort of informed my values.*"

Amanda: "*I am a spiritual person…I am still Christian…but more on the spiritual as I will get older I think, and so I always encourage with students that they have outlets.*"

Many principals viewed the value of acting in the best interests of their students as guiding their discretionary decision-making. This articulated value appeared to be fundamental to their decision-making (research sub-question 5):

Sarah: "*It* [decision-making] *also has to be good for the child.*"

Adam: "*What is going to keep them safe to start with and what is going to be the best response to ensure their learning program,* [that] *their learning is as good as we can make it.*"

Amanda: "*You make them* [decisions] *in the best interests of the family, of the child always. It is always about the child…principals make decisions not according to The Education Act, not according to the building…they make it in the best interests of the child at that time.*"

Harold: "*You're dealing with people your judgment can affect tremendously, and it should always be on the best interests of the individuals involved.*"

Danielle: "*I would not* [doubt myself] *if I feel like I have made the decision with the best interests of the student…is it in the best interests of the young person? And whose best interests does this serve? And if it's not the young person, then I need to go back and rethink it. Who am I really making happy?*"

Melvin: "*Again it comes down to whatever the rule, law or procedure is. If it is something that is going to be hurtful to a community or to a child, I think it is asinine…like tardiness? Who cares? Like what is best for the kid.*"

Two principals perceived the rights of students and the inherent dignity involved with rights as values informing their decision-making:

Danielle: "*Yes, students at the center of the decision-making process…student rights would inform the decision…it's a piece I sort of consider separate from the work.*"

Melvin: *I mean they have the basic rights that every human being does. Do we need to have a Charter of Rights for students? Maybe for some of those hardliners; for me, no…there is a basic right that these kids have to be treated with respect.*"

The principals also appeared to value student-centered decision-making:

Frank: "*In public education…we come at it with more of a child-centered* [approach]*…I don't think discipline and child-centered education go hand in hand today…child-centered would be number one*"

Danielle: "*It's the young person. We have to keep the student at the center all the time…the entire ecology of the young person…I am very student-centered. Everything that I do, my first question to myself is who is at the center of the circle?*"

Others valued what they believed was the exercise of good judgment for students in their decision-making. They valued common sense decision-making, which they seemed to understand as being synonymous with good judgment:

Lauren: "*I think you have to model good judgment…I think people that make more good judgments maybe are more 'people type' persons. People, you know, worry more about the instructional side of teaching children…*[in order] *to make good choices…it makes a huge difference when you are dealing with people, the decisions you make because there could be long-lasting consequences.*"

Melvin: "*We are given, as principals, a lot of discretion in terms of what we make decisions about. I said the common sense decision-making…as long as you are making decisions with common sense, you are going to be supported.*"

Amanda: "*I think you have to be able to exercise good judgment to be in this business, and principals are leaving at an alarming rate and they are not staying in this.*"

Frank: "*I think what makes a poor principal is an inability to make good judgment calls…walk in to any community and they'll tell you whether they've got a good principal at their school or not…their ability to make good calls. To make good, consistent, reasonable decisions…but there has to be some sort of rhyme and reason to it…if you're seen as someone who is approachable, that people can talk to, and that you're fair. That all has to do with good judgment and common sense.*"

Shawna: "*I mean you are hoping you're trying to exercise good judgment with a lot of things…why would I apply this policy if it does not make sense?*"

Harold: "*This is where common sense comes in, right? It's how you react, or base your decision.*"

Lauren: "*I mean it is reading people and making judgments about people…we made a judgment that we invested the time in this child and we tried to teach him how to make good choices.*"

For some, making good judgments included making moral judgments:

Miriam: "*I guess there's sort of a moral judgment as to what we think is the right thing for that person or that student…I think it's moral, character development. Is this right? Is this wrong? Is this going to help the child make better decisions in the future?*"

Shawna: "*You have morals, right? The difference between what is right and wrong. Sometimes there are things that are morally, you just know you've got to do something because it's good for that kid.*"

Interestingly, one principal, while acknowledging his values, indicated he did not want to impose them on students:

Melvin: "*It is not my job to impose my values on them, but it is my job to use the values that I was raised on to teach these children and that is not to impose and say that they have to think the way I do.*"

5.5.4 Theme Four: Principals' Understanding of the Significance of Experience in Discretionary Decision-Making

This theme focused on the way in which principals appeared to understand the role experience played in their discretionary decision-making. The participants understood experience in various ways, such as in the length of their professional experience, as an aid to establishing comfort with and confidence in their decision-making, as serving to create trust among stakeholders, as being essential in relationship-building, and as being an integral component of justification and accountability (research sub-question 2, research sub-question 6, research sub-question 9, and research sub-question 10).

Most principals noted the way in which their professional experience affected their discretionary decision-making. Their understanding of experience, however, may refer to their interpretation of the type of specific information pertinent to a particular case they believed they required to inform their decision-making (research sub-question 6):[17]

> Lauren: "[I make] *a judgment call…based on my experience and also on the experience that others who have been around longer have had with that particular child.*"
>
> Adam: "*When you are responding in a disciplinary sense, something has happened. What you want is to have it not happen again, and so if I feel comfortable given the responses I get as we are working through the process…. If I had a sense that this could be something that might come back, then my response may have been far more significant....I think I learned that from experience*…[that] *the contextual element of response is super important.*"
>
> Amanda: "[I consider] *past experiences, like I knit together all the past experiences and I fuse that with the families that I am dealing with…I won't be in it* [the principalship] *ten years from now, but I will make a different decision tomorrow just from today…just because I learned more today than I did yesterday, and so now I know.*"

Harold, who will retire at the end of the current school year, understood experience as an important influence in his decision-making:

> Harold: "*I don't call my resource officer unless it's a serious situation...and I think it's through experience…I am confident to make decisions…you have interpersonal skills, and common sense skills…but I think common sense comes from confidence and experience, as a teacher, as an administrator, as an educator*…."

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[17] Dr. D. Allison of Western University notes this distinction and suggests "time in role can be very misleading," and that it is "quite separate from time on the job." Some principals can benefit from their experience more than others. He maintains "experience is necessary but not a sufficient condition for expertise"; in other words, experience "doesn't guarantee" expertise. Principals gain expertise by exposure, that is, "doing the work that is connected to the role," and by their "ability to benefit from the experience, and learn from it, and make sense of it." "Reputation amongst your peers" or "judgment of your peers" are conditions that are necessary for one to be considered an expert (personal communication, July 11, 2011).

He stressed frequently throughout the interview the number of schools where he had worked, and how his experiences had affected the exercise of his discretion:

> Harold: "*Experience and consensus…I make decisions that way because I think it's common sense, and experience and judgment, that I will not do things that some others* [principals] *do…I feel comfortable enough in my experience that I'll deal with it this way, instead of thinking, okay this situation happened, I have to do this. This situation happened, I have to do that.*"

For some principals notions of comfort with, and confidence in, their decision-making were connected with experience. The amount of time principals spent in the role may or may not provide them with confidence in decision-making:

> Adam: "*I do find I second guess myself a lot and I think it has mostly to do with the fact that, professionally-speaking, I spent most of my career as a high school teacher. That's what I trained for, that is what I worked in for fifteen years. Now I find myself trying to understand the world of elementary education and it's not one that I have any background, training or experience in. So even now, three years in, I still find myself very much out of my depth in terms of professional information and, to be perfectly honest, interest*….[because of a knowledge gap], *and so in that sense I really do find myself kind of every day thinking, is this the right way to decide?*"
>
> Miriam: "*I think I'm very good at what I do, even though I question myself sometimes....I sometimes think…probably I question myself when, sort of, you know, when it rains, it pours, when you have one of those days.*"
>
> Shawna: "*I just think I have more memory bank to draw from…more experience. You go, 'I have been in this situation; this is what I did. This worked, this didn't.' I think that's where the confidence comes, in knowing that I have been in this situation before and this is how it's going to be.*"
>
> Melvin: "*I think that the thing we suffer from in education is that we constantly are questioning ourselves about our decision-making process without really thinking it through. Are we comfortable with it? I think we second guess sometimes. Do I? I am getting way better than not. I am way more comfortable than I was five years ago…because you are dealing with everybody else's shit all the time. You are dealing with everybody else's discipline all the time. And so to me that empowers you. You say 'Look you brought them* [students] *to me. You are going to be okay with what I am going to do here. Now if you have any questions, feel free to ask and we will talk about it, but if you are going to submit to my authority, if you want to give up your decision-making in this, then we better be comfortable with it.' And that is not an arrogance thing, that is just up front.*"

> Sarah: "*The more situations you have to deal with, the more difficult situations you have to deal with, I think you develop a little bit more experience dealing with those things…*[and you gain] *more confidence as well, and I think confidence is part of that. You know when you are talking about that parent who is really rough around the edges and that you know when you phone you might get yelled at and those you get used to, not taking things as personally, I think, when you have more experience.*"

Sometimes the opportunity to defend a decision may provide a principal with a measure of confidence, despite having not extensive experience in the role (research sub-question 10):

> Danielle: "*I guess because I am fairly new to the role…sometimes I will just ask for the clarification around something and then say, 'This is what I am thinking I might like to do,' and as long as I can sort of defend my decision I do not spend a whole lot of time second guessing myself.*"

Yet, one principal believed his two years' experience as a principal enabled him to justify his decision-making to educational stake-holders (research sub-question 10):

> Melvin: "*Well, I think you know part of the justification has to come based on* [your] *experience.*"

The lack of administrative and other experience, on the other hand, could be seen as an influence hindering principals' discretionary decision-making. Some principals appeared to judge younger administrators based on their years in the role:

> Danielle: "*Four years ago, I had no intention of being an administrator…but I looked around at those people who were becoming administrators and it concerned me and I thought I can do that and maybe I need to do that…just some of the people that were being appointed, they lacked experience. They were young, with three years or four years in a classroom…well, their judgment's going to be limited, their scope is narrow; they don't have that field of opportunities and exposures. I think they stick a little closer to the script. I think that's when you tend to stick to the book* [when you are inexperienced]."

> Shawna: "[When I would be] *sitting around the table with young principals or young vice-principals or whatever, I would sit and listen and I would think, yes, experience does definitely* [inform my decisions] *because you have been in a number of different schools and in different situations. You can sort of almost see how things can, not that you see how they play out, right? But you learn to say what can I deal with? What can I control? What can I make a decision about?*

> *And what I can't? So I guess that obviously is a huge difference, is the experiences you've had.*"

> Harold: "*Common sense. Probably the number one thing that drives me…in my situation, I think that your interpersonal skills and the fact that you understand what common sense is will help you to make the decision. It comes with experience* [and] *common sense. I think new principals have to be more careful that they're following board policy in situations.*"

For other principals, experience appears to allow them the discretion to determine whether or not to enforce policy:

> Miriam: "*I feel it is my obligation* [to enforce rules, policies, *The Education Act*]. *I feel fine about it and they influence my decisions a lot. But as I'm saying, I also think I'm smart enough and I've been around enough that I use some of that discretion in discipline issues.*"

> Danielle: "*I think you have to be within a stone's throw of accepted procedures. I do not think you want to feel like you are that one vigilante person out there without the support of the school system behind you…and maybe with time and experience, I'd be okay with that.*"

Most of the administrators seemed to understand their ability to exercise discretion in their decision-making as being related to the level of trust they were able to establish with staff, students and their families, their supervisors, and other stakeholders. By establishing trust with various stakeholders, they also appeared, in some instances, to build confidence in their own decision-making. They also suggested they might create an appropriate measure of accountability (research sub-question 9):

> Frank: "*As administrators, you've got to build trust. They* [stakeholders] *are going to trust that you're making a decision on some sound backing and moral grounds, and that it's in keeping, and that you're consistent.*"

> Harold: "*My superintendent is very understanding. He must trust my judgment. It's not going to come given to you.*"

> Melvin: "*You know, they* [principals] *did not get there by accident, and I would like to think that the people in the principalship have displayed some sort of leadership or courage that has allowed them to be trusted, not just by their employer, but by the community.*"

> Shawna: "*I think that if you build a good relationship with the parents when stuff happens, they trust you. I've had parents say to me, 'You know what? We know you care about our kids.' I am sure there are ones out there that probably will disagree, and I know they're there, too, right?*"

> Adam: "*If you are not responding in a way that is acceptable to the community, you'll quickly lose any support you have of that community and then your job becomes impossible, so you know you need to be somewhere in that range of acceptability for the community you're serving. If you do not have a trust relationship then I would say, particularly in this community, you can't move forward with anything…if you are exercising bad judgment, you know, people will notice soon enough, and then you will not have the confidence of the staff, the parents or even the children.*"

The establishment of trust with stakeholders might also enable them to provide justification for their decisions (research sub-question 10):

> Sarah: "*I think when you put the time and effort into it* [considering circumstances], *you cut down the number of incidents with those particular children by a lot because when you are doing that you are building relationships and you are building trust…there are probably certain parents that if I get to know the situation and I know the parents, but I make sure that we're dealing with the situation in a way that I can then defend or explain, or justify.*"

The principals appeared to emphasize the need to build strong relationships in their schools, which helped not only to build trust, but also to enhance their judgment as decision-makers and resulted in the perception of effectiveness in their roles, and provided them with a measure of accountability (research sub-question 9):

> Miriam: "*I think effective principals…build relationships with kids and community and parents…effectiveness* [is] *related to their ability to exercise good judgment…I mean, if you're an effective principal, and you've built good relationships and you have good communication, I think people believe that you do make good judgments.*"

> Amanda: "*I think a lot of administrative work is like fly fishing. You get the kid on the hook. You've got to let him run for a while...you know what I mean? You have got to build that relationship so they come back in. A lot of us want to bring him in right away and throw him on the dock…and there is also a 'customer service' kind of administrator. They are just going somewhere else. They are in the job for short-term, because they are not building relationships. You need to build relationships with kids and with staff.*"

Some principals believed they could not make decisions without knowing the family or the students; knowing the individuals involved appeared to be part of the knowledge principals needed to make appropriate discretionary decisions (research sub-questions number 6 and 7):

> Danielle: "*I have to know Gary* [student in vignette]. *I have to know his family. I have to be informed. I cannot make a decision without* [this information]. *It can't be done at arm's length. Lots of people do it at arm's length, but I can't. Without the emotion of knowing the kid, having the connection. It is not about a relationship, it is about having a connection with that kid, and if it were just a paper and pencil activity, it would be much easier to just come up with a decision, but they are never just papers or pencils. They are really living and breathing young people and decisions that I make will impact them.*"
>
> Melvin: "*To me it is that building of a relationship that is the hammer. It is not finding ways to be punitive to kids. If we set up our plan around being punitive, we are in trouble… I would say nine out of ten times the kids will turn over whatever I think that they have before I have to search them and that is a part of building that relationship*."
>
> Amanda: "*But I better know my families, so discretion could be that the kid did not eat this morning, therefore he was an absolute ass in class, and I know that, so I need to get him something to eat.*"

The specialized knowledge principals indicated they would need in their decision-making, in addition to the facts of a particular disciplinary case, may include a respect for the dignity of the individual (research sub-question 6):

> Shawna: "*I have some students who come from very traditional First Nations' beliefs. So we have to be respectful of everyone's faith. When we are talking with our First Nations kids I always try to find out from them if they grew up traditionally, and if they grew up traditionally and if they have faith in their elders. Those are really important pieces to know about our kids that always comes back to knowing your kids.*"
>
> Melvin: "*Secondly,* [my decision-making] *would be based on my knowledge of the individual kid.*"
>
> Lauren: "*The way I approached her* [misbehaving student] *was based on what I knew about the community, or about her community or her family, and trying to build a relationship with her…and her grandma phoned me one day because of something that happened and I said, 'You know who I am and that I worked with*

your grandchildren before this.' She said, 'Yes, I know that is why I am calling you,' because I had already made a connection, so I think it is really important."

5.5.5 Theme Five: The Role of Policy/Legislation in Principals' Use of Discretion in Their Disciplinary Decision-Making

The participants appeared to understand in various ways the influences of policy and legislation upon their discretionary decision-making, for example, as a support, as a guide, or even as a defense against possible litigation (research sub-question 4 and research sub-question 7).

The principals' understanding of their obligation to follow policy could be reflected in their responses to the vignette questions. Nine of the ten principals indicated they would impose a suspension on the student, Gary; however, the length and type of suspension would vary anywhere from a three-day suspension to the full ten days, as outlined in the policy. One principal, Danielle, indicated an in-school suspension would be levied but for an unspecified time. Amanda indicated she would not suspend the student, regardless of the policy.

Some principals appeared not to be rule-bound and believed they were afforded considerable flexibility in enforcing policies in many situations (research sub-question 4). There appeared to be times when they felt they could ignore the established rule, law, or policy:

> Adam: "*We talked about The Education Act* [(1995)]. *It is a pretty loosey-goosey description of what power is in terms of the principal's discretion…how you apply things. There you got huge amounts of leeway. There are other policies that are far more tightly defined, and so I think a wise person, feeling that a policy does not accurately address the situation you are facing, consults.*"

> Danielle: "*It depends on whether it is a reasonable and rational rule, law, or procedure…I can ignore it easily…is it reasonable and is it good for students*?"

> Melvin: "*I feel that I have been trusted to make the common sense decision. I think the bounds of the rules are very flexible.*"
>
> Frank: "*If we went by the letter of the law of The Education Act* [1995], *schools would be empty, half the schools in this city would be empty…I think the expectations of what the Education Act states and what is the day-to-day practice in a school, I think they're two different things.*"
>
> *Lauren:* "*I am trying to work within it* [suspension policy] *for the betterment of the student.*"
>
> Amanda: "*I agree that there needs to be some form of guideline, but I wish there weren't rules and I wish there weren't guidelines.*"

One principal felt obligated to enforce policy based on his understanding of the school board expectations about how important the policy was:

> Frank: "*You need to have an understanding of what the board, of what our particular school board is asking of you and what they expect, and sometimes it always isn't in line with personal philosophies of what you like to see in a school, so I don't follow the board policy unless I'm told to…I guess it's a personal read on how pressing it is.*"

Another principal felt bound more by the school board policy than by *The Education Act* (1995):

> Sarah: "*First thing I go to would be our school board policies and our procedures. If it was something serious, I consult that.*"

Amanda took the discussion to another level. She saw the ignoring of policy, or selective enforcement, as a catalyst for change:

> Amanda: "*I am willing to bend that policy…based on personal values, just on who I am as a person and what the needs are…somebody has to sort of challenge an occasional policy and law, otherwise you do not get the* [high school] *daycare.*"

Sometimes the participants felt policy or legislation could be used as a means to defend their decisions, if they were questioned by parents or other stakeholders:

> Miriam: "*I usually always use it* [*The Education Act* (1995)]*...it helps to back you.*"

> Harold: "*You can say 'this is the situation' and if you need to fall back on school board policy at those times* [parental challenge of a decision], *you can because they will likely look toward the school (and challenge you on that).*"
>
> Shawna: "*It is very important to* [follow the law], *and so if I went to* [the students'] *lockers and said 'You know what? The lockers are the school's. I can open them.'*"
>
> Frank: "*Usually more often than not, you can get a consensus…it isn't always agreement about the discipline…the consequence that has to happen, and if you can't, that's when you can fall back on policy and say, 'You know, The Education Act says I can suspend up to three days for this without telling anyone. I'm just doing it.'*"

Most of the participants did not claim to know the school division policies relating to discipline well (other than the policy on suspension), and three admitted their knowledge of *The Education Act* (1995) was negligible: "*Don't know it well*" (Danielle); "*Do I know it? Yeah, no, not really*" (Melvin); and "*I couldn't spout any of that, any specific thing, but I know I've read it*" (Harold). Frank, however, agreed that he knew the provincial legislation "*somewhat, but it's kind of archaic*," an opinion shared by Shawna. Sarah indicated she had "*read*" *The Education Act* (1995), but it was not "*the first thing*" she went to when a "*serious*" issue with a student arose. She explained, "[The] *first thing I go to would be our school board policies and our procedures.*" Lauren indicated she believed that "*at the high school…you have to have a better knowledge of the law.*" Miriam added she would "*keep…those pages about suspension and gross misconduct and keep them photocopied and handy.…I would enforce it* [*The Education Act* (1995)] *as I saw fit*." Amanda believed "*principals make decisions not according to The Education Act* [1995]." Only one participant mentioned relevant case law and its impact upon his decision-making. Adam indicated principals "*need to be guided by that case law response and you need to be within the certain range*," although he did not mention any specific cases that might be germane to decision-making in disciplinary situations.

At other times, the principals felt policy was to be used as a guideline for decision-making, and the repercussions for not referring to it, they believed, could be significant—litigation, for example. In terms of the third research sub-question regarding how they understood and practiced discretion, the principals appeared to understand discretion as being an inherent part of policy and indicated they had the flexibility to exercise it in their decision-making in most situations. Certainly, there were areas in which the participants believed that policy must not only be consulted but also adhered to, especially in the area of school safety. They appeared to feel rule-bound and unable to exercise any discretion in occurrences that jeopardized student safety:

> Frank: "*We open ourselves up in today's world to court cases and criticism if we don't follow* [policy]*…you can always push the fire uphill if you use discretion, which I believe most educators do, and use policies as a guideline; however, I wouldn't use violence policies as a guideline, but there are attendance things… that we don't follow on a daily basis by the letter of the law, because in any given situation it's not the best thing for that child.*"
>
> Sarah: "*I just had to explain that for this type of incident* [weapon in school] *that typically it could be up to ten days' suspension if that is what the policy states….*"
>
> Lauren: "*You know the policy* [described in vignette] *is meant as a guideline, a very strong guideline, but you have to take in the circumstances that are happening at the school.*"
>
> Melvin: "[I am] *highly discretionary, but you know what? Really where I am not discretionary about is safety. Everything else is pretty much open.*"

One principal felt very strongly that the policy in the vignette was a zero tolerance policy that he was obligated to enforce. Moreover, adhering to it could serve him well if a related incident were to occur in the future:

> Harold: "*First of all, it's a zero tolerance policy. If that school policy wasn't in place, I would handle it much differently. So I think the fault is the school policy right here…I think you have to follow that…and the reason why is it could come back and could backfire on you if something happens…if he comes back in a week and shoots somebody then, and everybody knew he had the other gun, you are hanging yourself.*"

Other principals indicated that zero tolerance still provided them with flexibility in their decision-making:

> Lauren: "*It depends on the circumstances…I have a hard time enforcing…zero tolerance* [in] *a situation like that* [fighting]."
>
> Melvin: "*No enforcement* [of zero tolerance]. *Not even close*."

One principal desired more policy directives and less discretion for protection against what she saw as increasing litigation in the field of education. Increased legal knowledge on the part of principals did not appear to be considered:

> Miriam: "*Maybe as principals we're going to start to need things a little more cut and dried…more clear, you know and I keep coming back to…we're* [going to be seeing] *them* [lawsuits]. *I don't feel I need that right now, but that might be something in the future…something* [policy] *that would always back us.*"

In general, the principals seemed to feel policy could serve as a framework to inform their decisions, in addition to other influences:

> Adam: "*Given the framework, because we do have guiding policies, but for the discretionary part of a policy…I default to…in loco parentis.*"
>
> Lauren: "*We sometimes have the constable in just to find out legal ramifications depending on what the issue is. I do go to the website and look at the policies and then procedures, I guess…but, it* [policy] *certainly guides me, especially in one of those situations where you are torn, which way to go with it. I mean certainly looking at the admin procedures and seeing what the guidelines are.*"[18]

Policy could also be relied upon in other ways, especially by those who wished to use it for their own advantage, such as possible career advancement; self-serving reliance on policy emerged as an inappropriate exercise of discretion (research sub-question 7):

> Amanda: "*They* [principals who desire promotion] *are going to follow every policy, dot every 'i'. They are not going to challenge policies, rules, and procedures.*"

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[18] It is worthwhile to note the broadly accepted distinctions between policy and procedure described on pages 80–81.

> Danielle: "*The ones that are cut and dried, they hide behind the suit…the downtown suit. There are principals who are looking to move up to bigger schools and knowing that they need to have proven that they can 'handle it,' whatever that means…sticking to the policies, the scripts.*"

Other inappropriate decision-making identified by the principals included a reliance on policy for the ease it provides in decision-making for the administrator, as opposed to exercising discretion, which requires more thought, judgment and, sometimes, courage:

> Melvin: "*They* [some principals]*are fearful of what that might mean in terms of their job performance…*[they] *do not handle conflict well and so it's easier to say 'It is out of my hands,' than it is to actually use some discretion in making some decisions about how you treat kids…they hide behind the rule book or the bureaucratic clock.*"
>
> Danielle: "*It is very easy to stick to a policy.*"
>
> Harold: "*I follow school board policy. It's easier that way. Suspend him* [student in vignette] *for two weeks because that's the school board policy, and if he doesn't agree with it, then I'm sorry, that's the policy and if you* [student's father] *need to, you need to take it up with the school board.*"
>
> Frank: "*Bringing a gun into school with the intent of intimidating or creating violence in the school. That's a policy that's easy to follow. It's the social policies that are tough. It's the bullying and the intimidating, the things that aren't so 'in your face.' Those are tough.*"

Still, other reasons for inappropriate decision-making may include administrators' failure to keep up to date on policies, a perception that they cannot exercise discretion or that they lack alternatives to following policies, and sheer laziness:

> Harold: "*There are those that fall behind the policies…maybe they're not able to control it themselves…maybe they don't want to bother, maybe this is the way they think you have to go.*"

One principal indicated policy served as a basis for discretion, or as an initial point from which to begin decision-making:

> Adam: "*Policies are great in that they give you an anchor and anchoring point to start from, and so that policy is your reference point, and then from there that*

discretionary part…then you go from that anchor point to decide where you need to go."

5.5.6 Theme Six: Student-Specific Influences Affecting Principals' Discretionary Decision-Making

This theme focused on the way in which influences that were specific to the student(s) involved in the misbehavior affected the principals' discretionary decision-making. The participants appeared to understand in various ways student-specific influences upon their discretionary decision-making, such as safety considerations, the intent behind student behavior, the student's personal circumstances, equitable treatment, the student's academic achievement, the reaction of the misbehaving student, the educative goal of discipline, the message to stake-holders, and the student's disciplinary history (research sub-question 4, research sub-question 5, and research sub-question 7).

When they spoke about influences affecting their exercise of discretion, all principals identified those which were specific to the particular student(s) involved in the disciplinary situation, as opposed to pressures that were external to the situation. The primary consideration in their decision-making was the safety threat the actions of the misbehaving student posed to the school, students, and staff. Many participants alluded to their "responsibility" or "duty" in this regard. The principals appeared to value school safety above all else; if the safety of students, staff, or the school were jeopardized in any way by the actions of any student(s), their discretionary decision-making would be influenced:

> Amanda: "*When you are an administrator in the building, you have to be able to have the discretion of deciding what is best at this time…you will always question your next move so you have to hope that 90% of the decisions you make are going to be great. So in my discretion, I am in charge of this building which has taken me a lot to get my head around. Oh, my good God! I am in charge of this*

> *building. The care and safety of everybody in this building…the care, concern and safety of the building, of all. That is a pretty daunting job.*"
>
> Harold: "*Obviously, the safety of the individuals, on all sides* [informs decision-making]…*the entire school, and on both sides of the question, of the individuals or the groups or whatever.*"
>
> Adam: "*Safety is definitely the priority…for safety in the school, safety outside of the school….*"
>
> Melvin: "*My job is to create a safe environment for education and having a pellet gun or gun or whatever at school is not a safe situation…I think there is an expectation within any community across the world that a school is a safe haven for kids to learn. I think my role as a principal, but also my role as a father… says that I have to govern the safety of the kids as I'd want to for my child, too.*"

For some principals, issues of school safety meant they were left with no discretion in their decision-making:

> Lauren: "*When it is a safety issue, I think we have to be really tough on safety issues* [and follow policy]."
>
> Sarah: "*If it is something to do with safety, that is for sure the kind of time when I call my superintendent because when we are talking about safety it is something that could result in harm to somebody…I would say I have less* [discretion]."
>
> Frank: "*I think I bend them* [rules]. *I don't think I ever ignore them, and if it's a safety issue, I'd never.*"

The principals also used school safety as a justification for their decision-making by basing a decision on whether or not a student posed a threat to school safety (research sub-question 10):

> Shawna: "*I would have to have a great big picture here. I could only justify that* [a ten day suspension] *if, in fact, there were safety issues where he was looking to harm someone. Safety for all in the school* [is paramount]."

Another influence upon principals' discretionary decision-making—student intent—related directly to principals' concern for school safety. The intent of the offending student was especially noticeable in the vignette question; all of the participants indicated that Gary's motive for bringing a weapon to school would clearly

mitigate, or aggravate, the circumstances and affect policy enforcement (research sub-question 4):

> Sarah: "*So I would not have any hesitation about a suspension and because it was a full gun and it would depend what he did with that if he had pointed it at someone or taken it out of his backpack.*"
>
> Miriam: "*I think I would do the three day* [suspension as opposed to ten days] *because it wasn't used in a threatening manner, it isn't a sharp knife and it isn't a different type of gun…because I don't think he brought it with the intent…he has to know you can't bring it to school, intent or no intent.*"
>
> Shawna: "*It's so important when we frame it we are not sending him away…we want to be able to work with him…find him some help because somehow he had a need to bring that to school. What was the need about? Is there something happening with friends that he needs to show that?*"
>
> Danielle: "*Maybe in-school suspension, maybe not that great of a length. A pellet gun can still do damage, but I do not believe that this is about intent to harm in any way.*"
>
> Adam: "*Gary tells me that nowhere was an intention of his to use it* [gun] *in any sort of aggressive way with other children on the school yard, and so to me if that would be a circumstance, that may shape* [my] *response a little differently.*"
>
> Melvin: "*I probably would not follow the minimum two weeks…it would all depend on the circumstances in terms of my read of him in my office and the risk that I thought he presented to the school…my read on his emotional state and the reason for why the gun is here.*"
>
> Lauren: "*I don't think he has brought the pellet gun to school with the intent of harming anybody or threatening anyone. There has got to be a consequence because he did bring the pellet gun to school, but is it a straight blanket two-week suspension? I think it is really important to know the intent the child had and whether he had threatened anybody with this gun.*"
>
> Harold: "*Do you enforce that policy? The other aspect of it is a boy is bringing a pellet gun to show his friends. He's not bringing it to harm others.*"
>
> Frank: "*And the whole intention, it all depends on what the child's intention was.*"
>
> Amanda: "*I would not* [enforce a school suspension]. *I do not think he brought it to do any harm. I think he brought it just to show his friends, just like the boy in my school a couple of years back who brought a little knife. He had no intention of using it.*"

The personal circumstance of a student also influenced the principals' discretionary decision-making. A student's personal situation was one type of knowledge the principals indicated they required in order to exercise discretion (research sub-question 6):

> Amanda: "*We always look at nutrition. One of the things I look at first is nutrition to see if they had eaten. Because if blood sugar drops, then discipline goes up. I also look at the construct of the house.*"
>
> Shawna: "*It's always context. I mean for a kid using the 'f-off' language there is context around that. If last night all hell broke loose at home, and mom and dad were fighting and the police came out to the house and you find out that the kids were actually apprehended, taken by social services, and then they're still plunked here the next day at school. They're kept here and we find out that they have been placed in foster care and all of a sudden the kid starts swearing. Give me a break. Of course we are going to do something different with that child. That is where your discretion is. It's about context.*"
>
> Lauren: "*The voice of reason or the judgment that a person has* [is] *based on knowing background. Discretion is based on the background information that may play or influence a decision.*"

For many principals, it was important to ensure that students be seen to be treated fairly (research sub-question 4). They seemed to want to be perceived as being fair in their discretionary decision-making. Their consideration of personal circumstance in the exercise of discretion appeared related to what they believed would result in the equitable treatment of students:

> Sarah: "*Equal doesn't mean equitable. So it depends on the student, what their needs are…how I figure out how that student ticks. It helps me to figure out how I can approach the situation with that particular student and for every student it is different because they each have their own personalities and their own strengths and weaknesses and their own stories at home as well.*"
>
> Melvin: "*For instance in a situation I have been in where there was a knife brought by two different students, one got a one-day suspension and the other got a seven-day suspension. The difference was one admitted to having the knife and admitted to what they did…and the other one threatened to shank six students…denied saying it to anybody, lied about it. I just said, 'You know what, you need some time off to think about that. We need to look at your total risk*

> *assessment.' So again it was based on the individual kid and the individual situation…it is very contextual.*"
>
> Harold: "*You have to look at the situation before you deal with it…it* [discretion] *would enable you to make a more fair decision…fairness is that all parties believe they've been treated, and I won't even say equally, but fairly, and that they understand from both sides.*"
>
> Miriam: "*I think it's that sort of equal versus fair concept, you know. I don't think you have…what's equal…you're not equal with all students, but you try to be fair depending on the student. I think I'm making fair decisions…which isn't necessarily equal.*"

For some principals, equal treatment of students, without flexibility, did not appear to necessarily ensure fairness or equality but, perhaps, ease of administration:

> Melvin: "*I think there are lots of people who just say, 'You know what? There is a procedure book. The procedure book says to do this and there is no flexibility in those procedures and I am going to treat everybody exactly equal.' Because if I enter my discretion that leaves me open to someone coming back on me about something.*"
>
> Frank: "*Having the policy makes it easier as an administrator, but it doesn't make it right.*"

Principals also may selectively enforce policy if they believed it did not allow for the consideration of personal circumstances:

> Shawna: "*He* [a student was high on drugs and policy indicated he was to be suspended] *was couch surfing, living from place to place, so I mean how do you deal with that? So there's context there and it's knowing the big picture. It does not make sense to apply this policy. Knowing the kids and knowing the background and knowing what is going on at home. All of that comes into play.*"
>
> Miriam*: "I think the home life is important. It think it would be more detrimental for him* [student Gary in vignette] *to be at home for two weeks. When I was at my former school, which is a pretty core* [inner-city] *school, it had to be something serious for me to actually send a child home…even though the policy is suspension.*"

One principal decided to selectively enforce policies in a situation if he felt hesitant or conflicted about his discretionary decision-making:

> Adam: "*I have to say honestly I have had scenarios in front of me and…this would be so much easier if I just didn't deal with it…I may have the sense that something is there, but I am hoping that it may just let itself kind of dissipate and in some cases it has, and in other cases it hasn't.*"

For some of the principals, not to consider the context or circumstance of a disciplinary situation would be an inappropriate exercise of discretion, and could possibly be considered unprofessional (research sub-question 7):

> Amanda: "*When it* [decision-making] *is hot-headed, like they just made that decision now and hadn't looked at the whole* [situation], *that's catastrophic.*"

> Danielle: "*Some teachers will kick the kid out of class and shut the door on the kid, and then there are some teachers that you can say to them, 'Okay this young person lives on their own, they are taking a bus across the town. They have a job that they work at until two in the morning.' When you explain that to the teacher, the teacher will say, 'Well, why didn't I know that?' Well, why didn't you find out? Those are professional responsibilities.*"

> Shawna: "*Yes, I would* [consider a decision inappropriate] *because they did not investigate…they did not look at the context of the child's life and what is going on at that moment.*"

> Harold: "*Ignoring it* [rule or procedure] *to the detriment of the student is, I think, deplorable…to the detriment of the community or of the staff.*"

Another influence was the potential effect of the principals' disciplinary decision-making upon the academic achievement of the student or students involved. This influence was especially apparent in the questions pertaining to the student Gary in the vignette:

> Amanda: "*I would not enforce the school suspension just because it seems to be sort of a linear event…and then they are a racial minority. I wonder about his academic achievement…so I worry a bit about that. He is struggling academically.*"

> Miriam: "*It could be an academic issue. Obviously he struggles because often disrespect and insubordination come with the fact that they* [students] *can't get it, so they use behavior to cover that up. He's struggling academically. It's* [suspension] *harmful to him academically.*"

> Adam: "*I could see maybe being out for a week and then in-school maybe an additional three or four days or a week. I would not want to keep this young man out of school for an extended period of time, simply because he, as it indicates here, he is struggling academically and has had kind of a rocky road in the school so far.*"
>
> Danielle: "*I do not think anything good occurs for students when they are left out of the school system…to punish him by removing him is not doing anything for him…or his education. He is already struggling.*"
>
> Lauren: "*My concern is the loss of his education as well, while he would be out of school for two weeks.*"

Only Melvin directly indicated that academic achievement would not have been an influence at all in his decision-making in the vignette: "*The academics part does not really matter to me at all that much.*"

The reaction of the student in a given disciplinary situation was an influence upon the principals' discretionary decision-making. Adam felt his discretion to enforce a policy on suspension would be exercised depending upon the student's response to the incident. He described a situation in which some grade-eight girls were starting fires on the playground after school hours. When they were confronted "*they burst into tears; the remorse is absolutely right there*." As a result, he concluded he did not have to "*have a hard, hard reaction to what potentially could have been a very serious incident*." This desire to use policy as necessary to assign either a lenient or harsh consequence, depending upon the remorse or empathy displayed by the misbehaving student is also apparent in the words of other principals:

> Melvin: "*I want to know his frame of mind…where he comes from. If this is a kid who feels remorse, I am probably more likely to go—you know what? He just made a mistake.*"
>
> Harold: "*If you get them to the point that they understand what they've done. Empathy is probably the most lacking in many, many, many adolescent children that are violent. They don't care.*"

> Sarah: "*It depends on the situation of who the child is, what the attitude of the child is in conversation with me and with the adults in the school…I mean from everyone's perceptions, how the child is feeling, if there is any remorse, what they are ready to do to set things straight.*"
>
> Lauren: "*Well, he* [student Gary in vignette] *has been in trouble, but he does sound quite remorseful?*"
>
> Frank: "*How he* [student Gary in vignette] *responds to mistakes he's made in the past would be one* [influence on decision-making]. *You can walk in and say you're sorry and then walk out and do the same thing the next day, and with that type of kid maybe you'd follow policy more.*"

Principals also felt their disciplinary decision-making had to provide an educative opportunity for the student or students directly involved; in fact, many identified this component as being a primary focus of any discipline policy or decision:

> Frank: "*I think it's a reality that some kids at some point need the consequences to go along with the discipline. The goal of having a discipline policy which we all work under would be to keep some order and…provide an opportunity for kids to learn…and that would drive all of our policies.*"
>
> Shawna: "*Your own children, you try to problem-solve with your own kids, always.* [The] *difference is, is that our own children we're hoping we have taught them some problem-solving. Our students don't have those skills. So that is why it is so important for us to teach them that there is another way to do it, but they also have to learn what crossing the line means because that's what happens out in a real world.*"
>
> Danielle: "*In a situation like this* [the vignette] *I think we want to just know that we have the parents on side and that we are looking at coming out from the same end, and the young person is going to learn, is able to perhaps problem-solve himself. I always think that if students need to be consequenced, that is teaching them discipline.*"
>
> Sarah: "*I think it* [discipline] *has to be a learning experience. It has to be opportunity to learn…a teachable moment, really…so that we can move forward instead of continually punishing.*"
>
> Lauren: "[Discipline is] *to educate children in ways that they can change their behavior or make a plan, as a consequence for a bad choice or a wrongdoing.*"

For other principals, discipline is a mechanism enabling schools to establish a framework for student learning to take place:

Adam: "*Fundamentally you want to set up an environment that maximizes learning and discipline needs to contribute to that. If it does not contribute to it, then it has no place.*"

Melvin: "*I think the goal of discipline in a school is to maintain a sense of order in order for us to get a learning agenda or a learning plan across for kids.*"

Miriam: "*For every action, there's a consequence. I think the goal is for lessons learned…you know kids make mistakes, even good kids make bad choices. As a result, there's a cause and effect…the other goal of discipline in schools is to maintain order and semblance…and to help change behavior.*"

Shawna: "*I will be the first one to say these kids need structure, absolutely they need structure…that structure means setting boundaries, having expectations, but doing it with care and compassion. It is when there is no structure and there is chaos* [and they can't learn]*…I just talked to a student today who is in grade eight and has been in eighty schools…if you have proper structure in place, these kids will do it* [learn]."

It would appear that while a primary purpose of discipline might be an educative one for the student or students involved, and in this way influence the principals' decision-making, more than half the principals indicated they believed others also must learn—in other words, that their discretionary decision-making must send a message to students, staff, and community:

Miriam: "*I can use a knife incident as an example…the boy was in grade eight and kids talk. I think in this community a kid bringing a knife to school is very uncommon yet. So I think the fact he did have to be suspended for three days sent a message home that this is serious stuff…and I even think the fact that the kid who is a little shit is scared shitless…I think it was a good thing, but I think it also showed I don't think you're really all that tough of a kid even though you walk around here being defiant to anyone and everyone.*"

Danielle: "*In an elementary school you could probably have a conversation with the staff and explain the rationale for the decision you had made and why it varies from policy. In a high school you might have a harder sell, but I would certainly want my staff to feel that there has been a consequence and there had been a message that was sent…however, I do not believe in sending kids away…they need to feel that this is where they belong and to tell them they cannot come, it just sends a wrong message.*"

Melvin: "*So I look at it* [two boys fighting] *and I go okay now, we are going to make a decision. I am going to say what am I going to do with the first boy and*

> *what am I going to do with the second boy? What is the message for the whole school? Well, if I was not using any discretion, it will be everybody gets three days and that is it. But, really, the first boy who started it, he probably should get the three days. This other guy is defending himself. He was probably more violent than he should have been, so I am going to go three days, one day. So now when we say do I make my decisions based on the whole school? Well, no because I made that decision for one guy on the whole of the school because everyone needs to know that starting a fight is wrong, but this guy who was just defending himself, he got too violent.*"

> Lauren: "*It is very important that the other parents and the teacher know that we are dealing with it* [vignette] *and we are taking the gun being at school very seriously, and I think a note would have to go out…to inform parents that yes, there was a gun at school, but it has been dealt with.*"

> Sarah: "*I try if something is serious…where a child is hit or there is fighting or that kind of thing, that I am being consistent in that, so that the message is consistent out there with students that if they decide to go in this direction, that's probably what is going to happen.*"

Nonetheless, the actions of the misbehaving student also send an important message which should be considered by the decision-maker:

> Danielle: "*He* [student Gary in vignette] *feels that his actions are suggesting that he is not feeling comfortable or he is looking for some way to attract attention to himself and I think that that is the message that needs to be listened to as opposed to just sending him away.*"

The message that is being sent by the principals, however, may be related to the manner in which they justify their discretionary decision-making to the larger school community (research sub-question 10):

> Adam: "*It* [suspension in vignette] *still is important that the school community understand that this is a significant response to a potentially significant event. So bringing a weapon to school, whatever the intent, is still a significant issue and, therefore, it has to be seen by the community that there is a significant response. So in that sense, yes, there is sensitivity to the community's perception of it.*"

Some principals considered the disciplinary history of the student as an aspect or circumstance influencing their disciplinary decision-making:

Lauren: "*Discretion is based on the background information that may play on or influence a decision…we have been keeping track particularly at this school because it has been done in the past, charted how much kids have been to the office…so it certainly helps you regulate what the consequences should be when you can track how many times you have dealt with the child.*"

Amanda: "*I wanted to know what has been done prior* [interventions] *and I wanted to know if it is the first offense.*"

Melvin*:* "*The office referrals, disrespect and subordination is* [sic] *a marker* [in vignette]. *It tells me that you know what? He does not like to be told what to do necessarily, does not like to follow rules, but that does not necessarily make him violent. It is just like if I am going okay, let us explore this a little bit more. It does not immediately make me think this is a bad apple or bad seed that we need to go after. No, but does it say you know what? This kid has maybe some issues with authority, perhaps.*"

Sarah: "*It depends what kind of things the student has been involved with before, if there had been other suspensions or other incidents that had led up to this, then that I take into consideration as to the length of the suspension.*"

Frank: "*Well, you've got history which he* [student Gary in vignette] *obviously demonstrated, inappropriate behavior of some kind in the school. He's had problems with an art teacher. So you know he's got a history of trouble…history, like how many mistakes he's made in the past…absolutely is one* [influence on decision-making]."

5.5.7 Theme Seven: External Influences and Pressures Affecting Principals' Discretion in Disciplinary Decision-Making

This theme focused on principals' perception of the external influences and pressures that affected their discretionary decision-making in disciplinary issues. These influences are distinct from those identified in Theme Six, which were specific to the student or students involved in the misbehavior. The participants appeared to understand external influences in various ways; these influences could result in their feeling pressured in their decision-making (research sub-question 2 and research sub-question 5). As well, all principals perceived they have a level of accountability to various stakeholder groups for their decision-making. Many felt they met this need for accountability

through justifying their decisions to the individuals involved (research sub-question 9 and research sub-question 10).

The principals appeared, in many instances, to understand the external pressures of staff, parents and community as being of lesser influence on their discretionary decision-making than were the student-specific influences; furthermore, they appeared to associate the need for accountability and justification more so with these external influences.

The expectations of teaching staff appeared to influence the discretionary decision-making of principals:

> Frank: "*I think anybody who's been in a building more than three or four years, I think it's rubbed off from the older teachers that there's an expectation…they expect that there's a suspension involved. You know they're not expecting some sort of mediation.*"
>
> Danielle: "*Because they* [principals] *don't want to go down the road of defending themselves or their actions to staff who maybe are going to question why it happened. Because they have parental pressure, it is easier than trying to explain to parents.*"
>
> Amanda: "*They are always breathing down your neck that we need to suspend them because that will heal them…The staff in my school want something punitive and disciplinary…teachers want something done, whether that be you assisting them in getting something done, or you do it. They want something done.*"

The influence of staff expectations could also be related to the level of trust teachers had in administrators' decision-making:

> Adam: "[For] *the boys who were fighting…the teachers would say, 'What do you mean that they have* [only] *one recess off?' They might think that that may be a little light, but you know, I think they are getting to know me well enough to go, 'Okay, there must be something else going on here.' And I did go back and explain to the teachers.*"
>
> Miriam: "*One thing I have found here with this staff in the year that I have been here is I don't really think the staff has questioned me, which is a really nice feeling. I think they seem to be quite confident that I will handle things…I found my staff at the last school, you know there were a couple* [of teachers who said]

'You should do this, and you should do that.' Well, first of all you're a third year teacher and that's pretty ballsy of you to say that to me."

Certain parental and community expectations appeared to influence the principals' discretionary decision-making at times, and these expectations could be related to what they perceived to be their knowledge of their school community:

Frank: "*There are some communities…you'd have a lawyer there, so you have to be very precise…you better make sure that you follow the policy and say the right things in the suspension letter and follow up the way you said you were going to follow up because you're going to be held accountable for it. Some communities have a lot of forgiveness and others not so much…you have to know your community…you have to know what's a big deal to your community. Compared to my school and* [name of school]*…the expectation of the communities would be different…in this type of community, it's kind of a working class, blue collar community. You can tell a parent and the parents understand that the kids are what they are, and they might not always like to hear that, and you might have to work through that…I think you can be far more honest with some communities than you can with others.*"

Miriam: "*I have experienced that* [her decision-making questioned] *probably more from a community expectation or parents' expectation. I wouldn't say community expectation; it's been more individual parents, certain kids and certain parents, and truthfully, those are the parents who wouldn't support the school in a normal situation. Today at recess the parent made a mountain out of a mole hill…I'm starting to pick my battles, and I don't know if that's necessarily the right thing. It's the right thing for me, health-wise, and sometime you realize, you know what you're going to win and what you're not, and is it worth it? I think I feel a little bit pressured.*"

Shawna: "*I think I made the right decision at that time for the child, but I maybe didn't make the right decision for all the stakeholders in place…I think mistakes happen when all the stakeholders are not considered and perhaps circumstances may have not been communicated clearly…I see discretion as having the ability to alter an intervention, such as a suspension, to meet the needs particularly of the child but also to accommodate the needs of other stakeholders.*"

Adam: "*I made some decisions at the beginning of last year that were not necessarily within that sort of range of norms of this community…what I found is that when I started getting the resistance I had to step back and ask 'Why this is happening? What is going on here?' I had little time to adjust to this new* [school] *context. I was still operating very much in that mode for that other community, and the responses that would have been appropriate and acceptable over there were not here. In the end I agreed. They were not acceptable. They were overly harsh responses here.*"

> Sarah: "*I guess it* [intimidation by parents] *would depend…this person* [a parent] *had come in a number of times…I would feel uneasy. It wouldn't be a comfortable situation for me, but I have had to do it* [make a decision] *many times before, and I would do it again if I knew that in my heart of hearts this was the right decision and the right thing to do.*"
>
> Amanda: "*In some schools…you can make a few decisions, you can make a few mistakes and nothing would come back to you, really…but at* [name of school] *you make your decisions and they are transparent and the community becomes whoosh…so you want to always be politically correct around them, making sure that they are always informed, because they are the ones…it is kind of an octopus model. You think of all their little tentacles, feeding into the head…I learned that last year, very quickly learned that.*"
>
> Harold: "*There's no doubt* [in my school community] *how I deal with situations that come up with students. That's where the perception of me as a principal is judged…I think that there are communities that are highly academic that would be driving the perception of the school and then, hence, the principal. That comes from gaining their trust about how you deal with a situation.*"

One principal indicated she did not want to have to consider the influence of parents in her decision-making:

> Danielle: "*I try not to make a decision rashly or in the heat of the moment. I try to make my decision logically with knowing everything I need to know…not because a parent has pushed my buttons or because I am feeling pressured by teachers or parents…I don't want to appease parents.*"

The pressure of legal action if policy is not adhered to was an influence upon some of the principals' decision-making:

> Frank: "*One of them is being scared of the kickback of parents…not me personally, but I've seen people, you're scared of…or of your staff. You do things because you think you're going to please your staff…whether it be your superintendent, or the parent. I don't want a bipolar parent running in here and running up one side of me and down the other. So if I ignore that* [the student's behavior] *I won't have to deal with the parent…you open yourself up to, and in some cases nowadays, to legal action. You're open to more criticism, you're open to high risks, because with today in the wrong community, you could have a lawyer knocking at your door because you didn't treat their kid the same as somebody else.*"

Some of these external influences with negative consequences could be legal pressures upon their decision-making:

> Miriam: "*I think parent pressure is huge, and I think it's going to become more of that and…like I said every other day you pick up the newspaper, there's some lawsuit against* [school division] *or a school in Saskatchewan. We're not talking about the crap in the States any more. We're talking about the neighborhood school down the street where you know the principal and the teacher and they're good people. Well, to use that student Johnny* [pseudonym] *as an example. That kid's not worth my career…and I think we're going to see more of that in the future.*"
>
> Danielle: "*Those who just stick to the script because it is the script…I think that we all lose, but definitely the young person for sure,* [and] *generally society I would suspect at a later date…but this situation* [local lawsuit] *became a legal matter…I do not think that anyone learned anything positive or productive. I think it was more a case of 'if I have a lawyer, and I take a stand.' In the end the kids didn't learn anything…like there are consequences. Now let's see if we can't mediate this…but the parents didn't like the consequence and so stepped in …involved lawyers…there would have been a lot of tension. It's not an easy situation.*"
>
> Melvin: "*You have cautions about the community influence and then the whole legal ramifications* [in decision-making]."

Principals appeared to understand some of the external influences upon their decision-making as being those that required a measure of accountability on their part (research sub-question 9). They understood their accountability as extending to students, staff, parents, community, and their supervisors:

> Melvin: "*I think we have to answer to the parents. I think we have to answer to the public. I think we have to be able to justify why we did what we did, and I think if we use common sense, there is no problem with accountability for you as an individual*."
>
> Danielle: "*I can't be making a decision that I can't defend because unless I am just going to go with 'that is the policy, that is the rule,' and I guess that is a defense. Isn't it? That's one way of looking at it.*"
>
> Frank: "*Should I be held accountable? Absolutely. That part of one of the reasons why when you let yourself work angry, then you open yourself up to criticism. People who work under policy don't need as much risk management*."
>
> Miriam: "*I think you always should have a reason. Therefore, you're accountable…we're accountable to our superintendent…you have to have accountability to the students and to the staff and to the parents.*"

> Adam: "*I believe we are held accountable by our communities…because what, in my experience happens if you get outside of those acceptable norms, then you upset the balance in the community with the decision. The community will typically make life miserable here at the school, but will also take the concerns up a level, which will then cause a reaction back down.*"
>
> Lauren: "*I am accountable to my superintendent, I am accountable to the parents, and to my staff, students…I guess the parents and my superintendent* [are most important]."
>
> Sarah: "*I think that you are highly visible as a principal, and you need to be treating people with respect and making clear, reasonable decisions.*"
>
> Shawna: "*We should all be accountable for the things we do. I mean, if I'm expecting my kids in the school to be accountable, absolutely I should be.*"
>
> Amanda: "*In the end, you hold it. That is the sad part. You can distribute all you want, but in the end, you hold that decision. That is your job. That is why it is a daunting position.*"
>
> Harold: "*We should be accountable to the people involved. This is where common sense comes in.*"

One principal understood being influenced by the possible negative reaction of parents in order to justify or to defend their decision-making as an inappropriate exercise of discretion (research sub-question 7):

> Frank: "*If I don't phone that child's parent and say this is what I've dealt with today only because of their reaction that I'm going to get on the phone? That's not appropriate. That's part of the negative things about doing this job, that you have to deal with tough people. And nobody wants to do it.*"

The principals understood justification as an important and obligatory aspect of the decision-making process (research sub-question 10). Many principals would justify their decision-making by explaining the reasons for their decision in a particular situation directly to the stakeholders. What is more, the stakeholders' perceptions of the reasons for a decision were of great concern to the principals. The administrators tried to balance their need to justify their decision against the amount of information they could divulge, given privacy concerns:

> Adam: "*I think it is really important that the people you work with understand why you are making the decision you are making. Even if they disagree with it. I think it's important that they understand and, of course, you cannot always give all the details*."

In their discussion of the vignette, most principals appeared to think justification for their actions and decisions was required. All principals indicated they needed to justify their decision to impose the suspension, or not, to the various stakeholders in the scenario:

> Sarah: "*I mean the student has to understand, right? Has to understand how serious the situation was. I have to also be able to justify this to other parents that are in the school. Other students in the school have to see that it was taken seriously when it comes to a safety issues…the staff, the parents of that child of course are going to want some kind of explanation.*"

> Melvin: "*I think, you know, part of the justification has to come based on experience, based on what you have established as the culture of your school…I think I would have to justify to the child's parents…to the staff…to the community at large.*"

> Shawna: "*I think I am able to justify my decision because I would look at the whole big picture here…but if* [there] *is only one thing I looked at, then I couldn't justify what decision we make.*"

Most principals indicated they would have to either inform their superintendents or justify their decisions to them, and recognized their need for support from their supervisors. They did not indicate whether their decisions would change if they were not supported by their superintendents; clearly, most felt confident they would have their approval:

> Lauren: "*I have to justify to the parents, to the staff, to other students and I mean definitely the superintendent.*"

> Danielle: "*I would communicate to Gary, his family, my staff,* [and] *my superintendent, my thoughts behind why I am shortening it* [suspension] *or perhaps turning it into a different type of a suspension…I think you are always going to have that thing on your shoulder making sure that whatever decision you make that you can justify it to parents.*"

> Frank: "*I think the* [suspended] *child…and whether or not he agrees with it would be the least of my worries. I would justify to staff, my direct supervisors, and then the parents…but the other kids in the school…you'd never justify it to them.*"
>
> Miriam: "*I would probably have to justify it to my superintendent…or just explain my reasoning, and I find my superintendent finds that I know my kids best…but he's my boss and I would do that…just the parent and my superintendent.*"
>
> Adam: "*I think when we make decisions like this, we need to have some rationale that we can justify why we are doing this…I can balance my thinking on this against somebody else…and talk it through with my superior…I would justify it to Gary* [student in vignette]*...and to his parents.*"

One principal indicated justification was necessary only to those individuals who have knowledge of an incident or disciplinary situation:

> Amanda: "*I have to justify the decision to my superintendent…I do not need to justify the decision-making to the community because the weapon was not exposed…I need to justify to Gary and his father* [in vignette] *and my immediate staff.*"

5.5.8 Theme Eight: Principals' Use of Discretion to Balance Individual and Group Interests and Rights

The eighth theme focused on how principals understood their use of discretion in order to balance individual and group interests in the school setting. The participants appeared to interpret discretion as enabling them to find the tension between these competing rights and interests depending upon the situation and context. The principals understood that the differentiation afforded them through the exercise of discretion also enabled them to treat everyone fairly, or equitably, although not equally, and helped them to resolve this tension (research sub-question 8).

Some principals appeared to believe that by exercising discretion in disciplining students they could achieve a balance through equity or fairness:

> Melvin: "*I think that sometimes if we treat…what's the old thing about the difference between the equality and equity? We cannot treat every kid the same and if we have a hard and fast rule we are not really teaching reality.*"
>
> Miriam: "*I think I'm making fair decisions, which isn't necessarily equal…I guess it would almost be like a balance.*"
>
> Lauren: "*I mean, equal is not always equitable. So I think I make it* [decision] *based on what I know about the child…but I also see how it affects the rest of the school.*"

In finding a balance between the individual and the entire school, most principals exercised discretion in their decision-making based on what they thought was best for the entire group depending upon the seriousness of the situation:

> Melvin: "*When it is real public out there and it is going to affect the whole rather than the individual…I look at that and I go, 'Okay. What's best for the whole of the school?*"
>
> Amanda: "[My decision] *is always for the greater good…the safety and concern of all students.*"
>
> Danielle: "*There had been a history with one* [student] *being the instigator and one had known gang connections. Now you are deciding what's best for the school and for the rest of the students.*"
>
> Frank: "*But at some point it's the best thing for the group. I shouldn't say that, because the best thing for this boy in this vignette probably isn't to be sent home. But the best thing in that situation when you take into consideration the other kids that are impacted is to probably clear some space between everybody…the individual's at the center of it, but there's a lot more other players involved with some of our decisions.*"
>
> Harold: "*It's not hard to bring them to understand that it's not the rights of three or four people, it's the rights of the whole school...you have the one bully in the classroom driving everybody crazy so that the rights of all the students and, in a sense, in the community* [are infringed]."
>
> Shawna: "*There is the odd time you have to make a very tough decision when you know there is an individual in the building that perhaps is not keeping things for the general good. Sometimes you do have to make that tough decision and if not, kids have to learn that it is not always about just me.*"

> Adam: "*Gary* [student in vignette] *is also a child in the school and needs an education, which is our primary purpose as an institution. So for me, it is very important that I can say to myself and go to bed at night and say, 'I balanced those two things.*"

5.6 Chapter Summary

This chapter provides a description of the ten research participants. The research question and the ten sub-questions are considered within the framework of the eight themes that were elicited through a coding of the verbatim transcripts. Findings of the research focused on the following eight themes: (1) principals' understanding of discretion in disciplinary decision-making; (2) principals' understanding of their role in discretionary decision-making; (3) principals' explicit and identified values in their discretionary decision-making; (4) principals' understanding of the significance of experience in discretionary decision-making; (5) the role of policy/legislation in principals' use of discretion in their disciplinary decision-making; (6) student-specific influences affecting principals' discretionary decision-making; (7) external influences and pressures affecting principals' discretion in disciplinary decision-making; and (8) principals' use of discretion to balance individual and group interests and rights. The participants' own words, in addition to quotations from relevant literature and scholars in the field, are used to illustrate the themes.

CHAPTER SIX

6 Analysis and Interpretation of Findings

This study examined the disciplinary decisions of elementary school principals in an urban school district in Western Canada; the emphasis was more on an interpretive approach of the decision-making process in contrast to the legal aspect of "achieving outcomes" (Hawkins, 1992, p. 14) through the exercise of discretion. The inquiry, which is limited by its methodology in that it examines this process "'from a distance'" (Mintzberg, 1979, p. 12), sought to determine how principals report negotiating within the parameters of the discretion afforded them in law and maintaining their own values system in student disciplinary issues. From the data obtained through semi-structured interviews with ten participants, eight themes emerged; there was substantial overlap among the themes, and many of the principals' statements could be attributed to more than one theme. The interpretation of the findings of the study will be guided by the framework of the ten research sub-questions, with the eight themes serving as a basis for the analysis and discussion. The analysis also includes an interpretation of the findings in light of the literature and other relevant research inquiries.

6.1 Research Sub-Question One

What is the nature of discretion in general?

Discretion is complex and multi-faceted. Torres and Chen (2006) point to its "puzzling and often misguided nature" (p. 191). A consideration of discretion relies heavily upon theory, a somewhat contested literature (Bodenheimer, 1977) which could be seen as mirroring the phenomenon itself. It is usually associated with judgment (Hall, 1999; Meyer *et al*., 2009; see also Manley-Casimir, 1974) and, apart from its use as a

legal term, discretion is defined in *Webster's Third New International Dictionary of the English Language* as "the act or faculty of discerning, discriminating, or judging" (Gove, 1976, p. 647). When considered as a "feature of decision-making" (Hawkins, 1992, p. 27), discretion is "dynamic and adaptable" (p. 45), and suggests a freedom of choice within certain defined boundaries, or the "ability to make decisions which represent a responsible choice and for which there is an understanding of what is lawful, right, or wise may be presupposed" (Gove, 1976, p. 647). Lipsky (1980) argues discretion is a "relative concept," (p. 15) and is sensitive to job situations. In organizations, discretion exists because some work is so complex "the elaboration of rules, guidelines or instructions cannot circumscribe the alternatives," and it contains a "human dimension" that calls for "sensible observation and judgment" which cannot "be reduced to programmed formats" (Lipsky, 1980, p. 15). Additionally, the organization within which the decision-maker is working provides a "context and limits to the decision-making" (Bell, 1992, p. 94; see also Hawkins, 2003; Manning 1992).

Discretion is necessary when the law, for various reasons, provides no "uniquely correct" answer (Bix, 2004, p. 97). Pound (1959) contends discretion "is only to be exercised where the law itself provides for it, and its exercise, where in the nature of things that is possible, is to be guided by principles" (p. 35). Ross (1991), in analyzing the "'prescribed by law' requirement in s. 1 of the [Canadian] *Charter*," asserts "vagueness is an inherent part of the delegation of discretionary authority; the breadth of the discretion is directly related to uncertainty in the application of the law" (p. 385). It is here "discretion suffuses the interpretation of rules, as well as their application" (Hawkins, 1992, p. 35). The interpretation of rules involves, on the part of the decision-

maker, "discovering its meaning, characterizing the present problem, and judging whether that problem is addressed by the rule" (p. 35). In characterizing the relationship between interpreting rules and exercising discretion, Hawkins (1992) points to "tensions, ironies, and contradictions" (p. 37), some of which may involve a discrepancy or the "lack of fit" between the "the written law and the practices of legal actors" (p. 38).

Bell (1992) suggests discretion occurs as either a power to choose, a choice made "in relation to another," or a choice "conferred or legitimated by the law" (p. 93). Discretion also may be viewed, in the "classical approach of legal theorists," as either a power conferred or as "the result of some absence or indeterminacy of the legal materials" (p. 97). That is to say, the role of discretion may be distinguished as "powers of choice deliberately granted or legitimated in the hands of a decision-maker," as well as "those choices and freedoms to manoeuvre which arise out of the indeterminacies or inadequacies of legal regulation" (Bell, 1992, p. 102). In the latter case, Dworkin (1977) is dismissive, contending "discretion, like the hole in a doughnut, does not exist except as an area left open by a surrounding belt of restriction" (p. 31). However, Bell (1992) points to areas of legal sociology with limited rules and few reasons for acting, in which "the discretion-holder exercises significant choice in the way he relates to other actors," the "legal reasons" for decisions are not foremost, and "rules play only a limited part, calling into question a model of 'ruled justice'" (p. 89). Nonetheless, the importance of the "legitimation" and "justification" (Bell, 199, p. 97) of discretionary choice cannot be over-stated, insofar as the ability required to provide "legal reasons why others should view such an act as authoritative and effective" (p. 105). Discretion, Bell (1992) adds, entails a choice that "can be legitimately exercised within a framework (p. 93), and the

formal constraints in that the decision "must be rationally justified and related to the purposes for which the power is conferred" (p. 94). The key aspect, however, is the "creative function" of the decision-maker which identifies "politically important power, even if there is not unlimited choice" (p. 94). Bodenheimer (1977) also notes the "creative activity" of the decision-maker (p. 1150). Those who exercise discretion wield power, and the holder of discretion affects "unilaterally the positions of others" (Bell, 1992, p. 95).

With respect to legal discretion, when, as Bodenheimer (1977) asserts, "the judge is 'legislating' in penumbral situations or unprovided cases, he relies, according to Hart, on social purposes, public policies and—occasionally—moral considerations in filling the open spaces in the law" (p. 1150). However, he takes issue with Hart's lack of specificity in defining the limits of "judicial lawmaking discretion," since these "gapfilling devices" are not rules per se (p. 1162). He goes on to note that "these residual sources of law are regarded by Hart as extralegal factors and not as part of the law" (p. 1150); these are the spaces where discretion is exercised.

The participants in the study had difficulty providing, and most of them failed to provide, a definition for discretion when they were asked for one during the semi-structured interviews. When I probed them further, some principals appeared to understand discretion as being synonymous with judgment or they seemed to perceive it as being an aspect of their decision-making, a feeling they had, or a gray area. Not one principal associated the word with its legal sense. However, that is not to suggest the principals did not understand the legal requirements for the exercise of discretion or that

they were not at all knowledgeable about discretion. They may have understood discretion in a way that was different from how it was presented during the interviews.

6.2 Research Sub-Question Two

What are the influences upon discretion?

K. C. Davis (1969) contends "facts, values, and influences comprise the exercise of discretion" but suggests influences often "crowd out thinking about values" (p. 5). Hall (1999) agrees the exercise of discretion involves "a careful weighing of factors, influences and circumstances" (p. 161). Influences identified in Theme Seven are forces external to the administrators which affect their discretionary decision-making, such as pressure from superiors, expectations of parents and community, expectations of staff, threat of possible legal action, and the need for accountability in, and justification for, discretionary decision-making. The last two influences will be analyzed separately in research sub-questions 9 and 10. Begley's (2010) research identifies "arenas" or "sources of influence" (p. 44) upon administrators' decision-making, such as the community, peers, and the organization itself, and these are consistent with the multiple influences upon decision-making identified by the principals in this study. What is more, the context for a decision, such as the student-specific influences identified in Theme Six, also appears to have considerable affect upon principals' discretionary decision-making, and supports Hodgkinson's (1978b) assertion that "decisions never occur in a vacuum" (p. 61). The principals often insisted their choices "*depended*" upon the situation (i.e., those student-specific influences identified in Theme Six such as personal circumstances, intent, and reaction of student) and contextual aspects, leaving open the possibility for inconsistency in decision-making between similar situations

encountered by individual administrators. These student-specific influences are analyzed in research sub-question 4. Half the principals in the study indicated their roles were evolving because of influences such as school board and parental expectations, changes in student demographics, or changes in societal norms, such as an increased willingness of stakeholders to turn to litigation to resolve disputes in schools.

6.2.1 Influences of Senior Administration and School Board

Affirming Ashbaugh and Kasten's (1984) research into principals' values in decision-making, the principals in this study appeared to be influenced by their perceptions of the expectations of senior administration and the school board. Most principals understood they were required to consult with their superintendent before "making a difficult decision," and this belief could be seen as having a "substantive, long-term impact" on their discretionary decision-making (Ashbaugh & Kasten, 1984, p. 206). As Frank noted, there was an expectation on behalf of the Board "*that we deal with violence issues…it would probably be what my up above me thinks, then the staff and the parents….I would look at what the expectations on me are, of the school, and the school being the Board, the upper administration and the staff*." These professional norms were a part of the "institutional culture" (Torres & Chen, 2006, p. 191) and appeared to limit or to constrain the discretion the principals felt they could exercise in certain complex disciplinary decisions. However, there was no indication the principals worked with senior administrators to ensure compliance of policy, nor did they indicate clear expectations were given to them by central office staff to ensure policy compliance or implementation, and it seemed "senior administration did not spend a lot of time on planning for implementation [of policy]" (LaRocque & Coleman, 1985, p. 159). The

principals simply may have not chosen or may have neglected to mention their senior administrators' acknowledgement and support of policy implementation strategies.

Yet, as LaRocque and Coleman (1985) discovered, "implementer cooperation is not automatic," and "without deliberate intervention of senior administration at the school level, misinterpretation, symbolic compliance, co-optation, and even noncompliance are more likely to occur than mutual adaptation" by principals in schools (p. 160). Their study also found "policy itself is the determinant factor in implementation" and that if the beliefs of senior administration and the board are that "issuance of authoritative statements (i.e., policies)" will "influence school implementation" without the provision of implementation activities, explanations, or information, then implementation is not likely to be successful (p. 157). Although the principals in my study did perceive their senior administrators were responsive to their decision-making, that did not necessarily seem to suggest their superintendents were "actively involved," monitored, or provided "appropriate feedback" to them in policy implementation (p. 161).

As identified in Theme Two, and consistent with Lipsky's (1980) assertion of seeking information among "like-minded" peers (p. 115), the principals expressed the need for collaborative decision-making as part of their role, by making references to "*distributed leadership*" (Shawna and Amanda) and to "*flat organizations*" (Frank). They emphasized the lack of hierarchy in their decision-making processes at the school level. Despite their understanding of the need for collegial and consultative procedures, however, they did acknowledge they also understood these decisions could be overturned by pressure or influence from more senior administrators. While some principals indicated their relationship with their superintendent was mutually respectful, it is unclear

what influence the lack of support from a senior administrator would have upon their discretion, although it could be reasonably assumed it may be considerable. LaRocque and Coleman's (1985) research suggests the attitude of senior administrators has a "critical effect on [policy] implementation" (p. 158). If a values conflict ensued between the superintendent's perception of the value of safety and the principles or Type I values of administrators (Hodgkinson, 1991), for instance, it could be argued one of three things could happen: administrators may "compromise their own integrity" (Ashbaugh & Kasten, 1984, p. 205) at that transrational level, they may choose to receive censure from their superior, or they may step down from their role. One could reasonably assume the first choice might be the more common occurrence, depending upon the severity or urgency of a decision.

Frank, for instance, said he would not change a decision until he was "*told to*," and only when it depended upon "*how pressing it* [the issue] *is*." Melvin, on the other hand, suggested he would never change his decision to meet administrative expectations, since being forced to overturn a decision would make him a "*toothless shark*." Amanda, who admitted to overtly defying board policy, characterized one particularly controversial decision as "*career-limiting; when you do something like that* [her decision to facilitate off-campus smoking by a grade eight student]*, it can be career limiting, so if I'm not in this office next year, you'll know why*." Just how prepared these principals were willing to be insubordinate was not demonstrated; nonetheless, Amanda said she would make the same decision again, despite having learned what she called her "*lesson*." Generally, though, the principals appeared to prefer to avoid transrational values, or those based on principle, a finding that aligns with Roche's (1999) study, and

they tended to avoid moral issues and to resolve values conflict in any situation at a lower level, consistent with Hodgkinson's (1991) third postulate of "avoidance" (p. 103).

The principals often seemed to appreciate they needed to reconcile their responsibility for school safety and the well-being of students with their need to ensure the approval of their direct supervisor, whose influence was a primary consideration. Nonetheless, they seemed to make many decisions "relatively free from supervision by superiors or scrutiny by clients [students]" (Lipsky, 1980, p. 14). Most principals alluded to their need to discuss their decision-making with their superintendents, particularly in complex disciplinary issues, as reflected in the vignette question involving weapons and school safety. The principals' discretion appeared somewhat restricted, if not by policy in those situations involving safety, then by the need for "compliance with superiors' directives" (Lipsky, 1980, p. 19). As a result, despite comments to the contrary, their professional autonomy would not appear to be absolute. Lauren indicated "*if they* [superintendents] *say hands down bottom line, this is it, then that's it…then I say this is a division policy and I have to stand by it*." Miriam, on the other hand, suggested she enjoyed more autonomy and stated her superintendent "*still knows what school's about*" and was "*always kind of behind us as much as he can be*." Consequently, she believed her superior would support her decision-making since she assumed they would usually agree on outcomes and consequences. What is more, "*building the trust*" (Frank) of superiors also appeared to be related to the principals' ability to exercise discretion; with the establishment of trust, principals appeared to believe they had greater flexibility or latitude in their decisions. Forced compliance with a supervisor's directive, however, would directly affect the principals' discretion in disciplinary issues, although to what

extent their compliance may simply be symbolic or monitored by the district office was not clear. Accordingly, compliance would also reduce their "responsibility and accountability" (Lipsky, 1980, p. 153) and potentially shield them from criticism or conflict with stakeholders.

Despite the fact eight of the principals saw themselves as the final determiners in the school-level decision-making chain, that is, the "*buck stops here*" (Frank), it would appear their discretionary decision-making could be over-ruled, or at the very least, constrained by their superiors, especially in matters of the metavalues of maintenance, efficiency, or effectiveness Hodgkinson (1978b, 1991) identifies. Examples given by the principals included issues of safety where length of school suspension may be overturned by a superintendent, or by overt opposition to established school board policy (such as no smoking on school grounds), which could result in a supervisor's reprimand or censure. The principals perceived their supervisors did allow for "individual adaptation of rules and policies according to the specific circumstances of their schools" (LaRocque & Coleman, 1985, p. 158), and for the most part the administrators gave the impression they generally were free to assert their autonomy in decision-making. Although senior administrators may have encouraged flexibility in principals' decision-making, they also may have had as a goal an overall consistent approach in their support of decision-making among the principals of the schools for which they were responsible. That is, they may have structured the choices for the principals in safety issues, for example, in order to create a "degree of standardization in programming throughout the school division" (Lipsky, 1980, p. 14), or may have "utilized [policy] implementation strategies

that treated the schools identically, and from a distance" (LaRocque & Coleman, 1985, p. 160).

6.2.2 Influence of Parents and Community

Most of the principals acknowledged the influence of parents upon their discretionary decision-making; however, many believed they would not necessarily allow this "*pressure*" (Miriam) to affect their decisions. Hodgkinson (1991) asserts that organizations, such as schools, depend upon outside support from parents and other stakeholders, and there is a "natural tendency" for administrators "to seek to avoid offending any perceived interest group" and, instead, to "develop allegiances or coalitions" among these groups to support policy (p. 60). A "pathology of consensualism or 'squeaky wheel' administration" can result, wherein the administrator "sacrifices value in the face of perceived pressures," and responds "only to the most vocal lobby" in a desire to "extinguish complaints" (p. 60). Statements made by some of the principals were not consistent with Hodgkinson's (1991) notion of consensualism, and reflected their perception they would not be swayed in their decision-making. Melvin, for one, was adamant he would never bend to a parent's demands, as was Amanda who "*couldn't care less*." Sarah said she "*would feel uneasy*" but would stand firm in her decision if it were challenged by a parent. Even Frank noted he did not "*want a bipolar parent running in here and running up one side of me and down the other…that's part of the negative things about doing this job, that you have to deal with tough people*." Such a scenario, he emphasized, would not influence his decision-making. The principals also gave the impression they were not making decisions based upon the "line of least resistance" (p. 122) to external influences—according to Hodgkinson's (1996) third

postulate of avoidance—although they may have been. The level of influence parents had upon the decision-making of the principals was not clear, but it could be reasonably assumed that it could affect their choices, especially if parental influence was supported by a central office senior administrator. Moreover, Torres and Chen (2006) claim discretion is influenced by "contrasting perceptions of appropriate student behavior and conduct" (p. 191). This contention is substantiated by Miriam who confessed to conceding to parental demands when a student's mother made "*a mountain…out of a molehill*" with respect to her decision-making in a student behavioral incident.

The influence of parents and community upon the principals' decision-making also appeared to vary depending upon the location in the city of any specific school. Hall's (1999) research similarly revealed "disparate documentation procedures" among principals, depending upon the degree of "affluence and influence" of a student's parent (p. 143). Comparable processes were alluded to by Adam, who changed his procedures for documentation because of "*community perception,*" not necessarily "*parent pressure,*" after moving from an inner-city school to one in the suburbs. He indicated the characteristics and values of the school community forced him to "*re-calibrate…for the social context that I found myself in…and it forced me to look at my practice from different angles and different dimensions.*" Frank had also noticed the differences in parental attitudes and expectations in schools from one area of the city to another.

The manner in which parents' lack of support would affect the decisions of the principals in any situation was unclear. If parents did not support the school and "*trounced it*" in front of the student, Miriam, for one, indicated her discretionary decision-making would be affected. She seemed more kindly disposed in her decision-

making towards those who supported the school, but alluded to having experienced more positive parental and community supports at a previous school in which she had been principal. Perceptions of their relationships with students, such as the history of conflict with a male student to which Miriam referred, may be other influences upon principals' decision-making. Fear of parents' criticism or "*the opinion of them* [principals] *in the community*" (Melvin) may influence the exercise of discretion by administrators. For example, Miriam described what she saw as a widespread deterioration of parenting skills, maintained the "*parents really have driven me crazy*" and concluded that parental support for the school was "*shifting*" away. All of these perceptions affected her decision-making, despite her hard work. She believed "*parent pressure is huge…and I think it's going to become more of that…every other day you pick up the newspaper, there's some lawsuit*." These findings in some ways mirror what Hodgkinson (1978b) views as an "administrative value bias," typified by the notion of "self-denial, hard work [and] deferred gratifications," that are reflected in administrators' "natural affinity" for the stereotypical belief they may be overworked and underappreciated in their "nomothetic commitment to the organizational values" (p. 130). In a similar way, Lipsky (1980) points to decision-makers' own "subjective assessments of the validity of their work" (p. 114) as being highly-specialized yet little-understood or even underappreciated in their role. It may be reasoned the principals might include information in their decisions that may support these perceptions and ignore other, relevant information in disciplinary situations.

6.2.3 Influence of Staff

The expectations of staff in student behavioral incidents appeared to be a lesser consideration in the principals' decision-making. Many of the principals were disdainful of teachers who made numerous student referrals to the office and who perceived the principal's role as simply being the school disciplinarian who enforces rules and determines appropriate consequences. Melvin pointed out his staff wanted him to be more punitive (which he was against) and to develop a "*really hard and fast, consistent set of expectations that if they* [students] *do not follow then we are going to go after them*." Similar expectations of staff appeared to frustrate and even anger the principals, who seemed to view discipline as a shared responsibility between teachers and administrators. Amanda, for one, claimed she would "*no longer attend to the disciplinary conduct*" in her building, while Danielle said that in deciding to send students away some principals would "*make the teachers happy because the student can be someone else's problem*." Sarah indicated she would not be swayed by staff challenges to her decisions, although she would "*like to make sure that they understand*" the basis for her choices. In a similar way, Adam indicated that although pressure from teaching staff would not influence his decision-making, he would ensure that they would "*understand why he* [was] *making the decisions*" he made. What consequences for misbehavior would be considered appropriate is subjective and a matter of interpretation; the principals pointed to past choices they had made that were different from the expectations of staff and stakeholders. In those cases, they perceived they had stood firmly behind the decision they had made, despite questions or challenges from staff.

In the area of student suspensions, all principals readily acknowledged their authority to suspend students and the expectations of staff and parents for them to use this disciplinary consequence with students as a primary response in disciplinary cases. Lipsky (1980) contends educators "decide who will be suspended and who will remain in school, and they make subtle determinations of who is teachable" (p. 13). Most principals indicated they did not believe suspensions were always an appropriate or an effective disciplinary consequence. However, the frequency with which they suspended students, or the grounds upon which suspensions were issued, other than for safety concerns, was not clear.

6.2.4 Other Influences

Another influence upon the discretionary decision-making of principals is what Hodgkinson (1978b) identifies as the "factors of personality" of the decision-maker, which "insert themselves into whatever range of discretion is left available" in the "rational decision making process" (p. 60). At times, things such as "self-interest, ideology, ambition, imagination, attitudinal predisposition, and prejudices" (p. 60) may have influenced the principals' decisions and, although they did not always acknowledge them as such, they often identified these influences in other administrators' decisions. Adam, for one, said he felt "*very often a great deal of pressure to make the right decision*," although he acknowledged he was "*clever enough to understand that I am going to get it wrong sometimes*." The principals also pointed to those administrators they believed were ambitious and made decisions based on their desire for career advancement and the opportunity to move "*downtown*" (Danielle). They were critical, too, of those administrators whose decision-making was perceived as "*black and white*"

(Amanda) because their decisions were seen as being self-centered, and not student-centered. Hodgkinson (1978b) identifies characteristics such as ambition, opportunism and a desire for success as constituting what he terms "careerism," which may influence decision-making and negatively affect students through "unfulfilled obligations" or a "shucking of responsibility" (p. 165).

Attitudes, which Hodgkinson (1978b) pictures as being at the "interface of self and world" (p. 109; see also Begley, 1999b) and which manifest themselves in behavior, may have reflected the unconscious, or conscious, values of the principal. Amanda, for one, championed values of mutual respect and security, yet she defied board policy as she "*held*" cigarettes for a grade eight student and allowed her to smoke just off school property in an effort to encourage the girl to stay in school. In order to effect what she saw as desirable change, her espoused "*out of the box*" attitude which challenged "*an occasional policy and law*" and which was the "*side of me which is Mother Teresa*" became behavior that did not necessarily reflect her expressed values, or else reflected unconscious values or values known on some other level. This finding does not support Hall's (1999) research which found personal characteristics did not appear to be a "prominent influence" (p. 160) in principals' discretionary decision-making.

March (1994) points to the "degree of uncertainty, or risk" (p. 6) involved in decision-making alluded to by some principals as an element of their discretion. Amanda, for one, did not appear to be risk-averse in her decision-making, and she did not express regret when censured by her superiors for her controversial decision to undermine board policy, despite saying she had "*learned her lesson*." Others, such as Harold and Sarah, indicated an unwillingness to stray from policy mandates when the

consequences of or alternatives to their decisions were unknown. In the principals' decision-making, risk seemed to be a reflection of their perception of their role obligation and the conscious or unconscious need to meet the expectations of that responsibility, or of their own personality or experiences, or of some other unknown aspect of their decision-making. Meyer *et al.* (2009) also note the role of conscience in informing the boundaries for the exercise of discretion. Only one principal, Sarah, identified conscience as being an aspect of her discretionary decision-making; however, that is not to conclude conscience is not an influence in the principals' exercise of discretion or that it does not help to determine the parameters for its use.

6.2.5 Student-Specific Influences

Other influences upon the principals' decision-making related to the individual student or students involved in the disciplinary incident. Some of these influences, identified in Theme Six, were the personal circumstances or life situation of the student involved, as well as his or her academic and disciplinary history.

All principals valued the ability that discretion afforded them to account for personal and life circumstances in student disciplinary incidents. Most of the participants understood that "an in-depth knowledge of the student and the ability to use that knowledge in a pedagogically meaningful way [could help them] to determine the appropriate disciplinary measure" (Brown & Zuker, 2007, p. 252). Whether they used that knowledge consistently in their decision-making was not clear; however, they endeavored to make accommodations in their decision-making for students whom they

understood as being especially challenged by race, poverty or disability.[19] For the principals who worked or who had worked at inner-city schools, life situations and personal circumstances directly influenced their decisions (see also Taylor, 2007). For example, Shawna noted her school had a school population that was "*95% Aboriginal*" with the "*highest concentration of low income families*" in the city. There was "*lots of poverty*" in the community, and the school had a "*very transient population…one student in grade eight has been in eighty different schools*." As she indicated, her discretion was "*all about context*" and looking at the "*big picture for the child*" when she made a disciplinary decision. With such extreme personal circumstances existing for her students, it may have been difficult for her not to consider the context in any disciplinary situation. Other principals, such as Frank, who worked at a suburban school, indicated life circumstances of the student influenced their decision-making, yet these considerations did not appear prominent; other influences, such as staff and community, may have been more important. Consideration of circumstances may have been a function of place or of the philosophy of the individual principal; indeed, that is how Shawna characterized it—her "*philosophy of reclaiming youth*." However, there did appear to be a gap in their mindset or education when it came to differentiating on the basis of student-specific circumstances.

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[19] Their consideration of these aspects is similar in some ways to the "consideration of gender, race, ethnic, and cultural background as well as Aboriginal status" in the sentencing of young offenders under the *YCJA* (Roberts & Bala, 2003, p. 401; see also *R. v. Gladue*, 1999).

Interestingly, fewer than half the principals considered the disciplinary history of the student in their decision-making and a progressive discipline regime[20] did not appear to be at the front of their minds. In the vignette, by way of illustration, only four principals, Frank, Sarah, Melvin and Amanda, directly mentioned the prior behavioral incidents of the student Gary as influencing their decisions. A student's disciplinary history did not appear to be an important consideration for all the principals. That does not mean, however, they never considered the disciplinary background of their students. Miriam, in fact, mentioned her frustration in decision-making because of the number of behavioral incidents that involved one student in her school whom she identified as a "*bully*." As a result, she questioned her own ability to be fair. Lauren, in a related way, tracked incidents of student misbehavior in a binder, a practice initiated by her predecessor. She categorized every disciplinary incident referred to the office and believed this system helped her "*regulate what the consequences should be*" and to use the examples "*to support* [her] *decision*." No principals, except one, mentioned the age of a student as being an influence upon their decision-making, despite that given the fact they practiced in elementary schools with students ranging in age from five to fourteen years, age may be expected to be an influence.[21] The principals simply may have chosen not to mention age as being an influence, age may not have been foremost in their minds, or they may not have understood age to be an influence at all upon their decisions. One

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[20] Progressive discipline is defined as a "series of defined steps progressively applied as disciplinary interventions to improve student behavior" (Roher, 2007, p. 217).

[21] As a point of comparison, it should be noted the age of young people is a consideration in the approach to sentencing in youth criminal justice. Abella J. of the Supreme Court of Canada asserts in *R. v. D.B.* (2008) youth have less maturity than adults and "a reduced capacity for moral judgment." As a result, they are entitled to a "*presumption* of diminished moral blameworthiness or culpability [emphasis in original]" (para. 41).

other student-specific influence upon decision-making noted by the principals was the academic history of the student(s) involved in the disciplinary situation. Only half the principals indicated the academic achievement of a student would be an influence affecting their disciplinary decisions, while one, Melvin, openly stated that he refused to consider lack of academic progress as a basis for his decision-making. Academic progress may not have been an important influence in minor disciplinary incidents; however, when major sanctions, such as suspension and expulsion, are being considered, the continuance of the academic program, it could be argued, should be an important consideration in the principals' decision-making.

The lack of importance the principals appeared to attribute to student-specific influences such as disciplinary history, academic performance, and age contrast with Ontario's Bill 212, the *Education Amendment Act (Progressive Discipline and School Safety, 2007),* in which student history is a required component of the progressive discipline process.[22] As well, in the sentencing of criminal offenders, an individual's past circumstances are also heavily considered. Under Bill 212, Ontario principals are "required to consider 'mitigating factors' or 'other factors' prescribed by the regulations" (Roher, 2007, p. 215). The "'other factors'" that "must be taken into account if they would mitigate the seriousness of the activity for which the pupil may be or is being suspended or expelled" include the pupil's age, history, and the use of a progressive discipline approach (Roher, 2007, p. 216; see also Bill 212 (2007); and O. Reg. 472/07).

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[22] In their analysis of the *YCJA*, Roberts and Bala (2003) note age is "the most important mitigating factor relevant to young offenders" and that "correlation between age and severity of punishment is the one feature common to all Western juvenile justice systems" (p. 412). They also point out that "previous findings of guilt of the young person" are circumstances that must be taken into account in youth sentencing (p. 412).

The principals may have considered these elements in their decision-making, but they did not seem to be foremost in their minds. However, the apparent lack of importance the principals in the study attached to these details may reflect a gap in their mind-set, training, or knowledge. It is not clear how these factors would be interpreted or how they would impact the disciplinary decision-making process (Trépanier, 2007).

Additionally, under Ontario's Bill 212, for students on long-term suspensions or expulsions, school boards are required "to coordinate the types of support required to assist the student in continuing his or her learning" (Roher, 2007, p. 214). The academic progress of students is a primary concern for schools; indeed, all study participants indicated the primary need for order and discipline in schools was to create a suitable environment for learning. It is ironic, then, that the academic progress of all students did not appear to be a more prominent influence in their decision-making.

6.3 Research Sub-Question Three

How is discretion understood and practiced by school administrators in their decision-making?

The principals appeared to interpret discretion more as being an element of larger, more complex issues than as being a part of every single decision they made (Lacey, 1992; see also Vorenberg, 1976). If assuming the law, broadly defined for this investigation, is a system of rules as defined by Hart (1961), then the principals appeared to consistently make disciplinary decisions within the penumbral area he described. Moreover, the principals often seemed to exercise their discretion in a quasi-legal fashion; in fact, one principal, Adam, drew that precise analogy. Judge-like, they would collect information, make decisions, and assign consequences all within the broadly

defined authority delegated to them through statute; moreover, discretion appeared to be exercised at all stages of their decision-making process.

Meyer *et al*. (2009) and Begley (2010, p. 49) suggest there are types of personal and professional discretion exercised by principals in their decision-making (see also Frick, 2009; Haynes & Licata, 1995). The principals in this study did not appear to consciously recognize discretion in this sense, although they may have intuited it in a different manner. From their statements, it is not apparent if professional discretion and personal discretion are specific types of discretion, if they are functions of one another, or if they operate independently. If it is assumed professional discretion and personal discretion can be differentiated, however, the manner in which they may be distinguished, and the requirements or conditions for the exercise of each type were not acknowledged and did not appear to be considered by the principals in this study. If both professional discretion and personal discretion are acknowledged and understood by the principals, then the distinction may help or guide them in their disciplinary decision-making to make decisions that support student well-being. If the principals did not recognize this distinction, however, then they may not always meet their professional obligations, they may find their accountability in decision-making to be compromised, or their "professional autonomy or expertise and discretion" may be negatively influenced or affected (Begley, 2010, p. 49), either consciously or unconsciously, by personal considerations. Being aware of, or being sensitive to, a distinction between personal and professional discretion would be helpful for principals because, in some disciplinary situations, they may experience a tension between their obligations in exercising professional discretion and their own values in exercising personal discretion. This

tension could cause hesitancy, anxiety, or angst to affect their disciplinary decision-making, especially in situations where there were conflicts between "personal moral positions and those of the profession, school district or community" (Begley, 2010, p. 49), and could result in inconsistency in decision-making or force them to make decisions that do not serve students well.

6.3.1 Obligation to Fulfill Legislated Role

Hodgkinson (1978b) describes administrators as seeking to accomplish "*organizational* [emphasis in original] ends" (p. 81) through the use of power. Authority is the term used for "legitimized power" (Hodgkinson, 1978b, p. 83), and the principals in the study were delegated their authority through *The Education Act* (1995). All principals in the study acknowledged their authority and responsibility for maintaining order and discipline in the school setting as set out under the statute, but it would be reasonable to assume each principal interpreted this obligation differently; as a result, their interpretation of their role and their function within it would influence their decision-making, especially if those roles are not clearly defined in legislation and if they are delegated wide discretion. For instance, certain principals may understand their roles as being authoritative disciplinarians, while other may see themselves more as conciliators and mediators (see Hall, 1999). The principals appeared to understand their authority in the latter sense, although there was fluidity in their role, and they also seemed to understand their position required them, at times, to be authoritarian.

They appeared to recognize their statutory obligation to provide a safe and orderly school environment and, similar to Hall's (1999) research subjects, they seemed to do so "through an integration of district policy, discretion and collaboration" (p. 139). Also,

consistent with the principals in Hall's (1999) study, most of the administrators appeared to interpret discretion as the "freedom to choose between a range of options" (p. 139). A common thread woven through the principals' understanding of discretion in student disciplinary issues was the flexibility, or latitude, it afforded them in their decision-making. This flexibility was not one they acknowledged as being necessarily delegated to them through provincial legislation or school board policy, although they may have simply assumed their discretionary authority as disciplinarians. The principals did not indicate an awareness of any specific or unique legal responsibilities or requirements in exercising their discretion, despite the fact they may have been aware of this obligation. Neither did they mention any occasion on which their exercise of discretion may have extended beyond the limits of that which they were delegated, nor did they suggest they consistently considered the reasonableness of their actions. In fact, they appeared to *assume* their decision-making was, in most cases, reasonable. They did not indicate if they interpreted "inaction decisions" (Hall, 1999, p. 159) as being exercises of judgment, but even choosing to do nothing suggests an exercise of discretion. Again, these considerations may reflect a lack of precise understanding of the parameters or requirements of their authority. Perhaps the principals' perception of discretion may have been a function of the magnitude of the behavioral incident or of the age or grade level of the students involved, or some other, unknown circumstance.

In their responses, the principals gave the sense they knew what they were doing in much of their decision-making, as identified in Theme Two (their understanding of their role); perhaps some were exercising good judgment and others were not, depending upon the circumstances of the disciplinary issue. However, their interpretation of the

broad discretion they assumed through the doctrine of *in loco parentis*, for example, may suggest they do not know as much as they think they do, or as much as they need to, in order to fulfill the obligations of their position. Their apparent lack of consideration of legal principles, relevant case law or Supreme Court decisions parallels Manley-Casimir's (1974) assertion over thirty years ago that the day-to-day operation and management of public schools seem "largely untouched" by "landmark decisions" affecting the "educational enterprise" (p. 347). He further suggests public school administrators "seem indifferent to court decisions and appear either reluctant or unable to incorporate judicially specified standards into their daily administrative behavior" (p. 347). Such indifference appears to be reflected in the principals' comments, and their lack of reference to case law or their interpretation of the principle of *in loco parentis*, for example, may suggest they may not be making decisions in accordance with "judicial decisions" (p. 347). On the other hand, they simply may have chosen not to make specific references to legal or law-related issues or topics.

For most of the principals, discretion appeared to reflect the ability to judge or to make decisions as they saw appropriate and, at times, their decision-making may be perceived at best as arbitrary, and at worst serendipitous, although they themselves did not characterize it in that way. However, the principals' "application of discretion" was not always "free and flexible" as Hawkins (1992) describes, but often appeared to be "guided and constrained" (p. 13) by norms, professional standards, and social and organizational rules, despite the autonomy they seemed to believe they enjoyed in decision-making. The principals in LaRocque and Coleman's (1985) study "valued their autonomy" and suggested they were "'running the show at the school'" and "'making all

the decisions'" (p. 162), but this finding was not borne out consistently by the principals in my study, although they perceived they were free to make decisions as they saw fit. The apparent lack of monitoring of most of their disciplinary decisions by central office, however, is similar to the "absence of systematic monitoring procedures" (p. 162) noted in LaRocque and Coleman's (1985) research. The "lack of interference by central office staff" (p. 162) may have contributed to the sense of freedom in decision-making the participants in my study appeared to be afforded, although some of them, such as Miriam, Lauren, and Sarah, seemed to understand that they were required to defer, or else wanted to defer, to their Superintendent's decision-making in complex disciplinary situations, especially those which included out-of-school suspension, as required by school board policy. Others, such as Melvin and Frank, seemed to suggest their decision-making was rarely scrutinized by their supervisors. There may have been a prevailing belief by senior administration that if the principals were "professionals" and "well-qualified" (LaRocque & Coleman, 1985, p. 162) in terms of experience or education, there were few complaints about them by parents or students, there were no data to suggest otherwise, or there was a lack of contentious issues, then they did not require monitoring of their decision-making. However, this finding in LaRocque and Coleman's (1985) analysis is incongruous with the majority of the principals' characterization of themselves on the demographic sheets in this study as being inexperienced, although their inexperience does not suggest they necessarily felt unqualified to act in their roles. Yet, none of the participants in my study indicated a desire for closer monitoring of his or her decision-making practices by senior administration; they appeared to believe their superintendents perceived they were doing a good job in their roles.

6.3.2 Discretion Perceived as Good Judgment

The principals clearly echoed the finding in Ackerman's (2003) study that discretion should include the exercise of good judgment (Galligan, 1986; see also Hall, 1999). They interpreted discretionary decision-making as necessarily based upon sound judgment, or common sense which they deemed essential to their role as school leaders. Some, for example Melvin, assumed they were appointed to that role because of their ability to exercise good judgment. He was critical of those administrators who "*do not handle conflict well*" and who "*would much rather just not talk to people than actually say this is what I believe about something*." He believed those administrators did not "*have the capability…they do not have the skill set*" to exercise discretion in their decision-making and "*stand by it and be able to justify it*." This finding supports Torres and Chen's (2006) suggestion there may be "various levels and types of intelligence" (p. 191), or even levels of skill needed to exercise discretion well. The other principals did not appear to consider that there was a certain level of intelligence or skill necessary for the exercise of discretion. According to Shawna, "*discretion should be based on sound decision-making practice.*" They appeared to assume that everyone was capable of exercising discretion and that its appropriate and reasonable exercise was more situation- or context-dependent than skill-dependent.

Conversely, if the principals did not make useful, sensible decisions, they could be seen as ineffective and, one might reason, lose the support of stakeholders. As Frank noted, "*If you're seen as someone who is approachable, that people can talk to you, that you're fair, that all has to do with good judgment. Practical is another word that would go with good judgment I think, because if you're making impractical decisions about*

things, they're not common sense stuff." Harold saw good judgment as being the product of experience and "*judgment…comes from experience…and judgment brings on the effectiveness* [of a principal]." However, as Vorenberg (1976) observes, the official is often "encouraged by statute to exercise his best judgment with great freedom and little guidance" (p. 654). Good judgment is highly contextual and subjective, and the fact the administrators simply assumed they were exercising it does not imply they were doing so. They did not consider, or may not have been aware, that sometimes in their goal of just decision-making they may have been making their decisions guided by the "rule of normality" (Lipsky, 1980, p. 112), that is, choosing within established expectations of behavior. Consequently, good judgment filtered through their notion of standard and deviant behavior may constrain the fair treatment of a student.

Manley-Casimir (1974) astutely points out that "the crucial question is, What constitutes 'good' or 'considered" judgment?" (p. 351). Good judgment in discretion may be understood in a number of ways, and the fairness of any discretionary decision is highly subjective. It is difficult to determine whether some principals consistently exercised good judgment and others did not, although it may be reasonable to assume not all principals exercised good judgment in every situation. Furthermore, the principals may have interpreted their judgments and decisions as being either good or not good, or as being somewhere along a continuum of judgment. They believed, however, not all students start out equally and, as a result, they clearly desired the "flexibility and individualized treatment" (Hall, 1999, p. 159) and the freedom of choice discretion afforded them in their decision-making to make what they hoped were good judgments.

As in Hall's (1999, p. 141) inquiry, a sense of justice, together with their personal philosophy, served to guide the judgment of many of the principals. Danielle, for one, noted how her "*personal philosophy*" was based on the value she placed on "*the worth of young people and where they belong in our society*" and served as a basis for her decision-making. Sarah added that her "*own beliefs in being honest and being kind to people*" were values that helped to inform her judgments. Ideologies are unique and, as Amanda concluded, her discretionary decision-making was based on her "*own paradigm*…[which] *is probably not congruent with others*." Although many of the principals expressed similar beliefs about their treatment of students, individual philosophies as a foundation for discretionary decision-making can lead to diverse and widely inconsistent consequences for student misbehavior, which may or may not serve students well. At other times some of the principals also spoke of discretion as an intuitive or "gut" feeling (see also Frick, 2009). Amanda offered that "*you've got to go with your gut*," while Miriam felt decisions were made with "*your gut and your heart*," and Lauren believed "*you go through gut sometimes*." Hawkins (2003) suggests that these hunches are used by decision-makers, when they "are conscious of a lack of an orderly or seemingly rational way of reasoning," to take present situations and fit them into previous, familiar cases, which leads to "routinised behavior" (p. 211).

Some principals spoke about their exercise of discretion as being an imposition of moral judgments, and they relied upon their sense of right and wrong (see Hall, 1999; see also Lipsky, 1980). Their moral judgments were guided by their values and, perhaps rightly or wrongly, on what they believed was good or best for a student. Frank, for example, believed he was "*making a decision on some sound backing and moral*

grounds," while Shawna thought "*sometimes there are things that are morally, you just know you've got to do something because it's good for that kid*." Their judgments of the "moral worthiness" of individuals (Lipsky, 1980, p. 109) seemed to be negotiated within contextual limits and could be affected by any number of other aspects, such as dominant behavioral norms, lack of resources such as time, or even by what they regarded as the objectives of the disciplinary consequence. Lipsky (1980) argues the problem here is not that "moral evaluations" are made among the offense, the offender and the consequence in the decision-making process, but that "diffuse moral assumptions of dominant social orientations" are likely to influence these decisions (p. 110).

The differentiation of students also may be based on the principal's personal interpretation of the distinction between worthy and unworthy, or deserving and undeserving, students. Lipsky (1980) characterizes worthy students as those who are "more likely to respond to help" (p. 111) than others and, as a result, are more gratifying to work with. Miriam, for example, indicated her anger and frustration with one boy who had teased a special-needs student and who, as a result, had been threatened with a knife by another student who came from a disadvantaged family background. Initially, she had not wanted to suspend the knife-wielding student and instead focused on the victim as someone who "*in all my years of teaching I can't find one thing I like about that kid* [the bully]*...he's rude, he's disrespectful, he's defiant, he does nothing.*" Ultimately, she adjudged the victim as not "*worth ruining your life over*." Miriam outlined the dilemma she experienced in making the disciplinary decision in this case, and worried that not being able to exercise discretion by considering all aspects of the situation (including the relative worth of the bully) would not ensure a fair or just resolution. Her conflict

reflects the "interhierarchical conflict" Hodgkinson (1983) identifies when values are "in contention at different levels" or the "principle of *principle* [emphasis in original]" (p. 203). Her decision to "override" her own "private affect (III)" (Hodgkinson, 1983, p. 203) and ground her decision at the Type I level of principle reflects the "moral *complexity* [emphasis in original]" of "leadership" (p. 204). Her inner turmoil also appears to mirror what Willower (1999) identified as the "gray areas" of administrative practice where tough choices are required "between closely competing goods or the lesser of evils, [and where] moral valuation comes into play" (p. 132; see also Frick, 2009).

6.3.3 Discretion Required for Fairness

The most salient feature of discretion, as interpreted from the study's findings and as understood by the principals, is its exercise by decision-makers so they might differentiate treatment of students in order to be fair. For the principals, justice appeared "intimately related to the exercise of discretion" (Manley-Casimir, 1977–78, p. 85). Their understanding of good judgment in their decision-making was related to fairness, which many principals were quick to point out was synonymous with equity, not necessarily equality, although it can be reasoned that finding the tension between equality and equity might not be achieved simply by exercising discretion. The value principals placed upon fairness, or at least the desire to be perceived as being fair, corroborates the findings of Hall's (1999) study, and was evident in Theme Three. Curiously, whether their decisions were perceived by students always as being fair or as examples of good judgment was not a consideration mentioned by any of the principals. The principals said they valued fairness for students, that is, students "getting what they deserve as the consequence of their own individual actions and efforts" and personal situations

(Yankelovich, 1994, p. 23), although as final arbiters in a retributive sense, they may not have been mindful of all the elements which can contribute to student misbehavior, such as the role and responsibility of the school itself. It is important to note that although the fairness they espouse appears to be a very solid value serving as the basis for a decision, it may be forced out, as Davis (1969) claims, by other constraints such as lack of information, resources or time, and result in consequences that are decidedly not fair or just. Putting the student at the center of the decision, it can be argued, will not necessarily ensure fairness, either. The principals appeared to value equality insofar as rules could be said to apply to all students, but discretion yielded them the flexibility they required to adapt rules to their personal definitions of equity. They may have tended to over-compensate, at times, in their attempts to appear fair and just; as a result, a minority student, for instance, may not have received a consequence which was appropriate to the misbehavior while, on the other hand, a student who was a member of the dominant group may have received a harsher consequence. The administrators seemed to understand that while leeway in disciplinary decision-making occasionally was required, at other times more severe consequences were needed because of "prevailing norms" (Vorenberg, 1976, p. 663). Arguably, something may be lost in terms of the educative aspect of discipline if the opportunity to apply leniency or, conversely, harsher consequences is not afforded principals (Vorenberg, 1976).

The principals in the study appeared to firmly believe they were treating all students "alike" (Lipsky, 1980, p. 112). It may be somewhat ironical in that they desired consistency in decision-making that was just, yet their practice of differentiation of students could result in outcomes that are anything but consistent or just. Moreover,

there may have been consistency within the discretionary decision-making of one principal based on personal philosophy and values, but among all the principals, there appeared to be inconsistency in their decision-making on issues that appeared to be similar. This disparity in treatment was evident, for instance, in their responses to the duration of the school suspension levied for the student Gary in the vignette; the length of suspensions determined by the principals varied from zero to fourteen days. Brown and Zuker (2007) argue "if students are to be treated differently, this must not be an arbitrary or accidental result but must flow from a proper exercise of administrative discretion" (p. 239). Despite having school board policies designed to assist them to interpret and to administer student suspensions, this wide range in the number of suspension days in the vignette suggests the principals, based on Brown and Zuker's (2007) assertion, understand the proper exercise of their discretion in very different ways.

Hawkins (2003) questions the notions of consistency and inconsistency in discretionary decision-making, contending these terms may be recognized in ways that are different from the research assumptions. For example, researchers or scholars may have discerned "'similarity' in a case where none may have existed for the decision-maker" (p. 205). Furthermore, while there may be assumptions there were "no differences in the cases as framed" by the principals in this study, they may have been "responding rationally—and consistently—to what they…regarded as differences in key features" in the scenario (Hawkins, 2003, p. 205). Even without discretion, however, inconsistency in decision-making may arise, since decision-makers may "frame the same phenomenon…differently" (Hawkins, 2003, p. 205), and treating two unlike cases in similar ways can still result in unfairness.

Individual values, too, can lead to "inconsistency in administrator response" to similar situations (Hall, 1999, p. 142; see also Manley-Casimir, 1977–78) which may reflect Hodgkinson's (1978b) second postulate of "degeneration" (p. 116), in which values tend to lose their intensity over time. Perhaps the inconsistency in discretionary decision-making that may result stems from different objectives, purposes, philosophies, preferences, or some other quality not considered by the principals. However, inconsistency "can pass unnoticed" when policies are vague, and there is a temptation by the administrator "to resolve issues at the pragmatic or lower levels" (Hodgkinson, 1978b, p. 195).

The principals differentiated treatment in order to achieve fairness for students, and they appeared to believe that their decisions were made in good faith; nonetheless, their decision-making could contain an element of bias or a prejudicial attitude (Lipsky, 1980). As Ashbaugh and Kasten (1984) emphasize, "administrators in organizations are not exempt from value bias in the decisions they make" (p. 196). Lipsky (1980) further asserts it is useful to "assume bias" in discretionary decision-making and to question "why it sometimes *does not* occur [emphasis added]," rather than to assume "equality of treatment" and to ask "why it is *regularly abridged* [emphasis added]" (p. 111). The principals, however, sought to counter any claims of discriminatory decision-making and, instead, emphasized ethnicity, socio-economic status or gender, those student-specific aspects identified in Theme Six, as being accommodated fairly through their discretionary decision-making and, in so doing, assumed they were unbiased in their decisions. They appeared highly sensitive to any perceptions of bias and were indignant toward suggestions that the exercise of discretion could result in disparity. It appears

they interpreted these student-specific elements as mitigating circumstances, not aggravating ones. For instance, they stressed a student's ethnicity would not influence their decision-making, and all principals noted in their responses to the vignette questions that the fact Gary was a racial minority student would not affect their decision. Their "tacit assumptions" that they were "honourable" leaders and administrators align with what Hodgkinson (1991) identifies as a pathology of organizations, since there is no evidence to support or to refute that they are such teachers and administrators; in fact, he suggests there is no "*prima facie* ground for this presumption" (p. 60).

Those principals who had experience in inner-city schools with racially diverse student populations, especially appeared to assume they were neutral, or unbiased, in their decision-making, which they may have been, despite any decisions which may reinforce disproportionate outcomes for students based on race, gender, or poverty. On the other hand, students' personal circumstances, such as poverty or a dysfunctional home life, were identified as mitigating factors for differentiation in their quest for fairness among students. The criteria for their interpretation of what constituted mitigating circumstances were not identified. Conversely, most of the principals understood lack of flexibility in decision-making, and administrators' inability to consider context, would result in inequity and would be inappropriate and, possibly, unprofessional. If discretion is not delegated to principals, it is legitimate to question how else they might account for mitigating factors in their decision-making (Vorenberg, 1976).

The principals appeared well-intentioned and genuinely desirous of treating students fairly, yet good intentions cannot guarantee equitable outcomes for all students.

Through the differential treatment of students, they seemed to believe they were being fair and just in their discretionary decision-making; however, their understanding of these constructs, or their perceptions about "causal relationships" (Martin *et al*., 2012), may have changed over time. If the purpose of the exercise of discretion, to quote K. C. Davis (1969), is that the "goal of individualized justice be attained" (p. 19), it was not possible to determine if the principals always were able to meet that objective in their disciplinary decision-making.

6.4 Research Sub-Question Four

What influences, values or circumstances do school administrators consider in their decision-making?

No one consistent element or circumstance served as the basis for the principals' discretionary decision-making; instead, there appeared to be a number of influences and values. Those influences that may be understood as being external to the principal are analyzed in research sub-question 2. There was no way to precisely measure the influences on decision-making. As noted previously, Theme Six suggested principals consider many influences in their decision-making, including circumstances that were more focused upon the individual student who was misbehaving, such as personal and family circumstances, the intent of the misbehavior, the student's reaction to the misbehavior, and the student's academic and disciplinary history.

All principals appeared to be highly sensitive to the social contexts of all disciplinary situations. Consistent with the observations of Meyer *et al*.'s (2009) study, many of the principals' disciplinary decisions appeared to have been made within "prescribed normative decision frameworks" (p. 26), but context and circumstances may

have caused these frameworks, at times, to be inappropriate. The student-specific influences identified in Theme Six, such as family background, intent and reaction appeared to be important aspects of the principals' decision-making. For example, the administrators' concern with the home situation and the academic progress (see also Hall, 1999) of the student Gary, in the vignette question, says much about their willingness to consider mitigating factors; however, the degree of influence this information would have upon their decision-making is difficult to determine. The context and circumstances of individual cases appeared to be variable influences across the entire group of principals, although some principals indicated that one particular aspect (e.g., socio-economic) may have had more influence upon their discretion than others.

6.4.1 Values-Informed Decision-Making

The principals' recognition of values-informed decisions is consistent with the bulk of the literature in administrative decision-making. They understood values as guiding their decisions and, although they may not have understood values as being a link between need and behavior (Hodgkinson 1978b, 1991), the participants believed values were acquired or learned. Despite their insistence on gathering information, obtaining the facts of a situation and making their decision accordingly, the administrators appeared to make judgments based on values which could be affected by various influences. Their values, though, were linked in some way to the information they used in any given disciplinary incident, and in some instances this information gave individual principals a "set of standards or guidelines for acceptable action" (Campbell-Evans, 1988, p. 25). At other times, however, they may have simply disregarded the information altogether because of constraints such as time, the credibility of the informant, or the lack of

complete information. On the last point, Begley and Leithwood (1989) contend "values provide structure for problem-solving" when "problem-relevant" information is lacking (p. 37), and their assertion appears consistently borne out by the comments of the participants in this study.

The values of "caring, responsibility, accountability, fairness and commitment to students" appeared to pervade the decision-making of the principals (Hall, 1999, p. 141), and they perceived these values informed their decision-making. However, there may have been other values which ran contrary to these espoused values that served as their decisional base. One might expect that principals would treat their students with a "degree of care with attention to their circumstances and potential" (Lipsky, 1980, p. 167), and the study participants did emphasize the value of building caring relationships with students through other values such as honesty and kindness. However, this caring appeared to be balanced against decision-making which could be described as "paternalistic and protectionist" (Walker, 1995, p. 4) at times, perhaps a function of the ages of students in elementary schools, or of their statutory duties under provincial child protection legislation. Thus, in certain cases, what the principals may interpret as decision-making informed by one value may be actually based on something quite different. For example, what some participants may understand to be decision-making based on the value of caring may be obscured by a sense of their need to "safeguard" the "purposes and mandates" of the school division (Walker, 1995, p. 4) and in so doing, they could subordinate students' interests and rights.

The value of "the efficacy of individual effort: the view that education and hard work pay off" (Yankelovich, 1994, p. 23) influenced the principals' decision-making and

appeared to favor some students over others. The principals' subjective evaluation of those students who simply may have made an error in judgment, but who generally were good citizens of the school and adhered to the rules, completed their work and were not disruptive in class, seemed to influence their decision-making in their efforts to achieve the objective of fairness. The notion of intent is linked to error in students' judgment, and all principals suggested their discretionary decisions, and the disciplinary consequences, could be based in whole or in part on the intent of the misbehaving student; this finding is consistent with the circumstances the principals considered in Manley-Casimir's (1977–78) study. However, intent may not be such a reliable predictor when, as March (1995) observes, decision-makers "attribute intent from observing behavior or the consequences of behavior." So whereas intent and even a show of remorse may serve as trustworthy indicators in some cases, they may be misleading in others. In the example of the girls lighting fires on the school playground, Adam indicated they had cried and shown remorse for their actions, behavior which he understood reflected a lack of intent to cause harm or to jeopardize school safety. These responses, however, could also be interpreted as the girls' fear of being punished for misbehavior, and not necessarily as remorse for what they had done.[23]

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[23] Dr. A. Leschied of Western University indicates children do not "tend to behave as if they are getting caught. The whole idea re deterrence and threat of punishment is that kids think about what they do, [i.e.,] the odds of getting caught, and weigh the cost/benefits of what will happen if they are caught (i.e., is it worth doing the crime?)." He continues that children "don't do that [since] most behaviours are impulse ridden and in the moment decisions…such that kids only show 'remorse' after the fact, once they are caught. For punishment/deterrence to be successful…the consequence has to come soon after the behaviour [and be] associated in time with the event…to have an effect" (personal communication, February 28, 2012).

Colman and Otten (2005) advocate for a "student's acknowledgement of responsibility for his or her wrongdoing" as a mitigating factor in the "determination of appropriate student discipline" in cases of misbehavior (p. 299). Half the study principals support this contention, since they indicated they would want to see a sense of remorse in a student. The form this remorse would take is open to broad interpretation, and no one consistent response came from the participants. A sincere apology would, as Colman and Otten (2005) suggest, shift the focus from a "punitive approach to misbehavior" to one that encourages "reparation and forgiveness" (p. 295) and may have been highly considered by the principals but simply not mentioned.

The extent to which the principals' interpretation of the intent of student misbehavior should serve as the basis for decision-making—in their desire for fair decision-making with meaningful consequences—may be considered in light of research conducted on youth sentencing. As Cesaroni and Bala (2008) assert in their analysis, when young people commit crimes they "generally do not consider the likelihood of being caught and punished….[They] do not think about the consequences of their acts" (pp. 468–469). They point to research that indicates "the cognitive and psychosocial reality is that adolescents have less judgment and greater impulsivity than adults" (p. 469). What is more, youth "are not considering the legal consequences of their acts…and tend to perceive themselves as invulnerable" (Bala, 2011, p. 10). The principals simply may have chosen not to mention an understanding of "adolescent brain development" (Bala, 2011, p. 10) as a feature of their decision-making, or they may have had no knowledge of this literature; consequently, the effect this awareness might have upon their exercise of discretion is unknown.

Some principals interpreted their values to be an extension of their personal philosophies or ideologies (see also Hall, 1999). This notion supports Hodgkinson's (1978b) theory of administration which he contends is "philosophy in action" containing the "dual aspects" of "rationality, or logic, and values" (p. 3). In distinguishing between management and administration, Hodgkinson (1978b) describes the former as being more routinized, specific and "susceptible to quantitative methods," whereas the latter deals with "the formulation of purpose, [and] the value-laden issues" (p. 5). While he further observes the practices of management and administration are "means-oriented" and "ends-oriented," respectively, and the true administrator is a "philosopher" and the true manager is a "technologist," Hodgkinson (1978b) maintains the distinction between the two is blurred, and often "deliberately so" (p. 5). However, as a general rule, the more "valuational" the decision-making, the more administrative in nature it is, and the less "valuational," the more managerial it is (p. 6).

The decision-making of the principals in this study mirrored Hodgkinson's (1978b) description because it appeared quite fluid; at times, the study participants were concerned with the "ends, aims, and purposes" (p. 6) of school policies. At other times they seemed to make many decisions that were rote, formulaic, programmed or "contingent and determined" (p. 61). Some of these latter decisions may have fallen into "the category of the managerial and technical" Hodgkinson, (1978b, p. 61) describes, or may have been made at the Type III level of personal preference. Nonetheless, the importance of the routinized decisions should not be minimized, as they, too, can have serious consequences for students. This is not to suggest these decisions were made independent of values or purposes, but that they may constitute those types of

discretionary decisions Hawkins (1992) characterizes as "repetitive," based on "familiarity" (p. 41) or "precedent" (p. 40), or on some other decisional base. What is more, the principals understood their decisions as not being based upon their own likes or dislikes, or Type III values; in fact, they appeared to perceive their decisions were value-neutral in terms of personal preference. Those disciplinary situations principals described as being quite involved and values-complex were often made in collaboration with others, with the will of the majority at Type IIA or the consensus level. In a way that mirrors the participants in Roche's (1999) study, many of the principals appeared to agonize over "achieving a fair, [and] just solution," when their "intentions suffer[ed] greatly at the hands of practicality" (p. 260), thereby contesting the traditional notion of administrators as simply being "rational, technical bureaucrats" (p. 264; see also Marshall *et al.*, 1996).

6.4.2 Espoused Values in Decision-Making

Theme Three also identified the values principals explicitly considered in their decision-making. However, these also may be interpreted as espoused values. Heifetz *et al.* (2009) suggest there may be a gap between espoused values and actual behavior in organizations (see also Roche, 1999).[24] For example, a decision-maker may be committed to the value of diversity, but does not make much headway in that area because of "career advancement" opportunities (p. 92). Willower (1999) similarly describes the holding of certain values to which there is "verbal commitment rather than

[24] Argyris and Schön's (1974) discussion of "espoused theories of action and theories-in-use" (p. 8) suggests that "the theory of action" to which one gives allegiance and which is "communicate[d] to others" may or "may not be compatible with his espoused theory" (p. 7). They go on to note dilemmas of "inconsistency," "effectiveness," and "value" may arise when there is "incongruity" (p. 31) between one's own ""theory-in-use" and his or her "behavioral world" (p. 29).

concrete action" (p. 132), while Begley (2010) notes individuals may "often articulate or posture certain values while actually being committed to quite different values" (p. 40). Values not espoused by the principals may have been unconscious, assumed, or taken-for-granted (Roche, 1999). Adam, for one, emphasized the value of tolerance as informing the disciplinary decision-making in his practice, although he also mentioned that community expectations could significantly influence his decision. Perhaps he was well-intended in many cases and he was able to respond through action to that which he was verbally committed, but values are not absolute, and in action they may appear differently to each decision-maker. If it can be reasonably assumed that school principals are to take leadership in instilling values such as respect, tolerance and fairness in their students, they should model these values in their discretionary decision-making in disciplinary issues. Espoused values should be consistently demonstrated. Simply valuing the primacy of inclusive, respectful and tolerant environments and believing that one's decisions reflect these values, do not ensure that one's choices or actions do so.

6.5 Research Sub-Question Five

Is there a hierarchy of influences, values or circumstances that shape school administrators' exercise of discretion in their decision-making?

The principals either could not describe or were hesitant in describing the values that informed their decision-making, and when asked to identify them, they appeared to have given them little consideration; the notion of values in decision-making did not seem to be foremost in their minds. This finding is consistent with Ashbaugh and Kasten's (1984) research. A conclusion in Campbell-Evans's (1985) inquiry that principals were somehow not "in tune with their moral or Type 1 values" (p. 90) or that

their values were "relatively unconscious and unquestioned" (p. 90) might reflect the administrators in the present study. When asked directly, principals in this study did not "attribute their values to a single source," and most of them indicated "their value set was a composite of their total life experiences" (Ashbaugh & Kasten, 1984, p. 206), such as religious teachings, professional learning and family life. Although they acknowledged the difficulty some complex issues presented, they appeared not to reflect upon the reasons or the value basis for their decision-making, or to question many of their decisions once they were made. This lack of self-reflection at an abstract level may be a result of the hectic pace of their roles. Alternatively, Campbell-Evans (1985) suggests some principals may express "things in more surface and essentially managerial ways" as a result of their working environment, and in a manner more oriented towards practical considerations with "limited direct reference" to values (p. 90); her observation was supported by the comments of most of the principals in my study.

In seeking a hierarchy of influences, values or circumstances that shape discretionary decision-making, this particular research question was neither suggesting nor intending a quantifiable or numerical value or ranking should be attached to these aspects. The listing was my interpretation of what the participants understood as being important in their decision-making. While questions related to hierarchy were part of the methodology, the analysis was based on my observations and interpretations of the time-span and frequency of the listing of influences, values and circumstances by the participants and of the relative importance with which they spoke about these elements.

6.5.1 Core Values in Discretionary Decision-Making

Heifetz *et al*. (2009) suggest some people may focus on only a few values in complex situations—these are their "core values" (p. 92; see also Begley, 1999b; Hall, 1999; Yankelovich, 1994). Specific core values identified by the principals that structured their decisions in times of complexity were justice, fairness, dignity, responsibility, compassion, empathy, tolerance and respect. The principals appeared to defer to a few core values, especially when they faced intricate and complicated disciplinary situations. It is difficult to determine which of the core values was primary, although the values of justice and fairness appeared to predominate in response to interview questions. On the other hand, perhaps they were able to hold a number of these core values simultaneously (Heifetz *et al.*, 2009). Their espoused core values are consistent with the core values identified by Walker (1998) in his study of the decision-making of senior educational administrators. Other core values may have been held by the principals but simply "did not figure prominently" in their responses (Campbell-Evans, 1985, p. 90).

Hodgkinson (1983) reasons that "*any* value can be manifested or held at *any* level [emphasis in original]," and gives the example that "Type II honesty would be valued because it has reasoned about [*sic*] or because it is the norm of the group" (p. 41) but notes it could also be held as a Type I principle, or even as a Type III preference to dishonesty. In a similar way, the principals' articulated core values can be grounded at a Type II level. The notion of core values is not inconsistent with Hodgkinson's (1983) contention of Type II values being the "modal level" (p. 47) within organizations since they appear to be held at the level of "collective justification" (Hodgkinson, 1978b,

p. 112), that is, as the values or expectations of the school division or as a perceived standard or a "collective judgment" (Hodgkinson, 1983, p. 49) in their roles as professionals. They would also support a "rational analysis" (p. 49) in that values, such as justice or empathy, could be the "norm[s] of expectancy" (p. 45) for various stakeholders. Core values also may be grounded at a Type II level by the principals' desire for some "future state" (p. 42), such as a fair or just resolution as a consequence of a disciplinary situation, or by the need to reflect "*tolerance*" (Adam), "*respect*" (Shawna), or "*responsibility*" (Lauren) for all stakeholders in decision-making outcomes.

6.5.2 Value of Safety

The principals indicated the safety of students, staff and school was a value that informed many of their decisions, and it appeared as if this value would trump all other values; indeed, the metavalues of organizational maintenance and growth identified by Hodgkinson (1978b, 1983) depend wholly upon this value. This finding of the primacy of safety, however, is not consistent with Campbell-Evans's (1985) study wherein there was no hierarchical component to the values guiding principals' decisions; her inquiry supported "the view of a fluid dynamic value system" (p. 92). Neither does it align with Vinzant and Crothers's (1998) research which revealed that generally no one value appeared to influence or force a decision to the exclusion of others.

The principals in the present study, however, understood safety as non-negotiable when the "*going got toug*h" (Frank). In fact, circumstances and situations relating to general safety and student well-being became more important than the circumstances and interests of the offending student in a serious disciplinary situation. The principals would triage (Lipsky, 1980) disciplinary incidents and treat cases they interpreted as involving

school safety as their primary focus. When school safety was threatened by acts of student misbehavior, the principals appeared to evaluate the potential outcomes by looking at the consequences of their decisions and determining whether anyone would or could be harmed. In this way, the value of school safety seemed to shape their decisions and support "normative standards" (Lipsky, 1980, p. 110). The value of safety as a rationale for decision-making would not be inconsistent with the predominance of Type II values of consequences and consensus that Hodgkinson (1978b) identifies for administrators. A safe school would be the "future… state of 'desirability,'" and school safety presupposes a "given scheme of social norms, expectations, and standards" (p. 112) that are enlisted at the Type II level of grounding. However, if one value could be identified as being paramount for the participants in my study, it was school safety. Its importance was evident when all participants, without fail, indicated the safety of all students and staff was their primary concern or duty in their decision-making and even supplanted their concern for the rights and interests of individual students. The finding supports, to some extent, Vorenberg's (1976) hypothesis that if rules are not specific but are quite broadly defined, discretionary decision-making might sacrifice a student's rights for a "more important target" (p. 664) or goal—in this case, the value of school safety. In the same way, Roher (2007) argues that "individual rights should not override the rights and safety of all others in the school. The collective rights of all the students and staff in the school should not be superseded by the consideration of mitigating factors for one student" (p. 217). On the other hand, however, as McCarthy and Soodak (2007) point out, some school administrators "must be persuaded" that maintaining school safety and protecting students right "are not mutually exclusive goals" (p. 472).

6.5.3 Value of the Best Interests of Students

The principals also valued what they perceived to be in the best interests of their students as the basis for their decision-making; that principle is grounded at Hodgkinson's (1978b) Type I level of value resolution. This finding is consistent with the results of Dunbar and Villarruel's (2002) inquiry, Meyer *et al*.'s (2009) study and Frick's (2009) research. Begley's (2010) study goes so far as to identify the "'students' best interests' as the meta-value of choice" for principals (p. 50; see also Walker, 1995). Since this study dealt with decision-making concerning the well-being and discipline of students, it could be reasoned that a higher frequency of the principals' decisions would be grounded at the level of principle, or Type I, than at the level of personal preference and, in many cases, the best interests of students was identified by the principals as the basis for their decisions. Doing what was best for students was a value that sustained and propelled administrators' discretion for the study participants. There appeared at times to be fluidity between the values of best interests and safety and often, in their decision-making, the principals understood safety as being in the best interests of all students and staff.

Some of the principals' decision-making based on the best interests of students, however, often appeared to lose its force (see Begley & Leithwood, 1989), and find resolution at the Type II level of consensus or consequences, in accordance with Hodgkinson's (1978b) second postulate, where values tend "to lower their level of grounding over time" (p. 116). This finding also may be reflected, in part, in Roche's (1999) research where the value of doing what was best for students appeared to be "subsumed into the realm of unconscious assumption" by the principals in his study

(p. 267), and instead of grounding decisions at the Type I level of principle, they grounded them at the Type II level of rational resolution. While all the principals articulated their intent to make decisions based on the principle of "*what is in the best interests of the student*" (Miriam), and they seemed to believe that they did so, they often appeared, ultimately, to make decisions based on what was best for the entire school or group at the nomothetic level (Hodgkinson, 1978b). However, in a way similar to the principals in Roche's (1999) study, the principals in my study were "not necessarily unconcerned" with issues of principle simply because they chose to "employ" Type II solutions (p. 268) in their decision-making; however, they often would justify these Type II decisions based on a Type I grounding of what they believed was in the students' best interests.

Hodgkinson (1983) contends that while values tend to "describe" what is "desired," ethics "prescribe" or "tell us what we ought to do" (p. 218). When ethics are applied to administration they yield "differing discretionary bases" for action (p. 218). He identifies a number of ethical positions, such as "guardianship," "social equity," and "hyper-professionalism" that can "provide a set of imperatives and decision rules for application to problems of administrative discretion" (pp. 221–222). The principals' espoused value of acting in the best interests of students could reflect Hodgkinson's (1983) "human relations" ethical position wherein leaders adopt as their "pre-emptive ethic the psychological and material welfare of those with whom [they] have to deal within [their] organizational field" (p. 221).

6.5.4 Values of Consensus and Consequences

The principals worked to accomplish the "organization's goals" of maintaining order and discipline through their discretionary decision-making, and they sought to ensure (perhaps unconsciously) the value of school safety "as efficiently as possible" (Hodgkinson, 1991, p. 109) through their judgments based on the Type II value levels of the rationality of consensus and consequences (Hodgkinson, 1978b, 1991; see also Hawkins, 1997). This resolution at Type II is the aspect of Hodgkinson's (1978b) model that is "best applied to the research data" (Campbell-Evans, 1985, p. 87). The finding corroborates MacKay's (2008) observation that, given the magnitude of their role in ensuring school safety, many school administrators are focused on "the collective good" and, aided by their broad discretionary power, may be comfortable "limiting individual rights" to further this "larger good" (p. 24). In reconciling the "dialectical tension between the idiographic and nomothetic aspects of the organization" (Hodgkinson, 1991, p. 146) and professional norms, ultimately the principals in this study appeared to resolve most of their decisions at Type IIA and IIB, the modal level for administrators identified by Hodgkinson (1978b; see also Ashbaugh & Kasten, 1984; Begley, 1999b, 2010). This finding also supports Campbell-Evans's (1985) research and Roche's (1999) inquiry, in which principals mostly used both "consequentialist and nonconsequentialist strategies" (p. 263). Roche (1999) defines the former as being "based primarily on calculating the good in terms of consequences, where the ends justify the means," and the latter as being "concerned with some clear intrinsic view of the right or one's duty" (p. 257). Also, as exemplified in Roche's (1999) research, the principals did not seem to resolve disciplinary situations at the level of personal preference or Type III; nor did they reveal

"personal preferences, likes or dislikes" (Campbell-Evans, 1985, p. 91). Nonetheless, they may have occasionally capitulated to discretionary decision-making at this level because of frustration, self-interest or unrelated personal considerations. Begley (2003) suggests that "self-interest is infrequently acknowledged as a motivation" because of the principals' need to be "publicly accountable" (p. 7).

The principals seemed to make most of their decisions within the penumbral space Hart (1961) describes; however, unlike his paradigm in which judges should not make discretionary judgments based on what they think is "best" (Hart, 1983, p. 137), the principals in this study appeared to do just that and, indeed, generally strove for what they believed was "right," the Type I deontological level (Hodgkinson, 1996). They based their decisions on moral judgments, that is, on a continuum of rightness (Begley, 1999b), within the confines of their delegated legal authority, and guided by professional and social norms. Nonetheless, in complex disciplinary cases, specific influences upon their decision-making would force resolution not with the usual Type II values but, instead, with Type I, and the perceived need to do what is "*right* [emphasis in original]," according to "The Principle of Most Principle," which forced the administrators to "abrogate the general logic of primacy of the larger interest" in the organization (Hodgkinson, 1991, p. 147). This exception to the usual Type II resolution is apparent in the principals' inclination toward leniency in the suspending of Gary, the student in the vignette, despite the two-week mandated suspension in the school policy.

6.6 Research Sub-Question Six

What kind(s) of knowledge do school administrators believe they need in order to make discretionary decisions in matters of student discipline?

March (1994) maintains decision-makers gather "more information than they could conceivably use" (p. 216). Lipsky (1980) further contends these decision-makers search for information that affirms their treatment of individuals and their "patterns of practice," and then "receive and incorporate information" consistent with their view of the world, leaving out that which may contradict it (p. 114). All principals indicated they required knowledge to inform their decision-making. Possible types of knowledge they believed they needed included knowledge of laws, policies, administrative theories, experiential knowledge, factual information regarding specific incidents and the understanding of circumstances. Two kinds of knowledge were identified as being essential to the principals' decision-making. First, all principals understood specific details of events as being pertinent to their investigation of student misbehavior. The other type of knowledge integral to their decision-making in disciplinary situations was experiential knowledge from prior incidents. This is not to suggest other kinds of knowledge were not necessary to inform their decisions; in fact, the types and amount of knowledge they required in each instance varied depending upon severity and complexity of the situation. Legislation and policies, for example, did not always seem to be important considerations for the principals. There may have been other kinds of knowledge they used in their decision-making but they simply did not, or could not, identity them.

6.6.1 Need for Factual Information

A dominant pattern in Theme One was the perception among all the principals of the need to gather information and to investigate fully during decision-making, especially in complicated disciplinary situations. The principals appeared to understand this process

as applying discretion to the facts and to their interpretation or sense of a policy or rule, and in this way seemed to believe it may lend more legitimacy to the exercise of their discretion and mean a lesser chance of making a mistake or an error in judgment. Their desire to find the facts is consistent with what McLachlin (1992) calls "the most fundamental way judges exercise discretion" (p. 170). Despite information that is "often incomplete and sometimes conflicting," the principals would work to resolve "conflicts and fill these lacunae by making inferences and choices," thereby exercising discretion (p. 170). The participants' need for fact-gathering appeared to be dependent, in some ways, upon the complexity and uniqueness of the disciplinary incident. However, the trustworthiness of their fact-finding may be questionable, because the principals may not correctly interpret relevant information, may have only partial knowledge, may consider irrelevant information, or may consider information obtained from individuals who have a particular bias or vested interest. Also, when gathering information from students, the principals may receive inaccurate details, especially from very young students, focus on a part of the information which may not be relevant, or overlook other integral pieces of information. As Hawkins (1992) puts it, they may freely take into account information that could be "of questionable accuracy, reliability or relevance" (p. 16; see also Hawkins, 1998). In some complex or involved disciplinary cases they may never gather all the information or hear all voices in their decision-making. Despite their assertions to the contrary, then, and based on their perceptions and interpretations of information, they may not be making the best decision. It is important, however, that they endeavored to gain as much information as possible in their quest to be fair.

Nonetheless, the type of information and the manner in which it is acquired by principals also could be a cause for concern. For example, Roher (2007), in his analysis of Ontario's Bill 212, the *Education Amendment Act* (*Progressive Discipline and School Safety, 2007*), notes that for "criminal and quasi-criminal offences" committed in schools the police have "a duty to investigate," and at some points the responsibilities of both principals and the police overlap (p. 211). In these cases, if principals persist in "reviewing the incident" by "interviewing witnesses or seizing property," their actions "could hamper or prejudice the police investigation" (p. 211).

Fulfilling their perceived need to investigate and gather information may not always result in fair, equitable, or appropriate discretionary decision-making. Consistent with Roche's (1999) study, however, when the principals indicated they had knowledge of or sought complete information about a disciplinary problem, they "rarely" acknowledged the influence of values in a decision, although the values may have become "unconscious or assumed" (p. 266). In this way K. C. Davis's (1969) assertion about influences (and facts) crowding out values appeared to be corroborated by the principals' decision-making. In those disciplinary cases where they believed they had acquired the appropriate or necessary facts concerning a behavioral incident, however, the participants may have simply chosen not to acknowledge or to have been aware of the influence of values in their decisions. They also appeared to default to principles or transrational values when knowledge was "absent or unavailable" and the complexity or urgency of a disciplinary situation made "rational processes…impossible or inappropriate" (Begley, 1999b, pp. 266–267). Generally, in these situations, decision-making was based on what they perceived was in the best interests of the student.

6.6.2 Information Specific to Situations

The principals appeared to understand that they would be better placed to exercise good judgment in their disciplinary decision-making through the accumulation of information. Despite Hodgkinson's (1996) admonition to the contrary, the principals appeared to want to distill an "*ought* from an *is* [emphasis in original]," that is, to derive values from facts, the "naturalistic fallacy" (p. 123). He believes "no amount of fact-gathering or information seeking can ever *conclusively* put them 'in the *right*' [emphasis in original]" (Hodgkinson, 1978b, p. 62). While facts and values are "inextricably intertwined" (Hodgkinson, 1996, p. 124), and information-gathering may help to arrive at "value premises," factual bases do not "prove those premises" (p. 56). As Campbell-Evans (1988) discovered, values may act as the "filter through which facts are screened and evaluated for the purposes of selecting one course of action from many" (p. 25). This notion is echoed in Pal (2001), who asserts "'*facts*'" *are always constructed through values and theorie*s [emphasis in original]" (p. 22). Hawkins (1992) contends that even when rules are clearly defined, the facts "upon which the application of a rule may depend have always to be interpreted" (p. 35). For example, the information Adam used in his decision not to suspend the girls who lit fires on the school playground was based on the value of empathy and on his understanding of the need to show remorse for misbehavior. Shawna, too, based her decision not to suspend a homeless student, who had come to school high on drugs, on the values of dignity and belonging. The principals, although desirous of facts and information to inform their decision-making, made "concrete choices in specific situations" (p. 22) about which facts were relevant to their decision-making and which were not. They may have been unaware, or perhaps did

not consider, that they also exercised discretion in determining which facts they considered or the people with whom they chose to speak. In those situations when they made decisions independent of a knowledge base, values appeared to more heavily inform their decisions. This finding supports Begley's (1999b) suggestion that when "knowledge schema is unavailable…urgency requires" administrators to fall back upon a "core set of values" (p. 252).

While the principals in this study appeared to have been loathe to act independently of what they saw as a required base of knowledge or a gathering of facts, they also may simply have fallen back upon common practice, consensus, professional norms or expectations forming the culture of a particular school, or upon the accepted way of making decisions at Hodgkinson's (1978b) Type IIA or Type IIB levels. As an illustration, they would assign a student suspension as a default disciplinary consequence in order to meet the expectations of staff or stakeholders or to support the way in which disciplinary issues were typically handled in the school, despite their belief in the effectiveness of this strategy. The "repetitive" (p. 39) nature of discretion identified by Hawkins (1992) supports this finding of resorting to common practice in making decisions in situations with which they felt familiar or experienced, or which they felt they had encountered before, and about which, therefore, they had the required information. Hawkins (2003) cautions, however, that "the more decision-makers decide cases repetitively…the more inevitable the onset of decision-making routines becomes" (p. 206).

6.6.3 Knowledge of Colleagues

Unlike the principals in Begley's (2010) research, the principals in this study tended "to seek information among peers, who may be expected to be like-minded" (Lipsky, 1980, p. 115). March (1994) believes "collective decision making allows participants to rehearse arguments and to develop justifications" or to practice rationalizing their decisions, and also "provides an opportunity for individuals to reduce their own internal uncertainty about difficult decisions" (p. 216). The findings of this study would support this assertion. Although the principals seemed to feel more confident and justified in their decisions made with colleagues, collaborative decision-making is not failsafe. Certain perspectives may dominate and negatively affect the decision-making process; on the other hand, fresh insight may be gained in decision-making that is collaborative. Shawna was one principal who spoke about a decision she had made in consultation with other professionals regarding an instance of physical violence among four girls in her school. She noted she was ultimately held accountable and was subject to much criticism by her staff; in the end, she regretted having made the decision. Amanda, on the other hand, revealed she felt "*lonely and isolated as an administrator*," and collaborative decision-making may have helped to alleviate some of these feelings.

More than half the principals in the study responded to the vignette by indicating their need to collaborate with their school resource officer, grounding their decisions at the Type IIB level of consensus Hodgkinson (1978b, 1991) identifies. Such collaborative decision-making may have helped them to justify their decisions, but it also may have provided them with the necessary legal information they did not possess. The support of

the resource officer may have given them confidence and a legitimacy they may not have felt on their own. Consistent with the findings of Meyer *et al*. (2009), most of the principals in this study also indicated their desire to collaborate with other members of a school team, such as educational psychologists or social workers, or with other professional staff in decision-making in complex disciplinary situations. Hall's (1999) study also found that administrators wanted to work with their colleagues, especially in situations involving youth violence, where "the gravity of the decision determines the extent of involvement [of colleagues and other professionals]" (p. 150). Hodgkinson (1996) disputes the desirability of "consulting and co-opting interested or knowledgeable parties" in order to widen the scope of the decision-making process (p. 56). He argues that this is not rational decision-making, but decision-making by "political suasion," and that assigning conflicts and problems to consultants and experts may result in the insertion of different and unfamiliar values into the decision-making process which may limit or usurp the administrator's "responsibility and freedom of choice" (p. 56).

6.6.4 Knowledge Based Upon Experience

A dominant pattern that emerged in Theme Four was the influence of principals' experience, as they interpreted it, upon their decision-making. Experience could be understood as one type of knowledge they required to help them exercise discretion. The principals' understanding of experience in supporting their decision-making aligns with Hawkins's (1992) description of the nature of discretion as being based on "precedent" (p. 40). As Lipsky (1980) asserts, decision-makers are "particularly inclined to believe that experience provides the basis for knowledge in assessing the client world" (p. 115). Consistent with Hall's (1999) study, Harold, who was in his final year before retirement,

indicated he routinely relied upon his experience as an educator and administrator as a basis for his discretionary decision-making. This reliance may constitute what Roche's (1999) research described as an experienced principal following a "standard practice" in decision-making based on values that have "become unconscious or assumed" over time (p. 266).

How reliable experience may be for informing decision-making is questionable and dependent upon the context and the individual. Questions of memory may affect decision-making based on experience, especially regarding details of specific events, and types of behavior problems or norms that can change over time. Emotional responses and anxiety, which can cause individuals to lose perspective, may alter the circumstances in decision-making, too. However, when a serious situation involving student misbehavior arose, both experienced and less-experienced principals indicated they would involve others in problem-solving, despite their acknowledged level of experience. As Hall (1999) reasons, "well-structured problems" (p. 150) that are familiar may be solved with minimum effort by relying on "past experiences;" however, more complex and less-defined problems require "more deliberation and involvement by others" or, perhaps, do not rely upon the need for experience at all (p. 150). Hawkins (2003) notes that when discretion is exercised, decision-makers "categorise most events according to some existing framing scheme derived from past events and organizational precedents" to help inform their decisions (p. 212). There will be particular consequences flowing "from the type or category settled upon" which will then simplify the problem or conflict (p. 212).

Hodgkinson (1978b, 1996) identifies three types of administrators. One type, the "collegial administrator," is not in his or her original profession, is only in the role for a specific time, may have had "no preparation in the field" and is one whose "professional allegiance is not administration" (Hodgkinson, 1996, pp. 58–59). Principals may be considered such administrators (Hodgkinson, 1978b) because, for the most part, they were educators, consultants, or educational leaders in their original profession. In their current administrative role, then, eight principals indicated on the demographic information sheet they were "inexperienced," based on the definition provided for them (i.e., being in the role for less than five years). Adam, for example, believed that he was inexperienced and ever ill-prepared for his principal's role at the elementary level, despite his formal education and his more than fifteen years' experience as an educator and administrator at the high school level. Because he did not have the benefit of experience at the elementary school level, he lacked confidence, and frequently second guessed himself. His self-described "knowledge gap" caused him to feel inadequately trained for his current role: "*The teachers come at me all the time about this, that and the other thing. I do not really know what they are talking about…I really do find myself kind of every day* [saying] *jeez, is this the right way to get it? If I ran a high school I would feel much better because I understand that world*." He indicated this lack of experience affected his discretion, and he may have avoided making decisions in certain situations, referred decisions to others, or sometimes felt frustration or uncertainty during the decision-making process.

In this inquiry, the principals' espoused belief in the need for experience is consistent with Haynes and Licata's (1995) study of elementary principals' decision-

making that linked experience to "creative insubordination" (p. 21), a component of discretionary decision-making; their research revealed a "principal's total years of experience as a school administrator" was "positively related" to a willingness to exercise creative insubordination (p. 31). Also noteworthy in Haynes and Licata's (1995) study is the finding that experienced principals were "cynical" about "professional discretion justified by degrees and certificates" and, instead, relied in their decision-making more on what they had learned on the job, "their school context and what they [were] trying to accomplish" (pp. 32–33). The principals in my study, while reliant on their experience and knowledge of their school community in their decision-making, offered little comment on professional credentials, and only one made passing reference to having taken an education law class at the graduate level.

Similar to the findings in Allison and Allison's (1993) inquiry into the effect of experience and time in role, the participants in my study referred to past disciplinary cases, although the circumstances were not necessarily identical. The principals, though, unlike those in Allison and Allison's (1993) study, seemed quite prepared to indicate how they would proceed in any given situation, based on effective past practices, and understood these prior situations as informing their current decision-making. As a result, while the principals' attention "to relevant details in problem situations is also an important and probably related factor in administrative expertise" (Allison & Allison, 1993, p. 319), nonetheless, "continued experience in the role can have a positive effect on expertise" (p. 318).

Only two of the principals interviewed in this study stated they considered themselves to be "experienced," that is, having experience in the role of principal for

more than the five years defined in the demographic survey, and none used the word "expertise" to describe his or her discretionary decision-making. Although they may on some level have considered themselves experts, the concept of "judged expertise" (Allison & Allison, 1993, p. 317) was not mentioned by the principals. Those who had extensive experience working in schools for more than twenty years, such as Harold, Miriam and Danielle, appeared to draw heavily upon past practices to inform their discretion, and they did not question, but assumed, the measure of ability experience provided them with respect to recognizing and resolving disciplinary issues. They appeared to believe that experience appropriately informed their decision-making and did not indicate whether it gave them "incomplete or partial solutions" (St. Germain & Quinn, 2005, p. 88). As Allison and Allison (1993) assert, "experience in schools" (p. 317) in any role may affect decision-making. This assertion is supported by the finding that Frank, in his fourth year of the principalship, considered himself "experienced" because he had been in "the administrator's chair" for eleven years, including seven years as a vice-principal. It could be reasonably assumed the other principals may draw upon their experiences as vice-principals or in other leadership positions to inform their discretionary decision-making. However, the extent to which they were able to benefit from their experience appeared to vary, although they did indicate it provided them with some measure of confidence in exercising their discretion. This confidence could have either a positive or negative effect upon their decision-making, because it may have given them some assurance in exercising discretion in a similar situation, or a false measure of confidence in challenging situations that were not truly similar. Perhaps they were able to use their experience in different ways or at

different levels, or drew upon their experiences differently in their own contexts (St. Germain & Quinn, 2005).

6.6.5 Confidence Related to Experience

As revealed in Theme Four, the principals also seemed to see a correlation between experience and their confidence in decision-making; this correlation seemed to be related to the trust they had established among parents, guardians and community members. Hawkins (2003) contends decision-makers gain confidence from "being able to see similarities in other cases" (p. 212) and are able to make discretionary decisions more efficiently, with less anxiety and greater ease. The principals' confidence appeared to be linked to their ability to exercise sound and fair judgment through their experience, which was, in turn, based upon their knowledge of the school community; in their exercise of discretion, a relationship existed among confidence, judgment, trust, and knowing one's school, its students and their families. The relationship between the experience the principals had and the level of confidence they felt to exercise discretion in their disciplinary decision-making is consistent with that in Hall's (1999) study, where "level of experience" (p. 161) appeared to be a considerable influence on discretion (see also Crowson & Porter-Gehrie, 1980, p. 66). As Adam pointed out, "*If you are exercising bad judgment, you know, people will notice soon enough and then you will not have the confidence of either the staff, the parents or even the children…it* [discretion] *would be linked to confidence based on knowledge of the job,*[and] *knowledge of the role*." Shawna agreed, saying experience "*absolutely*" would inform her discretion.

6.6.6 Experience in Role and Exercise of Discretion

Most of the participants, however, seemed to suggest the more extensive their experiences in school, especially at the level of principal, the more confident and comfortable they were in exercising discretion in disciplinary situations, and they would not really worry about the repercussions of their decisions. Harold, Adam, Danielle and Shawna indicated their experience afforded them greater discretion, and they gained confidence in their decision-making. Harold equated his confidence and experience to the common sense he possessed. While experience may serve to inform many decisions in a satisfactory manner, it would not be a fail-safe method for discretionary decisions, because cases can appear similar on the surface, but after time, they may prove to be more dissimilar, or other circumstances may become more relevant. Experience, however, may also lead to ambivalence in decision-making. Conversely "typification," whereby "familiarity with the broad features of routine cases" may cause decision-makers to routinize their decisions "for reasons of efficiency," or give them confidence, is "another way of providing a rational defence against criticism" (Hawkins, 2003, p. 212). Basing decisions solely on past experience may not always be the most equitable, appropriate, or effective choice, but it may be more expedient and may offer easier and quicker solutions for harried principals. The research of Meyer *et al*. (2009) suggests conscience serves as a "vehicle or conduit for past experience" (p. 24) to inform discretionary decision-making in the area of principals' succession; however, the extent to which conscience contributed to the construction of the decision-making framework of the principals in my study, if it contributed at all, was not mentioned by the participants and was not evident in the findings.

St. Germain and Quinn's (2005) inquiry into principals' tacit knowledge, or knowledge "grounded in experience" (p. 75), revealed that in the problem-solving errors of "expert" school administrators, or those who had at least five years' experience (p. 79), "timing—arguably a characteristic of either judgment or intuition—was critical" (p. 77). Novice principals, their research showed, tended to reach a decision either too early or too late in the problem-solving process. The notion of timing among novice, or newly appointed, principals may help to explain Amanda's error in allowing the student to smoke off school property; being new to her role, she may not have considered all of the consequences of her decision before she made her choice. On the other hand, she may have based her decision on strategies she had used previously as a teacher. Many of the principals understood that time may help them make better decisions, and if they felt rushed or pressed for time, their decision-making could be adversely affected. St. Germain and Quinn (2005) contend that dealing with ever-increasing challenges may provide principals with greater problem-solving skills and "expertise" (p. 77), yet experience alone is not necessarily an indicator of, or precursor to, "expertise" (p. 87; see also Allison & Allison, 1993). Routinized problems could lead to boredom or nonchalance and poor judgment in decision-making, and it can be reasoned that many of the principals relied on prior experiences when they were forced by circumstances to make decisions in a hurry. As St. Germain and Quinn (2005) conclude, tacit knowledge "is untaught but integral to successful decision-making in situations in which time is limited" (p. 88).

Begley (2010) identified knowledge attained through "life experiences, professional training, and reflection" as a motivating force "behind the adoption of a

particular value" (p. 42) which, in turn, influences decision-making. Melvin agreed, noting it was "*personality and…life experience rather than…experience in* [the] *job…not age and not number of years in the position*" that informed his decisions, partly because he saw himself as being relatively young in his role as principal. In terms of training, four principals described what they understood to be a vast difference between administration in a high school and administration in an elementary school, especially in the area of discipline, and suggested that the experiences at one level might not necessarily serve to appropriately inform decisions at the other, or may at least leave administrators with less confidence in their discretionary decision-making.

6.7 Research Sub-Question Seven

What do school administrators perceive to be appropriate and inappropriate exercises of discretion in student disciplinary issues?

Although many administrative decisions (disciplinary and otherwise) are made quickly, those decisions relating to complex and serious disciplinary incidents appeared to be made over a longer period of time by the participants; indeed, that is how many of the principals categorized their perception of appropriate and inappropriate exercises of discretion—by the rapidity, or lack thereof, with which decisions are made. The principals in this study seemed to interpret appropriate discretionary decision-making as that which was contextually based and collaborative, whereas inappropriate exercises of discretion appeared to be those decisions that were formulaic and made in haste, without consideration of what they considered relevant circumstances (see Heilmann, 2006). Inaction (which is also an expression of judgment) and selfish or career-enhancing decisions were also considered inappropriate by the participants.

6.7.1 Perceptions of Inappropriate Exercise of Discretion

Mintzberg (1979) characterizes a school system as a "*professional bureaucracy* [emphasis in original]" which is an organization whose work leads to 'predetermined or predictable…standardized'" behavior that is complex and "decentralized" (p. 348) and relies "on the skills and knowledge" of its "operating professionals" to function (p. 349). In professional bureaucratic organizations, he continues, "considerable judgment" can be exercised by professionals who can be described, in some cases, as "incompetent or unconscientious" (Mintzbeg, 1979, p. 373). These are professionals who may neglect to keep current in their field, who are more concerned with career advancement, or who are not truly focused on the needs of the people they are serving (Mintzberg, 1979). Leithwood (1999) maintains, however, "virtually all relevant evidence suggests that school administrative practice is already highly ethical" (p. 25). Nonetheless, many of the principals in the study commented upon colleagues who may have been influenced in their decision-making by a desire to move to a bigger school and an accompanying larger pay cheque, or by a promotion to a more senior position at the district office; some of the participants were scornful of what they considered an inappropriate exercise of discretion in decision-making by putting what they saw as personal motives before students' interests, as if the decision-maker had given up on a student.

Those individuals the principals perceived as making "*hard-and-fast decisions*" (Adam) in the course of a school day may have different priorities and influences or may feel they are exercising discretion appropriately when they make decisions quickly. Sometimes, despite good intentions, hasty decisions may be made out of frustration, in error, or for some other reason, and they may not be the best decisions in a given

situation. At other times, decisions made easily may be the correct ones. Taking time in exercising discretion may not result in the most effective resolution, either, and could be perceived by stakeholders as indecision and weakness. Nonetheless, the principals in the study appeared to see "*cut-and-dried*" (Shawna) and "*snap*" (Lauren) decision-making as inappropriate, as masquerading as sound judgment, and as bordering on lack of professionalism. Heavy-handedness did not appear to be appropriate, either; most of the principals displayed a preference for leniency, through the consideration of mitigating circumstances, as an appropriate response. Yet the mitigating, or aggravating, circumstances they considered may or may not have been appropriate in any given situation.

Some of the principals were disdainful of those administrators they perceived as doing things too "*easily*" (Melvin), or "*by the rulebook*" (Amanda), or following policy to the letter, since they considered them to be self-serving, opportunistic, and concerned not with the welfare of children, but with self-aggrandizement or the advancement of their own careers. Such principals may be considered "careerist" administrators, one of four archetypes Hodgkinson (1996, p. 91) characterizes; careerists are self-centered and self-concerned, and believe rules can be "bent, broken and evaded if the end result can be unpenalized success" (p. 92). Other principals, according to Melvin, "*hide behind the rulebook*" or the "*bureaucratic cloak*" (Danielle) because they wish to avoid conflict or controversy, and doing so is "*easier because then it is not you* [the principal] *making the decision*" (Melvin). To what degree this perception is accurate is unclear, and what it suggests about those who do not follow the letter of policy in their decision-making appears flawed. The principals did not indicate they were prepared to question their

colleagues about these decisions, although one principal (Danielle) indicated she had moved into administration to counter what she saw as inexperience and, perhaps by association, incompetence in younger principals who, she believed, would not be capable of making decisions that would positively benefit children. Again, youth and inexperience do not necessarily indicate poor judgment in decision-making (Allison & Allison, 1993).

Mintzberg (1979) also describes the professional who "confuses the needs of his clients with the skills he has to offer them" and "concentrates on the program that he favors…to the exclusion of all others" (p. 376). This description may be reflected in the discretionary decision-making of some of the principals in the study who unquestioningly assumed their decisions were aligned with students' needs as they identified them and were entirely appropriate in providing equitable treatment of students when, in reality, the decisions may have been inappropriate. What some of the participants interpreted as good judgment in their decision-making may have actually empowered certain students in ways they should not have been or did not wish to be empowered. Also, the collaborative decision-making they appeared to need involving safety issues and the school resource officer, for example, may have been misguided at times or may have served to elevate situations to an unnecessary level of seriousness. On the other hand, by eschewing the additional layer of accountability afforded by consultation or collaboration, the few principals, such as Frank, who did not perceive collaboration as appropriate in discretionary decision-making may have selectively, and unscrutinized, enforced policy of the school division or acted capriciously beyond their authority or

capability, or both. If they had worked collaboratively they may have had to relinquish some of their authority or control in decision-making.

6.7.2 Appropriate Exercise of Discretion in Policy Implementation

Shipman (1969) asserts "there can be no sharp separation between policy and administration. Policy is the value content of the administrative process" (p. 122; see also Hodgkinson, 1978b). LaRocque and Coleman (1985), too, identify policies in administration as forming "the critical link between the policy realm and the realm of programs and practices" (p. 152), while highlighting the "critical importance of administrators, both district and school level, to the success of policy implementation efforts" (p. 155). As administrators, principals "make policy" (Hodgkinson, 1978b, p. 68; Lipsky, 1980, p. xiii) and exercise discretion to do so. Hall (1999) contends discretion is a central element in principals' interpretation and implementation of policy. Hawkins (1992) maintains, as borne out in the findings of the study, that principals' "interpretive behavior is involved in making sense of rules and in making choices about the relevance and use of rules" (p. 13).

The manner in which the study participants implemented the rules and policies appeared to be on a continuum and seemed, for the most part, negotiable in many disciplinary situations. In the case of the vignette regarding the weapon in school, Harold believed he would have no choice but to implement the suspension outlined in policy. In his words, "*I follow school board policy…that's the school board policy, and if he* [student's father] *doesn't agree with it, then I'm sorry, but that's the policy…I don't have any say*." Adam, on the other hand, believed policy to be a "*starting point*" and asked himself "*Does this policy make any sense whatsoever in the context I am dealing in right*

now?" Shawna, too, said that although she was familiar with policies on suspension and expulsion in the school division, she did "*not feel bound* [to implement them], *as I feel we are given discretion depending upon circumstances and context*." While they also may have been reluctant to "reflect on the appropriateness of the basic assumptions underlying established policy and practice in specific instances," some of the principals simply may have adhered to what they perceived was the school division policy, or what they thought was best for the student based on "unconscious assumptions" (Roche, 1999, p. 267). Harold, for instance, despite having been a principal for almost twenty years, revealed he did not know whether there was a policy on weapons in the school division. All of the principals appeared to understand they possessed the personal skills or abilities (see LaRocque & Coleman, 1985, p. 158) to implement policy. However, relying solely upon policies as a basis for decision-making was interpreted by them as an inappropriate exercise of discretion, whether or not they possessed the ability to do so.

6.7.3 Enforcement of Policy and Legislation

Some of the administrators in the study perceived that school policies were too constricting or limiting upon their discretion (see Simon, 1957), that a specific policy may have been overly rigid or strict, or that legislation, such as that outlining reasons for suspensions, did not align with their own beliefs or values. If this were the case, principals appeared to think they could determine whether or not to enforce the policy or law. Hawkins (2003) believes "how a particular rule applies in a particular circumstance will inevitably be reserved for, or assumed within, the discretion of the legal actor concerned" (p. 207). Furthermore, in line with the conclusions of LaRocque and Coleman's (1985) research on the implementation of community policy relations in

public schools, if the values articulated in a policy aligned with the principals' own values, they were more inclined to accept and internalize the "values and goals of the policy," support it, and change their "role behaviors and role relationships" to be consistent with the policy (p. 157). As Melvin concluded, he did not "*feel any obligation*" to enforce a policy he believed was "*counterintuitive to what a child needs*," although in specific cases he did feel somewhat constrained by procedures for a student search because it was a "*legality issue*." It appeared principals were guided by their own interpretation of what was good for a child, despite rules or policies to the contrary. Their interpretation may beg the question of why policy is there in the first place. It is worthwhile to note the principals did not refer to specific school board policies unless asked, and in those cases referred only to the policy on student suspension with which they seemed most familiar, or the authority to suspend for "gross misconduct" under *The Education Act* (1995).

LaRocque and Coleman's (1985) study revealed few "teacher respondents had ever read, or were even aware" of certain policies (p. 159). It was not clear if their finding reflected the level of awareness of specific policies relating to discipline by the participants in my study. The principals may simply have chosen not to refer to the board policies relating to student discipline Two principals commented on their belief the *Act* was outdated legislation, a notion which may have provided them with some justification in their choice to enforce it as they saw fit; however, most principals alluded to the *Act* in reference to serious disciplinary situations, suggesting that discretion was variable depending upon their interpretation of the severity of a disciplinary incident. They may have been more conversant with board policy and legislation than they admitted or,

conversely, may have been less knowledgeable and, as a result, spoke only in generalities about policy and legislation. Unlike the principals in Roche's (1999) inquiry who felt they needed to be consistent in their application of policy, the principals in my study did not appear to believe they needed to apply policies consistently. They seemed to support Hawkins's (2003) maxim that "rule breaking may be a threat to order, but rule enforcement is not necessarily conducive to order" (p. 207). Instead, they believed they had to apply policy differentially based on circumstances, and that consistency in policy implementation was not necessarily a good thing and could bring about disparity in outcomes for students. As a result, discretion as it was exercised by the principals, could undermine the "intent of the statute" or policy (Vorenberg, 1976, p. 665).

6.7.4 Values in Policy Implementation

Aaron, Mann and Taylor (1994) argue policy analysts are now recognizing values are not "independent of public policy" and refer to the idea that responses to policy "depend upon people's values;" as a result, they muse about how policy might affect or "directly or indirectly" change values and the responses people have to policies (p. 3). The principals' interpretation of their exercise of discretion in implementing policy also served to promote their thinking that they were compassionate, caring administrators (also see Heilmann, 2006) as identified in Theme Six through their consideration of student-specific influences affecting their discretionary decision-making. The values they espoused in Theme Three, such as respect, dignity, and tolerance served to reinforce this notion as well. Those of their colleagues who they believed acted without demonstrating the qualities of caring and compassion, and who appeared whimsical or

capricious in their decision-making, were considered to be inappropriately exercising their discretion and possibly abusing that power.

In her study of values in principals' decision-making, Campbell-Evans (1988) discovered "where policy conflicted with their values, principals responded by implementing the policy and then worked to change or amend it to correspond to their value position. In cases of internal conflict, value choice preceded decision action" (p. 86). Most of the principals in my study either appeared to ignore a policy's intent entirely if it conflicted with their own espoused or even unconscious values or worked to "ameliorate" what they interpreted as "negative" effects of a policy (Haynes & Licata, 1995, p. 23) upon students by adapting it to their value position, much like the participants in Campbell-Evans's (1988) study. This avoidance of policy implementation may have been a result of many things, such as misinterpretation or misunderstanding, their uncertainty of a policy's intent, a subjective evaluation of the policy's importance in their school, its impact on the best interests of a student or students in general, or simply a desire to undermine central office dictates for personal reasons. Haynes & Licata's (1995) finding that administrators who were newly appointed to the role of the principal tended to "cling to established policy and infrequently [made] policy adaptations" (p. 32) was not corroborated by the principals in this inquiry, although Danielle, as noted earlier, perceived "*young, inexperienced*" principals had "*limited judgment*" and as a result would "*stick a little closer to th*e [policy] *script*." Sossin (2002) argues administrators will use policies or rules intended to guide discretion "to mask more human (and sometimes more humane) motivations" (p. 832). He concludes many decisions are "motivated by human frailties… [such as] discrimination, spite, laziness, [and]

selfishness" (Sossin, 2002, p. 832; see also Hodgkinson, 1978b, p. 60). Although none of the study participants indicated these frailties served as a basis for their decision-making, they may well have been in certain disciplinary situations.

6.7.5 Selective Enforcement of Policy

When it served their purpose, however, the principals would selectively choose to enforce policy (Manley-Casimir, 1977-78), especially in matters of school safety or in cases in which they appeared fearful their decision-making may be subject to legal scrutiny. In many ways their decision-making mirrored Walker's (1998) belief in policy implementation based on utilitarian principles whereby administrators selectively implement that part of a policy which will bring the "greatest benefit" (p. 300) and the least detriment for the greatest number of students. Similarly, the research of Marshall, Patterson, Rogers, and Steele (1996) on "*career assistant principals* (CAPs) [emphasis in original]" (p. 272) revealed they would "often find policy, orders, roles, rules, and resources inadequate" (pp. 287–288); consequently, they would "make their own judgments" rather than follow the dictates of policy in order to maintain relationships with their students and to resolve conflicts (p. 288). However, as Torres and Chen (2006) observe, different policies, and their intent, may "demand different levels of discretion" (p. 190); this appeared so with the principals. Their discretion was variable, as was their need to adhere to rules and policies. They did not assume the rules operated "in a simple causal way:" "'the rule is this, therefore I must do that'" (Hawkins, 2003, p. 206). This finding was revealed, for example, in Theme Five in their understanding of policy and legislation; abiding closely to the intent of policy, especially in safety matters, would provide the principals with support or "*back up*" (Frank) for their decision-making. Most

appeared to feel they had little discretion in the area of school safety, and some principals, such as Harold, even sensed there was zero tolerance, or no discretion, in this particular realm. Safety, however, can be very broadly defined. In matters of minor behavioral incidents involving safety, for the most part, the principals believed they had a wide degree of discretion. This specific pattern of exercising discretion may not always serve them well, especially if they initially underestimated the severity of a situation and did not follow policy dictates in their decision-making.

Smith and Foster (2009) contend "school policy and practice" must "provide equal opportunities to students," a process that involves taking "a hard look at the extent to which they [educators] are accommodating students of diverse backgrounds, needs, and aspirations" (pp. 35–36). In a similar way, Sossin (2002) maintains "a fair, impartial and reasonable decision cannot be divorced from the needs, expectations and rights of affected parties" (p. 854). The principals emphasized that their decision-making, through the exercise of discretion, had to accommodate for the diversity they found in their schools. Consistent with an awareness that policies by their design can result in unintentional "adverse impact discrimination" (Hamilton & Sinclair, 1991, p. 101), the school leaders in this study avoided implementing a policy when they believed it would not result in fair or just outcomes for students or when it did not "*make sense*" (Shawna) to them. They indicated that they would alter policy in order to act fairly on the basis of such personal circumstances as poverty or ethnicity, but they did not appear to consider the imposition of their own values in their decision-making or to have an awareness of some of the assumptions they made. There was no indication, however, whether the principals' interpretation of policy would guard against the negative effect of its

implementation, or whether selective enforcement or avoidance may have caused an adverse impact upon their students.

Research has indicated policy implementation will be "more successful" if "the beliefs and attitudes inherent in the policy" are close to "existing norms," and that educators are more likely to implement a policy if they feel it offers a solution that is "an improvement to the status quo" (LaRocque & Coleman, 1985, p. 156). The decision-making practices of principals interviewed in the study are consistent with this finding, although successful implementation of policy in some cases may have been interpreted differently by individual principals. For example, Melvin's declaration that he would not "*purposely be going out and finding ways to break*" policy, but that he was "*not going to go out and follow it to the 'T' just to follow it to the 'T'*" may reflect this finding. Acceptance of the policy by the principal could be "related to compliance," while non-acceptance could be related to "noncompliance, symbolic compliance, or co-optation" (LaRocque & Coleman, 1985, p. 160). For instance, Amanda found she could not support the implementation of a hat policy (see also Henriksson, 2008). In other words, she "saw no need for it, judged the goals and assumptions of the policy to be incompatible with [her] own, and derived no sense of challenge or satisfaction" from its implementation (LaRocque & Coleman, 1985, p. 156). She indicated "*rules have to be established through kids…if you don't want hats, you better have a reason why. I am not ignoring it. I will say no hat in the hallway…if the hat goes by me, it is not going to be my first priority, frankly*," and added that such rules were "*stupid*" and she would exercise discretion in her decision. Danielle also indicated she would "*ignore*" them. As LaRocque and Coleman (1985) contend, educators are more likely to implement a policy

if they feel it addresses "a real problem or need" (p. 156). Because the hat policy did not appear to align with an identified problem or need for her students, Amanda was noncompliant with it. In much the same way Melvin said he did "*not feel any obligation*" to enforce a policy that "*is counterintuitive to what a child needs*."

6.7.6 Policy as Guide to Decision-Making

For the principals in this study, as reflected in Theme Five, policies and legislation appeared largely to serve as decision-making guides or frameworks that enabled them to exercise wide discretion (Downey, 1988) and helped to facilitate their administrative practice. However, in a manner similar to that described by Meyer *et al*. (2009), the principals' exercise of discretion in decision-making appeared to expand or contract depending upon the circumstances and their "interpretation of [their] arena[s] of action" (p. 32). Consistent with the findings of Dunbar and Villarruel (2002), there were multiple understandings of the policies by all participants in this study. Some of the principals interpreted policy as a means of giving students another chance, or of doing what they believed would be good for the child or young person involved. However, there appeared to be a lack of knowledge about relevant policies and legislation, and these participants, like those in Dunbar and Villarruel's (2002) study, made "vague comments" alluding to parts of school division policy but did not convey a "substantive comprehensive understanding" of policies and legislation (p. 101). Again, although the principals made no reference to legislation affecting their practice, such as the *YCJA* (2002), this does not mean they were unaware of their legal responsibilities and obligations. Also consistent with the results of Roche's (1999) investigation is the use of the modification, adaptation or overturning of system policies by principals if they

believed they "impinged unfairly on teachers, children, and families in their school community" (p. 264).

The findings of my study also support LaRocque and Coleman's (1985) assertion more than twenty years ago that "there is little reason to believe that [educational] administrators, as part of their training, have developed a keen sense of their responsibilities as policy implementers" (p. 155). However, the principals in the study may have had a sense of their responsibilities as implementers of policy, but chose not to implement it for any number of reasons. Or, perhaps they used "policy and regulations to evade decision responsibility" (Manley-Casimir, 2003, p. 271). LaRocque and Coleman's (1985) suggestion, however, that policy influences administrators "by creating a climate of opinion" (p. 160) is clearly reflected in the principals' varying beliefs regarding discretionary power and the use of student suspensions in disciplinary situations. If, however, policy-making is, as Hodgkinson (1996) maintains, "decision making writ large" (p. 49), then administrators "directly or indirectly, formally or informally, by persuasion, influence, manipulation [or] control of information…do in fact determine policy decisions" (p. 58).

6.7.7 Implementation of Suspension Policies

Similar to the findings in Hall's (1999) research, there was inconsistency among administrators in their beliefs about the intent and efficacy of suspensions, but most of the principals viewed suspensions as a "consequence for aggression" (p. 144). The expectations of staff, parents and other stakeholders about suspension as the disciplinary consequence for a wide range of behaviors appeared to be an important influence upon the principals. Danielle, Melvin and Amanda commented on the difficulty in resisting

their staffs' desire for student suspensions and how they personally valued inclusive rather than exclusionary environments. Despite Mendez and Knoff's (2003) assertion that principals view suspensions as punishment rather than as a consequence for inappropriate behavior, suspensions did not appear to be perceived as especially punitive sanctions by some of the principals who spoke about them as "*providing a break*" for the parties involved. For them, suspensions appeared to be a necessary response to certain types of behavior. This inclination mirrors Hodgkinson's (1996) "excisionistic fallacy" according to which administrators seek to resolve value conflicts by "excising the source of the problem" and removing the "need for its consideration" (p. 124). In this way, by removing or excluding the individual, which yields a "delusory appearance" of having resolved the "value issues," the principal does not necessarily address the "root value question" but avoids it and does not speak to the "*truth* of the rights or wrongs [emphasis in original]" of the incident (Hodgkinson, 1996, p. 124). Errors such as these, Hodgkinson (1996) concludes, "are often unconscious" (p. 125); they appeared so with the administrators in the study.

For some of the administrators suspension may have become the default disciplinary consequence because it was encased in legislation, it was an expectation of staff and parents for misbehavior, or they lacked the creativity or willingness to examine other alternatives. Similar to the findings in Campbell-Evans's (1985) research, the principals seemed to consider somewhat the "consequences" of levying a suspension "prior to [taking such] action" (p. 90), but they did not suggest they used a standardized process, which they may have done. Sarah believed in student suspensions only as a "*last resort*," and Danielle didn't support "*sending students away*." Four of the principals

felt suspending students for attendance concerns was wrong and made no sense (see Costenbader & Merkson, 1998), although they may have done so. Melvin said it was "*silly*" to do so, Lauren believed it was "*hypocritical*," while Shawna and Frank said "*absolutely not*." None of the principals, however, spoke about the perceptions of students regarding suspensions, thereby emphasizing the unilateral focus of the consequence.

Although some principals indicated they would not suspend students even if they felt pressured by stakeholders to do so, or if they believed there was no other option available, because of their desire for safety at all costs, it was not clear whether their resolve would hold in situations of serious school violence. Others, such as Danielle, were scornful of administrators who applied suspensions "capriciously" (Duke *et al*., 1978, p. 306) believing it was an ineffective form of discipline as opposed to other options. Instead, many of the study principals said they searched for a broad range of options to suspensions in their efforts to respond to misbehavior. However, suspension was frequently cited when they gave examples of disciplinary consequences they had assigned to their own students. This penchant for suspension may be explained by simple hypocrisy, hypercriticality of colleagues and peers, absence of alternative measures, or bowing to what they saw as zero tolerance provisions.

The principals' reliance upon suspension reflects to some extent Lipsky's (1980) contention that, despite the educational goals of schools, decision-makers differentiate based upon their perceptions of the "relative normality" of behavior, regarding some students as being "able to benefit from intervention" and others as being "unresponsive or unworthy of help" (p. 113). Decision-makers will tend to differentiate their responses

based upon deviations from these standards of behavior. That is, they expect, in a "normal distribution" of students, there will always be a set of pupils for whom suspension is necessary because they may not be especially cooperative or show "deference" for procedures and, as a result, will "be singled out for particularly harsh treatment" such as exclusion "from the school population through suspensions and other punishments" (Lipsky, 1980, p. 113).

6.8 Research Sub-Question Eight

Do school administrators believe the exercise of discretion assists or hinders them as they work to balance competing rights in the school setting?

As identified in Theme Eight, the principals struggled with the tension that exists between balancing the rights of the individual and the rights of the rest of the school population in disciplinary issues. Disciplinary cases in which the participants were required to strike a balance between competing interests in the school setting reflected those areas of "open texture" described by Hart (1961, p. 132). Most administrators emphasized that finding this balance was a crucial, ongoing aspect of their decision-making and they perceived the exercise of discretion was essential in enabling them to reconcile competing interests. For the principals, finding a balance was also dependent upon their short- and long-term goals for individual students and for the advancement of the learning agenda as the overall mission of the school. To this end, the principals understood they needed to maintain their authority and, more importantly, to be seen as maintaining it, in addition to building consensus, gaining support, and achieving reasonableness with "common sense actions and logical conclusions" (Biggs, 1993, p. 157). Other considerations that affected their decision-making as they sought to balance

interests was the level of acceptability of the behavior; the need for consistency in their decision-making; the reasonableness of the application of applicable rules, legislation, or policy; the seriousness of the disciplinary issue; and the availability of resources such as time and personnel.

6.8.1 Acknowledgement of Student Rights

> For the purposes of the study student rights are defined as the following: the fundamental freedom to practice one's religion, to be free from religion, and not to be forced to practice another's religion; freedom of thought, opinion, and expression; and the right to gather in groups, legal right to life, liberty, and security of the person, and the right not to be denied these rights without first being granted a fair hearing; a limited right to be secure against unreasonable search and seizure; the right not to be arbitrarily detained and the right to be informed of the reason for the detention; as well as the right not to be subjected to any cruel and unusual treatment or punishment. The equality rights provision in the *Charter* means that students are protected from discrimination in education. (Watkinson, 1999, p. 194).

Brown and Zuker (2007) briefly provide a historical context for children's rights as evolving from a pre-industrial society in which children were viewed as chattels or property of their parents, through an age of industrialism when they were seen as needing protection, to a post-industrial age when they are now seen as persons with the "right to" (p. 255). None of the principals indicated knowledge of *Charter* rights and few mentioned the notion of student rights, but that does not mean they were unaware of them or did not consider them as they sought to reconcile competing claims. It is difficult to

determine how often, if ever, the exercise of discretion by the elementary principals in this study infringed upon the rights of students in their schools in the examples they provided. Although they may have had different intentions, the principals may have made decisions that did not consistently respect or protect student rights, or there may have been unintended outcomes to their decision-making that may not have respected them. Furthermore, they may have tried to balance students' rights against their own interests, biases or assumptions.

When asked whether the rights of students would inform his decision-making, Melvin replied that students "*have the basic rights that every human being does. Do we need to have a Charter of Rights for students? Maybe, for some of those hardliners, but for me, no*." The principals appeared more inclined to interpret rights not as an entitlement, but in terms of a dominant notion of corresponding student responsibilities, although it is not clear whether they, or teachers, were educating students about these responsibilities. Nonetheless, it appeared they expected students to be responsible and regulate their own behavior and to be aware of the rights of others. The standard set by these expectations does not appear to be entirely consistent with Torres and Chen's (2006) call for greater attention to be "placed on cultivating leadership that ethically balances the safety interests of the school and the privacy interest of the student" in order to ensure student rights are protected and honored in the school setting (p. 203). The principals seemed to understand student rights as being limited, rather than supported, by their discretionary decision-making.

In the realm of school safety, the principals appeared quite willing to trump individual student rights for a greater good—that of the entire school population usually,

but not solely—and most principals indicated this norm or standard would be the basis for decision-making in order for the school to accomplish its goal of educating students. They firmly indicated their decision-making should send a message to the student body. Shawna said her students would have to learn that "*it is not always about me*," whereas Amanda affirmed her decision-making "*is always for the greater good*." These decisions could also be the path of least resistance. Their perception of the greater good is consistent with the findings of Frick and Faircloth (2007) in which one subject believed "the balance between the individual and the group was skewed more toward the group" and, in fact, the "uniform treatment of all students" helped to meet the administrator's purpose (p. 26). It did not appear that the principals consistently questioned whether this greater good was, in fact, the least detrimental decision for all students involved and, if so, whether the decision was the correct way to achieve their own goal or purpose (Walker, 1998). In their decision-making, the "collective justification" (Hodgkinson, 1991, p. 98) of the principals may not have benefitted the individual student, respected his or her rights, or benefitted all members of the group, even though they assumed it did. The individual student may have been seen as a means to achieving an end, not as an end in itself (Walker, 1995), although the principals said they took pains to ensure they were perceived as treating all students with dignity, even if there were decisions made that privileged the many over the few.

The participants' desire to send a message about misbehavior echoes, to some extent, the sentencing principles of deterrence and denunciation, especially as these

principles relate to youth justice under the *YCJA* (2002).[25] This need to send a message was also linked to their need for accountability in, and justification of, their decision-making. All principals emphasized their decisions should indicate not only to students but also to other stakeholders their level of tolerance for misbehavior, the sanction for misbehavior, and the application of fairness and justice. Cesaroni & Bala (2008) contend "deterrence theory is based on the assumption that punishment can prevent future offending and it is linked to a belief that harsher punishments will reduce levels of crime" (p. 268). While the principals did not refer to social science research that suggests knowledge of harsher consequences will not deter youth's "offending behavior" (Bala, 2011, p. 10), they generally avoided imposing harsh sanctions for student misbehavior in most disciplinary situations. However, their support of less punitive consequences was juxtaposed against a belief that certain behaviors, such as bullying (Miriam) or racially-motivated acts (Amanda), should be denounced as conduct that was particularly intolerable and in those cases they could use sanctions that had a "general deterrent effect" (Bala, 2011, p. 9). It is worthwhile to note that "general deterrence is not a principle of youth sentencing under the present regime [the *YCJA,* (2002)]" (*R. v. B.W.P.*, 2006, para. 4), and that judges "cannot sentence one young person with the aim of sending a message to other youth" (para. 12). Certainly, many criminal acts committed

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[25] Charron J. of the Supreme Court of Canada defines "deterrence" in *R. v. B.W.P.* (2006) as "the imposition of a sanction for the purpose of discouraging the offender and others from engaging in criminal conduct" (para. 2). When deterrence is aimed at the particular offender, "it is called 'specific deterrence'; when aimed at others, 'general deterrence'" (para. 2). The Court goes on to note that when general deterrence is factored into a sentence, the offender is "punished more severely…because the court decides to send a message to others" (para. 2). Denunciation is described as "'a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values'" (Public Legal Education, 2012, p. 5).

by young people are distinct from student misbehavior in schools, yet the principals seemed unaware of any parallels that could be drawn between their disciplinary decision-making and the underlying notions behind the principles of deterrence and denunciation in youth sentencing. They appeared to understand the application of certain disciplinary consequences as being necessary to send a message to students or to denounce objectionable conduct. In arguing against the addition of denunciation and deterrence as sentencing principles under proposed amendments to the *YCJA* (2002), Bala (2011) points to "the fact that moral development and judgement [of youth] are not fully developed until adulthood" (pp. 9–10). It is not clear from the findings of the study if the principals understood or took into consideration the stages of moral development and judgment in children and young people. Research indicating the principle of deterrence has an effect upon judges but not upon youth (Bala, 2011; Cesaroni & Bala, 2008) may be reflected in some of the discretionary decision-making of the principals in the study.

6.8.2 Exercise of Discretion to Balance Competing Interests

The principals in this study seemed to interpret justice and fairness as consistent with Rawls's (1969) notion of finding the proper balance between competing interests. It may be reasoned that the consideration of the area of discretion delegated to the principals leaves the nature of justice and of the balance between interests to the "judgment of individual officials" (Vorenberg, 1976, p. 676). As Shawna realized, it may not always be possible to accommodate the interests and needs of all stakeholders as evidenced by her collaborative decision-making in the incident involving a fight among girls in her school that resulted in sustained criticism and solid resistance by her staff and colleagues. In her words, "*Mistakes happen when all the stakeholders are not considered*

and perhaps circumstances have not been communicated clearly…discretion is not a biased action…but the ability to meet the needs particularly of the child but also to accommodate the needs of other stakeholders."

The principals understood the exercise of discretion as enabling them to be fair in their decision-making and to balance all interests, but in their attempts to resolve disciplinary issues, they may have unwittingly assumed the values of fairness and justice were "differentiated by degree rather than by kind," (p. 152), an error Hodgkinson (1991) calls a "homogenetic fallacy" (p. 151) adopted by administrators. Justice and fairness appear to be absolutes for the principals as they individually interpreted them, but, as Willower (1996) suggests, absolutes often break down in practice. However, it appeared to be of primary importance to them that they were perceived as being fair by students and stakeholders and, in that way, they created a "climate of mutual respect and justice" (Manley-Casimir, 1979, p. 25). The need for fairness also appeared to be related to their challenge of reconciling decisions with consequences that may include their being accused of being either too harsh or too lenient. While they seemed to believe their exercise of discretion in reconciling competing interests and rights usually resulted in a perception of fairness among the students, staff and stakeholders, they also understood dissatisfaction on the part of students, staff and stakeholders to be an indication that they may not have achieved fairness in balancing interests through their exercise of discretion.

6.9 Research Sub-Question Nine

What do school administrators perceive to be an appropriate measure of accountability for their discretionary decisions?

Begley's (2010) study identified accountability as a "meta-value for school principals" (p. 49). If one can assume that the principals in the study spoke truthfully, care for their students is a priority. Yet, despite being well-intentioned, principals must be accountable for their decision-making and consequent actions. Indeed, all of them indicated they assumed responsibility for their decisions. They specified they were accountable to their stakeholders and school community, especially in their responses to the vignette questions, and they gave examples of challenges to their decision-making in the form of the external pressures and influences indicated in Theme Seven. Their perceptions reinforce Ehrich's (2000) identification of a number of accountability frameworks within which principals work, such as community, legal, and bureaucratic. She contends "principals are in a precarious position; they are located at the interface between competing sets of demands by specific shareholders" (Ehrich, 2000, p. 121). Although the study participants did not point to these specific accountability models, they seemed to understand "alternative types of accountability such as moral and professional accountability [which] center around relationships between people; relationships built on trust and support, not relationships that are characterized by control and hierarchy" (p. 121).

6.9.1 Determining Measures for Accountability

It may be difficult to identify and to agree upon the measures for effectiveness or appropriateness of administrators' discretionary decision-making. As Lipsky (1980) maintains, "the more street-level bureaucrats are supposed to act with discretion, and the broader the areas of discretionary treatment, the more difficult it is to develop performance measures" (p. 168). One can reasonably assume there should be a system of

checks and balances for administrative decision-making. The principals did not refer to specific measures of their performance in decision-making; if they assumed they were making sound judgments, they perceived them as being fair. Nonetheless, aspects of decision-making can be difficult to assess, such as the type and level of impact upon individual students involved in any disciplinary incident. The number of disciplinary situations principals may attend to in one day could be interpreted as a quantitative measure of the job they perform, but it is not wholly reflective of their role. On one hand, a principal may be a popular administrator with students, yet may not be the fairest arbitrator in disciplinary situations; on the other, the administrator who is feared and disliked by students may be quite capable of administering discretionary decisions that are adjudged by all stakeholders to be fair. Finally, the extent to which privacy and confidentiality can impede access to information may further limit measures of accountability.

6.9.2 Accountability to Supervisors

A few of the principals indicated the need for direct accountability to their superintendent, but this responsibility appeared to be for more complex discretionary decisions, not for ones which they may have considered routine. The principals valued their perceived autonomy in exercising discretion, and consistent with LaRocque and Coleman's (1985) study of policy implementation at the school level, there appeared to be few mechanisms to monitor the principals' decision-making by a supervisor unless, one assumes, a complaint was made to central office by a stakeholder or a suspension was issued. There seemed to be few formal structures in place for accountability purposes—as documentation was not mentioned—although the principals may have

assumed such a process was taking place. Perhaps their accountability was measured in some other way that was not formalized or they did account for their decisions but simply did not acknowledge doing so. However, much of their decision-making appeared to occur in an environment where very little accountability was required; that is, some follow-up was done, but it appeared to be based upon the judgment of the individual principal. The principals also understood they were to demonstrate responsibility for their decisions depending upon the magnitude of the behavioral incident, and the number of students involved; that is to say, the greater the severity of the incident, the greater was the need for accountability. Their belief supports Manley-Casimir's (1977–78) contention that many of the minor disciplinary decisions made in schools take place behind a closed door in the principal's office with little apparent accountability. Nonetheless, even minor decisions involving students, such as a loss of recess privileges for a morning, can affect student well-being and require some level of accountability. Leithwood (1999) refutes the notion that there is little public scrutiny of the actions of principals, arguing it is "extremely difficult" for school-based administrators to "behave in a professionally unethical manner" without being detected, since much of their work is "highly visible to students, parents, teachers, and members of the nonparent community" (p. 26). Administrators may or may not be acting in a manner that is deliberately unprofessional or even unintentionally unethical; nonetheless, they can be exercising poor judgment and do so with little apparent accountability.

The principals believed there to be a shared understanding between them and their supervisors about the acceptability and appropriateness of the principals' decision-making, despite the lack of compliance with policy directives. The principals'

assumption about senior administration's support of their discretionary decision-making and the level of accountability the principals determined was necessary, dependent upon the incident, may have resulted from a lack of communication "regarding their [superintendent's] expectations" (LaRocque & Coleman, 1985, p. 164). Discretion did not appear to be school- or site-specific, but the amount of discretion exercised appeared to vary depending upon the type of student misbehavior; that is, the principals appeared to understand they had very broad discretion in minor incidents of misbehavior, but less room in more serious or complex incidents. In this way, their level of accountability appeared to be directly related to the severity or urgency of a disciplinary situation.

6.9.3 Accountability to Stakeholders

Millerborg and Hyle (1991) outline a process to help principals be accountable in their decision-making. They affirm that the "astute leader reflects on issues, examines the conflict from different perspectives, determines if ethical and legal considerations exist, and proceeds to make decisions that uphold self-respect as well as public trust and confidence" (p. 16). The principals in this study appeared to follow this process to varying degrees as they worked through their disciplinary decisions, yet they struggled with certain aspects of gaining the trust of their school community (see also MacCarthy & Soodak, 2007). They believed they could provide accountability to stakeholders and gain their trust through decision-making that reflected good judgment, although they recognized not all stakeholders may view their decisions in this way. They also seemed either to be unaware of or to chose to ignore the roles the broader institution of education or the school itself may have had in their decision-making. In considering the need for accountability, the principals may not have considered how changing patterns and trends,

such as the growing use of technology or increased student diversity, may have affected their implementation of school division discipline policies, or their level of accountability, or even whether their students and their families held values similar to their own.

If the legal requirements of discretion are to be met by administrators, then they must ensure it is exercised in good faith, reasonably, upon proper grounds and according to certain procedural standards. Manley-Casimir (1977–78) also contends discretion must be controlled "within the designated limits" and checked to ensure there is no "arbitrariness or illegality" in its exercise (p. 86). Their decisions would also have to adhere to "legal standards and educational considerations" (Manley-Casimir, 1977–78, p. 86). He argues for a model of discretionary justice in school discipline because of principals' wide discretionary power and in his belief, as noted previously, discipline is often "dispensed on a one-to-one basis" in a "closed office," and enforced through "rules and sanctions" (Manley-Casimir, 1977–78, p. 85). The discretionary power afforded the principals in the study appeared very broad, there seemed to be no formal mechanism for accountability and there was little transparency in their decision-making. For example, while principals may be unaware, at times, of the legal requirements governing their actions, such as in searches, arguably many students and parents may be even more ignorant about them. On the other hand, some parents and students may have a misguided sense of entitlement. Since discretion is a part of all stages of the decision-making process, students and stakeholders are required to assume the good faith and reasonableness of administrators. The principals, however, did not indicate whether they always afforded students the chance "to discuss or disagree with the accusation" of

misbehavior or if the process involved "protective steps for the student" (Biggs, 1993, p. 178). They did not suggest they followed the requirements for procedural fairness, although they may have.

Brown and Zuker (2007) point out the "common law duty of procedure fairness" requires "at a minimum" the individual must be informed "in advance…of a matter which may affect his or her individual rights," be given a "reasonable opportunity" to make submissions and to respond and "be told the reasons for the decision" (p. 48). They go on to note "principals and school boards have a duty of fairness when they are considering whether to suspend or expel a student" (Brown & Zuker, 2007, p. 245). Their assertion is grounded in the Supreme Court of Canada's ruling in *Nicholson v. Haldimand-Norfolk (Regional Municipality) Cmmrs. Of Police* (1978) that "in the administrative or executive field there is a general duty of fairness" (para. 22). The requirements of procedural fairness are variable and depend, as established by the Court in *Nicholson* (1978), upon the circumstances, the nature of the matter before the person making the decision, and the provisions in the statute. Furthermore, in *Knight v. Indian Head School District No. 19* (1990), L'Heureux-Dubé J., in considering *Nicholson v. Haldimand-Norfolk* (1978), ruled the general duty to act fairly "depends upon the nature of the decision to be made by the administrative body," the "relationship between the body and the individual" and the effect "on the individual's rights" (para. 28). If the study participants did not afford students the opportunity to be heard or did not tell them why their actions necessitated a disciplinary sanction and simply imposed a disciplinary consequence, they could be infringing upon students' rights and, in some instances, their actions could be subject to legal scrutiny via judicial review. Yet, in speaking directly

about their accountability, some principals in the study expressed fears of increasing "*legal action*" (Frank) in education and the spectre of judicial review, but they did not seem to be concerned about a lack of legal knowledge. They seemed concerned, frustrated or even angered, however, if their decisions were challenged by parents or other stakeholders.

6.10 Research Sub-Question Ten

In what ways do school administrators justify their exercise of discretion?

The principals in this study understood they needed to justify their discretionary decisions in various ways to various stakeholders. Whether they actually did so on a consistent basis, or in the manner which they described, is unclear. Ultimately, what the principals determined would be the best for the entire school, or a Type II value resolution of consensus and consequences, appeared to be key justifications in their decision-making. Decisions made at these levels appeared to be more defensible than would those resolved at the principle (Type I) or preference (Type III) levels. Their inclination "to gravitate towards the rational motivational bases of consequences and consensus" (Begley, 2010, p. 49) may stem from a need to justify their decision-making. Hawkins (2003) points out decisions are more "readily justifiable or defensible if they can be presented as following 'normal practice' or a 'routine procedure'" (p. 213), and in this way decision-makers develop "understandings of what are 'normal cases'" (p. 212) as one way of defending against criticism, typifying their decisions, and deciding with ease and simplicity.

However, as Hodgkinson (1983) contends, when there are value conflicts, then they will be invariably justified at either the Type I "principle of hierarchy (or the

principle of *principle*) [emphasis in original]," or what "one *should* [emphasis in original]" do, or at the Type III "principle of least principle" (p. 203), where one should seek "to avoid conflict, reduce value tensions…[and] scale the level or argument downwards" (p. 204). This contention is reflected, in part, in the decision-making of the principals in my study. When the principals described what appeared, for them, to be complex disciplinary decisions that involved conflicting values, if they evoked a Type II level of grounding of consequences or consensus, ultimately they would justify their decision-making by grounding the decision either in the Type I level of principle of what was best for students, or in the Type III level of affect for "pragmatic reasons…the affective wear and tear upon [them]…[and] the sheer emotional involvement" (p. 204). In those cases they may simply, give in to the influences of parents or stakeholders in an effort to negotiate, avoid conflict, or "put out fires" (p. 204). For example, Frank spoke about the influence of irate parents upon his decision-making and his justification, at the Type III level, to avoid further conflict in a way that may be described as the "least exhausting and destructive" (p. 204); this resolution would also help to support the maintenance and efficiency of the school's learning program. In another instance, Amanda's desire to keep a student in school by allowing her to smoke during recess periods conflicted with school board policy and provincial law, yet she justified her decision at a Type I level of principle and was "*sanctioned*" by her supervisor.

There appeared to be different degrees of justification required depending upon the seriousness of the behavioral incident, although student safety seemed to be the default reason for many of their decisions. Their reasoning may be explained by their legislated responsibility to maintain order and discipline and, in part, by Torres and

Chen's (2006) claim that "in an era of ever-present youth violence and drug use, policies wedded to the safety-above-all-else framework are…easier to justify than policies that constrain discretion on the basis of civil rights" (p. 203). In this sense, the finding of the principals' justification of safety first as a rationale for action would support Hodgkinson's (1983, 1991) contention of justification taking place ultimately at the Type I or Type III levels. All administrators appeared to indicate justification was necessary in the complex behavioral situation of Gary in the vignette, yet they did not seem to perceive justification was as necessary in those minor disciplinary incidents whose "inconspicuous nature belies their importance" (Manley-Casimir, 1974, p. 354). Arguably, many of these seemingly unimportant decisions can have importance consequences for the well-being of students.

6.10.1 Justification Based on Best Interests of the Child

Lipsky (1980) contends differentiation in the treatment of individuals can sometimes be attributed to the desire to act "in the best interests of clients or the best interests of the greatest number" and, in doing so, the decision-maker "rationalizes, excuses, and justifies…intervention orientations" (p. 112). The comments made by many of the principals in justifying their decision-making support Lipsky's (1980) contention. Most of the participants justified their discretionary decision-making by explaining it was based on a personal conviction they understood as being what was "*the right thing for kids*" (Danielle) or "*the best thing for a student*" (Frank), as identified in Theme Three (see also Frick, 2006, 2009; Hall, 1999; Haynes & Licata, 1995; Roche, 1999; Tuten, 2006; Willower, 1996). Their adoption of the best interests of their students as a basis for decision-making is also consistent with the practice of the principals in Begley's (2010)

study for whom it was the "meta-value of choice" (p. 50). This justification for decision-making by the participants in my study also aligned with the findings of the subjects in Haynes and Licata's (1995) study who provided the rationale of "doing what [was] best for their students" as "justifiable on a practical or ethical basis," thereby affording themselves what the researchers termed the "legitimacy of the justifiable" (p.33).

Walker (1995), however, warns against a simplistic interpretation of the best interests of children and urges for a more guarded and "critical" use of the notion by school administrators (p. 6). The maxim, which has "enormous potential" to direct "goodness, rightness, and appropriateness of policy and practice" also has the "capacity to cover non-action or detrimental choices" concerning children (p. 5). He cautions against the "opportunistic" interpretation by school leaders of the best interests principle that contains a "hint of soft Machiavellianism which gives self-permission to bend a personal or professional value system to benefit kids. Altering a pseudo-system of values [feigned or false] is done at the discretion of the leader" (p. 5). In my study, none of the justification for principals' decision-making based on the best interests of students appeared "hollow" or "sententious" (p. 3), nor did the administrators appear to embrace "platitudes, sophisms, and manipulations" (p. 7) when they spoke of making decisions in the students' best interests. However, they assumed everyone had the same understanding of the phrase, and did not indicate how best interests were determined, what they are or when they had been met (Walker, 1995). The principals gave the impression their decision-making based on best interests was not superficial or predicated on "taken-for-granted meanings" but on a "broadly accepted ethical framework" that was capable of finding common ground and consensus in decision-making (Walker,

1995, p. 8).

The intentions of the principals in the study to act in the best interests of students appeared to be genuine, but according to Ashbaugh and Kasten's (1984) study, the principle is of " little use as a guide to action unless it can be made operational and delimited" (p. 205), and can be seen as a platitude or as being too simplistic. As they point out, "the best interests of one group of children (poor children, for example, or handicapped children) may not be the same as [those of] another group (for example, the gifted)" (Ashbaugh & Kasten, 1984, p. 205). Such general statements do not and cannot relate to all sub-groups of students and could be used to justify decisions of "questionable benefit" (Walker, 1995, p. 4). To assume there is one "single best interest" (Ashbaugh & Kasten, 1984, p. 205) to be determined by one individual may be misguided. Walker (1995) also cautions against the teleological assumption by some principals who have the "superior concept of good, right or excellence on behalf of a particular child, such that their ideations trump those of the parent" (p. 4). This "prospective rather than retrospective" assessment of events, facts, and circumstances involving students, calls for judgment of the "potential impact" of the decision upon the child or young person (Boyd, 2004, p. 169) and may be difficult for an individual administrator to predict. The expressed desire of the principals in this study to work collaboratively at decision-making may be a safeguard against one person solely determining what is best for a student or students, although in most situations the principals appeared to base their decision-making precisely on their *own* understanding and interpretation of the best interests principle.

6.10.2 Justification by Acting in Place of the Parent

Conversely, the principals may also have understood doctrine of *in loco parentis* to mean they dealt with the students in a caring and compassionate manner. Both Adam and Shawna, for example, justified making disciplinary decisions based upon how they would treat their own children (see also Walker, 1995); however, their own children may be quite unlike those children with whom they work in the school setting. This justification for decision-making, however, may enable them to rationalize dealing more severely or more leniently with the student, depending on the circumstances of the disciplinary issue. Furthermore, the use of the doctrine of *in loco parentis* as a justification for disciplinary decision-making by half the principals in the study may not serve them, or students, well. Alexander (1978) contends that up to the mid-twentieth century, especially in England and the United States, "school administrators, by virtue of standing *in loco parentis*, were not required to adhere to any particular standards of fair play when sitting in judgment over actions of students" (p. 337). As MacKay and Sutherland (2006) observe, the doctrine of *in loco parentis* "has been eroded almost to the point of extinction in the past several decades" and, realistically speaking, has "little or no place in today's schools" (p. xviii). It should not be considered "a primary source of authority" as considered in *Ogg-Moss v. The Queen* (1984), where the Supreme Court of Canada ruled the doctrine "has little, if any, relevance in institutional settings" (p. xix). Arguing the combination of "authority of the *in loco parentis* doctrine and the power conferred on teachers by statute" results in an "almost omnipotent, legal status" for teachers, MacKay and Sutherland (2006) assert it creates a "dangerous model" that is "inaccurate and misleading" (p. 45). Because the *in loco parentis* role "has diminished, "

they conclude teachers now "more commonly" act "in various capacities as agents of the state" (MacKay & Sutherland, 2006, p. 195). Nonetheless, by the authority delegated to them under *The Education Act* (1995), which they seem to have understood through the principle of *in loco parentis*, some of the principals in this study may interpret expectations of an "almost superhuman standard" (MacKay & Sutherland, 2006, p. 45) which, in turn, could lead them to decision-making that may be erroneous in a legal sense and detrimental to students.

What is more, the broad discretion they perceive they are afforded as a "surrogate parent" (Sitch & McCoubrey, 2000, p. 178) may not accord students their rights. For example, some of the principals, such as Shawna, appeared unaware of a potential infringement on privacy rights in student searches, and their interpretation of the *in loco parentis* doctrine had the capacity to be detrimental to student well-being. The principals did not seem to question their assumptions while acting in place of the parent or the consequences, intended or otherwise, in their decision-making based on that premise. They did not allude to their role as state agents as such, and perhaps may have been unaware of this role or simply chose not to discuss it.

6.10.3 Justification by Rule Enforcement

None of the principals in the study either provided or was able to provide a standardized code of conduct for his or her school, although one, Sarah, mentioned a list of rights and responsibilities the staff reviewed with students at the start of each year. Nonetheless, Duke *et al*. (1978) claim that "in theory at least" even listing student rights can serve "to protect students from administrative abuse of authority" (p. 305). Melvin mentioned a list of shared expectations to which he did not refer during the course of the

school year, although he had parents sign it every fall. Danielle noted she had brought to her new school a series of very simple belief statements, such as "*responsibility builds responsibility, nobody is treated like a nobody and problems are opportunities*," that had not been "*embraced*" by the school. Lauren indicated that the rules in her school, such as "*no chewing gum*" were just "*understood*." Amanda noted her staff wanted to create a "*handbook with rules and regulations*" for student conduct, but she had said she did not want "*to have* [her] *hands tied*," and agreed, instead, to a series of guidelines because she did not want to be "*the sheriff in the building*." Shawna's school had no formal code of conduct other than "expectations written out about cell phones" and a series of belief statements in the school such as "*hands off*" and "*what does being safe, respectful and responsible look like*?" Adam acknowledged *The Education Act* (1995) gave him a "*lot of leeway to respond in an appropriate manner*," but a formal codification of rules in the school was "*not terribly closely adhered to*." Instead, "*the one rule that everybody knows and is reinforced constantly is the idea of hands off*." This finding supports Duke *et al*.'s (1978) contention that "school and classroom rules often lack uniformity and their enforcement is reputed to be consistently inconsistent" (p. 305). If one student is disciplined and another student is not for the same infraction, Duke *et al*. (1978) wonder if students would have "legal recourse" (p. 306) in such a case, or if inconsistency in rule enforcement could leave teachers and school administrators legally liable.

While the principals might not have been making rules for every situation they encountered, they appeared to have a series of understandings about what acceptable student behavior looked like and seemed to enjoy not feeling rule-bound. It may have been they interpreted some rules as being "over-inclusive, penalizing too much conduct,"

so they must be relaxed; other rules may be too "difficult to formulate with adequate precision" in order "to fit the varying types of situation" so that "informal adjustments" are necessary" (Bell, 1992, p. 90). Their sense of what was appropriate enabled them to act, at times, in an arbitrary manner, without having to provide specific justification for their decisions. The perceptions of stakeholders might be quite different, however, as Danielle, Amanda, and Melvin each indicated, their staffs had wanted them to codify acceptable student behavior. Arguably, a clearly defined and transparent procedure for decision-making would provide staff and students who are affected by decisions with a better understanding of how discretion is exercised. In this way, too, principals would have greater need to justify their decision-making and to provide reasons for it. They may do this, however, in any case. Yet, it does not mean an expansive list of rules is required for student behavior. Duke *et al.* (1978) wonder if some educators promulgate "more rules than they can possibly enforce," and suggest, instead of creating more rules or harsher consequences, establishing fewer rules that may be "taken more seriously by students and teachers" (p. 306). They also question the "legality of rules" such as not chewing gum, or not using the washroom, and ask if they are "essential to maintaining classroom order" (p. 306) and contrary to notions of student rights. However, without a formalized code of conduct, the exercise of administrative discretion may lead to inconsistency in rule enforcement. Nonetheless, the principals' discretion appears to be very broad, and without articulated codes of behavior, the checking of discretionary decisions, according to K.C. Davis's (1969) model, cannot be guaranteed.

Sometimes the principals in the study seemed ready to absolve themselves of responsibility for decisions that they believed may not have served well the students or

the school community. Perhaps out of frustration from dealing with habitual misbehavior or from meeting hostility by parents, some principals may blame the students or their families and justify their decision-making that way (Lipsky, 1980). Miriam, for instance, mentioned what she saw as an increase in parental expectations that was influencing her decision-making:

> "*Parenting has changed so much…emails come from parents* [saying] *'I don't think it's fair that my kid'…and I'm getting to the point where, you know, well if that's what you want, and you don't think it's fair…I'm not going to fight that battle because it's not worth it. Whereas five years ago you wouldn't have gotten an email like that.*"

Her perception appears to reinforce Lipsky's (1980) contention that if students are seen as the products "of inadequate background conditioning, " which may include such influences as family dysfunction, poverty, or emotional or physical neglect, the administrator can be relieved of the burden of responsibility "if their charges [i.e., students] fail to progress" (p. 153).

6.10.4 Justification to Superiors

The principals in the study who perceived they needed to discuss or justify their decision with their superintendent appeared content to do so. However, other principals, such as Melvin, who saw themselves acting autonomously, or without the constraints of centralized decision-making, may have been acting in either a responsible or irresponsible manner depending upon their interpretation of the acceptable level of discretion they are delegated by policy and legislation. Melvin's belief in the trust central office had placed in his decision-making, and the flexibility he was afforded, justified his choices and enabled him to challenge his superintendent's direction. For example, he

understood he would not have to increase or decrease a student suspension, even if he were told to do so:

> "*I do not know if I would change it* [the decision] *necessarily, but I would advocate. Well, I would not change it…because you are taking the power out of my hands… I would think that if my superiors want to come in and overrule and make a longer suspension, based on a secondhand account that occurred, I think that I would advocate strongly against that.*"

The principals perceived their discretionary decisions as being supported by their supervisors and interpreted a freedom to act in what they understood to be the best interests of their students, a finding consistent with that of Meyer *et al*.'s (2009) study of decision-making in principals' succession.

6.10.5 Model for Justifying Discretionary Decisions

However, Manley-Casimir (1974) emphasizes discretion is "responsibly exercised" when all relevant considerations are accounted for, when reasons are given for the decision and "*when the reasons themselves are defensible*" [emphasis in original]" (p. 351). He maintains the "crucial aspect of the exercise of discretion is the *basis* upon which the decision is made [emphasis in original]" (p. 351) and is linked to the "substantive" dimension (p. 352) of the exercise of discretion. He advocates for a school governance model based on K. C. Davis's (1969) notion of discretionary justice and extends it from "high-visibility decisions" which constitute "an important minority" to those "'garden variety' decisions of low visibility" that administrators make daily in schools (Manley-Casimir, 1974, p. 354). He believes one way to achieve justice is through "structuring discretionary power" that adopts "*open* statements of plans, policy, rules, findings, reasons, and precedents together with a fair informal procedure [emphasis in original]" (Manley-Casimir, 1974, p. 355). Consequently, he urges that schools should

have a clearly defined code of behavior. This way, there can be a powerful statement for justification; if those affected by the decision-making know how the "discretionary power" is to be exercised, "the likelihood of injustice is reduced" or if abuses "do occur steps can be taken to correct them" (Manley-Casimir, 1974, p. 355). Arguably, if the rules are not known, students may be especially vulnerable to whim, favoritism or bias on the part of the administrator, and justification for a decision in those cases may be difficult to provide.

6.11 Chapter Summary

The general purpose of the research was to determine how elementary principals negotiate within the constraints of administrative discretion in order to maintain their own values system. This chapter analyzed the findings of the research by responding to the ten research sub-questions through the discussion of the eight dominant themes that emerged from the in-depth interviews. The analysis considered the nature of discretion, the influences upon discretion, the types of knowledge needed in discretionary decision-making, appropriate and inappropriate exercises of discretion, and the levels of accountability and types of justification necessary for the exercise of discretion in disciplinary situations. The findings were also interpreted through the literature. The major focus of the analysis was on the principals' decision-making in disciplinary issues, and Hodgkinson's (1978b, 1991, 1996) hierarchy of values provided the conceptual framework for examination of the findings. The legal authority delegated to the principals through statute and policy was an additional lens used for analysis and added insight into the manner in which they mediated and sought compromise among competing interests in their decision-making.

CHAPTER SEVEN

7 Conclusions and Implications for Further Research

> What is needed in organizational studies of schools are explorations that tell us more about the hidden injuries of learning, teaching, and being an administrator. In approaching this task, such studies must work with the unique, the specific, to reach larger insights that carry conviction and meaning beyond themselves. (T. Greenfield, 1978, p. 20)

7.1 Conclusions

Discretion is inherent in principals' decision-making, and the well-being of students is dependent upon its reasonable and legitimate exercise in disciplinary situations. The elementary principals in this study are afforded wide discretionary power in their disciplinary decision-making delegated through legislation, case law and school board policies. How they choose to exercise this discretion is based, in part, on their own values systems, their perceptions, preferences and assumptions, and also on external influences such as context and circumstances, expectations of parents or other stakeholders, and resources such as time. Ultimately, discretionary authority can empower principals "to think about formal equality in relation to social realities, with the goal of ensuring substantive equality for disadvantaged groups" (Boyd, 2004, p. 166). In light of these assertions, and mindful of those decisions that may be detrimental or injurious, it is appropriate to consider what may be gained or lost by the exercise of discretion in student disciplinary issues.

Sossin's (2002) description of discretionary decision-making as often based on "assumptions, value judgments, first impressions and broader personal and ideological agendas which are rarely disclosed" (p. 835) provides an accurate portrayal of the exercise of discretion by the principals in this study. Indeed, Hodgkinson's (1978b) appraisal that administrators' "essential competence lies in the area of judgment" (p. xi) is, in part, corroborated by the research findings. While discretion allows for the individualizing of student disciplinary issues and for creativity in dealing with them, there is also much opportunity for flaws in individual judgment, which could result in disciplinary decisions which are too lenient and not preventive or proactive, or those which are too harsh for particular circumstances. This is not to say that "rules are good, discretion is bad" (Hawkins, 2003, p. 206; see also McLachlin, 1992; Dicey, 1885). The appropriate and just exercise of discretion appears to require an exquisite balance, which Lipsky (1980) characterizes as being between "compassion and flexibility…and impartiality and rigid rule application" (pp. 15–16). In their discretionary decision-making in matters of student discipline, the principals seem to be positioned between the Charybdis of wide-ranging latitude, where capriciousness and arbitrariness reside, and the Scylla of rigidity, where restrictive policies leave them little room for flexibility or for differentiation in the treatment of students. Shumavon and Hibbeln (1986) speak about the balance between the "need for flexibility and the need for control" (p. 8). The challenge is to find the tension that exists between the fair, responsible and just use of discretion and that which is capricious and unjust (Manley-Casimir, 1974).

Based on the findings of this study, the principals perceive discretion is necessary to maintain school safety, balance competing rights, and be fair and just in their

disciplinary decision-making in order to support students. The nature of their role clearly indicates there is a need "for flexible powers" (Ross, 1991, p. 386) but, as Stefkovich (2006) points out, "what one educator may view as free expression, another may see as disruption" (p. 158). Much is left to the interpretation and understanding of the individual administrator. Discretion can be "freeing to competent administrators who prefer to rely on their own good judgment," yet the "knowledge and the empowerment" that accompany discretion "behoove school officials to use their discretion wisely" (Stepkovich, 2006, p. 158; see also Howe & Covell, 2010). Furthermore, according to Geraldine Knudsen, lawyer for the Saskatchewan School Boards Association, three basic principles should guide school administrators when dealing with legal requirements and their administrative responsibilities: applying good judgment and common sense, keeping in mind the best interests of the student, and applying the notion of fairness (LEAD School Law and System Governance Workshop, Regina, SK, November 23, 2011). Unfortunately, though, as Biggs (1993) wryly observes, "sensible discretionary decision-making is difficult to teach" (p. 185). Likewise, Sossin (2002) contends, "rules, regulations and surveillance are necessary because we simply cannot trust that a bureaucrat's common sense and good nature will prevail" (p. 832). Paquette and Allison (1997) offer a possible response to the exercise of discretion and policy-making in organizations. They believe in the promotion of "different types and levels of discretion where they make the most sense given formal organization goals and structures and the values of those that create and live and work within them" (p. 181). The notion of delegating broader or narrower levels of discretion at different times and for different types of behavior may aid in supporting common sense and good judgment. Other

possibilities exist which can serve to frame discretion in order to appropriately and effectively guide and support principals in their disciplinary decision-making.

First, rules for discretion must be specific enough so decisions can clearly align with policy and legislative pronouncements, provide "intelligent" judgment (Vorenberg, 1976, p. 652) and limit, as much as possible, the exercise of unreasonable discretion. To this end, then, policy statements, manuals and memos should contain directives to inform principals' practice. Specific boundaries can provide options for and limits to principals' decision-making that will protect not only them but also their students. The extent to which discretion can be tolerated may depend upon a case-by-case basis; overall, however, a short-leash principle (i.e., controlled, checked, or restrained) may provide the best insurance that alternatives and consequences will be carefully and deliberately considered. It is, however, important to be mindful of Hawkins's (2003) assertion, as previously noted, that by reducing discretion "somehow greater justice will be a natural consequence" (p. 207). Nonetheless, school officials should become fully aware of how they make their decisions, what values and influences affect their decision-making, and why they make the decisions they do. If principals are making decisions based on what they perceive are reasons of school safety or in the best interests of the child, then they should be guided by the requirements for the exercise of administrative discretion and be mindful of standards such as acting upon proper grounds, acting in good faith, and acting reasonably. School-based administrator discretion should be based upon the principles of administrative discretion.

In addition to the question of the *measure* of principals' discretion is consideration of the *constraints* and *conditions* required for its fair and reasonable

exercise. For instance, two such stipulations for discretion may include requiring not only formal documentation subject to scrutiny by stakeholders (where matters of confidentiality allow), but also formal procedural requirements to control its exercise. First, documentation appears to be essential for accountability in discretionary decision-making (Hall, 1999). There seemed to be few formal mechanisms in place for the principals to be accountable to their stakeholders, despite their own recognized need for them. In the way judges are required to "provide public reasons for their decisions and conform to just and articulable rationales" (Sheehy, 2004, p. 15) so might school administrators be required in their disciplinary decision-making to undertake similar practices. Because principals appear to make decisions about student disciplinary issues with "relative autonomy from organizational authority" (Lipsky, 1980, p. 13), it can be argued there needs to be a system of checks and balances and procedural safeguards adhered to in order to provide a consistent level of accountability, especially in those situations involving serious disciplinary decisions (see also Hall, 1999) and to "restrict the potential for abuses while preserving the benefits" of discretion (Shumavon & Hibbeln, 1986, p. 8). Perhaps the task of detailed documentation is overwhelming for time-strapped administrators; nonetheless, if the educational mantra for the twenty-first century is "safety and accountability" (Gorman & Pauken, 2003, p. 24), principals who are obligated to maintain order and discipline in schools may be better able to meet accountability requirements by providing written reasons for their decisions not only to the affected individuals or groups, but also to their colleagues and superiors and wider school community. Transparency in administrators' decision-making also may help to

build trust with stakeholders and may help to off-set perceptions of unfairness or injustice in disciplinary consequences.

Second, K. C. Davis's (1969) requirements for the structuring, confining and checking of discretionary power provide a practical framework when applied as a template for the exercise of discretion in schools. If discretion is to be exercised justly, it must be "substantively" and "procedurally" fair (Manley-Casimir, 1977–78, p. 85; see also Alexander, 1978). In order for administrators to obtain the "optimum amount of discretionary power" (p. 354) and to be provided with "normative standards to guide their behavior" (p. 347), Manley-Casimir (1974) advocates a model for discretionary justice that requires clarifying discipline plans and policies, creating fair practices that ensure "procedural due process," establishing an appeal process for review (p. 357), and controlling abuse of discretion by providing options and alternatives in decision-making. However, what "the appropriate form of review" (Ross, 1991, p. 386) is for the discretionary decision-making of elementary principals could be difficult to determine, depending upon one's perspective (i.e., student, parent, superintendent, or principal). Perhaps an independent committee of educators and stakeholders, such as that convened to review suspensions and expulsions, could vet complex decisions, or the creation of a youth advocate in schools (Chesler *et al*., 1979), a district youth advocacy officer, or a school ombudsman position could serve as a mechanism for appealing administrative decisions and help avoid unintended consequences of discretionary decision-making. Other suggestions for limiting discretion include using legal rules to confine it, controlling who is placed in the position of decision-maker, and restricting the context and circumstances that are to be considered (Hawkins, 1998).

Proudfoot and Hutchings (1988) itemize the basic rules of natural justice: the person hearing the case must be free from bias; the party must have the opportunity to present his or her case; the party must receive notice of the hearing and is entitled to legal representation; the party is entitled to have an opportunity to appeal; and the case must be conducted in a fair manner and it must be seen to be conducted fairly (pp. 45–46). Alexander (1978) believes "at very least, natural justice requires the school administrator first to provide the child with a hearing which is impartial and free of bias, and secondly to guarantee the student that fairness will prevail" (p. 355). What is more, the administrator must "give the student adequate notice of what is proposed, allow the student to make representations on his own behalf, and/or appear at a hearing or inquiry, and to effectively prepare his case and answer allegations presented" (Alexander, 1978, p. 355). In order to prevent "laxness or denial of proper procedure" Alexander (1978) refers to "judicial precedents of both natural justice and due process" that can "add specificity and restrain administrative prerogative by reducing the administrator's boundaries of discretion" (p. 356). These boundaries, he suggests, may be limited through the use of a number of guidelines, such as, specifying clearly the rules that have been broken, having an open mind, allowing ample time for a defense to the allegations, allowing students to present witnesses on their own behalf, and considering the right of students to remain silent so as not to incriminate themselves (Alexander, 1978, pp. 356–357). These guidelines could be modified or adapted to suit the complexity and seriousness of the behavioral incident.

Furthermore, expectations for policy implementation and adherence by principals should be clarified and reinforced by senior administration since selective enforcement

and even "non-compliance" of policy occurs often at the school level (LaRocque & Coleman, 1985, p. 164). These expectations should be supported by the development of a mechanism to monitor in-school administrators' decision-making practices on an occasional and on-going basis. The principals in the study did not appear to believe they were consistently rule-bound or required to follow policy and legislation at all times; when it served their purpose they would refer to their authority as delegated in the statute, but more often than not they appeared to make decisions based on their experience and their sense of a situation, leaving themselves open to claims that they acted arbitrarily or capriciously. Vorenberg (1976) suggests if officials rely solely on discretion, they may be left with the belief they know more than they do, a condition which could lead to disparity in their treatment of students. The principals' understanding of current legislation and school policy indicates they may need more knowledge in this area, especially because they appeared to feel they were exercising discretion appropriately, but seemed unaware of its requirements or constraints or that their decisions could be subject to judicial review. This apparent unawareness may have resulted from the fact that, for the purposes of the study, they were more concerned with the exercise of discretion from a social-science rather than legal perspective. They appeared to act on the assumption that courts generally would be willing to support their decision-making with respect to student discipline; curiously, their fears of what they saw as increasing litigation in education did not appear to prompt them to become more knowledgeable in the field of education law.

Personal ideology and interpretation of the purpose of and need for discipline are threaded throughout the principals' decision-making. The task of exercising discretion

includes negotiating within the confines of law and the boundaries of one's own values system. The principals readily admitted they often wrestled with decision-making in the "gray areas" (Campbell, 1999, p. 160; Frick, 2009; see also Willower, 1999, p. 132). Although all principals interpreted their use of discretion in their disciplinary decisions as differentiation based on student needs, as MacKay (2009) notes, their "dual responsibility" includes not only "'short term' accommodation" needs, but also an analysis of their practice to determine the "often hidden barriers" that may serve to merely concede difference among individual students and make decisions that simply fit them into the dominant paradigm (p. 47). Many of their decisions align with the former category of exercising discretion to accommodate for circumstances or context, but the application of student consequences in their disciplinary decision-making reflects MacKay's (2009) analysis of molding students into the prevailing notion of fair and equitable environments. As a result, it would appear Hodgkinson's (1991) vision of administrative introspection that calls for the adoption by administrators of the "megamaxims" of knowing "the task…the situation…the followership…[and] oneself" (p. 153) is required. School principals should be encouraged to become reflective in their disciplinary decision-making and give attention to their practice as a "philosophical and moral enterprise" (p. 160). Begley (2004) also calls for a twenty-first century administrative practice that is "professionally effective, ethically sound and consciously reflective" (pp. 4–5), based upon self-knowledge and a "sensitivity to the orientations of others" (p. 5).

Additionally, administrators in schools should consistently model respect for student rights (see also Sitch & McCoubrey, 2000). While the principals in this study do

not appear to focus specifically on the notion of student rights, they may, either consciously or unconsciously, strive to protect and respect them in the school setting. On the other hand, they may believe acknowledgement of rights or the "involvement of students in their disciplinary decisions" (Sitch & McCoubrey, 2000, p. 196) may lead to an erosion of their traditional authority, or a lack of understanding about rights on their part may lead to resistance "based on the fear that children's rights will inhibit school order" (p. 197). The vagueness of their references to student rights and responsibilities, however, suggests a greater awareness and affirmation of student rights may be required in order to lessen the risk these rights could be abrogated by discretionary decision-making in disciplinary issues. Such indications also necessitate deep personal reflection upon principals' own interpretation of children's rights, their understanding of student rights, and the way in which they respond to these rights in the school setting.

Manley-Casimir (1979) foresaw over thirty years ago the obligations of principals to "guard and respect the rights of students," and he argued for changes to school administrative processes which would "place limits on the traditional authority of school officials" in the regulation of student conduct in order to afford students educational opportunities to "learn to exercise rights with due care and concern for the rights of others" in a manner that aligns with their growth, development and maturation (p. 13). Watkinson (1999) describes, in part, the evolution of the notion of student rights in Canada. She contends that while recent judicial decisions have provided a "more expansive interpretation" of the idea of students rights, "education theory and practice continue to follow the authoritarian model, and it is the democratic model that is a prerequisite for the recognition of student dignity and the promotion of student rights"

(p. 195). As well, some educators may feel their "professional autonomy" is challenged or may perceive the "erosion of their competence" (p. 195) as an inherent danger of considering student rights. Yet, Watkinson also notes a gradual and promising change in that more educational scholars and practitioners "are promoting and realizing a caring and community-oriented democratic school environment" (p. 195). The perception of the principals in this study, however, may not have moved greatly from the "*in loco parentis* justification as enunciated in provincial legislation" to the idea of the "child as a 'person' in his or her own right" (Manley-Casimir, 1979, p. 10) despite the entrenchment of the *Charter*. Students' rights must be reconciled with traditional patterns of power and authority that are inherent in principal-student and teacher-student relationships and manifested through the exercise of discretion in disciplinary situations. Suggestions that "guidance and training on strategies for disciplining children that respect them as people with rights and responsibilities to respect the rights of others" (Canadian Coalition, 2009, p. 53) make for sound educational decision-making and good common sense. In this way "it might be possible to both maintain order and respect rights" (Sitch & McCoubrey, 2000, p. 200).

7.2 Implications of the Findings

7.2.1 Implications for Administrative Practice

Torres and Stefkovich (2009) urge school officials to "reexamine their beliefs about class, culture, and minority representation and the impact each poses on [*sic*] decision making, especially in the area of discipline" since they are allowed "considerable discretionary interpretation and application of law" (p. 469). Begley (2004) also advocates for gaining awareness of others' value orientations. Training in

decision-making for principals, which may include the awareness of their own values system and its influence upon their decision-making, should be required (Ashbaugh & Kasten, 1984; Hodgkinson, 1991) in order to guard against negative outcomes for students. Sheehy's (2004) suggestion judges should aim for "self-awareness and informed decision-making" (p. 15) by "becoming cognizant of their own values and assumptions" while also "enlarging their understanding of the relevant social context" (p. 14) can also provide valuable direction for principals in their discretionary decision-making. As W. Greenfield (1995) affirms, "school administrators have a special responsibility to be deliberately moral in their conduct, that is to consider the value premises underlying their actions and decisions" (p. 69). Despite advocating for an empirical approach to educational administration, Willower (1999), nonetheless, calls for administrators' greater attention to valuation, or "the process of making moral choices" in schools (p. 132). He emphasizes the "importance of praxis, or thoughtful practice" wherein values must not be divorced from the processes of "critical thinking and reflective analysis" that are required "to abet moral choice" in administrative decision-making (Willower, 1999, p. 132).

Handler (1992) advocates for the establishment of conditions to "facilitate the creation and nurturing of empowerment in discretionary dependent relationships" (p. 354). This model should include the consideration of student rights and decision-making based on the best interests of the child principle, which "must be 'a primary consideration'" (Howe & Covell, 2010; see also Birrell & Marshall, 2007). In order to guard against discretionary decision-making that may be seen as manipulative or coercive, this principle, when used as a basis for decision-making, has the potential to

empower students and their parents and to engage their participation in resolving disciplinary conflicts. As Walker (1995) contends, "the leader's position, then, is to gain the support of others in facilitating the best interests of children" (p. 6). A collaborative, decision-making model that listens to all voices and includes a chance for appeal may offer greater chances for student well-being, opportunity for growth and a positive regard for the principles of fairness, mutual respect, and responsibility. Moreover, this model could be enhanced by a framework in which the "burden of proof' in disciplinary cases shifts from the student to the school system, so that if a "constitutional right or interest is implicated," then "administrators must provide facts or supply specific evidence in a discipline situation that the accusation or action taken toward a student is justified" (Biggs, 1993, pp. 178–179; see also Alexander, 1978).

Kajs (2006) also believes school administrators should be trained how "to develop skills to investigate, analyze, and make judgments" effectively and, at the same time, remain "fair, humane, and consistent" in the discipline process (p. 25). Campbell-Evans (1982) suggests the use of "in-basket exercises" or case studies may help enhance and augment administrators' decision-making abilities (p. 101). There may be a need for attention to "ethical issues and ethical aspects of decision making in preparing school administrators for their roles" (Millerborg and Hyle, 1991, p. 17); given the emphasis the principals in the study placed on values in their disciplinary decisions, such a focus may aid administrators in learning how to deal with complex disciplinary cases (see also Frick, 2009). While Campbell (1999) acknowledges there is no one formula to resolve ethical dilemmas and ethics should not be treated as "another management strategy"

(p. 160), she offers that case study analysis by administrators of experiences from "their own professional practice" (p. 159), in addition to "firmer policy guidelines," may help principals to "reconcile their own values and interpretation of ethics" (p. 160) as they encounter conflicting perspectives in their daily practice. Meyer *et al*. (2009) advocate for "ethno-drama context-specific role-playing scenarios" (p. 34) for principals in graduate courses or in school-district professional development courses so that principals, or those aspiring to the principalship, may engage in the discussion and exploration of the role of discretion in decision-making.

Kajs (2006) offers two documents to help administrators exercise their judgment "as professionals in determining the type of discipline to be applied for misconduct" (p. 22). The first chart is entitled "Factors to Determine Discipline for Offense Using Administrator Discretion" and lists items, such as grade, age, offence, circumstances, prior history, student attitude and impact of offence, which school officials could use to analyze misbehavior and make a decision "regarding a disciplinary action" (p. 23). A second table labeled "Sample Disciplinary Management Actions" consists of "nonpunitive and punitive disciplinary actions to address offenses" such as peer mediation, verbal warnings, withdrawal of privileges, restitution, and suspension (Kajs, 2006, pp. 24–25). He suggests administrators can more effectively exercise discretion by considering the circumstances in the first table as "useful indicators" in developing their disciplinary responses found in the second chart (Kajs, 2006, p. 25). Although such a systematic process may be time-consuming and, in certain cases impractical, it may allow principals to demonstrate a measure of accountability and transparency in their disciplinary decision-making.

The introduction of a process such as Hodgkinson's (1991) "value-audit," wherein administrators take stock of their own values, can serve to support principals' decision-making and create "inner confidence that the best judgments have been made" (p. 136). His eighteen-point system of reflection, or some variation of it, may help them develop a "rich personal value structure and commensurate value skills" and lend them greater insight and knowledge in their judgments and help to determine if their values are aligned with school-division values, norms, standards, and policies (p. 136). Begley's (2010) version of this value audit not only encompasses the fundamental notion of careful reflection upon value bases in decision-making but also extends to include administrators' regard for "justice" and a "respect [for] individual rights" in order to foster "critical thinking" in their discretionary decisions (p. 51). Walker's (1995) twelve ethical principles comprise a similarly reflective process designed to help principals mediate conflicting values in their discretionary decision-making. Manley-Casimir (1974) supports K. C. Davis's (1969) suggestion that the use of hypothetical cases to present problems, and the organization's response with reasons, will serve to clarify "obscure or unclear policy" and will show administrators how to constrain their power (p. 355). School boards and professional associations should encourage administrators to be more reflective in their practice (Ashbaugh & Kasten 1984; Campbell-Evans, 1982; Hodgkinson, 1978b, 1991; Millerborg & Hyle, 1991; Roche, 1999) and support collaboration and open dialogue with colleagues and other professionals by providing release time for these activities in order to enhance principals' decision-making capacity.

Knowledge of current, applicable case law, established legal principles such as the best interests of the child, relevant Supreme Court decisions, and education and

human rights legislation would provide administrators with an information base enhancing the prospect that their decision-making would reflect contemporary jurisprudence (see also Findlay, 2006; Peters & Montgomerie, 1998; Torres & Chen, 2006; Warren, 1988). Shumavon and Hibbeln (1986) also advocate for the exploration of "patterns in judicial decisions" so that administrators can determine "what [discretionary] behavior has been sanctioned" by the courts and what "freedoms or constraints in the exercise of administrative discretion" have been established in relevant case law (p. 2). In this way, the exploration may illuminate the extent to which judicial decisions may have had a "constraining effect" upon administrators and to what extent the "courts [have] failed to provide limits," or if the "limits prescribed by the courts [are] too narrow" (Shumavon & Hibbeln, 1986, p. 2). School divisions should provide their school-based administrators with "frequent, regular and high-quality in-service updating education law issues" (Leschied, Dickinson, & Lewis, 2000, p. 63) and encourage them to subscribe to education law journals and newsletters in order to keep current in the field. Faculties of education in universities should ensure that aspiring administrators receive at least one course in education law in their preparatory programs at the graduate level in order to foster a greater awareness of rights and the responsibilities that accompany them. It follows that principals and school officials should gain an understanding of the *Convention on the Rights of the Child*, especially Article 28 that provides for ensuring that "school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention" (*Convention on the Rights of the Child*, 1989).

If arbitrariness is to be avoided in discretionary decision-making structures, then schools require specific rules and comprehensive codes of conduct aligned with school district policy. Torres and Chen (2006) call for policies that are specially designed and "carefully" (p. 203) worded to follow case law, so as to ensure student privacy rights, especially in cases of search and seizure, are not undermined. The careful wording of policy, such as explanations of what circumstances warrant searches for instance, can help "to prevent inappropriate forms of discretion" (p. 203). Furthermore, unclear school rules can place "too much discretion in the hands" (*Canadian Foundation*, 2002, p. 96) of school officials, echoing the concerns of the Supreme Court of Canada that vague laws can violate "the precept that individuals should be governed by the rule of law, not the rule of persons" (p. 96).

Brown and Beckett (2006) advocate for a clearly defined, district-wide code of conduct—based on current research literature on school discipline and developed with input from school administrators and teachers—which supports "consistency and flexibility" in the administration of school discipline. They believe such a code is crucial in teaching students self-discipline, countering accusations of lack of fairness, and supporting less disruptive behavior (Brown & Beckett, 2006, p. 253; see also Manley-Casimir, 1977–78; Vorenberg, 1976). Brown and Zuker (2007) identify a school's code of conduct as a "critically important document" since American law has shown "failure to state and publish a rule" can result in the successful challenge by students of a "suspension or expulsion that tries to enforce the rule" (p. 250). Furthermore, a student's right to "procedural fairness includes the right to know the school rules, *i.e.*, what behavior is subject to punishment" (Brown & Zuker, 1007, p. 250; see also Biggs, 1993).

Such codes would also help to provide a platform for administrators to justify their discretionary decision-making, in addition to offering a measure of accountability for stakeholders and others with an interest in the disciplinary decisions of principals.

Codes of conduct, implemented at the district or school level, may serve to limit the discretion of school administrators. Developed collaboratively by stakeholders at all levels, a code of conduct should be prefaced by the acknowledgement of the right of all stakeholders to a safe and orderly school environment and the attendant responsibilities of teachers, students, parents, community members and administrators in protecting this right.[26] Martin *et al*. (2012) contend "explicitly defined" codes of conduct that are "regularly reviewed and enforced" would also work to ensure teacher safety and well-being (p. 20). Articulated standards of discipline followed by the identification of clearly defined "disciplinary offences" and "prescribed specific consequences" and sanctions for student misbehavior on a graduated scale of progressive discipline procedures should also be included (Brown & Beckett, 2006, p. 250). Additionally, alternative measures that proactively address misbehavior could be contained in the code, such as conflict resolution, behavior contracts, peer mediation, mentoring programs, talking circles, or anger management strategies. For codes of conduct to be implemented effectively, Brown and Beckett (2006) argue they must be published and widely distributed throughout stakeholder groups, written in "developmentally-appropriate language" (p. 249) and taught to students, and implemented by schools in the way they believe

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[26] The Ontario Ministry of Education, for example, requires school boards to align their board code of conduct with the existing provincial Code of Conduct "that sets clear provincial standards of behavior" that are applicable to all students, parents and community members and which list the roles and responsibilities of all stakeholders in developing effective policies and practices (Ontario Ministry of Education, 2007, p. 2).

"would be most effective with their student populations" (p. 251). They should be subject to annual review and be responsive to changes in laws and policies. MacKay and Sutherland (2006) agree that teachers and students should be part of the rule-making process in schools. They point, however, to the need to adhere to *Charter* principles in the creation of school rules, since "rules that in substance violate principles contained in the *Charter* may be subject to challenge" (p. 89), such as those restricting freedom of speech or expression.

Manley-Casimir (1974) further advocates for rule-making that "establishes" boundaries and "confines the power" (p. 355) of administrators. This way, through the application of well-publicized, rights-based and clearly-defined rules legitimately related to the educational purpose of the school (Duke *et al*., 1978), the administrator may be able to make decisions more easily and confidently. As well, in order to be substantively fair, the reasons underlying the choice or action taken should be identified in light of prevailing norms and standards, thereby providing a layer of accountability for the decision (Manley-Casimir, 1974). Hall (1999) also advocates for specifically worded policies and rules for student discipline, lest the exercise of discretion by school officials "yield inconsistency or disparity in decisions depending on administrative values and ideologies, social constraints, decision context and ambiguous student discipline objectives" (p. 159). Extending the notion even further, Shumavon and Hibbeln (1986) suggest that developing "behavior norms within the profession" and refining a code of ethics for administrators may "prevent possible injustice" (p. 8) in the exercise of discretion.

Another step school districts could take towards providing accountability to educational stakeholders is to have school boards collect key data on all suspensions and expulsions by school and district (Bhatarajee, 2003; Brady, 2002; Brown & Beckett, 2006; Stader, 2004); making these numbers public by province and school division may aid in accountability and transparency. As Brady (2002) urges, "school districts, policy makers, and researchers must employ more uniform and reliable school discipline data collection and dissemination procedures. School discipline data varies widely at the state and local levels [in America]" (p. 191). So do they, too, in Canada, should they exist at all. Suspensions/expulsions statistics could be disaggregated and analyzed by ethnicity, gender, and by the designation of special needs, and then used to inform principals' discretionary decision-making in schools and in policy formulation at the district and provincial levels (Townsend, 2000). Gleaning information after the fact from disciplinary decision-making in order to help with policy creation (Vorenberg, 1976) may reveal whether discipline trends exist and may also prove invaluable in providing guidelines for suspensions and expulsions as a disciplinary consequence. Stader (2003) maintains administrators must "examine the consequences of their actions and, if necessary, make changes in policy and practice to not only keep schools safe but also to protect individual students from the capricious application of policy" (p. 64). Mendez and Knoff (2003) further suggest analyzing suspension statistics for patterns of misbehavior in order to shift attention away from models that are "punishment-oriented" (p. 48) to those that encourage positive behavior supports and early intervention. Torres and Stefkovich's (2009) study analyzed police involvement in disciplinary incidents in schools based on "demographic variables" such as "poverty, minority composition [of

students], and urbanicity" (p. 466). They suggest student discipline should be "carefully reviewed to measure whether decisions have a disproportionate impact on students across multiple social characteristics" (p. 469).

However, there may be socio-political questions raised by examining suspension/expulsion data in this fashion, and it cannot necessarily be assumed the analysis would be used for positive social justice reasons or to "address the inequities that underlie the results" (Bouvier & Karlenzig, 2006, p. 25) should they exist. Reports based on this kind of data may "further contribute to the stereotypes and stigmatization" already faced by a group or groups if assumptions, biases and motives are not disclosed (Bouvier & Karlenzig, 2006, p. 25). Furthermore, there may be legal and ethical implications of categorizing disciplinary consequences, such as privacy concerns and access to information among advocacy and stakeholder groups or the general public. Other barriers to this type of examination exist as well. Skiba, Michael, Nardo, and Peterson (2002), for example, urge caution when exploring statistics on suspensions and expulsion that support commonly held hypotheses of disproportionate discipline rates for racial minority students in the United States and argue they do not prove "bias in the administration of discipline" (p. 333), contending there may be other "possible explanations or reasons for disciplinary" disparity (p. 318). Their study found that a disproportionate rate of suspension for African American students was associated with a "general overreliance on negative and punitive discipline" (p. 335) and a "higher rate of office referrals" at the classroom level (p. 335). Torres and Stefkovich suggest the "severity of the student offense and deciding how to proceed" with disciplinary consequences may reflect "culture and values within a community" more than the

"interpretation of a law or policy" (p. 468). Thus, the decision by a school administrator to "disregard, overlook, or ignore student offences" or to "hold students less accountable for their behavior" also may result in disproportionate discipline rates among groups of students (p. 468).

Finally, school divisions may wish to review their administrative appointment procedures, reconsider their administrative transfer policies and enhance the consultation process if, as the study subjects suggested, knowing the community will aid principals in their discretionary decision-making and allow them to gain confidence in their decisions. Additionally, the suggestion that transfers from elementary to secondary administrative positions may not be seamless implies that the training of administrators through mentoring or shadowing programs might be advisable. Unexamined transfers between elementary and high schools for principal appointments may leave administrators feeling ill-prepared for their job because of inadequate transition procedures and training.

7.2.2 Implications for Future Research

The topic of principals' discretionary decision-making provides a rich source for future exploration.

Discretionary decision-making could be further examined to increase understanding of the role gender plays in its exercise. As Clark (2002) and Manley-Casimir (1977–78) have noted, male and female administrators operate on different decisional premises; a future investigation of this possibility has the opportunity to be a fecund area of study. While gender was not a lens through which the data in this study were analyzed, the principals indicated they perceived a difference in the way men and women exercised their discretionary decisions in schools, although they were either

unable or unwilling to describe this perception of difference. Their perspectives may reflect elements of the decision-making process that are seen in terms of "other categories" (Alverson & Sköldberg, 2009, p. 249) such as race, gender, disability, or ethnicity.

Next, the perceptions of teaching staff and support staff (e.g., bus drivers, custodians) with respect to principals' discretionary decision-making could be investigated to determine how, or in what ways, they may influence school administrators' judgment in disciplinary issues. Further exploration of the influence of the expectations of district-level senior administration upon policy compliance by principals in disciplinary situations may lend valuable insight into discretionary decisions. As well, the perceptions of students and their parents and families as recipients of the discretionary decision-making of principals could be assessed to determine if their interpretations of best interests, "individualization" (Biggs, 1993, p. 164), justice, and fairness in student discipline are consistent with the goals of school administrators and school or division policies. The differences, if any, between sub-groups, such as males and females, could also be explored. This investigation could complement further study of principals' understanding of their notions of accountability and defensibility in their discretionary decision-making (see also Hall, 1999).

The decision-making of secondary administrators may be a potential area of comparative study to determine if the age of students is an influence in exercising discretion in disciplinary decision-making. An exploration of the decision-making practices of vice-principals or assistant principals, who are often delegated authority to discipline students in schools and who hold a unique role in the school setting, may offer

insight into the exercise of discretion. The disciplinary decision-making of administrators in private or parochial schools is another area in which discretion could be investigated to see how it is exercised by principals in those particular settings. Furthermore, a comparative study among principals in different school divisions within one province, or among school divisions in different provinces or countries, could serve to reveal how discretion is exercised under different constitutional, legislative, school district policy, and possibly cultural, provisions and norms.

An extension of this research could entail as a possible next step the systematic observation of the discretionary decision-making of principals in student disciplinary situations (see also Hawkins, 1997; McCarthy & Soodak, 20007; Mintzberg, 1973). Such a methodological approach, however, may be subject to additional scrutiny in terms of privacy and confidentiality concerns of students. Kmetz and Willower (1982) contend the "structured observation methodology" used by Mintzberg (1973) in his study of managerial work involves the "quantification of work activities" and its application in the school environment may ignore the "crucial one-time event" that may have significance (p. 76), especially with respect to the exploration of discretionary decision-making. They offer that "participant and non-participant observation," in addition to case studies or ethnographic studies, may be better suited in an examination of the work-life of principals (Kmetz & Willower, 1982, p. 76).

Last, the decision-making of principals in other areas of school administration, such as curriculum and assessment, finances, or facilities may lend insight into the nature of discretion and its exercise in the school setting. Furthermore, future researchers may wish to investigate whether various types of discretion exist, such as personal discretion,

professional discretion, "moral discretion" (Frick & Faircloth, 2007, p. 29), or "ethical discretion" (Walker, 1998, p. 293), or whether there are varying degrees of discretion. Such an inquiry may tease out the distinctions, if any, between different kinds or levels of discretion.

7.3 Chapter Summary

The principals in this study believed the exercise of discretion enabled them to maintain school safety, balance competing rights, and be fair and just in disciplinary decision-making in order to support students. While discretion offers administrators creativity and flexibility and the opportunity to individualize cases, this latitude must be balanced against capriciousness and arbitrariness and decision-making that may not ultimately support student well-being. The challenge is to find the tension that exists in the fair and judicious exercise of discretion, and that which is unfair or arbitrary.

The findings suggest principals should gain an awareness of how they make their decisions and the values and influences that affect them in their decision-making. The structuring of their discretionary power requires clear discipline plans and policies and a mechanism for appeal or review of decision-making. Principals need to enhance their knowledge of current legislation and relevant case law and legal principles in order to appropriately inform their disciplinary decision-making. This increased knowledge should include the area of student rights. District-wide and school-based codes of conduct are necessary to aid in achieving fairness and providing accountability to stakeholders.

Directions for future research include exploration of the perceptions of those who are the recipients of the discretionary decision-making of principals, such as students and

their families. Alternatively, the influences of teaching and support staff, or of senior administration, upon principals' decision-making could be investigated. A comparative study of the discretionary decision-making of principals in other school divisions, provinces, or countries may offer additional insight into discretion in disciplinary matters. Finally, a study of discretionary decision-making in areas such as curriculum, finances, or facilities would help to illuminate further the nature of discretion as it is exercised in the school setting.

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APPENDICES

Appendix A:

University of Western Ontario Research Ethics Board Approval

THE UNIVERSITY OF WESTERN ONTARIO
FACULTY OF EDUCATION

USE OF HUMAN SUBJECTS - ETHICS APPROVAL NOTICE

Review Number:	1006-8
Principal Investigator:	Greg Dickinson
Student Name:	Nora Findlay
Title:	*The Problem of Penumbra: Elementary School Principals' Exercise of Discretion in Student Disciplinary Issues*
Expiry Date:	December 31, 2010
Type:	Ph.D. Thesis
Ethics Approval Date:	August 12, 2010
Revision #:	
Documents Reviewed & Approved:	UWO Protocol, Letter of Information & Consent

This is to notify you that the Faculty of Education Sub-Research Ethics Board (REB), which operates under the authority of The University of Western Ontario Research Ethics Board for Non-Medical Research Involving Human Subjects, according to the Tri-Council Policy Statement and the applicable laws and regulations of Ontario has granted approval to the above named research study on the date noted above. The approval shall remain valid until the expiry date noted above assuming timely and acceptable responses to the REB's periodic requests for surveillance and monitoring information.

During the course of the research, no deviations from, or changes to, the study or information/consent documents may be initiated without prior written approval from the REB, except for minor administrative aspects. Participants must receive a copy of the signed information/consent documentation. Investigators must promptly report to the Chair of the Faculty Sub-REB any adverse or unexpected experiences or events that are both serious and unexpected, and any new information which may adversely affect the safety of the subjects or the conduct of the study. In the event that any changes require a change in the information/consent documentation and/or recruitment advertisement, newly revised documents must be submitted to the Sub-REB for approval.

Dr. Alan Edmunds (Chair)

2010-2011 Faculty of Education Sub-Research Ethics Board

Dr. Alan Edmunds	Faculty (Chair)
Dr. John Barnett	Faculty
Dr. Jacqueline Specht	Faculty
Dr. Farahnaz Faez	Faculty
Dr. Wayne Martino	Faculty
Dr. George Gadanidis	Faculty
Dr. Robert Macmillan	Assoc Dean, Graduate Programs & Research (*ex officio*)
Dr. Susan Rodger	UWO Non-Medical Research Ethics Board (*ex officio*)

The Faculty of Education
London, ON N6G 1G1

Karen Kueneman, Research Officer
Faculty of Education Building

Copy: Office of Research Ethics

Appendix B:

Letter of Introduction and Consent Form

The Problem of the Penumbra: Elementary School Principals' Exercise of Discretion in School Disciplinary Issues

LETTER OF INFORMATION

Introduction

My name is Nora M. Findlay and I am a doctoral candidate in Educational Policy Studies at the Faculty of Education at The University of Western Ontario. I am currently conducting research into elementary principals' exercise of discretion in decision-making and would like to invite you to participate in this study.

Purpose of the study

The aims of this study are to discover how elementary principals understand and exercise discretion in their decision-making regarding student disciplinary issues.

If you agree to participate

If you agree to participate in this study you will be asked to answer a series of questions in a semi-structured interview in your office after the end of the school day, or at a time and place that are most convenient to you. The interview will last approximately one hour and will be audio-recorded if you agree. You will be provided with a copy of the transcript of the interview and you will be able to change or to delete parts of the transcript if you so wish. You are asked to review the transcript, make changes and return it to me within one week.

Confidentiality

The information collected will be used for research purposes only, and neither your name nor information which could identify you will be used in any publication or presentation of the study results. All information collected for the study will be kept anonymous. School and school district names will not be included, and pseudonyms will be used in order to

preserve your anonymity. Once the study is concluded, the data will be kept for a period of two years in a locked cabinet in the researcher's office. After that date, the data will be shredded.

Risks & Benefits

There are no known risks to participating in this study.

Voluntary Participation

Participation in this study is voluntary. You may refuse to participate, refuse to answer any questions or withdraw from the study at any time with no effect upon your employment status whatsoever.

Questions

If you have any questions about the conduct of this study or your rights as a research participant you may contact the Manager, Office of Research Ethics, The University of Western Ontario. If you have any questions about this study, please either contact me, or my advisor, Dr. G.M. Dickinson.

This letter is yours to keep for future reference.

Nora M. Findlay

The Problem of the Penumbra: Elementary School Principals' Exercise of Discretion in School Disciplinary Issues

Nora M. Findlay, Doctoral Candidate, Education Policy Studies

University of Western Ontario

CONSENT FORM

I have read the Letter of Information, have had the nature of the study explained to me and I agree to participate. All questions have been answered to my satisfaction.

Name (please print):

Signature: Date:

*[**********If applicable include:]*

Name of Person Obtaining Informed Consent:

Signature of Person Obtaining Informed Consent:

Date:

Appendix C:

Interview Protocol

Introductory Vignette

I will read the following hypothetical vignette and then would ask you to respond to the questions which follow.

You are the principal of an elementary school located in the inner city of a large urban center. Many of the students come from low socio-economic backgrounds and single-parent or blended families. On Monday just before noon hour, the grade two teacher rushes into your office with a drawing made by one of her students, Daniel. She had asked her students to depict one of their weekend activities, and Daniel, a racial minority student, had drawn a picture of an adult and two children shooting birds. When asked, Daniel had indicated he and his father and his brother had been shooting ducks near a pond on Saturday night in one of the city's large parks. This was an activity they had engaged in before, and Daniel proudly boasted of his father's accuracy in shooting. What is more, Daniel said his older brother, Gary a grade eight student, had brought the gun to school in his backpack to show his friends. You immediately go to the grade eight classroom and ask Gary to come with you to your office and to bring his backpack with him. Gary is a student who is struggling academically, and who has had numerous office referrals over the past few months by his classroom teacher for issues of disrespect and insubordination. The art teacher also complained to you last week that Gary wasn't completing assignments and was being disruptive in her class. What is more, the father has belligerently come into your office on many occasions with various complaints, the latest being that his youngest son was being harassed by another student in his class. At first, Gary sullenly denies knowing anything about the incident his brother has described and flatly refuses to open his backpack for you. Upon further questioning, however, he finally admits to having a pellet gun with him and expresses remorse and is afraid of what will happen if his father finds out he brought the gun to school. School policy indicates that if any student brings a weapon to the school the student faces a minimum two week suspension, and the resource officer must be involved.

1. Do you enforce a school suspension for Gary?
2. What influences or circumstances would shape your decision?
3. Do you believe any influences or circumstances are more important than others?

4. In what ways will you justify your decision?
5. To whom do you believe you must justify this decision?

Semi-Structured Interview Schedule

Question Prompts

1. What is the goal or goals of discipline in schools? (Probe for interpretation of purpose of discipline, opinion of goals, particular school context.)
2. Please describe your role as you see it with respect to student discipline in the school. (Probe for interpretation of participant's role.)
3. How do you describe discretion in decision-making? (Probe for personal definition, key words, ideas, notions.)
4. Please share your thoughts on the ways in which principals might appropriately exercise discretion regarding discipline in schools. (Probe for specific examples.)
5. Please share your thoughts on the ways in which principals might inappropriately exercise discretion regarding discipline in schools. (Probe for specific examples.)
6. How do you feel about your obligation to enforce rules, laws, and policies in decision-making in student disciplinary issues? (Probe for participant's interpretation of obligation, knowledge of legislation, case law.)
7. What kinds of disciplinary situations make you feel hesitant or conflicted in applying a law, rule or school policy in your decision-making? (Probe for specific examples, reasons for choice, selective enforcement of laws, policies.)
8. What different considerations or principles might guide you in your decision-making when disciplining a student? (Probe here for gender, rights, personal faith, values.)
9. What types of information or knowledge do you require when your make discretionary decisions in cases of student discipline? (Probe for influences, level or degree of influences, circumstances,)
10. Have you ever experienced a situation when what you personally believed was the right choice in disciplining a student was different from what was either the professional expectation or the community expectation? (Probe for personal conflict, tension.) Please describe how you resolved this discrepancy. Who or what assisted you in that decision?
11. In what ways do the characteristics and values of the school community affect your decision-making in school discipline cases? (Probe for balance of rights, needs, interests, responsibilities.)
12. What is your opinion of a principal ignoring an established rule, law or procedure when disciplining a student? (Probe for reasons, justification, circumstances, considerations.)

13. Should principals be held accountable for their decision-making in disciplinary issues? (Probe for needs, interests of various stakeholder groups, understanding of defense of decision-making.)
14. Some suggest that there are judgments that principals make that are unique to their profession? Do you agree? (Probe for types of judgments, reasons, examples.)
15. What is your opinion of the effectiveness of principals being related to their ability to exercise good judgment? (Probe for understanding of judgment, principal effectiveness.)

Appendix D:

Demographic Profile

Demographic Information

1. What is your gender? _____
2. How long have you been a principal? _____
3. How long have you been an in-school administrator? _____
4. Do you work with a vice-principal or assistant principal? _____
5. What is the student enrolment at your school? _____
6. Are you younger than 30? Between 30 to 40? Between 40 to 50? Between 50 to 60? Over 60 years of age? _____
7. Are you someone you would consider an inexperienced principal? A principal with more than five years' experience? A principal who is within five years of retirement? _____

Thank you for your willingness to participate in this research study.

Appendix E

School Division Permission to Conduct Research

Nora Findlay

From: Dave Hutchinson
Sent: September-21-10 2:21 PM
To: Nora Findlay
Subject: Research Request

Hi Nora – I just wanted to let you know that your request to conduct research in the Division has been approved. All the best with your project –

Take Care,

Dave Hutchinson
Superintendent, Instruction and School Services

Ph:
Fax:

Administrative Assistant:
Ph:

Curriculum Vitae

Name:	Nora M. Findlay
Post-secondary Education and Degrees:	The University of Regina Regina, Saskatchewan, Canada 1972-1975 B.A.
	The University of Saskatchewan Saskatoon, Saskatchewan, Canada 1975-1976 Saskatchewan Professional "A" Teaching Certificate
	The University of Regina Regina, Saskatchewan, Canada 1982-1983 B.Ed. (Distinction)
	The University of Regina Regina, Saskatchewan Canada 2000-2006 M.Ed.
	Western University London, Ontario, Canada 2009-2012 Ph.D.
Honours and Awards:	League of Educational Administrators Directors and Superintendents (LEADS) Saskatchewan Award for Excellence in Graduate Studies 2002
	Saskatchewan School Boards Association (SSBA) Graduate Student Award 2006
	Canadian Association for the Practical Study of Law in Education (CAPSLE) Fellowship 2009
	Ontario Graduate Student Scholarship (OGS) Government of Ontario 2009-2010
	Social Science and Humanities Research Council (SSHRC) Doctoral Fellowship 2009-2011

Western Graduate Research Scholarship
Western University
London, Ontario, Canada
2009-2011

Related Work Experience

Teaching Assistant
Saskatchewan Indian Federated College
1985-1988

Teaching Assistant/Instructor
University of Regina
1987-1996

English Language Arts Teacher
Indian Head School District #19
1976-1977

English Language Arts Teacher
Weyburn Public School Board
1978-1979

English Language Arts Teacher
Regina Public Schools
1980-1984; 1996-2000

Vice-Principal
Regina Public Schools
2000-2005

Principal
Regina Public Schools
2005-2009; 2010-present

Publications:

Findlay, N. M. (2002). Student Rights, Freedom of Expression, and Prior Restraint: The *Hazelwood* Decision. *Education & Law Journal, 11*(3), 343–366.

Findlay, N. M. (2007). Educators and Student Rights: An Ethical and Legal Challenge. *Policy and Practice in Education, 12*(1), 8–28.

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Findlay, N. M. (2010). Living Away from Blessings: Student Failure as Lived Experience by C. Henriksson (Book Review). *Canadian Journal of Education, 33*(3), 661-664.

Findlay, N. M. (2011). *At Law's End: In-School Administrators' Exercise of Discretion in Disciplinary Decision-Making.* Proceedings of the Twenty-first Annual CAPSLE Conference, held in Calgary, AB, April 22- 24, 2010 (Toronto: CAPSLE, 2011)

Findlay, N. M. (in press). At Law's End: In-School Administrators' Exercise of Discretion in Disciplinary Decision-Making. In M. E. Manley-Casimir, (Ed.), *Administrative Discretion in Education*. Calgary, AB: Termeron Press.

Findlay, N. M. (in press). *The Shifting Tides of Student Discipline in Schools: Current of Support or Undertow of Exclusion?* Proceedings of the Twenty-Second Annual CAPSLE Conference, held in St. John's, NL, May 1-3, 2011 (Toronto: CAPSLE, 2012).