

# The Teacher's Grade and the Principal's Prerogative: Whose Policy Prevails?

Darryl Hunter and Paul Clarke\*

*This article tackles some interrelated issues rarely discussed in the education law literature by examining three superior court cases in Western Canada about the leadership of school administrators in classroom assessment-related matters. One case dealt with principals' responsibilities in evaluating teachers' assessment practices, the second addressed administrators' obligations in the supervision of teachers in the application of grading policy, and the third discussed the ethical line between the actions of a school principal as a professional leader and as a parent when assigning student marks. The authors identify implications for school leadership practice, theory, and ethics.*

*Dans cet article, les auteurs abordent quelques questions interdépendantes rarement abordées dans la littérature sur le droit scolaire en examinant trois affaires jugées par des cours supérieures dans l'Ouest canadien portant sur le leadership des administrateurs scolaires dans les questions d'évaluation en classe. Une des affaires portait sur les responsabilités des directeurs dans l'évaluation des pratiques d'évaluation des enseignants, une deuxième traitait des obligations des administrateurs dans la supervision des enseignants dans l'application de la politique d'octroi de notes aux élèves et une troisième discutait de la ligne éthique entre les actions d'un directeur d'école en tant que dirigeant professionnel et en tant que parent lors de l'attribution de notes aux étudiants. Les auteurs déterminent les implications relatives à la pratique, à la théorie et à l'éthique en matière de leadership scolaire.*

—Failure is instructive. The person who really thinks learns quite as much from his failures as from his successes.

John Dewey

## 1. INTRODUCTION

Instructional leadership is widely touted in research and pre-service and in-service educational programs as a highly important component of educational leadership. Instructional leadership emerged as a new and amorphous construct in American scholarship in the wake of and as a refutation of the Coleman

---

\* Darryl Hunter is a professor in the Department of Educational Policy Studies, University of Alberta, Edmonton, Alberta. Paul Clarke is Associate Dean of Education at the University of Regina, Regina, Saskatchewan.

Report, which suggested schools could not substantially improve student learning because of the socioeconomic conditions that prevailed in students' homes and communities. Forty years later, "instructional leadership" in several forms is widely accepted by policy-makers and practitioners as an essential element of leadership practice in schools.<sup>1</sup> Indeed, relatively recent studies largely confirm early assertions about leadership and student learning<sup>2</sup> — the former has a "significant" impact on the latter. Findings in the last fifteen years have been internally consistent: school principals can elevate student outcomes by as much as five to seven percent,<sup>3</sup> but largely indirectly, and as mediated, channeled, or coordinated through the efforts of others. "Leadership for learning" is the newest label in a vast body of scholarly and advocacy literature relating to instructional leadership and its sub-connections to assessment matters.

It is difficult to distill this body of literature given the many perspectives that prevail. However, many Canadian scholars, including Michael Fullan and Keith Leithwood,<sup>4</sup> argue school principals are the central figures in school improvement and have a pivotal role in elevating school outcomes. It follows that the all-pervasive but often overlooked routine in schools concerning classroom assessment and grading and their reflection in report card marks should be the object of attention for school leadership practitioners. Although there are several academic thought pieces<sup>5</sup> that begin to plumb the school

<sup>1</sup> P. Hallinger "Instructional Leadership and the School Principal: A Passing Fancy That Refuses to Fade Away" (2005) 4 *Leadership and Policy in Schools* 3.

<sup>2</sup> K. Leithwood, A. Harris, and T. Strauss, *Leading School Turnaround: How Successful Leaders Transform Low-Performing Schools* (Hoboken, NJ: John Wiley & Sons, 2005); V.M. J. Robinson, M. Hohepa, and C. Lloyd, *School Leadership and Student Outcomes: Identifying What Works and Why. Best Evidence Synthesis Iteration* (Wellington, NZ: New Zealand Ministry of Education, 2009); T. Waters, R.J. Marzano, and B. McNulty, *Balanced Leadership: What 30 Years of Research Tells Us about the Effect of Leadership on Student Achievement. A Working Paper* (Aurora, CO: Mid-Continent Regional Educational Lab., 2003).

<sup>3</sup> K.S. Louis, K. Leithwood, K.L. Wahlstrom, S.E. Anderson, M. Michlin, and B. Mascall. *Learning from Leadership: Investigating the Links to Improved Student Learning* (Center for Applied Research and Educational Improvement/University of Minnesota and Ontario Institute for Studies in Education/University of Toronto, 2003) at 42, 50; J. Sebastian and E. Allensworth, "The Influence of Principal Leadership on Classroom Instruction and Student Learning: A Study of Mediated Pathways to Learning" (2012) 48:4 *Educational Administration Quarterly* 626; P. Hallinger, R.H. Heck, and J. Murphy, "Teacher Evaluation and School Improvement: An Analysis of the Evidence" (2014) 26:1 *Educational Assessment, Evaluation and Accountability* 5.

<sup>4</sup> Michael Fullan, *The Principal: Three Keys to Maximizing Impact* (San Francisco, CA: John Wiley & Sons, 2014); K. Leithwood, A. Harris, and T. Strauss, *Leading School Turnaround: How Successful Leaders Transform Low-Performing Schools* (San Francisco, CA: John Wiley & Sons, 2010).

<sup>5</sup> B. Noonan and P. Renihan, "Demystifying Assessment Leadership" (2006) 56 *Canadian Journal of Educational Administration and Policy* 1; R. Stiggins and D. Duke, "Effective Instructional Leadership Requires Assessment Leadership" (2008) 90:4 *Phi Delta Kappan* 285.

principal's role in relation to grades, assessment leadership remains relatively uncharted territory in research. Indeed, some have characterized school grading as "the wild west of school improvement".<sup>6</sup> A great deal of pioneering research remains to be accomplished.

One void concerns the legal dimensions of classroom assessment in Canadian schools. Even if grading is a crucial determinant in student trajectories through and beyond schools, no scholarly articles about a teacher's or school principal's respective legal obligations and rights in this high-stakes activity in public schools have appeared in Canada or in the United States. That is surprising because such grades have been characterized as "the fundamental currency in our education system".<sup>7</sup> Moreover, in Canada, classroom grades are frequently considered by courts as admissible and often important evidence in family law, educational law, and employment law cases.<sup>8</sup> Classroom assessment is, arguably, the most frequent (weekly and often daily), most labour-intensive (as much as 30-40% of professional time is devoted to making and marking assignments and tests, and providing feedback on them),<sup>9</sup> most expensive (when calculating the

<sup>6</sup> D. Reeves, L.A. Jung, and K. O'Connor, "Special Topic/What's Worth Fighting against in Grading?" (2017) 74 *Educational Leadership* 42.

<sup>7</sup> E. Pattison, E. Grodsky, and C. Muller "Is the Sky Falling? Grade Inflation and the Signaling Power of Grades" (2013) 42:5 *Educational Researcher* 259, online: <<http://doi.org/10.3102/0013189X13481382>>.

<sup>8</sup> Courts at all levels across the country frequently consider not only marks, but also teacher comments and attendance on report cards, as forms of evidence. See, for example, *Myers v. Peel (County) Board of Education*, 1981 CarswellOnt 579, 1981 CarswellOnt 612, [1981] 2 S.C.R. 21, 17 C.C.L.T. 269, 123 D.L.R. (3d) 1, 37 N.R. 227, [1981] S.C.J. No. 61 (S.C.C.); *Horton v. Marsh*, 2008 NSSC 224, 2008 CarswellNS 371 (N.S.S.C.); *R. v. S. (M.)*, 2016 CarswellQue 12838, 2016 QCCQ 15825, EYB 2016-274894 (C.Q.); *Dorward v. Fisher*, 1998 CarswellBC 1706, [1998] B.C.J. No. 1874 (B.C.S.C.); *B. (Litigation Guardian of) v. Greater Victoria School District No. 61*, 2012 CarswellBC 1501, 2012 BCHRT 177 (B.C. Human Rights Trib.); *R. v. Okubadejo*, 2008 CarswellOnt 8192, [2008] O.J. No. 5416 (Ont. S.C.J.); *Cudmore v. New Brunswick* (Janaury 30, 2003) Doc. HHR-003-01, 2003 CanLII 64199 (N.B.L.E.B.); *R. v. F. (D.P.)*, 2000 CarswellNfld 290, 194 Nfld. & P.E.I.R. 51, 584 A.P.R. 51 (Nfld. T.D.).

<sup>9</sup> Alberta Education, *Alberta Teacher Workload Study* (Edmonton, AB: Malatest & Associates, 2015); Linda Duxbury and Christopher Higgins, *The 2011/12 National Study on Balancing Work, Life and Caregiving in Canada: The Situation for Alberta Teachers* (Edmonton AB: Alberta Teachers' Association 2013), online: <<https://www.teachers.ab.ca/SiteCollectionDocuments/ATA/Publications/Research/COOR-94%20National%20Study%20on%20Balancing%20Work%20-Duxbury.pdf>>; P. Black, C. Harrison, C. Lee, B. Marshall, and D. Wiliam, "Working Inside the Black Box: Assessment for Learning in the Classroom" (2004) 86:1 *Phi Delta Kappan* 8; A. Philipp and M. Kunter, "How Do Teachers Spend Their Time? A Study on Teachers' Strategies of Selection, Optimisation, and Compensation over Their Career Cycle" (2013) 35 *Teaching and Teacher Education* 1; Saskatchewan Instructional Development and Research Unit, *Teacher Time: A Study of the Challenges of Intensification of Saskatchewan Teachers' Professional Time* (Saskatoon, SK: Saskatchewan Teachers' Federation, Dec. 2013), online: Saskatchewan Teachers' Federation <[www.stf.sk.ca/portal.jsp?Sy3uQUnbK9L2RmSZs02CjV3Jh9YwRCfE66+wzdOJFKO8=F](http://www.stf.sk.ca/portal.jsp?Sy3uQUnbK9L2RmSZs02CjV3Jh9YwRCfE66+wzdOJFKO8=F)>.

proportion of teachers' salaries devoted to classroom grading and comparing it to costs of large-scale assessments); and the highest-stakes (in determining student trajectories) and most voluminous form of inquiry conducted professionally in Canadian schools. Paradoxically, it is also one of the least-queried topics in Canadian educational research. The stakes associated with large-scale assessments have been widely discussed and surveyed in law.<sup>10</sup> However, it is rarely acknowledged that the stakes associated with classroom assessment are even higher for a student. In no Canadian province do large-scale assessment data serve as the sole or even the central basis for determining whether a student is promoted within or graduates from a school.<sup>11</sup> Nor is large-scale assessment the predominate basis for regulating graduation outcomes.<sup>12</sup>

Rather, classroom assessment findings and the values associated with them are the bases — individually and in aggregate — for all promotion decisions in every Canadian school until at least Grade 10. In Ontario, for example, only one of 32 graduation requirements involves but is not exclusively determined by a centrally administered examination; the remaining 31 credits are earned entirely through teacher-generated scores. In every other province, no centrally administered examination is worth more than 50 per cent of a student's final grade. When talking about stakes in Canadian testing, one must recognize that classroom assessment is the common ground for critical judgments about a student's destiny. Unlike other assessment data, classroom assessment data (as grades) are systematically and directly delivered by report card to every household with school-age children in Canada three to four times per year. These data are presumably the subject of annual parent-teacher interviews in most schools in Canada. Parent interviews typically do not revolve around academic research and, likely, not large-scale assessment data either, given that most large-

<sup>10</sup> For two contributions among many in Ontario policy circles, see F. Ohemeng and E. McCall-Thomas, "Performance Management and "Undesirable" Organizational Behaviour: Standardized Testing in Ontario Schools" (2013) 56:3 *Canadian Public Administration* 456; L.E. Pinto, "Tensions and Fissures: The Politics of Standardised Testing and Accountability in Ontario, 1995-2015" (2016) 27:1 *The Curriculum Journal* 95. For an introduction in Canadian law to a longstanding bone of contention, see D.M. Hunter and Paul Clarke, "Legal Tests for Large-Scale Testing in Canadian Public Schools: Judicial Activism or Deference?" (2015) 24 *E.L.J.* 95.

<sup>11</sup> Students need not pass the Ontario Secondary School Literacy Test to obtain their literacy credit. In fact, thousands obtain that credit through the Ontario Secondary School Literacy Course following an attempt at the test. Hence, teachers' classroom assessments become the focal point, funnel point, and ultimately the point of regulation for large percentages of students in Ontario to meet graduation requirements. Policy manual available online: Government of Ontario «<http://www.edu.gov.on.ca/eng/curriculum/secondary/english12curr.pdf>». For 2013 statistics in Toronto and for the province, see online: Toronto District School Board «<http://www.tdsb.on.ca/Portals/0/AboutUs/Research/SchoolBySchoolPE13b.pdf>».

<sup>12</sup> C. DeLuca, H. Braund, A. Valiquette, and L. Cheng, "Grading Policies and Practices in Canada: A Landscape Study" (2017) 184 *Canadian Journal of Educational Administration and Policy* 4.

scale tests in Canada are exit exams.<sup>13</sup> In other words, report card grades are the form of data most frequently accessed by students and parents alike during schooling.

Although there is typically less media fanfare associated with the release of these results than there is with large-scale assessment results, report card marks are a focus of student and parental attention at all levels of the education system. They are also the substantive bases for awarding scholarships and university or college entrance. For the classroom professional, grading involves making a series of value-laden decisions that, whether consciously made or not, are crucial to a student's destiny. To grade is to sort. As such, grades sit at the centre of social stratification processes in Canada.<sup>14</sup> In Canadian schools, the initial sorting of students according to their abilities, aptitudes, and attitudes begins somewhere in the middle years. No-fail policies and a general professional reluctance to hold students back during the elementary grades are evident when looking at student transitions through schools. In Saskatchewan, for example, it

<sup>13</sup> Our understanding of the content in parent-teacher interviews in Canada is fragmentary. Isolated studies in Canada and elsewhere can be found in C. Baker and J. Keogh, "Accounting for Achievement in Parent-Teacher Interviews" (1995) 18:2-3 *Human Studies* 263; M. MacLure and B.M. Walker, "Disenchanted Evenings: The Social Organization of Talk in Parent-Teacher Consultations in UK Secondary Schools" (2000) 21:1 *British Journal of Sociology of Education* 5; G. Crozier "Is It a Case of 'We Know When We're Not Wanted'? The Parents' Perspective on Parent-Teacher Roles and Relationships" (1999) 41:3 *Educational Research* 315; M. Ladky and S.S. Peterson "Successful Practices for Immigrant Parent Involvement: An Ontario Perspective" (2008) 10:2 *Multicultural Perspectives* 82; L.L. Dyson, "Home-School Communication and Expectations of Recent Chinese Immigrants (2001) 26:4 *Canadian Journal of Education/Revue canadienne de l'éducation* 455; Y. Guo, "Meetings without Dialogue: A Study of ESL Parent-Teacher Interactions at Secondary School Parents' Nights" (2010) 20:1 *School Community Journal* 121.

<sup>14</sup> The complex interactions of student preferences, teacher grades, high school scheduling, and stratification can be discerned in D. Caro, J. McDonald, and D. Willms, "Socio-economic Status and Academic Achievement Trajectories from Childhood to Adolescence" (2009) 32:3 *Canadian Journal of Education* 558; E. Grodsky, J.R. Warren, and E. Felts, "Testing and Social Stratification in American Education" (2008) 34 *Annual Review of Sociology* 385; A. Westphal, M. Becker, M. Vock, K. Maaz, M. Neumann, and N. McElvany, "The Link between Teacher-Assigned Grades and Classroom Socio-economic Composition: The Role of Classroom Behavior, Motivation, and Teacher Characteristics" (2016) 46 *Contemporary Educational Psychology* 218; B. DeLany "Allocation, Choice, and Stratification within High Schools: How the Sorting Machine Copes" 99:2 *American Journal of Education* 181; H.M. Watt, J. D. Shapka, Z.A. Morris, A.M. Durik, D.P. Keating, and J.S. Eccles "Gendered Motivational Processes Affecting High School Mathematics Participation, Educational Aspirations, and Career Plans: A Comparison of Samples from Australia, Canada, and the United States" (2012) 48:6 *Developmental Psychology* 1594; K.S. Schiller "Effects of Feeder Patterns on Students' Transition to High School" (1999) 72:4 *Sociology of Education* 216; K.A. Frank, C. Muller, K.S. Schiller, C. Riegle-Crumb, A.S. Mueller, R. Crosnoe, and J. Pearson, "The Social Dynamics of Mathematics Coursetaking in High School" (2008) 113:6 *American Journal of Sociology* 1645; J. Oakes and G. Guiton "Matchmaking: The Dynamics of High School Tracking Decisions" (1995) 32:1 *American Educational Research Journal* 3.

is a relatively rare occurrence to see students held back a year until late in junior high school (where one exists) or as they enter high school.<sup>15</sup>

These high-stakes decisions by teachers have short-term and long-term consequences that will shape students' trajectories as they enter and exit high school.<sup>16</sup> The professional's estimations of student abilities in key subject areas will influence student preferences and hence programs in which students register at the secondary and postsecondary levels. A student who struggles with literacy assessments in the middle years will likely follow a path through high school that is different from the student who is adjudged to be highly proficient in reading and writing. Mathematics assessments in the middle years between ages 13 and 15 are especially important. As representations of student aptitude in abstract thinking, mathematics grades will shape students' beliefs and their proclivity to register in high school credit combinations of Algebra, Physics, Chemistry, and Biology as prerequisites for postsecondary entrance, or to select credit options that are more vocationally oriented.<sup>17</sup> Hence, the alignment of large-scale assessment scores and report card grades becomes important.<sup>18</sup> The professional's repertoire of assessment skills in middle years and secondary schools thus becomes crucial to a student's destiny in high school and beyond. In a real sense, classroom assessment skills are wielded as unacknowledged instruments of power over the life chances of Canadian youth.

Although the respective roles and responsibilities of teachers and principals are set out in relevant school legislation, there is much ambiguity if not ambivalence about who determines a student's final mark. For example, current

<sup>15</sup> Saskatchewan Ministry of Education, Saskatchewan Education Indicators Report (Regina, SK: Author, 2010), online: yourfairshare «<http://yourfairshare.ca/files/2011/09/2010-Saskatchewan-Education-Indicators-FINAL.pdf>».

<sup>16</sup> S.M. Brookhart, T.R. Guskey, A.J. Bowers, J.H. McMillan, J.K. Smith, L.F. Smith, and M.E. Welsh, "A Century of Grading Research: Meaning and Value in the Most Common Educational Measure" (2016) 86:4 *Review of Educational Research* 803.

<sup>17</sup> J.L. Meece, A. Wigfield, and J.S. Eccles, "Predictors of Math Anxiety and Its Influence on Young Adolescents' Course Enrollment Intentions and Performance in Mathematics" (1990) 82:1 *Journal of Educational Psychology* 60; J.E. Jacobs, O. Lanza, D.W. Osgood, J.S. Eccles, and A. Wigfield, "Changes in Children's Self-Competence and Values: Gender and Domain Differences across Grades One through Twelve" (2002) 73:2 *Child Development* 509; J.D. Shapka, J.F. Domene, and D.P. Keating, "Trajectories of Career Aspirations through Adolescence and Young Adulthood: Early Math Achievement as a Critical Filter" (2006) 12:4 *Educational Research and Evaluation* 347; R. Mason and Janelle McFeetors, "Student Trajectories in High School Mathematics: Issues of Choice, Support, and Identity-Making" (2007) 7:4 *Canadian Journal of Math, Science & Technology Education* 291; M. Adamuti-Trache and L. Andres, "Embarking on and Persisting in Scientific Fields of Study: Cultural Capital, Gender, and Curriculum along the Science Pipeline" (2008) 30:12 *International Journal of Science Education* 1557.

<sup>18</sup> J.A. Ross and P. Gray, "Alignment of Scores on Large-Scale Assessments and Report Card Grades" (2008) 54:3 *Journal of Educational Research* 327; J.A. Ross and L. Kostuch, "Consistency of Report Card Grades and External Assessments in a Canadian Province" (2011) 23:2 *Educational Assessment, Evaluation and Accountability* 159.

British Columbia policies and ministerial orders do not go beyond enjoining both principals and teachers to “ensure that teachers follow provincial legislation and policy”.<sup>19</sup> Section 20 of Alberta’s *School Act* indicates that a principal must “(a.1) provide instructional leadership in the school; (b) ensure that the instruction provided by the teachers employed in the school is consistent with the courses of study and education programs prescribed, approved or authorized pursuant to this Act;” and “(h) supervise the evaluation and advancement of students” while teachers providing instruction and supervision under section 18 (l) must “(e) regularly evaluate students and periodically report the results of the evaluation to the students, the students’ parents and the board.”<sup>20</sup> Next door in Saskatchewan, section 174(k) of *The Education Act* requires principals to “(k) establish, in consultation with the staff, the procedures and standards to be applied in evaluation of the progress of pupils and in making promotions” while assigning teachers a general duty under section 231 (p) to “advance or promote pupils in their work in accordance with the promotion policies of the school and under the general supervision of the principal.”<sup>21</sup> Such provisions undoubtedly allow for much interpretation to fit local circumstances, but they also permit occasions for conflict to arise.

Indeed, we could not find a single scholarly article either in Canada or the United States that clarifies the respective obligations of teacher professionals and principals relating to classroom assessment practices within a legal framework. There is a body of labour law and adjudication rulings relating to classroom assessment in the midst of a collective bargaining impasse in an “essential service” context. However, we could locate no appellate court cases in any Canadian province about the public school principal’s role in classroom assessment issues in ordinary circumstances.

When it comes to classroom grading practices under law, the issues typically fall within three alternate legal domains: first, as an assertion of professional autonomy and therefore within the purview of a teaching profession act that sets out a code of professional conduct or professional practice review; second, as a facet of instructional leadership/supervision and falling under roles and responsibilities described within a provincial school act or education act, and according to the rules established by a body of administrative law set out by the courts; or third, as relating to teacher evaluation matters that are often defined within labour law, together with a set of arbitration board rulings relating to employment contracts and collective agreements in the province governing

<sup>19</sup> Government of British Columbia, *Manual of School Law K-12*, online: British Columbia <<https://www2.gov.bc.ca/gov/content/education-training/administration/legislation-policy/manual-of-school-law>>.

<sup>20</sup> *School Act*, R.S.A. 2000, c. S-3, online: Queen’s Printer Alberta <<http://www.qp.alberta.ca/documents/Acts/s03.pdf>>.

<sup>21</sup> *The Education Act*, 1995, S.S. 1995, c. E-0.2, online: Government of Saskatchewan Publications <<http://www.publications.gov.sk.ca/freelaw/documents/English/Statutes/Statutes/E0-2.pdf>>.

employer-employee relations. These three legal domains, then, set out a general framework within which superior courts in Western Canada have been asked to rule on — and have coincidentally commented on in *obiter dicta* — teachers' grading practices, the way principals exercise their leadership, and the overall administrative purview in schools.

Our purpose in this article is to begin to illuminate the legal dimensions of classroom grading in Canada. We seek to analyze what courts and tribunals have said in three cases about the respective obligations of teachers and principals about processes and products of student assessment within public schools. The three cases are:

- *Raison v. Fenwick* (1981),<sup>22</sup> which distinguished between competency in teaching and professional reputation under common law in relation to classroom assessment;
- *Dorval v. Edmonton Public School Board* (2016),<sup>23</sup> which delimited in terms of natural justice principles a school administrator's school policy-making authority in classroom grading and a teacher's autonomous prerogative in classroom assessment policy; and
- *Sautner v. Saskatchewan Teachers' Federation* (2017),<sup>24</sup> which underlined the principal's ethical obligation in contrast to a parental interest in student grades.

These three cases were deliberately selected from among many conflicts before lower courts and arbitration panels because they feature extensive *obiter* commentary. They illustrate the complexity and ambiguity in provincial legislation about whether a school administrator or a teaching professional determines a student's final grade in a Canadian school.<sup>25</sup> We do not address grades and assignments in postsecondary education,<sup>26</sup> nor do we directly explore questions about parents' roles or the interpretation of school board and

<sup>22</sup> *Raison v. Fenwick*, 1981 CarswellBC 660, 120 D.L.R. (3d) 622 (B.C.C.A.) [*"Raison"*].

<sup>23</sup> *Edmonton School District No. 7 v. Dorval*, 2016 CarswellAlta 32, 2016 ABCA 8, 28 Alta. L.R. (6th) 1, 609 A.R. 280, 656 W.A.C. 280 (Alta. C.A.) [*"Dorval"*].

<sup>24</sup> *Sautner v. Saskatchewan Teachers' Federation*, 2017 CarswellSask 420, 2017 SKCA 65 (Sask. C.A.) [*"Sautner"*].

<sup>25</sup> In Ontario, *Fernandes v. Peel Educational & Tutorial Services Limited (Mississauga Private School)*, 2016 ONCA 468, 2016 CarswellOnt 9377, 34 C.C.E.L. (4th) 42, 2016 C.L.L.C. 210-046, [2016] O.J. No. 3140 (Ont. C.A.), featured grading matters that reached superior court on appeal. However, the school was operating as a contractor.

<sup>26</sup> Grades at the higher education level have often been the subject of disputes before courts and adjudication boards in Canada. See, for examples among many, *University of Ottawa and APUO (Rancourt), Re*, 2014 CarswellOnt 19219 (Ont. Arb.); *Blasser v. Royal Institute for Advancement of Learning*, 1985 CarswellQue 88, 16 Admin. L.R. 298, 24 D.L.R. (4th) 507 (C.A. Que.); *Martin v. University of Winnipeg*, 2017 CarswellMan 167, 2017 MBQB 67, [2017] M.J. No. 111 (Man. Q.B.); *Visic v. Law Society of Upper Canada*, 2012 HRTO 1642, [2012] O.H.R.T.D. No. 1659 (Ont. Human Rights Trib.); *Green v. University of Winnipeg*, 2015 CarswellMan 603, 2015 MBCA 109, 323 Man. R. (2d) 157, 657 W.A.C. 157 (Man. C.A.).

ministerial policy. Quite different legal issues and professional implications about large-scale assessment<sup>27</sup> are not considered. In addressing the student marking problem of roles and responsibilities from the point of view of the Canadian legal system, our central question is the following: What have Canadian superior courts said about classroom grades as they have been created and transmitted within public schools by principals and teachers?

## 2. GRADING UNDER THE COMMON LAW

In *Raison*, the central issue was whether a teacher who had been terminated for maintaining unsatisfactory learning conditions in his West Vancouver school district classroom could sue the school principal for libel for a report written in light of parental concerns about the teacher's grading practices. Viewed legally, is classroom grading a prerogative of the teacher at common law, or does it fall under the statutory jurisdiction of school administrators as state agents to determine teacher competency? Both the administrative review panel commissioned to hear the original case and a lower court judge who had considered the matter ruled that the assessment-related matter could not be severed from the primary claim of instructional incompetence advanced by the employer under the relevant provincial statute. However, the British Columbia Court of Appeal disagreed in a two-to-one ruling, stating that the classroom grading issue had reputational and ethical implications above and beyond matters of teaching competence.

The Court of Appeal's decision was predicated on two paragraphs in the principal's report (in which he supported the teacher's termination), which described a dispute between the teacher and a parent about the teacher's grading of an essay in a Canadian history class. The principal's report mentioned an essay that, at the request of a parent, the principal had discussed with the teacher. After criticizing the scope of the topic assigned for the essay, the principal had noted in his competency report as follows:

the parent who had raised the issue was more concerned about the marking than the format. Mr. Raison had graded her daughter's essay "A" and then reduced the grade to "C" on the grounds that the essay was not the work of the student. Having read the essay carefully, I told Mr. Raison in my opinion, that the essay was not of "A" calibre, and that it was the work of a student. He took the essay away to re-assess it but has not returned it with his comments. In my opinion, Mr. Raison's grading leaves much to be desired.

The implication that the student lacks integrity has not yet been resolved to the mother's satisfaction or mine. The mother emphasized that the student wrote the essay at home without help.<sup>28</sup>

<sup>27</sup> Above note 10, particularly Hunter and Clarke.

<sup>28</sup> Above note 22, at para. 10.

However, the teacher had demonstrated before an administrative review panel that he had previously addressed the concerns before the principal and the district superintendent. Moreover, the teacher had substantiated his grade by showing how 1500 out of the 1800 words in the essay were plagiarized from two textbooks, and thus the essay was manifestly not the student's own work. By not correcting his erroneous statement in the teacher's competency report and by communicating his disparaging opinion of the teacher's grading practice in his report, the principal had libeled the teacher. Although three reports showed that the teacher had repeatedly demonstrated unsatisfactory learning conditions in the classroom, the review panel did not accept the accuracy of the principal's report dealing with the requirements of a student essay and, in particular, a plagiarized essay.

When taken before the Court of Appeal, the principal's report on competency, among other points about learning conditions in the classroom, contained "words meant and were understood to mean" that the teacher was incapable of assessing whether essays submitted were authentic; that the teacher knew he had incompetently assessed the essay as to authenticity and grade; that the teacher had disregarded his responsibility to admit his failure to do so correctly; and that that he did not and could not grade work correctly.<sup>29</sup> The court confirmed the comprehensive allegation of incompetence, thus upholding the administrative review panel's and lower court's original findings supporting termination within the provisions of British Columbia's *Public School Act*.<sup>30</sup>

Justice Macdonald wrote in his minority opinion that

[p]lagiarism is discreditable to a student. If a teacher believes it has occurred he is bound to give effect to his belief when grading an essay. Allying plagiarism on the part of the student, when it has not occurred, may be evidence of the teacher's incompetence. When there is a denial of plagiarism conveyed by a student's parent to the principal, and the principal takes the matter up with the teacher, the teacher ought to co-operate in resolving the issue. Failure to cooperate would be irresponsible. But an allegation of such conduct is not beyond the scope of the comprehensive allegation that he is a teacher with a learning situation in his classes which is less than satisfactory. Certainly, a charge by a teacher against a student of plagiarism, knowing the charge to be false, would be dishonest and morally reprehensible. But that is not the situation here. The words set out in ... [the principal's report and] the statement of claim must be assessed in the context of the whole of the passages quoted. In my opinion they do not allege matters against the appellant additional to the main charge of libel (that the learning situation in his classes was less than

<sup>29</sup> *Ibid.*, at para. 12.

<sup>30</sup> R.S.B.C. 1996, c. 412.

satisfactory) which are either actionable standing by themselves or add to the sting of that main charge.<sup>31</sup>

But that conclusion, which rested on administrative law, the court majority believed, should not end the matter under the common law. For Justices Nemetz and Hutcheon, the “essay allegation” did not fall within the scope of the comprehensive allegation that the learning situation in the teacher’s class was unsatisfactory. Citing *Gatley on Libel and Slander*,<sup>32</sup> the justices referred to a common law case in which the defendant accused the plaintiff of acts of cruelty to a horse, including amongst other things, knocking out an eye. In that English precedent, proof that the accusation was true in all particulars except that the eye was not knocked out, was held to be an insufficient defence against a defamation case.

Hence, according to the majority’s reasoning, the principal’s allegation that the teacher had wrongly accused a student of plagiarism was an allegation quite distinct from the other allegations in the three reports of school board officials about the teachers’ competence. Justice Hutcheon believed that “[t]hose allegations are concerned, in the main, with the charge that the plaintiff used inadequate and inferior methods of instruction. The essay allegation concerns not only incompetency but also the ethical standards of the [teacher-] plaintiff.”<sup>33</sup> For the majority, the central issue was whether estoppel (a common law doctrine that prevents a plaintiff from breaking apart and pursuing issues in courts that have been previously decided) applied to the whole of the primary claim of incompetence but not specifically to the essay allegation of plagiarism. Here, the court appeared to be responding to the administrative review panel’s majority finding that although the teacher was incompetent, the principal’s report was inaccurate, perhaps defamatory. Understandably, the Court of Appeal did not discuss whether the principal’s report was an example of an unintentional (negligence) or intentional tort and did not comment on whether a defence of privilege<sup>34</sup> applied, leaving a subsequent lower court to answer those questions.

After reviewing the administrative panel’s initial finding and the lower court judge’s ruling, the majority of the British Columbia Court of Appeal decided the three administrative reports relating to the teacher’s instructional competence were unassailable against claims of libel, through estoppel. The exception was the principal’s written characterization of the teacher’s grading practices and the justification provided for assigning a grade. The principal’s report, which described the teacher’s purported error in assigning the grade based on an

<sup>31</sup> Above note 22, at para. 13.

<sup>32</sup> *Gatley on Libel and Slander*, 7th ed. (London, UK: Sweet & Maxwell Ltd., 1974) at 15 and 155-56; *Weaver v. Lloyd* (1824) 2 B & C 678, 107 E.R. 535 (Eng. K.B.).

<sup>33</sup> Above note 22, at para. 21.

<sup>34</sup> A defence of qualified privilege in this case would be the principal’s arguing that he had the right to make potentially defamatory statements in the circumstance of carrying out his *Public School Act* duties to supervise teacher evaluation and instructional quality. Absolute privilege often relates to location rather than situation.

allegedly false determination of plagiarism and generally unsatisfactory grading practices, was potential evidence of libel. It remains unclear whether the teacher chose not to pursue the matter further, whether a lower court decided that the principal's report could not be construed as defamatory, or whether a defence of privilege applied to all termination proceedings. What is significant was that grading judgments in teacher evaluation — at least in the context of allegations of plagiarism — were recognized by the court as having reputational and ethical implications additional to and beyond issues of instructional competence. School principals who prepare inaccurate reports on classroom grading may be subject to defamation claims, even though overall observations of instructional incompetence are supported by administrative review panels and multiple levels of the court system.

It might be argued that *Raison* does not present a situation in which instructional leadership has gone awry, but is simply an example of a somewhat negligent principal operating bureaucratically when culling the instructionally inept. The case does raise tangential questions about the time demands entailed in and the thoroughness of principals' reports on teacher competence — both of which are recurrent administrative issues in teacher supervision.<sup>35</sup> More pertinently, a competency report provides descriptive information about, and prompts reconsideration of, the nature of a leadership “conversation” between principals and teaching professionals. Whose judgment or opinion of student performance should prevail? When should evidence supporting that judgment be brought into a conversation between superordinate and subordinate: before or after the conversation?<sup>36</sup> Was this a collaborative conversation (in which inter-professional relations and, hence, staff harmony are most important), a crucial conversation (in which the stakes are high for the teacher), a critical conversation (in which the stakes are high for the student), a courageous conversation (in which the stakes are high for the principal), or a fierce conversation (in which the principal is confrontational)?<sup>37</sup> *Raison* illustrates that this sliding conversational scale in power relations may have disparate legal implications as well.

<sup>35</sup> K. Leithwood, “Leadership for School Restructuring” (1994) 30:4 *Educational Administration Quarterly* 498; N. C. Cranston, “School-Based Management, Leaders and Leadership: Change and Challenges for Principals” (2002) 30:1 *International Studies in Educational Administration* 2; E.L. Horng, D. Klasik, and S. Loeb, “Principal's Time Use and School Effectiveness” (2010) 116:4 *American Journal of Education* 491.

<sup>36</sup> C. Evans, “Making Sense of Assessment Feedback in Higher Education” (2013) 83:1 *Review of Educational Research* 70.

<sup>37</sup> The Ontario Ministry of Education has been advocating for courageous and fierce conversations as a core leadership skill. See <<http://www.edu.gov.on.ca/eng/policy-funding/leadership/ideasIntoAction.html>>. For an introduction to various kinds of “conversations” as a social psychological field with much terminological and conceptual ambiguity, see H. Anderson and S. Swim, “Supervision as Collaborative Conversation: Connecting the Voices of Supervisor and Supervisee” (1995) 14:2 *Journal of Systemic Therapies* 1; K. Patterson, *Crucial Conversations: Tools for Talking When Stakes Are High* (New York: McGraw-Hill Education, 2002); N. Mercer and S. Hodgkinson, eds.,

### 3. GRADING UNDER ADMINISTRATIVE LAW

Whereas the previously discussed case is a rather dated but still pertinent British Columbia common law-based decision concerning a teacher's reputation, the more recent Alberta case of *Dorval*<sup>38</sup> involved a somewhat more esoteric consideration: When is a teacher's grade not a grade? What started as a dispute between a teacher and a principal about grading philosophy degenerated into issues about the fairness of the teacher's dismissal for insubordination. Teaching competency was not in question. The teacher had a 30-year unblemished record teaching physics at the high school level. The school board terminated his employment, however, because he refused to follow his principal's directive to use letter codes describing student behaviour, instead of a mark of zero, for students who did not complete assignments. The teacher and other professionals on staff had been using a "replaceable zero", which meant that students were allowed, even encouraged, to hand in late assignments for a grade that replaced the zero. These teachers believed this method encouraged accountability and resulted in a work-based evaluation. The dismissed teacher was the only one disciplined for his refusal to follow the principal's direction regarding the use of codes rather than zeros.

A review panel crystallized the issues as follows:

The real issue between the parties was: how to motivate students to complete their work, whether on time or later... The Teacher had professional obligations to the students and the responsibility to use his judgment in the selection of teaching and assessment methods, to achieve completion of the curriculum. The Principal had a professional obligation to supervise the fulfillment of those professional responsibilities, while respecting the professional judgment of the Teacher.

While a workplace is not a "debating society", to use the arbitral adage, in an education environment, where the development and expression of ideas is encouraged, room for reflection and discussion of teaching and assessment issues might be expected and welcomed among colleagues. Of course, if necessary, the Principal will have the final word, but here

---

*Exploring Talk in School: Inspired by the Work of Douglas Barnes* (London; Thousand Oaks, CA: Sage, 2008); J. Ryan "Inclusive Leadership and Social Justice for Schools" (2006) 5:1 *Leadership and Policy in Schools* 3; G. Singleton and C. Linton, *Courageous Conversations about Race: A Field Guide for Achieving Equity in Schools* (Thousand Oaks, CA: Corwin, 2006), K. C. Mansfield and G. Jean-Marie "Courageous Conversations about Race, Class, and Gender: Voices and Lessons from the Field" (2015) 28:7 *International Journal of Qualitative Studies in Education* 819. For a discussion of stakes, stakeholders, and standards, see D. M. Hunter and T. J. Gambell, "Incorporating Stakeholders in Standard Setting: What's at Stake?" (2000) 15 *Canadian Journal of Program Evaluation* 83.

<sup>38</sup> Above note 23.

no effort was made to mine the experience of senior teachers as to how to better accomplish the shared goals.<sup>39</sup>

What followed the teacher's refusal to conform were two letters of reprimand, and the change of zero grades to codes by the assistant principal under the principal's direction. The teacher's response was to change the codes to 0.1 to circumvent a computer search for zeros. The reprimand by the principal set out the refusal to use the codes and added an allegation that the teacher had failed to attend two staff meetings. The teacher's reply was that the school board and the superintendent had repeatedly and publicly stated there was no policy on zeros, and the collective agreement stated that teachers could carry out their duties in accordance with school board policies. At a suspension hearing, the teacher reiterated his reasons for using the numeric entries in the computerized grading system. He commented that, in his experience, students responded more positively when zero was used, because they were able to appreciate the effect of that mark on their grades and the improvement that could be achieved if the assignment was completed and a higher mark substituted. The teacher asserted that the use of icons [codes] gave the student an inflated grade number, which provided little or no incentive to complete the assignment for an actual mark, in case the new mark might lower the final grade. The teacher emphasized that the use of the zero entry, together with an offer to allow the student to improve the mark, was effective for him in assuring task completion.

The events that took place between the teacher's suspension and his termination included demands from the principal for return of classroom exams and assignments and the resulting teacher's return to the school on three occasions, rather than using a courier, to return exams that he had misplaced and to deliver a letter to the principal. These events culminated with his dismissal. The principal characterized as "utterly reprehensible" the teacher's refusal to return student work, pointing out that some of the exams and assignments were unmarked.<sup>40</sup> The principal claimed that the teacher's habitual refusal to obey lawful orders, repeated insubordination, and neglect of duty forced him to recommend termination.

A review panel found the teacher had been treated unfairly in his termination, concluding that allegations of retaining school property and attending on school grounds had been adequately explained. There was no evidence of deliberate misconduct by the teacher or of deliberate repeated misconduct. The review panel noted that the principal's decision to single out this teacher contributed extensively to the events that unfolded and concluded that a teacher transfer should have been considered given an obvious personality conflict between the teacher and the principal.

When the Edmonton Public School Board pushed the ruling to the Alberta Court of Appeal, it relied on three lines of argument to demonstrate the review

<sup>39</sup> *Ibid.*, at para. 7.

<sup>40</sup> *Ibid.*, at para. 18.

panel's unreasonableness. First, it argued that the events leading up to the teacher's suspension should not have been considered, only the immediate events leading up to the termination. However, the Alberta justices disagreed, saying that the organic whole of events had to be considered: "There is a clear nexus between the suspension and the termination; but for the events leading up to the suspension, the events relied on for the termination would not have occurred. Fairness therefore mandates that the suspension events be considered."<sup>41</sup>

Second, the school board contended that the panel erred in applying appropriate tests in the law of workplace discipline, misconduct, insubordination, and off-duty conduct.<sup>42</sup> The appeal court did not accept that argument either, holding that what distinguished this case is that in terminating a professional teacher, the school board as employer was carrying out a function defined by statute, the *School Act*.<sup>43</sup> That legislation provides that the employer must act reasonably in terminating a contract of employment. In the court's reasoning, legal sources distinguish between employees who are required to obey lawful orders from persons in authority (such as those from industrial workplaces) and professional employees and others with legal obligations who may be expected to exercise a degree of independent judgment in the performance of their duties.<sup>44</sup> The teacher "was a professional employee who had legal obligations to his students and would be expected, and entitled, to exercise his professional judgment regarding the best interests of his students,"<sup>45</sup> wrote the Alberta Court of Appeal in an unanimous decision.

<sup>41</sup> *Ibid.*, at para. 45.

<sup>42</sup> Citing Donald J. M. Brown and David M. Beatty, *Canadian Labour Arbitration*, 4th ed. (Aurora, ON: Canada Law Book, 2007) at 7:4000.

<sup>43</sup> Above note 20.

<sup>44</sup> Above note 23, at paras. 48-50. The court found that the review panel had relied, without error, on all of the required elements of workplace discipline: the *School Act*, Edmonton Public School Board Policies on Curriculum and Instruction, the Alberta Teachers' Association publication *Assessment of Students*, and the authoritative labour law text by Brown and Beatty, above note 42.

<sup>45</sup> Above note 23, at para. 49. The Court of Appeal determined that events must be reviewed holistically, and not as an atomistic search for faults. In setting out its Standard for Review at para. 40, the Alberta Court of Appeal noted,

When assessing reasonableness, the reasons must be reviewed as a whole and the reviewing court should not parse the decision or seize on specific errors; a decision-maker is not required to make an explicit finding on each constituent element, and reasons need not include every argument, statutory provision, jurisprudence or other detail: citing *Law Society of New Brunswick v Ryan*, 2003 SCC 20 (CanLII) at para 55, [2003] 1 SCR 247; *Dunsmuir v New Brunswick*, 2008 SCC 9 (CanLII) at paras 58-61, [2008] 1 SCR 190.; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 (CanLII) at para 164, [2011] 3 SCR 708. The decision "must be approached as an organic whole, not as a line-by-line treasure hunt for error": *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper Ltd*, 2013 SCC 34 (CanLII) at para 54, [2013] 2 SCR 458. The reviewing court should look at the reasons offered or

Third, the Edmonton Public School Board argued that the review panel had been unreasonable in considering extraneous matters and in drawing its conclusion that just cause for termination did not exist. Here, the Court of Appeal was especially thorough in its appraisal, articulating both substantive and procedural elements in the concept of reasonableness.

The substantive elements of the termination that the [review panel] found unreasonable included: the principal ordering the teacher to use codes given the evidence that policy [of the high school] and Edmonton Public School Board) supported involvement of teachers' professional judgment and consultation; the order being simply announced with little or no consultation; questions or concerns being ignored; little or no communication to students and parents about the codes or their enactment; the failure of the principal and the appellant to respect the professional rights and duties of the teacher regarding assessment of his students; and the discriminatory singling out of the teacher for discipline when other teachers who also challenged and refused to follow the principal's order were not disciplined.<sup>46</sup>

The procedural element of reasonableness involves acting fairly, in good faith, without bias, and in accordance with stated policies. The teacher must be given notice and afforded a reasonable opportunity to be heard.<sup>47</sup> As the Court of Appeal noted,

The procedural elements of the termination that the [review panel] found unreasonable included: the refusal of the principal and the appellant to give any consideration to the teachers' evidence about his absences from staff meetings; the refusal of the principal and the appellant to consider the basis and reasons for the teacher to attend at the school; and the timing of the actions of the principal and appellant that precluded the teacher from assisting the supply teacher who took over his classes and dealing with and resolving the marking of exams. Additionally, of express concern to the review panel was the nature of the termination hearing [where the Superintendent served simultaneously as judge and executioner], which procedure surely should have met the standard of natural justice.<sup>48</sup>

Unlike in *Raison*, there was no ongoing "conversation" in this Alberta case between the principal and teacher on grading matters. Indeed, the Alberta Court of Appeal was concerned about the absence of much consultation at all over the "no zero policy" in the school and its consequences for the teacher.

---

which could be offered in support of the decision and try to supplement them before seeking to subvert them: *Newfoundland Nurses' Union* at para 12.

<sup>46</sup> *Ibid.*, at para. 68.

<sup>47</sup> *Ibid.*, at para. 67.

<sup>48</sup> *Ibid.*, at para. 69.

#### 4. GRADES UNDER ETHICAL REVIEW

If one construes grades as evidence of student achievement, then *Raison* raised problems about authentic evidence backing a grade and *Dorval* about the absence of evidence for a grade. *Sautner v. Saskatchewan Teachers' Federation*<sup>49</sup> concerned the falsification of grades as evidence of achievement. Both the British Columbia and Alberta cases raised ethical issues, explicitly so in the words of the British Columbia Court of Appeal Justice Hutcheon, absent a British Columbia Teachers' College at that time. In the Alberta case, a professional ethics committee exonerated the teacher prior to the Court of Appeal challenge. In *Sautner*, the central legal issue was whether the professional body could sanction a high school principal for unethical practice in altering student grades that teachers had prepared and submitted to the Ministry.<sup>50</sup> The principal had argued there was insufficient proof proffered by the Saskatchewan Teachers' Federation to find her guilty of professional misconduct and that a six-month suspension of her licence was "excessive".<sup>51</sup> Saskatchewan's Court of Appeal disagreed with the principal on both grounds. The principal was found guilty of professional misconduct for changing her daughter's grades. According to court documents, the principal's daughter graduated from high school in June 2014 and went on to attend classes at the University of Lethbridge. However, her daughter struggled in her university English class and was told that if she had done better in her high school English class, she would not have to take the course. The principal, who by then was working as a principal in an Alberta school,<sup>52</sup> contacted some teachers and asked them to help her daughter upgrade her marks.

Role conflict was a central conundrum in this case: determining which of the contradictory demands placed on someone as a parent or as a school leader are pre-eminent. In other words, the question was whether a personal ethic of familial care should predominate over a deontological obligation in an ethic of justice.<sup>53</sup> In this way, the *Sautner* case paralleled *Eggertson v. Alberta Teachers*

<sup>49</sup> Above note 24.

<sup>50</sup> *Ibid.*, at para. 1.

<sup>51</sup> *Ibid.*, at para 3. In Saskatchewan, as in Alberta, Manitoba, and the Atlantic provinces, principals belong to the same professional body as teachers.

<sup>52</sup> Sautner was the principal of Wolseley High School from 2006 to 2014 and then left to take a principalship in southwestern Alberta at the time her daughter graduated from high school. In January 2015, she emailed two English teachers at Wolseley High School and offered them \$500 if they would help her daughter upgrade her marks. The request prompted an investigation into her daughter's academic record and the new Wolseley High School principal discovered that the daughter's grades in an electronic database did not match the marks recorded by her teachers in June 2014. *Ibid.*, at paras. 9-13. Neither the Saskatchewan Teachers' Federation nor the Saskatchewan Court of Appeal identified any jurisdictional issue arising from Sautner's not being a member of the profession in Saskatchewan at the time the investigation was completed.

<sup>53</sup> It might be pointed out that bribery of public officials is unethical in either optic. Sautner

*Association*,<sup>54</sup> in which the teacher as parent was eventually absolved of professional misconduct charges after criticizing a fellow teacher at a parent-teacher interview. The Alberta Court of Appeal eventually found that both a lower court and a professional ethics committee had been unreasonable in expecting a teacher could suspend her parental status in a situation in which the academic progress of her children was being discussed, had not properly balanced parental and professional roles, had adopted an overly literal interpretation of the professional code of conduct, and had in effect undermined the Alberta government's recognition of parental rights under the *School Act*.<sup>55</sup>

However, actual grades were in the balance in the Saskatchewan case, unlike the *Eggertson* case, which stemmed from a teachers' criticism of a colleague when retrospectively discussing the academic progress of her children in an elementary school parent-teacher interview. In *Eggertson*, the Alberta Teachers' Association ethics committee had condemned a teacher's comments to colleagues, whereas in *Sautner*, the Saskatchewan Teachers' Federation censured a school administrator for manipulating the information system, even if it eventually declared there was insufficient evidence that the teachers offered cash payment were parties to undermining the grades' integrity.

The Court of Appeal in *Sautner* accepted and affirmed the ethics committee's and the teachers' federation executive's reasoning when upholding the penalty:

[T]he Committee is of the view that the penalty should reflect aspects of both a specific deterrent in relation to [the principal] as well as a general deterrent in relation to the teaching professional at large. Further, it should ultimately support and maintain public confidence and respect for the teaching profession. These principles should be applied in a manner consistent with the overarching objective of acting in the public interest.

While the Committee understands that every parent wants to support his or her children, this clearly cannot come at the expense of one's professional responsibilities. In the view of the Committee, improper

---

argued she had not attempted to bribe officials but rather was offering compensation out of recognition for the additional work she was asking of the teachers, much like one would provide a gift card to someone who has gone beyond the call of duty to help her daughter through a kind of credit upgrading policy. The Professional Ethics Committee and the Court of Appeal concluded there was insufficient evidence to prove she had asked two teachers at the school to increase her daughter's grades with a financial inducement (in other words, this was not a commercial conversation). "Kimberley Sautner, teacher accused of paying to change daughter's grade, says she acted ethically", *The Huffington Post* (2 February 2016) online: The Huffington Post «[www.huffingtonpost.ca/2016/02/10/kimberley-sautner\\_n\\_9202054.html](http://www.huffingtonpost.ca/2016/02/10/kimberley-sautner_n_9202054.html)».

<sup>54</sup> *Eggertson v. A.T.A.*, 2002 CarswellAlta 1334, 2002 ABCA 262, 47 Admin. L.R. (3d) 183, 6 Alta. L.R. (4th) 24, [2003] 2 W.W.R. 613, 327 A.R. 59, 296 W.A.C. 59, [2002] A.J. No. 1358 (Alta. C.A.).

<sup>55</sup> Above note 20.

alteration of a student's marks goes to the heart of a teacher's professional obligations.<sup>56</sup>

The *Sautner* case put the Saskatchewan Court of Appeal in the unusual, even awkward, position of having to apply legal rules to an ethical matter. Academics frequently apply ethical concepts to legal cases in higher education; Canadian courts have only rarely been asked to apply legal concepts to an explicitly ethical question in educational leadership.<sup>57</sup> Which among several approaches to ethics<sup>58</sup> should the court uphold: an ethic of care, an ethic of virtue, an ethic of justice, or a consequentialist ethic that revolves around the best interests of the child?<sup>59</sup> In reviewing the penalty imposed, the court affirmed that an important aggravating factor was that the principal had compounded the breach of her professional obligation by never acknowledging or taking responsibility for her actions. The court referred to two cases. *Britton v. STF*<sup>60</sup> was a case in which a Saskatchewan vice-principal was given a written reprimand after being found guilty of professional misconduct and conduct that was not becoming to a teacher, namely, altering the grades of five students. However, the justices deemed it unfortunate that the STF professional ethics committee's reasoning was not available to them. And, the second case referred to was not on point.<sup>61</sup> In that case, a teacher had admitted to forging the principal's signature twice. At the end of the day, the court found that the ethics committee and the STF executive had carefully considered all of the relevant factors and that the original committee decision was reasonable — within a justice ethic.

<sup>56</sup> Above note 24, at para. 59.

<sup>57</sup> *Casavant v. S.T.F.*, 2005 CarswellSask 276, 2005 SKCA 52, [2005] 6 W.W.R. 31, 262 Sask. R. 195, 347 W.A.C. 195, [2005] S.J. No. 257 (Sask. C.A.). Courts have reviewed several professional misconduct cases in law and in medicine.

<sup>58</sup> R.J. Starratt, "Building an Ethical School: A Theory for Practice in Educational Leadership" (1991) 27:2 *Educational Administration Quarterly* 185.

<sup>59</sup> J.A. Stefkovich, *Best Interests of the Student: Applying Ethical Constructs to Legal Cases in Education* (London: Routledge, 2013).

<sup>60</sup> See "Fired vice-principal stands behind changing students' marks", Regina Leader Post (15 June 2015) online: Regina Leader Post <<http://www.leaderpost.com/news/Fired+vice+principal+stands+behind+changing+students+marks/11109852/story.html>>. Unlike the Ontario College of Teachers, neither the Alberta Teachers' Association nor the Saskatchewan Teachers Federation makes public the deliberations of their ethics review committees. *Ontario College of Teachers v. Crouse* (November 1, 2016), 2016 ONOCT 99 (CanLII), *Ontario College of Teachers v. Woltman* (February 20, 2015), 2015 ONOCT 88 (CanLII), *Ontario College of Teachers v. Bene* (February 10, 2009), 2009 ONOCT 7 (CanLII), may be pertinent for looking at teachers' grading practices in an ethical context.

<sup>61</sup> *School District No. 39 and Vancouver Teachers' Federation, Re*, 1996 CarswellBC 3536 (B.C. Arb.).

## 5. GRADING WITHIN INSTRUCTIONAL LEADERSHIP

A recent survey of the Canadian landscape for grading policies and practices<sup>62</sup> has determined the primary influences on grading to be provincial and local school board policies. That topographical view overlooks a primary source/interpreter of policy that influences grading: the school principal, who is recognized in most provincial statutes as having decision-making authority. The much-maligned variability in student grading<sup>63</sup> — parents, students, and university admissions officers often complain about inconsistency in teacher marking — may stem as much from the varying expectations of the school leaders, as from imprecise provincial and school district policies. So, too, is the principal important in moderating weaknesses in teachers stemming from inadequate professional training and addressing professional dilemmas arising from weighting of (non)cognitive factors such as effort or diligence in teachers' appraisal of student achievement.<sup>64</sup> In other words, principals have their own grading policies that are enacted directly with teachers. The leader's own discretionary interpretations of employer and provincial policy — as well as those of teachers — must be considered when looking at school-level grading practices.

Nevertheless, the three Western Canadian cases set perimeters around that grey zone of discretion. A grade is essentially a symbolic representation of a student's level of achievement. The integrity of a mark hinges on the extent to which a grade is strictly commensurate with the quality, breadth and depth of students' academic achievement. Using grades to draw conclusions or make decisions inevitably places a value both on grading as a practice and on individual grades. When ethical matters arise, administrators should consider the merit/fidelity of the mark (the grade must accurately reflect student achievement) to be substantially different from the grade's worth/utility (the mark becomes useful for subsequent decision-making).<sup>65</sup> Administrators might forecast ethical dilemmas to arise when mark tampering is rationalized by (a) the need for compassion; (b) the intent to teach life lessons; and (c) the desire to provide

<sup>62</sup> Above note 12.

<sup>63</sup> Above note 16.

<sup>64</sup> One of us has described elsewhere how principals ask rhetorical questions while dealing with teachers and parents rather than make assertions to steer around contradictory meanings of a grade. See D.M. Hunter, *About Average: A Pragmatic Inquiry into School Principals' Meanings for a Statistical Concept in Instructional Leadership* (Ph.D. Thesis, University of Regina, 2014) [unpublished].

<sup>65</sup> D.R. Sadler, "Grade Integrity and the Representation of Academic Achievement" (2009) 34 *Studies in Higher Education* 807; D.R. Sadler, "Indeterminacy in the Use of Preset Criteria for Assessment and Grading" (2009) 34 *Assessment & Evaluation in Higher Education* 159; D.R. Sadler, "Fidelity as a Precondition for Integrity in Grading Academic Achievement" (2010) 35 *Assessment & Evaluation in Higher Education* 727.

students with opportunity.<sup>66</sup> Each of these rationales was given by commentators as explanations at one point or another in the Western Canadian legal cases when the adjustment of marks and other educator practices were adjudicated.

Instructional leadership requires an understanding of the role of sound assessment in efforts to improve teaching and learning. The well-prepared principal is ready to ensure that assessments are of high quality and used effectively. However, historically, preparation for effective assessment has been neglected in university programs.<sup>67</sup> Legislation often remains ambiguous or ambivalent about who sets the standard for grading. Case law can provide an inverted, negative mirror for illuminating what school leaders should (not) do in their leadership practice about the ubiquitous report card grade and the professional's processes in generating it.

In the three cases that we have discussed, courtroom transcripts suggest that central office officials initially supported the school principals' positions, or at least participants believed they had the support of central office. In *Raison*, central office officials' reports collectively argued for termination, expressing doubts about a teacher's autonomous professional judgment. In *Dorval*, the officials believed that a dismissal for misconduct was established primarily within labour law precedents, not in view of a teacher's status as professional to exercise his or her own experience-based judgment. And, in *Sautner*, the principal's testimony included claims she had proceeded with the support of the school system's director to re-enter her daughter's marks.

All of these cases revolved around divergent meanings or contrasting interpretations to be given to a student's grade — in each case, the school principal attempted to elevate a mark as initially assigned by the teacher. Whether that constitutes grade inflation, and whether report card grades have soft signaling power as indicators of student quality, remain debatable.<sup>68</sup> However, such marks certainly do not demonstrate fidelity to teaching professionals' conceptions of accurate representations of student performance. A grade can be viewed, alternatively, as a statement of professional judgment or as evidence of professional competence and authenticity (*Raison*); as a depiction of a student's status in a school program or as an expression of school board

<sup>66</sup> R.D. Tierney, "Altered Grades: A Grey Zone in the Ethics of Classroom Assessment" (2015) 8 *Assessment Matters* 5.

<sup>67</sup> L. Volante and X. Fazio, "Exploring Teacher Candidates' Assessment Literacy: Implications for Teacher Education Reform and Professional Development" (2007) 30:3 *Canadian Journal of Education* 749; C. DeLuca and A. Bellara, "The Current State of Assessment Education: Aligning Policy, Standards, and Teacher Education Curriculum" (2013) 64:4 *Journal of Teacher Education* 356; C.A. Poth "What Assessment Knowledge and Skills Do Initial Teacher Education Programs Address? A Western Canadian Perspective" (2013) 58:4 *Alberta Journal of Educational Research* 634.

<sup>68</sup> Pattison, Grodsky, and Muller above note 7. See also R.L. Ziomek and J.C. Svec, "High School Grades and Achievement: Evidence of Grade Inflation" (1997) 81:587 *NASSP Bulletin* 105; D.J. Woodruff and R.L. Ziomek, "High School Grade Inflation from 1991 to 2003" (2004) *Research Report Series 2004-04*, ACT Inc.

policy (*Dorval*); or as an accurate record of student accomplishment or a projection of parental, student, and professional aspirations for post-secondary study (*Sautner*). The austere alpha-numeric symbol that is a student grade thereby carries a great deal of cargo under administrative law. These rulings suggest that astute school administrators should proceed with caution when imposing their own meaning on a student mark.

The flash points in these cases were in record keeping and information management systems; they only obliquely derived from teachers' actual cyclical test making and marking in the classroom context. The legally contested issues did not stem from the curriculum content and appropriateness of tests or assignments, nor in the author of the grade's intentions in providing an assessment. Instead, initial frictions originated as the grades were communicated after classroom production to central office, the ministry, or parent/students. Although that focal point may relate to the court's concern with the grade as evidence, given courtroom preoccupations and emphases in evidentiary law, it implies that the central challenges for leadership in assessment matters start not in instruction and assessment as processes, but rather at the point at which grades must be entered into school records and communicated to others. Exponents of instructional leadership contend that a school leader's role is to become directly involved in professionals' classroom practices as infra-group processes, whereas the "grade-aches" often are felt at the point of mark delivery, not during mark construction.

In these cases, however, the parental and central office positions on a classroom assessment issue remain opaque and a limitation of this article. Parents, students, teachers, and central office are the primary audiences in an evaluative rectangle for report card grades. Principals stand at the centre of a constellation of competing interests around and within the school; the principal's job is to manage these conflicting expectations to best serve the public. We do know that courts will recognize the importance of parental involvement in classroom assessment reporting, if not in the construction or artificial inflation of marks.

Other questions remain unanswered. To what degree is the professional judgment involved in assigning a grade an expression or representation of the teacher, the principal, the school, or the school district? Moreover, none of the cases canvassed in our article considers the implications of freedom of expression as protected under section 2(b) of the *Canadian Charter of Rights and Freedoms*.<sup>69</sup> One of us has argued elsewhere that the *Charter* may well offer

---

<sup>69</sup> Part I of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 ["*Charter*"]. In *Morin v. Prince Edward Island School Board, Regional Administrative Unit No. 3*, 2002 CarswellPEI 36, 2002 PESCAD 9, 212 Nfld. & P.E.I.R. 69, 213 D.L.R. (4th) 17, 637 A.P.R. 69, 94 C.R.R. (2d) 75, [2002] P.E.I.J. No. 36 (P.E.I.C.A.), a majority of the Court of Appeal held that "teachers engaged in their profession" have a constitutionally protected right to free expression. The majority

enhanced protection for teachers' professional freedom.<sup>70</sup> At this time, we know little about teacher attitudes and whether they indeed want untrammelled freedom of expression in the grading realm. After all, many evaluative activities within institutions are performed "in committee" precisely because judgments become a collective decision and not those of a singular individual who becomes autonomously accountable.<sup>71</sup>

We readily acknowledge that governments may tell teachers what to teach through prescribed curricula. But should they tell them how to teach, including how to grade? Many provincial ministries have been introducing classroom grading criteria through policy, rubrics, and templates.<sup>72</sup> As Clarke and Trask have noted,

If teachers are no more than bureaucratic employees who are programmed to use preapproved teaching strategies, then there is no need for academic freedom in public schools. A different result ensues when teachers are viewed as professionals. Normally, teachers are hired because they know how to teach. They should be entitled to exercise some degree of independent judgment. To perfect their craft and to improve on existing methods, teachers should be allowed to experi-

---

rejected the school board's argument that teachers cannot have a right to free speech because control of schools rests with principals. It ruled that the Board's proposition was "tenable neither in logic nor in law" (at para. 71). In dissent, Justice McQuaid offered a more restrictive view about teacher autonomy. He portrayed teachers, above all, as employees and held that the purpose of the School Board's decision was to exercise supervisory control over the teacher as one of its employees. Consequently, it had the authority to supervise him and to direct his projects. Any free speech rights the teacher had were subject to the approval of the school principal and the superintendent. Justice McQuaid refused to recognize the teacher's contention that his actions and expression promoted the foundational values upon which s. 2(b) of the *Charter* rests: "Expression by a teacher in the classroom of a school in the public school system is not in the furtherance of, nor does it promote the values underlying the constitutional protection afforded expression by s. 2(b) of the *Charter*. The expression here had nothing to do with the search for truth, the maintenance of the [*sic*] democracy, and the promotion of self autonomy [*sic*] as values which underlie the protection of free expression" (at para. 234).

<sup>70</sup> P.T. Clarke and R. Trask, "Teachers' Freedom of Expression: A Shifting Landscape — Part Two — Curricular Speech to Students and Recent Developments" (2013-14) 23 *E.L.J.* 85; Paul T. Clarke, "Canadian Public School Teachers and Free Speech: Part III — A Constitutional Law Analysis" (1998-99) 9 *E.L.J.* 315.

<sup>71</sup> Group decision making and judgment is a vast and growing research topic in cognitive and social psychology. Among the advantages given for consensus decisions are controls over the vagaries of independent snap judgment, the construction of infra-organizational values, and collective accountability for decision making. High school transcripts issued by the Ministry in nearly all provinces do not identify the professional authors of submitted marks but often identify the school where they were awarded.

<sup>72</sup> See, for example, Ontario Ministry of Education, *Growing Success: Assessment, Evaluation, and Reporting in Ontario Schools — First Edition, Covering Grades 1 to 12* (Toronto: Author, 2010), online: Ontario Ministry of Education <<http://www.edu.gov.on.ca/eng/policyfunding/growingSuccessAddendum.html>>.

ment, within the bounds of reasonableness and appropriateness, with different pedagogical practices.<sup>73</sup>

We hesitantly conclude that these cases do not contribute substantively but may do so procedurally within a progressive narrative on teachers' professional autonomy and academic freedom. Some commentators have suggested the Alberta decision about a zero grade has enhanced professional authority in classroom assessment matters<sup>74</sup> when the teacher's philosophy differs from that of the school principal on student grading matters. However, after detailed scrutiny of *Dorval* and the other two superior court decisions discussed in this article, we question whether any of them have substantively expanded professional rights to greater freedom of expression or autonomy in assigning student marks. Instead, all three case decisions revolve directly around constraints on administrators' leadership behaviours in classroom-related matters. They do not extend teachers' professional purview except perhaps through imposing a duty to consult on the principal. Courts have circumscribed and delimited the way school administrators should fulfill their legislatively defined and mandated duties. In doing so, they have acknowledged and legally recognized, but not markedly extended, teachers' professional status in marking. Just because the teacher and principal are co-related in workplace relationships, it does not logically follow that new burdens added to principals' duties have correspondingly and inversely extended teachers' professional rights. We reject such binary, zero-sum presumptions in power relations<sup>75</sup> and doubt whether a double negation in court room judgments logically yields a strong affirmation.<sup>76</sup>

<sup>73</sup> Above note 70, at 103.

<sup>74</sup> Bianca Bell, "From Zero to Hero: A Teacher's Academic Freedom" (2017) 25 *E.L.J.* 235; Brian Andrais, "Double Duty" (13 June 2016) 96 *Alberta Teachers' Association Magazine* 16, online: The Alberta Teachers' Association «<https://www.teachers.ab.ca/News%20Room/ata%20magazine/Volume-96-2015-16/Number-4/Pages/Double-duty.aspx>». See also Paul Bennet, *Teacher Autonomy and School Standards: What Made Lynden Dorval an Alberta Teacher Hero?* (August 2014), online: educhatter «<https://educhatter.wordpress.com/2014/08/31/teacher-autonomy-and-school-standards-what-made-lynden-dorval-an-alberta-teacher-hero/>», amidst voluminous provincial and national press commentary.

<sup>75</sup> T. Parsons, "On the Concept of Political Power" (1963) 107:3 *Proceedings of the American Philosophical Society* 232; B. Arts and J. V. Tatenhove, "Policy and Power: A Conceptual Framework between the 'Old' and 'New' Policy Idioms" (2004) 37:3/4 *Policy Sciences* 339.

<sup>76</sup> For a counter line of argument, see John C. Duncan, Jr. "Two 'Wrongs' Do/Can Make a Right: Remembering Mathematics, Physics, & Various Legal Analogies (Two Negatives Make a Positive; Are Remedies Wrong?) The Law Has Made Him Equal, but Man Has Not" (2005) 43 *Brandeis L.J.* 511. Social psychologists also believe that wrongs can be used to manage impressions and shape attitudes for propagandist ends: D. Trafimow and K.A. Finlay, "The Prediction of Attitudes from Beliefs and Evaluations: The Logic of the Double Negative" (2002) 41:1 *British Journal of Social Psychology* 77. See also Laurence Horn, *A Natural History of Negation* (Stanford, CA: CLSI Publications, 1989) for the logician's analysis of the double negative. In English, the formulation can be seen

Three administrative wrongs do not make a new professional right, but rather reinforce those that pre-existed. The proclivity for binary thinking under labour law and administrative law may derive from popular misconceptions about an adversarial judicial system in criminal law and from the media's propensity to dramatize events through depictions of villains and victims.<sup>77</sup>

In other words, these appellate court judgments did not say that teachers' autonomously generated marks are beyond reproach, and they did not laud teacher Dorval as the "hero of zero". Instead, they throttled the would-be administrative Nero. The teachers' professional judgment in classroom grading and reputation transcends that of instructional competency; the principal may be subject to defamation litigation for incomplete or inaccurate documentation of assessment processes, notwithstanding a defence of privilege. School principals appear to have a duty to consult at least the senior staff before implementing a new school-wide grading policy. Moreover, those assuming leadership roles in assessment and thus instructional matters must be careful not to breach ethical codes by tampering with teacher marks and intermixing a parental interest or monetary interest with arithmetic computation to improve perceptions of student or school performance.

Above all, what seems clear is that school administrators are bound by a standard of reasonableness when addressing grades before and after they have been submitted. One might argue that Alberta and Saskatchewan courts were applying post-*Dunsmuir* tests of reasonableness<sup>78</sup> to the reasoning of review

---

as litotes or meiosis, a way of understating and diminishing the harshness of an observation. Double negatives were a complaint in George Orwell's essay *Politics and the English Language* because they convolute reasoning, corrode clear exposition, and laden an idea with ambiguity. American governmental cryptographers point out that their Supreme Court has extended the art of negation into a quadruple negative, trying to decipher the meaning of "This is not to say, however, that the *prima facie* case may not be met by evidence supporting a finding that a lesser degree of segregated schooling in the core city area would not have resulted even if the board had not acted as it did." Measurement critics of the LSAT's content sardonically remain "not unconvinced that these test makers are very good at what they do". Steve Stein, "LSAT Logical Reasoning: Double Negatives and Multiple Negatives", online: Power Score Test Preparation <<https://blog.powerscore.com/lsat/lsat-logical-reasoning-sources-of-difficulty2>>.

<sup>77</sup> G.C. Hazard and A. Dondi, "Responsibilities of Judges and Advocates in Civil and Common Law: Some Lingering Misconceptions Concerning Civil Lawsuits" (2006) 39 *Cornell Int'l L.J.* 59; R. Sanvenero, "Social Media and Our Misconceptions of the Realities" (2013) 22:2 *Information & Communications Technology Law* 89; K. Gelb, "Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing" (2009) 21:4 *Federal Sentencing Reporter* 288; Neil Cranston, Allison J. Trimble, and Jeanne M. Allen, "The Impact of Education Law on School Principalship: Challenges and Emergent Findings" (2013) 28:2 *Journal of Educational Leadership Policy and Practice* 79.

<sup>78</sup> It was widely anticipated that the Supreme Court of Canada decision in *Dunsmuir v. New Brunswick*, 2008 CarswellNB 124, 2008 CarswellNB 125, 2008 SCC 9, [2008] 1 S.C.R. 190, 291 D.L.R. (4th) 577, 69 Admin. L.R. (4th) 1, 64 C.C.E.L. (3d) 1, 69 Imm. L.R. (3d) 1, 170 L.A.C. (4th) 1, 95 L.C.R. 65, 329 N.B.R. (2d) 1, 844 A.P.R. 1, 2008 C.L.L.C. 220-

panels when looking at just cause for dismissal or grounds for sanction, not looking directly at the school administrator's reasonableness when contemplating teacher-submitted grades. However, the Alberta court spoke directly to substantive reasonableness in the principal's processes for introducing a new school-wide grading policy. Principals cannot order the use of specific codes when school and district policy grants teachers professional judgment and consultation rights.<sup>79</sup> A principal must proceed with substantial consultation involving senior staff members and must listen to their questions and concerns. Moreover, school administration must communicate to students and parents about grading symbols and their enactment. The principal and the school board must respect the teachers' professional rights and duties regarding student assessment and may not discriminate by singling out a teacher for reprimand when a group of professionals dissents. Extrapolating from these judgments, we could infer that courts are upholding a *primus inter pares* model of instructional leadership, not the hairy-chested archetype in some transformational models.<sup>80</sup>

The relationship between teachers and principals must be governed by trust and respect if teachers are going to flourish as professionals and role models for their students. It might be helpful to start with a presumption of legitimacy and validity in grading that acknowledges the professionalism of teachers. Attempts to micromanage what happens in the classroom, including the way students are assessed and graded, is an impediment to a collaborative and professional working relationship. Excessive, undue, and unjustified surveillance and control over how teachers deliver the curriculum, and integrally, their methods of grading, will tend to weaken the bond between teachers and formal school

---

020, D.T.E. 2008T-223, 372 N.R. 1, [2008] S.C.J. No. 9 (S.C.C.) [*"Dunsmuir"*] would simplify the judicial review of administrative action by limiting the scope of review to two standards: reasonableness and correctness. Subsequent superior court decisions have brought even greater precision to these terms and their applicability. In the Alberta case, the Court of Appeal referred to provincial precedents as guiding its concepts of reasonableness: *Grande Yellowhead Regional Division No. 35 v. Leeson*, 1997 CarswellAlta 1048, 1997 ABCA 392, 209 A.R. 214, 160 W.A.C. 214 (Alta. C.A. at para. 13; *Bruse v. Calgary Board of Education*, 2011 CarswellAlta 1006, 2011 ABCA 196, 54 Alta. L.R. (5th) 200, 510 A.R. 125, 527 W.A.C. 125 (Alta. C.A.) at paras. 19-21; *Edmonton School District No 7 v. ATA*, 2013 CarswellAlta 592, 2013 ABCA 155, 57 Admin. L.R. (5th) 296, 544 A.R. 367, 567 W.A.C. 367, [2013] A.J. No. 454 (Alta. C.A.) at para. 17. In the Saskatchewan case, the parties agreed that the applicable standard of review of decisions by professional regulatory or administrative tribunals was reasonableness and that issues involving procedural fairness did not involve any deferential standard of review.

<sup>79</sup> The Edmonton Public School Board moved quickly after the review panel decision to refine its policy, introducing new standards for evaluation and permitting zeros if pre-conditions are met. Current policy is available online: Edmonton Public School Board <<https://www.epsb.ca/ourdistrict/policy/g/gkb-ar/>>.

<sup>80</sup> D. Hunter, "Leadership for Learning: A Study of the Ideas in its Research Bases" (Regina, SK: Saskatchewan Instructional Development Research Unit, University of Regina, 2011) [Unpublished research paper].

leaders. By the same token, teachers are not lone rangers operating independently and as rugged individualists.

Parents have a legitimate interest in knowing how and why assessment is occurring and how well their children are learning and progressing through the grades. Teachers are expected to provide appropriate justification in this regard based on sound pedagogical methods and the best interests of their students. If principals or other school officials become aware of serious problems related to assessment, they will be expected to exercise appropriate supervisory control. This expectation does not constitute a serious threat to teachers' professional autonomy. We acknowledge that legitimate disputes between reasonable teachers and reasonable principals around assessment will not go away.

In managing those disputes, a process or way to proceed thoughtfully, ethically, and relationally is key. It is critical to remember that principals should treat teachers with respect and dignity as professionals, value their professional judgment when it is exercised appropriately and with justification, and look for ways to engage collaboratively and professionally to resolve outstanding differences. Teachers must resist the urge to be hypersensitive when school principals and authorities have good reason to ask fair and legitimate questions about grading practices. Exercising general supervisory control when there is good reason to do so is something teachers should expect and accept. This approach is not a panacea and differences around grading will persist. That said, in supporting best practices and promoting the education and flourishing of students, a better method of resolving conflicts around assessment may well emerge.<sup>81</sup>

Grading for report cards is neither a clinical exercise nor an administrative afterthought. Those cases that have come forward to date illustrate that teacher marking is not an antiseptic activity within schools, students' homes, or the news media. An extensive body of research is emerging about efficacious feedback, uninformed however by what the courts have said about this crucial facet of pedagogy wherein grades are omnipresent.<sup>82</sup> Canadian courts have interposed

<sup>81</sup> M. Deutsch, P.T. Coleman, and E.C. Marcus, eds., *The Handbook of Conflict Resolution: Theory and Practice* (London: John Wiley & Sons, 2011). For a recent review of the pressures on school administrators across Canada, see Jameel Aziz and Gordon Thomas, *The Future of the Principalship in Canada: A National Research Study* (Edmonton, AB: Alberta Teachers' Association and Canadian Association of School principals, 2014), online: Alberta Teachers' Association <<https://www.teachers.ab.ca/SiteCollectionDocuments/ATA/Publications/Research/The%20Future%20of%20the%20Principalship%20in%20Canada.pdf>>.

<sup>82</sup> For example, we now know that the situational timing for feedback may be as important as timeliness, that feedback with visible exemplars and explicit criteria may be more effective than transmitting grades alone, and that individualized feedback is preferred over group feedback. J. Hattie, *Visible Learning: A Synthesis of 800+ Metanalyses on Achievement* (Abingdon, UK: Routledge, 2009); C. Evans, "Making Sense of Assessment Feedback in Higher Education" (2013) 83:1 *Review of Educational Research* 70; J. Hattie and H. Timperley, "The Power of Feedback" (2007) 77:1 *Review of Educational Research* 81.

requirements between the actions of the authors of grades and those of the school authorities who authorize the grades. Student marks as symbols are shot through with moral, ethical, and legal meanings that a school leader must approach with prudence, and with profound respect for the professional prerogative.

Reproduced with permission of copyright owner. Further reproduction prohibited without permission.